

# FROM RESPONSE TO COMPENSATION

FROM THE OPRC-HNS  
PROTOCOL TO THE HNS  
CONVENTION



# OPRC-HNS Protocol

- A follow-up to the OPRC Convention
- Aims to provide a global framework for international cooperation establishing systems for preparedness and response to HNS pollution incidents – entered into force 14 June 2007
- France acceded 24 April 2007, entered into force 24 July 2007
- Annex II – Reimbursement of Costs of Assistance
  - Stipulates that the rights of Parties to recover the costs of actions to deal with a pollution incident or threat are not prejudiced under the applicable provisions and rules of national or international law
- Resolution 2 – calls upon States to become parties to the **International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous Substances by Sea “the HNS Convention”**



# Introduction – the legal framework

- **Compensation for damage caused by the carriage of Hazardous and Noxious Substances (HNS) is regulated by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous Substances by Sea “the HNS Convention”**
- **Adopted by Governments at a Diplomatic Conference organized by the IMO in 1996**
- **It establishes a two-tier system of compensation with the first tier being paid by the individual ship-owner or his insurer and the second by the International Hazardous and Noxious Substances Fund (HNS Fund) - largely modelled on the existing regime for oil pollution from tankers set up under the CLC and the Fund Convention**
- **Covers both pollution damage and damage by other risks e.g. fire and explosion, personal damage (including loss of life or personal injuries) on board and outside the ship, damage to property outside the ship (e.g. terminals, port jetties and related infrastructures)**
- **States that ratify the HNS Convention must implement it into their national law**



# Aim of the HNS Convention

To ensure adequate, prompt and effective compensation for:

- damage to persons and property
- costs of clean-up and reinstatement measures
- economic losses caused by maritime transport of hazardous and noxious substances (HNS)



# Scope of application

- **Convention applies to:**
  - any damage in the territorial waters of a State Party
  - pollution damage in the Exclusive Economic Zone or its equivalent area
  - damage (other than pollution damage) caused by HNS carried on board ship registered in, or entitled to fly, the flag of a State Party outside the territorial waters of any State
  - costs of preventative measures



# EXCLUSIONS FROM THE APPLICATION OF THIS CONVENTION

- **AT THE TIME OF ACCEPTANCE , or any time thereafter, a State Party may declare that this Convention does not apply to ships:**
  - **a) which do not exceed 200 GRT; and**
  - **b) which carry hazardous and noxious substances only in packaged form; and**
  - **c) which are engaged on domestic trade (on voyages between ports or facilities of the same State Party)**



# What HNS are covered?

- The definition of HNS is based on lists of individual substances that have previously been identified in a number of IMO Conventions and Codes e.g. IBC Code, IGC Code and the IMDG Code
- HNS could be bulk cargoes and packages goods
- Bulk cargoes can be solids, liquids including oils and liquefied gases such as LPG and LNG.
- Some bulk solids are not covered due to low hazard e.g coal and iron



# What HNS are not covered?

- The HNS Convention does not cover:
  - pollution caused by persistent oil (covered by the 1992 CLC and the Fund) however non-pollution damage e.g. caused by fire and explosion is covered
  - coal and other low-hazard solid bulk cargoes
  - damage caused by radioactive material

**RECOMMENDED THAT IMO AND THE IAEA SHOULD WORK TOGETHER IN DEFINING AND CONSIDERING ISSUES OF LIABILITY AND COMPENSATION OF DAMAGE OCCURRING DURING THE MARITIME TRANSPORT OF RADIOACTIVE MATERIALS**





# What type of damage will be covered?

- The following type of damage is covered:
  - Loss of life or personal injury on board or outside the ship carrying the HNS
  - Loss or damage to property outside the ship (e.g. terminals, port jetties and related infrastructures)
  - Economic losses resulting from contamination of the environment e.g. fisheries, mariculture and tourism sectors
  - Costs of preventative measures e.g. clean –up operations at sea and onshore
  - Costs of reasonable measures of reinstatement of the environment



# Preventive Measures

- Measures to prevent or minimise *damage*
- Compensation for cost of *reasonable measures*:
  - To respond at sea
  - To defend sensitive resources
  - To clean coastlines and coastal installations
- Loss or damage caused by such measures



