

ANNEX 2**HNS CORRESPONDENCE GROUP**

Special Consultative Meeting

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Submitted by Norway**Insurers and Insurance Certificates****Outline of the insurance provisions**

1 HNSC article 12 requires that a State Party shall ensure that all ships registered in that State Party and all ships entering or leaving its ports have got insurance cover for the liability under the Convention (paragraphs 1, 10, and 11). The scope of the coverage is the liability of the owner, but there are certain modifications set out in the Convention, including the defence of wilful misconduct of the shipowner (article 12, paragraph 8). The insurer can be sued directly (article 12, paragraph 8) in the jurisdictions set out in HNSC article 38.

2 Other security may be substituted for insurance (article 12, paragraphs 1 and 14).

3 A State Party has a duty to issue certificates in respect of its own ships. Ships from other States Parties will, similarly, have their certificates issued by their flag state. A State may issue certificates to a ship from a non State Party, but is under no obligation to do so (article 12, paragraph 1).

Insurance availability as a prerequisite for entering into force

4 Before committing themselves to the HNSC, most states would first consider carefully whether or not it is likely that the required insurance (or other financial security) will be available in the market. One would, of course, avoid imposing obligations on shipowners that are practically impossible to comply with.

5 Although it is pertinent to pose this problem, it appears that the necessary insurance will be offered. The Protection and Indemnity Clubs of the International Group of P&I Clubs offer liability insurance to shipowners up to well over USD 4,000,000,000 per incident. In HNSC, few ships would require higher insurance than SDR 80,000,000 per incident, and none more than SDR 100,000,000.¹ Even if the clubs may wish to be more careful to commit themselves in respect of HNSC insurance than in respect of liability or indemnity insurance in general, there should still be plenty of insurance capacity available. Indeed, other insurers also offer insurance within these ranges.

¹ HNSC article 9, paragraph 1. 1 SDR = 1.4 USD, see <<http://www.imf.org/external/np/tre/sdr/basket.htm>>.

The tasks of the States Parties in respect of issuing insurance certificates

Implementation in national law

6 Each State Party must designate an authority, *e.g.* the maritime directorate or another public or private (!) body, to issue insurance certificates on behalf of that State Party. One must also decide whether or not one wishes to issue certificates to foreign vessels, and whether or not there should be any fees or charges for the certificate.

7 There are no requirements in international law as to how these decisions should formally be carried out. National law may require decisions in writing by certain authorities, *e.g.* the Parliament. In all events, it is, of course important that the rules are communicated to foreign shipowners.

The certificate

8 The form of the certificate is determined by article 12, paragraphs 2 and 3, and the Annex to the Convention. The details of the certificate include:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

9 The certificate may be issued in one or more national languages, but must in all events be available to the shipowner either as a copy or an original in English, Spanish or French (article 12, paragraph 3).

10 One copy of the certificate must be forwarded to the authorities that keep the register of ships where the ship is registered, if in a State Party (article 12, paragraph 4). Because States Parties generally issue certificates in respect of their own vessels, this means that the issuing authority is obliged to forward the certificate to another authority within the same State. A copy should in all events be kept by the issuing authority.

11 There are plans to make information on insurance certificates available on the Internet.² Governments may wish to include in their implementation legislation a requirement that insurers must submit this information in an appropriate format.

² Equasis already includes general insurance information, see <<http://www.equasis.org/>>.
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Consideration of the application

12 It is for the applicant to prove that the requirements for issuing a certificate are fulfilled. The main part of the application is a blue card issued by an insurer, that is a confirmation that they undertake the obligations of the insurer under the HNSC. The issuing authority may wish to consider the following:

- Does the undertaking cover all obligations required by HNSC? One should require an express statement to this effect. If such a statement is given, it does not matter whether the insurer is a liability insurer or an insurer of another kind.
- Does the insurer have the financial capability necessary for his undertaking? If in doubt, one should require a statement to this effect from the relevant authorities in the state in which the insurer has his main office.³
- Will the insurer have sufficient funds available in a State Party when a claim is made? A judgement under the HNSC may be enforced in any State Party (article 40), but not necessarily elsewhere. The applicant should therefore demonstrate that the insurer will have funds available in a State party until claims arising during the validity of the certificate are time-barred. Alternatively, the applicant may provide an undertaking by the insurer that they accept that a judgement against him by a court of any State Party is enforced even in non State Parties.

13 Governments may cooperate by keeping each other informed about their decisions on whether to accept or reject a blue card when in doubt. The easiest way to this is to maintain a fax/email list for circulating information. This list should be maintained by the Fund secretariat.

The duration of the certificate

14 The duration of the certificate should not be longer than the undertaking by the insurer (HNSC article 12, paragraph 2(f)).

The tasks of the States Parties in respect of control of insurance certificates

Implementation

15 Each State Party must organize a system to monitor that the ships that need insurance actually comply with the requirements. The implementation measures are likely to include:

- A legal basis in national law for the insurance requirement (typically an Act of Parliament).
- Penal sanctions against the master and shipowner for non-compliance (HNSC article 6).
- Designation of a public or private body to perform checks on behalf of the State Party.

³ In some cases, for example within the European Union, one is obliged to accept the financial standing of insurers located in other member states (see First Council Directive 73/239/EEC of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance article 7(1), as amended by Council Directive 92/49/EEC article 5).

- Setting up inspection procedures, most likely based on random checks.

Control procedures

16 The control procedures could be based on the following routines:

- Running registers of national cargo ships against the national register of HNSC insurance certificates issued to see that all ships have got an HNSC insurance certificate.
- Checking whether an HNSC certificate has been issued when considering vessels for port State control if information about HNSC certificates is available in the database used for such screening (e.g., Equasis⁴).
- Checking whether there is an HNSC certificate on board when carrying out port State safety control of foreign vessels or similar control of national vessels.
- Requiring cargo ships to give details of their HNSC certificate when they (as is common practice) identify themselves when approaching the coastline.
- Requiring cargo ships to give details of their HNSC certificate when they give notice to the authorities or the harbourmaster that there are dangerous goods on board.⁵

17 In all cases, if a cargo ship does not have an HNSC certificate, that warrants further scrutiny by the same inspector or another inspector, to see whether there is actually HNS on board, or such substances have been on board in the jurisdiction.

18 Most cargo ships would need an HNSC insurance certificate from time to time, and are permanently covered by insurance because their owners are members of a P&I club. It should therefore be considered to require (by national law) all ships with a cargo certificate to maintain HNSC certificates permanently. In that way, one avoids the trouble of determining whether or not there actually is HNS on board. Alternatively, one could establish a rule in national law that it is for the shipowner to prove that there is no HNS on board.

19 What is said above about cargo ships also applies to passenger ships carrying cargo, such as ferries.

⁴ See <<http://www.equasis.org/>>.

⁵ Such notices are required in the European Union, see, e.g., Council Directive 2002/59/EC of 27 June 2002 establishing a Community vessel traffic monitoring and information system <<http://europa.eu.int/cgi-bin/eurlex/udl.pl?REQUEST=Seek-Deliver&COLLECTION=oj&SERVICE=eurlex&LANGUAGE=en&DOCID=2002l208p10&FORMAT=pdf>>