



Agenda Item 8	IOPC/OCT18/8/2	
Date	7 September 2018	
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1992 Fund Assembly	92A23	●
1992 Fund Executive Committee	92EC71	
Supplementary Fund Assembly	SA15	

2010 HNS CONVENTION

Note by the Secretariat

Summary:	<p>At the April 2018 session of the 1992 Fund Administrative Council, the Director indicated that in view of the progress made recently towards the entry into force of the 2010 HNS Convention, he would submit a list of items that the future HNS Fund Assembly would be required to consider and decide upon once established following the entry into force of the Convention.</p> <p>This document provides details about the tasks to be undertaken by the Secretariat to set up the HNS Fund and to prepare for the first session of the HNS Fund Assembly. It also includes an update of the work carried out by the 1992 Fund Secretariat in that regard.</p>
Action to be taken:	<p><u>1992 Fund Assembly</u></p> <p>The 1992 Fund Assembly is invited to:</p> <ul style="list-style-type: none"> (a) take note of the information contained in this document; and (b) provide feedback to the Director on the suggested course of action (paragraph 6.3).

1 Introduction

- 1.1 In April 2010, an international conference on the revision of the HNS Convention adopted the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (2010 HNS Protocol).
- 1.2 Resolution 1 of the Conference requested the 1992 Fund Assembly to instruct the Director of the IOPC Funds to carry out the tasks necessary to set up the International Hazardous and Noxious Substances Fund (HNS Fund) and make preparations for the first session of the HNS Assembly. To this end, the 1992 Fund Secretariat has undertaken a number of administrative tasks in cooperation with the International Maritime Organization (IMO) and has reported progress at least to each regular session of the 1992 Fund Assembly (see document [IOPC/APR18/5/1](#) for the latest updates).

2 Conditions for entry into force of the 2010 HNS Protocol

- 2.1 The 2010 HNS Protocol shall, under its Article 21, enter into force 18 months after the date on which the following conditions are fulfilled:
 - (a) at least 12 States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it; and

(b) the Secretary-General of IMO has received information in accordance with Article 20, paragraph 4 and 6 that those persons in such States who would be liable to contribute pursuant to Article 18, paragraphs 1 (a) and (c) of the HNS Convention, as amended by the Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

2.2 As at 7 September 2018, four States had become Contracting States to the 2010 HNS Protocol. Norway was the first State to ratify it in April 2017, followed by Canada and Turkey in April 2018, and more recently by Denmark in June 2018.

2.3 The States referred to in paragraph 2.2 have reported to IMO the total quantities of HNS Contributing Cargo they each received in respect of the general account as set out below:

State	Contributing cargo to the general account (Calendar year 2017)
Canada	1 119 961
Denmark	713 624
Norway	2 190 983
Turkey	25 402 211
TOTAL	29 426 779

2.4 The total quantity of 29 426 779 tonnes of cargo contributing to the general account that have been received in those four States for the calendar year 2017, represent about 73% of the total quantity of contributing cargo required in the general account.

2.5 In addition, those four Contracting States represent a third of the number of States required and each of those States has more than 2 million units of gross tonnage, thus fulfilling one of the three conditions for entry into force.

2.6 A number of other States have indicated on several occasions that they are working towards implementation of the Convention in 2018 and 2019 with a view to ratifying or acceding to it during the course of 2020.

2.7 On the basis of these very encouraging developments, the Director is of the view that the 2010 HNS Convention is now likely to meet the criteria for entry into force in 2020 or 2021 and that therefore, the work carried out by the 1992 Fund Secretariat to set up the International Hazardous and Noxious Substances Fund (HNS Fund) and to make preparations for the first session of the HNS Assembly needs to enter a new phase.

3 Work carried out so far to facilitate the entry into force of the 2010 HNS Protocol

3.1 Since 2010, the tasks undertaken by the Secretariat, in cooperation with the IMO Secretariat and other interested stakeholders, were aimed at providing States with all the tools and support required to facilitate their ratification of, or accession to the 2010 HNS Protocol, namely:

(a) the development, maintenance and expansion of the online database of substances that fall within

- the definition of HNS, including contributing cargo, under the 2010 HNS Protocol (the HNS Finder);
- (b) the development of HNS contributing cargo reporting guidelines to assist States' ratification of or accession to the 2010 HNS Protocol. The guidelines contain guidance for domestic implementation of the reporting obligations prior to the entry into force of the HNS Convention, including model reporting forms for providing data on the total quantities of HNS contributing cargo received in a State;
 - (c) the publication of a brochure describing the main features of the HNS Convention with its first edition in 2010 followed by an updated version in 2014;
 - (d) the development and maintenance of a dedicated website aimed at providing all interested stakeholders with a comprehensive source of information about the HNS Convention;
 - (e) the support provided between 2014 and 2017 to the HNS Correspondence Group set up by the IMO Legal Committee at its 101st session (LEG101) in April 2014; and
 - (f) the continued engagement with States considering ratifying or acceding to the Protocol and the industry stakeholders potentially affected by the Convention, via correspondence or through workshops and conferences.