# Who will pay compensation?

- **First tier – individual shipowner and his insurer, via compulsory insurance**
- **Second tier – HNS Fund, contributed to by all receivers of HNS after sea transport in States Party to the Convention**



# Compensation limits

## Shipowner

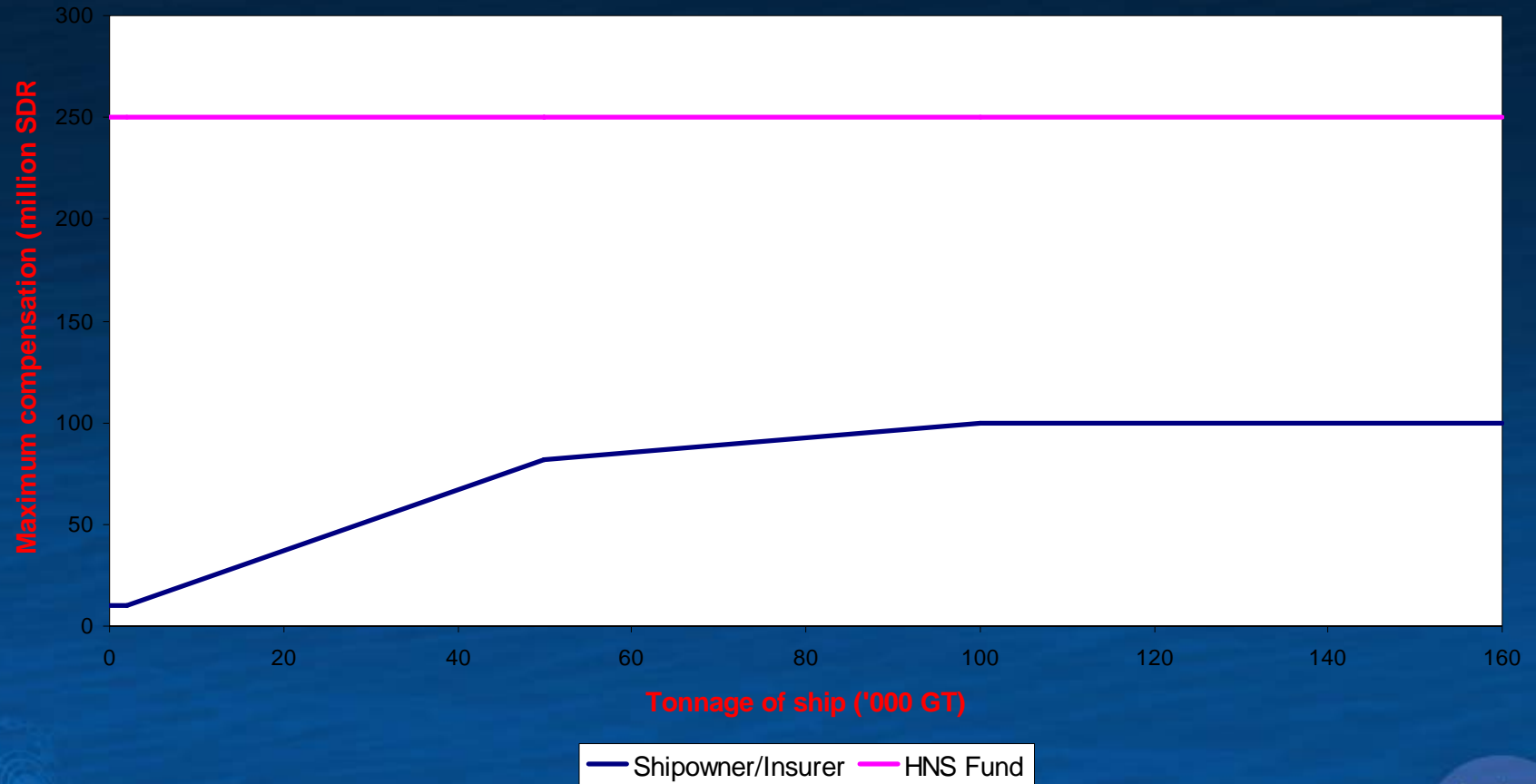
- ships up to 2000 GT - 10 million SDR (US\$15 million), rising to
- ships  $\geq$ 100 000 GT - 100 million SDR (US\$150 million)

