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Agenda item 6

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## **IMPLEMENTATION OF THE HAZARDOUS AND NOXIOUS SUBSTANCES CONVENTION**

**Special Consultative meeting to discuss the Hazardous and Noxious Substances  
Convention: Friday 16 March 2001**

**Submitted by the United Kingdom**

### **SUMMARY**

- Executive summary:*** This document reports on the outcome of the Special Consultative Meeting in March 2001 to discuss the HNS Convention
- Action to be taken:*** The Committee is invited to take note of the information provided and comment and decide, as appropriate
- Related documents:*** -

### **Attendance**

1 The meeting was attended by representatives from: Australia, Bahamas, Barbados, Canada, Croatia, Cyprus, Denmark, Egypt, Finland, France, Germany, Greece, Italy, Japan, Latvia, Malta, Marshall Islands, Netherlands, Norway, Panama, Philippines, Poland, Republic of Korea, Singapore, Spain, Sweden, Switzerland, Trinidad and Tobago, United Kingdom, United States of America, Uruguay, Vanuatu, CEFIC, FETSA, GIIGNL, ICS, International Group of P&I Clubs, IMO, IOPC Funds, IUCN, IUMI and the World LP Gas Association.

### **Election of the Chair and adoption of the agenda**

2 The meeting elected Mrs. Birgit Olsen (Denmark) as its Chair. The meeting adopted the provisional agenda without debate.

### **Report on progress towards ratification and implementation of the HNSC**

3 The Chair recalled that only one country had acceded to the Convention, but 8 countries had signed the convention subject to ratification. Twenty representatives reported on steps being taken in their countries, all stated or implied that they intended to ratify the convention in due course but that there were practical problems needing to be addressed before ratification could take place. Most said it would be important to have a co-ordinated approach so that a sufficient number of States, with the necessary volume of contributing cargo, could bring the Convention into force at the same time. Some States have established, or are about to establish, national committees to examine the implications of the HNS Convention for their industry, whereas

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others spoke of their contacts with the industry to explore specific implementation options. Some delegations expressed that legislation could be in place within a few years. Delegations also noted the European Transport Council statement made in December 2000, underlining the need to ensure a proper and, as far as possible, global regime for liability and compensation in cases of pollution damage resulting from contamination by hazardous substances transported by ships. Accordingly the Council called on Member States to ratify the HNS Convention.

4 Three specific problem areas were emphasised:

- (i) Difficulties in identifying the receivers of HNS cargo;
- (ii) Difficulties in determining contributing cargo because of the absence of an explicit list of substances covered by the HNS convention; and
- (iii) How to address the trans-shipment of substances covered by the HNS Convention.

Most speakers said they favoured a uniform approach in solving these difficulties.

5 Canada (supported by several representatives) suggested that an IMO resolution might be used to call attention to the HNS Convention and ratification of the Convention. Such a resolution should aim at giving it a “higher profile”. The United Kingdom offered to prepare an initial draft resolution, with the aim of having the draft ready for the eighty-third session of the Legal Committee. Canada, Denmark, the Netherlands and Norway volunteered their assistance.

6 Norway suggested there was a need for a target date for ratification to promote co-ordinated action. This was supported, but some representatives said it was better to avoid a specific target date at this stage.

#### **Work of the IMO HNS Correspondence Group (UK acts as co-ordinator)**

##### **UK – draft guide on the workings of the HNS Convention**

7 The UK reported on the work to develop a guide on the workings of the Convention. It is intended to provide guidance on all aspects of the Convention, and as an aid to Governments contemplating ratification, as well as the affected industry. Members of the Correspondence Group were working on component parts, and it was not yet complete. The guide would need to be updated regularly, particularly when the Convention comes into force, and a draft copy will be circulated by e-mail to all meeting attendees. The United Kingdom indicated that it previously considered the option of producing separate guides for each of the interested parties i.e. claimants, contributors and potential States. However, given the complexities of the Convention and the difficulties in expressing its provisions to three different audiences in three different styles of writing, the United Kingdom decided to condense the information in a single document for all interested parties.

The United Kingdom said it hoped the IMO and IOPC Funds would make the guide available through their websites, and the IOPC Funds representative said it would be happy to do so. Finally, the United Kingdom re-stated the intention of the Correspondence Group, made at the eighty-second of the Legal Committee, that a substantive draft document will be produced, with a target date for publication after the eighty-third session of the Legal Committee.

### **Australia and Denmark – contributing cargo**

8 Australia and Denmark presented a preliminary table of estimated contributory cargo tonnage for 21 States. The table is acknowledged as provisional and incomplete. All States were urged to submit figures, estimated or actual, to improve the validity and usefulness of the data.

9 CEFIC provided additional information at the meeting concerning main trade routes and high volume products amongst the total 100 million tons of bulk liquid chemicals annually transported in sea going tankers.<sup>1</sup>

10 Norway said there might be a need to clarify the term “associate person” when used to consolidate contributory cargo. This matter was referred to the Correspondence Group.

