

Emne: RE: Summary of first round of discussions - HNS-LNG Correspondence Group
Fra: Marier, François
Dato: Fri, 17 Aug 2007
Til: "Erik Rosag",

Dear Erik:

Thank you for the draft paper summarizing the discussion in the correspondence group thus far. We would like to make the following comments regarding the findings contained in your draft paper as well as its recommendations.

Firstly, we have some concerns whether this paper might leave the impression that the correspondence group has reached a well-rounded consensus on how to deal with this complex issue. Based on the various submissions, we do not believe that it would be possible to reach such a conclusion at this stage. This is particularly the case with regards the two options presented in the paper.

Option A, while generating some discussion, in our assessment this option does not have sufficient support among the various contributors to make such a recommendation at this time. Indeed, in our own submission, Canada questioned the feasibility and practicality of requiring titleholders to provide a financial guarantee to the receiver.

Option B, was generally rejected by the contributors for the main reason you state in the paper (i.e. it falls outside the spirit of the convention). However, it is included as part of the resolution as one of the two measures a state can adopt. The link between paragraphs 2.8 and 2.9 and the resolution is thus unclear. I would also draw your attention to paragraph 5.2 and its current wording. We would argue that adopting measures that are in within the spirit of the convention and thus targeting the intended party (the titleholder) are no less detrimental to developing countries as whatever costs are borne by the titleholder (say for securing a financial guarantee) would, in any case, be passed on to the buyer or receiving terminal in a developed country.

With regards to paragraph 4.1 and the issue of cross-subsidization, we would suggest stronger wording to make it clearer that payment of LNG claims by the General Account would not be acceptable to any of the contributors to the correspondence group.

In summary, we feel that paragraph 1.3 needs to be revised to indicate that in spite of the good efforts on your part as well as all contributors to the correspondence group, no consensus emerged on the way forward. As usual, the following wording may also be added to the preamble of the paper: "The views expressed in this paper should not be taken as representing the formal position of the delegations or their governments who contributed to the work of the correspondence group". With that clarification, you can the set out, as the Coordinator of the group, the proposals now set out in paragraphs 2.1 to 5.2. You could then present in paragraph 6 the draft resolution possibly ammended as attached.

Thank you again for your efforts and we look forward to receiving the views of other contributors.

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ANNEX
DRAFT RESOLUTION

ON CONTRIBUTIONS TO THE HNS FUND IN RESPECT OF LNG CARGOES

WHEREAS the IOPC Fund has been entrusted with the task to prepare the implementation of the HNS Convention;

CONSIDERING the importance of ensuring that all contributions to the HNS fund are paid when due;

BEING CONSCIOUS that there may be problems collecting contributions when payable by persons not subject to the jurisdiction of a State Party;

NOTING that the contributions to the LNG account of the HNS Fund according to Article 19 of the HNS Convention are payable by the person who immediately prior to its discharge held title to the LNG cargo, even if that person is not subject to the jurisdiction of a Contracting State;

BEING ALSO CONSCIOUS that the efficient collection of contributions to the HNS Fund depends on correct and complete reports according to Articles 21 and 43 of the HNS Convention;

FURTHER NOTING that there may be a need to clarify the reporting obligations of States Parties in respect of contributors to the LNG account that are not subject to the jurisdiction of a State Party;

EMPHASIZING that the LNG account should neither subsidize other accounts or sectors nor be subsidized by them;

RECOMMENDS:

1. that all States Parties to the HNS Convention should ensure that all contributors in respect of cargoes of LNG discharged on their territory are collectable, in particular if the contributors are not subject to the jurisdiction of a State Party, *eg*, by
 - requiring the receiver to obtain from such contributors a security for a limited amount to the satisfaction of the HNS Fund Secretariat; or
 - making the receiver of a cargo of LNG the surety of the obligation to pay contribution.
2. that the same reporting routines pursuant to Articles 21 and 43 of the HNS Convention should be maintained whether or not a contributor in respect of an LNG cargo is subject to the jurisdiction of a State Party, and that the reports of the States Parties may be based on information submitted by the contributors or by others.
3. that other accounts should not cover, partly or in full, non-collectable contributions in respect of HNS Cargoes.