## HNS Fund

- maximum of 250 million SDR (US\$370 million) (including amount paid by shipowner/insurer)



# How much compensation?



# THE HNS FUND

- **The HNS Fund will be set up when the HNS Convention enters into force**
- **States which ratify the Convention will become members of the HNS Fund**
- **HNS Fund will be governed by an Assembly**
- **HNS Fund will have a Committee for Claims Compensation**
- **HNS Fund will be administered by the Secretariat headed by a Director**
- **Given similarities between the HNS Fund and the IOPC Funds, it is likely that these Funds will have a joint Secretariat**



# Accounts and Sectors

|                        | Establishment of account  | Contribution to account/sector |
|------------------------|---------------------------|--------------------------------|
| <b>General Account</b> | <b>40 million tonnes</b>  |                                |
| Bulk solids            |                           | 20 000 tonnes                  |
| Other HNS              |                           | 20 000 tonnes                  |
| <b>Oil Account</b>     | <b>350 million tonnes</b> |                                |
| Persistent oil         |                           | 150 000 tonnes                 |
| Non-persistent oil     |                           | 20 000 tonnes                  |
| <b>LNG Account</b>     | <b>20 million tonnes</b>  |                                |
| <b>LPG Account</b>     | <b>15 million tonnes</b>  |                                |

# Conditions for entry into force

**18 months after ratification by at least 12 States, subject to:**

- **4 States each having ships with a total tonnage of at least 2 million GT; and**
- **Contributors in the States that have ratified the Convention must between them, have received in the preceding calendar year a minimum 40 million tonnes of contributing cargo to the general account (i.e.bulk solids and other HNS, not oil, LNG or LPG)**





# REPORTING REQUIREMENTS

- Before the HNS Convention enters into force, States are obliged when they ratify the Convention to report the total quantities of a contributing cargo for each account and sector which were received in that State in the preceding year
- Reporting of a contributing cargo is essential to the entry into force of the HNS Convention.
- IOPC Funds Secretariat has developed a software to assist States and potential contributors to fulfil their reporting requirements (HNS Convention Contributing Cargo Calculator - HNS CCCC) available on CD or via the website [www.hnscccc.org](http://www.hnscccc.org)



# Potential Benefits

- **States who become Party will derive benefits:**
  - Application of strict liability regime
  - Application of direct action
  - Application of compulsory insurance
  - Establishment of the HNS Fund



# POTENTIAL COSTS OF MEMBERSHIP

- No membership fees or any direct costs to States Parties
- States must be able to meet the basic obligations required in order to become parties to the Convention
- Ship-owners will have to meet the costs of compulsory insurance
- Receivers of HNS will have to meet the levies imposed by the HNS fund



# OBLIGATIONS OF A STATE PARTY

- **To issue or certify compulsory insurance certificates (CIPs) for ships under its flag**
- **To accept compulsory insurance issued by other States**
- **Not to permit a ship under its flag to trade unless it has a CIP**
- **To submit reports of contributing cargo**
- **To ensure under its national law that insurance or other financial security is in force for any ship entering or leaving a port in its territory or arriving at or leaving an offshore facility in its territorial sea**
- **To recognize the HNS Fund as a legal person and its Director as the legal representative of the HNS Fund**
- **To take measures for the remission or refund of certain duties and taxes paid by the HNS Fund on substantial purchases of certain property and services**
- **To exempt the HNS Fund from direct taxation**
- **To authorize the transfer of payments of contributions to the HNS Fund and of any compensation paid by the HNS Fund**
- **To ensure that its courts have jurisdiction to entertain actions for compensation against the ship-owner and its insurer**
- **To ensure that its courts have jurisdiction to entertain actions against the Fund**
- **To ensure that the HNS Fund has a right to intervene as a party to certain legal proceedings**
- **To recognize and enforce judgements against the ship-owner or the insurer or the HNS Fund**



# Current status

- **Ten States have ratified the Convention (Angola, Cyprus, Lithuania, Morocco, the Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Slovenia and Tonga)**
- **Only 2 of these States (Cyprus and Slovenia) have submitted reports on contributing cargo**
- **EU States – target date for ratification of June 2006**