11 Bearing in mind the difficulties many States experienced when trying to identify HNS cargo, Norway (supported by several representatives) suggested the IMO and the IOPC Funds could undertake a project to develop a software program, which identified all substances covered by the HNS Convention. A user would then be able to verify whether a specific ‘product’ was or was not on the list. Such a program could also be used as an account manager. Cyprus noted that any involvement by IMO would need to be approved by the IMO Council. The IOPC Funds representative said that the resolution adopted gave him a mandate to prepare for the HNS Convention and had been waiting for an indication that countries were serious about ratification. The delegations at the meeting indicated that there is now a strong will to proceed. The IOPC Funds representative undertook to prepare proposals on this issue for the IOPC Fund Assembly in October.

### **Norway – HNS insurers and insurance certificates**

12 Norway introduced a draft document on issues surrounding insurance certificates which are intended to serve as evidence of an undertaking by the insurance provider. Norway said national legislation should consider three issues:

- (i) Whether the insurance covered all obligations;
- (ii) Whether the insurer had the financial capability necessary for the undertaking; and
- (iii) Whether the insurer would have sufficient funds available in the State-Party when a claim was made.

This document was referred to the Correspondence Group for further consideration.

### **Netherlands – identification of “receiver”**

13 The Netherlands reported that there is a need to agree the definition of a receiver, which also covers the issue of trans-shipment of HNS goods. Some States expressed concern about whether trans-shipments would be covered by the Convention, and the Netherlands replied that genuine cases of trans-shipments would be left outside the scope of this term. The Netherlands will produce a paper and submit it to the HNS Correspondence Group for comments. This paper will then be annexed to the Guide being developed by the United Kingdom delegation.

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<sup>1</sup> This information has been inserted into the IMO Guide for Interested Parties on the Workings of the Hazardous and Noxious Substances Convention, 1996.

### **Canada – Compliance and verification of States’ responsibilities in respect of the reporting system for contributing cargo**

14 Canada introduced a draft document on compliance and verification, in which the most critical aspect concerned options for putting a reporting system in place. Canada compared two options:

- (i) annual self-reporting by the industry, with spot checks by the government; and
- (ii) gate-keeper or ‘police state’ reporting which was administratively much more complex.

15 Comments were consistently in favour of a self-reporting mechanism taking into consideration the limited number of receivers that many States would have. Norway said it was not necessary to achieve absolute uniformity in this process since the convention allowed for some flexibility. This document was referred to the Correspondence Group for further consideration.

16 CEFIC elaborated on their positive experience with self-reporting mechanism, highlighting that the individual company can only take responsibility for their data. For several reasons national associations cannot provide consolidated data for their members.

### **Timetable/finalisation of the work of the Correspondence Group**

17 After some discussion about trying to have the Correspondence Group’s work finalised by the time of the eighty-third session of the Legal Committee, it was agreed to use this as a target, but not to complete the work in haste. However, it was recognised that there is not much to be gained by delay through trying to seek “perfection” in the drafting of the document. If the eighty-third session could not be met as a target date then the HNS Correspondence Group should see the eighty-fourth session of the Legal Committee as the ultimate target date for the completion of the work.

18 The meeting agreed that all delegations in attendance would add their details to the Correspondence Group in order to widen the scope and the work of the Group.

### **Any other business**

19 The IOPC Funds representative said that the HNS Fund will need to find money very quickly in the event of an incident, and stressed the importance of putting a good reporting system in place to make sure that the Fund is practically and financially viable. He added that the Fund must be prepared to proceed efficiently at the very start.

20 An appeal was made by several States for others to aid their ratification/accession process by sharing details of their experiences in identifying receivers and contributing cargo, as well as any other information which might prove useful.

21 A further special informal meeting will be convened, if deemed necessary by the co-ordinator of the Correspondence Group (the UK delegation).

### Action points

- The UK, assisted by Canada, Denmark, the Netherlands and Norway, will prepare an initial draft HNS resolution in time for LEG83;
- The UK will continue to develop a guide on the HNS convention. Members of the group will continue their work on component parts of the guide. The UK will circulate copies of the guide, as it stands, to all meeting attendees;
- All States are urged to submit estimated or actual figures for HNS cargo to improve the validity of the data being compiled by Denmark and Australia;
- The IOPC Funds will prepare proposals for the development of a database to identify substances covered by the Convention. Such a system may also act as an account manager;
- All States are urged to share their experiences in identifying receivers and contributing cargo;
- A Norwegian paper on *HNS insurers and insurance certificates*, a paper from the Netherlands on *the identification of receivers*, and a Canadian paper on *compliance and verification of States responsibilities in reporting contributing cargo* were all referred to the group for further consideration;
- The group aims to finalise its work by the eighty-third session of the Legal Committee, but this should neither be completed in haste nor delayed in the pursuit of perfection.

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