

ICS warns of hazardous gap in global liability

Sandra Speares - Wednesday 3 October 2007

PRESSURE is building for an urgent ratification of the Hazardous and Noxious Substances Convention after the International Chamber of Shipping warned against moves to attempt to revise it, writes Sandra Speares.

The convention is due to be debated at the International Oil Pollution Funds meeting later this month. However, the ICS has now joined an increasingly vocal band of interested parties raising serious concerns prior to the debate that by not ratifying the convention there is a gap in global liability coverage and a real risk of regional regulatory action.

“It is most important that the HNS Fund Assembly resists the efforts of a small minority of governments to undermine the current arrangements which provide for a reasonable distribution of risk between shipowners and cargo receivers,” the ICS said yesterday. “Abandoning the previously agreed convention terms now would be an act of extreme folly.”

At a meeting of the legal and maritime law committees of the Nordic Shipowners' Associations last week there was also a call for urgent ratification of the 1996 HNS convention, which provides for cover for damages caused by such substances on a strict liability basis.

The Nordic Shipowners' Associations, which include associations from Denmark, Finland, Norway, Sweden and the Aland Islands, have written to the Nordic maritime authorities seeking their support for an early ratification of the convention, which provides for a sharing between owners and cargo interests of compensation costs for spills of hazardous and noxious substances.

While the HNS convention broadly follows the formula set out in the Civil Liability and Fund Conventions, both of which have proved successful in dealing with compensation for oil spills from ships, the HNS convention has proved far more complex because of the number of receivers of chemicals.

According to the Nordic Shipowners' Associations a number of governments are arguing that ratification cannot take place until legal or technical problems have been resolved, with others totally opposed to the HNS convention in principle.

The associations, along with the ICS, advocate the ratification of the convention as soon as possible, saying that any perceived legal or technical problems can be resolved afterwards by the HNS Fund assembly, as has been the case with the IOPC Funds assembly.

Areas of concern raised by the associations include the issue of non-submission of reports that signatories to the convention are obliged to supply annually on quantities received.

Other issues that have been raised concern payments to the LNG account of the HNS Fund, including whether security should be provided to cover potential liabilities. The associations argue that failure to provide reports has not hampered the successful operation of the IOPC funds and the HNS convention provides for sanctions on non-reporting states in any case.

Like the ICS, they believed that the international nature of transport of dangerous goods by sea “argues strongly in favour of a global approach to legislation regulating liability and compensation for HNS damage”. Failure to have an HNS convention, they argue, would have “devastating consequences to IMO,

leaving the matter to regional or national regulation.

“That in turn may have dramatic and unpredictable consequences for the whole global limitation system.”

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