4 Administrative tasks necessary for setting up the HNS Fund

- 4.1 The 2010 HNS Protocol will enter into force 18 months after the conditions laid out in its Article 21 are fulfilled and the first session of the HNS Fund Assembly will have to take place no more than thirty days after the date of entry into force.
- 4.2 The first Assembly of the HNS Fund will have to take decisions on a number of issues related to, *inter alia*:
 - (a) the HNS contributing cargo reporting and contributions system;
 - (b) the handling of claims for compensation, including the preparation of a Claims Manual and a proposed mechanism for cooperation with P&I Clubs;
 - (c) the financial matters, including the preparation of Financial Regulations, the assessment of annual contributions and the budget;
 - (d) the operational matters, in particular the preparation of Internal Regulations and a proposal for the appointment of auditors;
 - (e) the functioning of the HNS Assembly and subsidiary bodies, including the adoption of Rules of Procedure and the relationship with non-State parties, intergovernmental and international non-governmental organisations;
 - (f) the location of the HNS Fund's Headquarters and the preparation of a Headquarters Agreement; and
 - (g) the Secretariat of the HNS Fund, including the preparation of Staff Regulations and Staff Rules.
- 4.3 The proposed tasks to be conducted prior to the first session of the HNS Fund Assembly for each of those issues are described below.

4.4 The HNS contributing cargo reporting and contribution system

- 4.4.1 HNS contributing cargo reporting was among the priority tasks identified in 2010 to assist States' ratification or accession to the HNS protocol. To that end, the 1992 Fund Secretariat had developed the following tools:
- (a) The HNS contributing cargo reporting guidelines to be used by States to develop their domestic reporting system prior to the Convention's entry into force. Those guidelines were endorsed by the IMO Legal Committee at its 100th session in March 2013.
 - (b) The HNS Finder, an online database of substances that fall within the definition of HNS, including contributing cargo and aimed at facilitating by entities liable to submit reports the identification of HNS contributing cargo. The HNS Finder has been in operation since 2011 and has been updated annually.
- 4.4.2 In preparation for the entry into force of the HNS Convention, a new set of reporting guidelines will need to be developed for examination by the first HNS Assembly. They will need to be presented as draft Internal Regulations for adoption and include proposed solutions to a number of issues that have not yet been resolved in the current guidelines. For instance, among other issues, the definition of transshipment remains to be clarified to ensure uniform application.
- 4.4.3 Work had previously been undertaken on reporting and contributions issues by a number of States and organisations at different periods of time and documents, such as the conclusions of the special consultative meetings in Ottawa in 2003 and Rotterdam in 2011, include a number of elements to be considered in that regard.

4.5 Handling of claims for compensation

- 4.5.1 Due to the wide range of substances falling under the HNS Convention, the establishment of criteria for the admissibility of claims will be more complicated than for the IOPC Funds. Even though the methodology used by the IOPC Funds to establish these criteria and the experience in the assessment of claims will be invaluable in preparing a draft Claims Manual for the HNS Fund, the challenges HNS pose in terms of claims assessment cannot be under-estimated.
- 4.5.2 In addition, the potential claims arising from loss of life or personal injury caused by HNS represent another set of challenges that the IOPC Funds have never faced before.
- 4.5.3 In preparation for this task, the Secretariat will need to identify experts in this area and work closely with such experts and any organisation with relevant expertise and willing to contribute to the development of a draft Claims Manual for consideration by the first HNS Assembly.
- 4.5.4 Furthermore, according to Article 26 (i) of the HNS Convention, the HNS Fund Assembly shall establish a Committee on Claims for Compensation with at least 7 and not more than 15 members. It would be necessary to decide on the composition and mandate of this Committee by taking into account the requirement concerning an equitable geographical distribution of members. The rules of procedure of this Committee will be prepared together with the rules applicable to the Assembly and its subsidiary bodies.

4.6 Financial matters

- 4.6.1 The HNS Fund will have its own accounts and its own budget, separate from those of the IOPC Funds. Furthermore, since the HNS Fund will have a general account divided into sectors, as well as up to three separate accounts, all contributed to by different entities, the management of the accounts will be

complex.

4.6.2 The IOPC Funds have Financial Regulations dealing with various aspects of the Funds' finances, in particular in respect of accounts, budget and investments. These Regulations have been amended from time to time and can be used as the basis for the HNS Fund Financial Regulations, but particular attention will have to be paid to the complexity of dealing with multiple accounts both for the costs and expenses of the administration of the HNS Fund and for payments of compensation, which will require a specific set of Financial Regulations.

4.7 Operational matters

4.7.1 Under Article 26 (c) of the 2010 HNS Convention, the Assembly shall develop, apply and keep under review internal and financial regulations related to the aim and the related tasks of the HNS Fund.

4.7.2 The Internal Regulations will govern the internal operational rules of the HNS Fund mainly with respect to contributions, reports of contributing cargo, claims and claims settlement, intervention in legal proceedings and delegation of authority and compensation for claims from incidents. Some aspects of those regulations have been touched upon in paragraphs 4.4 to 4.6 but the Secretariat will have to prepare a full set for consideration by the HNS Fund Assembly.

4.7.3 Under Article 26 (g) of the 2010 HNS Convention, the Assembly will appoint auditors and approve the accounts of the HNS Fund. Therefore, consideration will have to be given by the Secretariat to the appointment of an External Auditor and other issues relating to the audit of the Organisation and the investment of its assets.

4.8 The functioning of the HNS Fund Assembly and its subsidiary bodies

4.8.1 On the assumption that the HNS Fund will have a joint Secretariat with the IOPC Funds, the Rules of Procedure of the HNS Fund Assembly and any subsidiary bodies should, in the Director's view, be rather similar to the Rules of Procedure of the IOPC Funds' governing bodies.

4.8.2 For instance, the Rules of Procedure of the IOPC Funds Assemblies each contain provisions governing the admission of non-Contracting States, intergovernmental and international non-governmental organisations as observers. The governing bodies of the IOPC Funds have also adopted criteria for granting observer status, which may be appropriate in respect of the HNS Fund.

4.8.3 The Rules of Procedure of the IOPC Funds' governing bodies will have to be examined in order to establish where amendments would be appropriate in regard to the HNS Fund and a draft will have to be prepared for adoption at the first HNS Fund Assembly.

4.9 The location of the HNS Fund Headquarters

4.9.1 Although this decision will have to be made by the HNS Fund Assembly in due course, the 1992 Fund Administrative Council had already expressed the view, at its session in October 2010, that the HNS Fund should have a joint Secretariat with the IOPC Funds^{<1>}. Such arrangement would provide a cost-effective solution and would allow the HNS Fund to greatly benefit from the long experience of the IOPC Funds and its staff. Similar comments were made by a number of delegations on the occasion of the 99th session of the IMO Legal Committee in 2012.

<1> See document [IOPC/OCT10/11/1](#), paragraph 8.4.13.

- 4.9.2 The relationship between the United Kingdom Government as the Host State and the IOPC Funds is governed by 1992 Fund Headquarters Agreement, currently under review.
- 4.9.3 If the HNS Fund's Headquarters were to be located in the United Kingdom it would be necessary to conclude a separate Headquarters Agreement between the Government of the United Kingdom and the HNS Fund, setting out the privileges and immunities of the HNS Fund, of delegates to its meetings and of the Director and the Secretariat.
- 4.9.4 The next step is for the Secretariat to formally engage with the Government of the United Kingdom in order to examine the practicalities for hosting the HNS Fund, including the scenario where the United Kingdom would not be a Contracting State of the HNS Convention at the time of entry into force.
- 4.9.5 Should the Headquarters of the HNS Fund be located outside the United Kingdom, a Headquarters Agreement would have to be concluded between the Host State in question and the HNS Fund, but in the Director's view, it is too early to consider this scenario given the impending discussions with the United Kingdom's Government.
- 4.10 The Secretariat of the HNS Fund
- 4.10.1 On the assumption that the HNS Fund will have a joint Secretariat with the IOPC Funds, two aspects need to be considered as a priority:
- (a) an evaluation of the number and profile of staff to be employed specifically for the HNS Fund in addition to the staff of the 1992 Fund and a budget allocation for the same; and
 - (b) the development of a proposed formula for sharing the costs of running a joint Secretariat between the three organisations (1992 Fund, Supplementary Fund and HNS Fund).
- 4.10.2 In addition, consideration will have to be given to the employment conditions for the members of staff of the HNS Fund. In the configuration of a joint Secretariat, the 1992 Fund Staff Regulations and Staff Rules applied to the IOPC Funds' staff should apply *mutatis mutandis* to the HNS Fund staff.

5 Ongoing activities

5.1 Information sharing initiatives

- 5.1.1 The IOPC Funds Secretariat continues to ensure that updated information regarding the HNS Convention is made available to States and other stakeholders in order to facilitate its understanding and subsequent early adoption.

HNS website

- 5.1.2 The HNS Convention website (www.hnsconvention.org) is in the process of being migrated to a new content management platform while undergoing some cosmetic improvements in order to make the site more user-friendly. This project is expected to be completed by the end of 2018.
- 5.1.3 In the meantime, new information continues to be uploaded, including a summary report of the HNS workshop organised by IMO in cooperation with the IOPC Funds on 26-27 April 2018. The presentations made at that workshop are also available to download under the 'Implementation' section of the website.

The 2010 HNS Convention brochure

- 5.1.4 The brochure titled 'The 2010 HNS Convention' was published in 2014 to provide an overview of the main features of the HNS Convention and is due for a re-print. That brochure was first published in 2006 and re-edited in 2010, in particular to introduce the changes to the Convention following the adoption of the 2010 HNS Protocol. However, with the publication of the brochure 'The HNS Convention, why is it needed' in 2015, which was one of the outputs of the work of the HNS Correspondence Group and developed in cooperation with IMO, the IOPC Funds and ITOPI, the usefulness of another brochure is now questionable.
- 5.1.5 At this point in time, since the focus remains on the promotion of the HNS Convention to facilitate its early entry into force, the 2015 brochure appears to be more relevant to that end and therefore, the Director is of the view that it is not necessary to re-print 'The 2010 HNS Convention' brochure at this stage.
- 5.1.6 However, having information materials about the HNS Convention available has been well received by States and other stakeholders and it is suggested that options be explored to develop new information materials that can be of use in this period prior to entry into force. Among the options considered are:
- (a) a new brochure containing a Questions and Answers section about the implementation of the Convention with a focus on key aspects related to the entry into force, such as the reporting and contributions and national legislation requirements; and
 - (b) an information sheet available electronically only and updated regularly about the HNS trade, reporting data and number of States party.
- 5.1.7 The Director would appreciate feedback from the 1992 Fund Assembly as to the type of information they would consider useful at this stage.

5.2 Engagement with States considering ratifying the Protocol

- 5.2.1 Since the October 2017 session of the 1992 Fund Assembly, the Secretariat has continued to use the opportunity of meetings and overseas trips to give presentations on the HNS Convention. This included among others, regional workshops on the civil liability conventions organised under the IMO Integrated Technical Cooperation Programme.
- 5.2.2 The Secretariat also uses the opportunity of visits from University students to London or the lectures delivered to foreign universities, in particular the World Maritime University in Malmö and the International Maritime Law Institute in Malta, to promote the HNS convention.

6 Director's considerations

- 6.1 As indicated in section 4 above, there are a number of tasks to be conducted in order to set up the HNS Fund and make preparations for the first session of the HNS Assembly. A number of those tasks relate to the drafting of rules, regulations and guidelines which will need to be discussed among all stakeholders concerned, including IMO as the depositary of the Convention, in order to get a preliminary consensus prior to their formal submission to the HNS Fund Assembly for approval.
- 6.2 Therefore, the Director proposes that the Secretariat undertakes the tasks listed in section 4 and reports on its progress to the 1992 Fund Assembly.

6.3 Subsequently, upon confirmation by IMO that the number of Contracting States to the 2010 HNS Protocol has reached or is about to reach the threshold for entry into force (namely, 12 Contracting States), the Director suggests that a group be set up, composed of Contracting States and States in the process of implementing the HNS Convention as well as other interested parties. It is proposed that this group would look at the work carried out and guide the preparatory work through to the first session of the HNS Fund Assembly.

7 Action to be taken

1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) take note of the information contained in this document; and
 - (b) provide feedback to the Director on the suggested course of action (paragraph 6.3).
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