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| LEGAL COMMITTEE102nd session Agenda item 3 | LEG 102/3XXXXX 2015 Original: ENGLISH |

**FACILITATION OF THE ENTRY INTO FORCE AND HARMONIZED INTERPRETATION OF THE HNS PROTOCOL, 2010**

**Report of the HNS Correspondence Group**

**Submitted by Canada**

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| **SUMMARY** |
| *Executive summary:* | This document provides a report to the Legal Committee of the work of the HNS Correspondence Group and proposes an extension of the Correspondence Group until its next session.  |
| *Strategic direction:* | 2 |
| *High-level action:* | 2.0.1 |
| *Planned output:* | 2.0.1.4 |
| *Action to be taken:* | Paragraph 21 |
| *Related documents:* | LEG 80/10/3, LEG 80/11, LEG 87/11, LEG 87/17, LEG 99/3/1, LEG 99/14, LEG 100/3, LEG 100/14, LEG 101/3 and LEG 101/12 |

**Introduction**

1 At its 101st session held on 28 April to 2 May 2014, the Legal Committee considered and agreed to reconstitute an HNS Correspondence Group with the (see paragraphs 3.6-3.7 of document LEG 101/12). The Legal Committee also agreed that Mr. François Marier of Canada would be the Coordinator of the Correspondence Group and that it would report on its activities at the next session of the Committee.

2 The terms of reference for the HNS Correspondence Group are as follows (see Annex 2 of document LEG 101/12):

1. to provide a forum for an exchange of views concerning HNS implementation issues and to monitor and inform the implementation process in States;

2. to provide – with a view to encouraging early entry into force of the 2010 HNS Convention at a global level, and for the benefit of both potential States parties and affected industries seeking a coordinated approach to ratification, accession or acceptance – guidance and assistance on issues regarding the implementation and operation of the Convention such as, but not limited, to:

(a) the collection of information on contributing cargo, the development of appropriate reporting and verification systems, and the contribution system in accordance with the *Guidelines on reporting of HNS contributing cargo*;

(b) the acceptability of insurance or other financial security for the purpose of article 12 of the 2010 HNS Convention;

(c) assisting the IOPC Fund 1992 with the development of the various documents and decisions required for the first sessions of the HNS Assembly, in accordance with resolution 1 on setting up the HNS Fund agreed to at the international conference that adopted the 2010 HNS Protocol; and

 3. to report to the Legal Committee at its next session.

3 Since its reconstitution, the Correspondence Group has worked to become a forum where States and observer delegations can exchange information and continue a dialogue on an ongoing basis with the intent of facilitating the entry into force of the 2010 HNS Convention. This dialogue has occurred mainly through the HNS Blog (see <http://hnsprotocol.wordpress.com/>), which is maintained by the IOPC Funds. The following reports on the specific issues discussed within the Correspondence Group and those that require continued efforts.

**Informal Meetings**

4 Two informal meetings took place in 2014 and both were convened by Canada and chaired by Mr. François Marier, Manager/Senior Policy Advisor, Transport Canada. It is important to note that these were not meetings of the Correspondence Group. The first informal meeting took place on 30 April 2014 and the second took place on 23 October 2014. Both informal meetings were well attended and the reports are attached as Annexes 1 and 2 of this document.

5 The first informal meeting on 30 April 2014 provided an opportunity for states to give an update of their implementation efforts. The meeting also looked at potential issues to be brought to the Correspondence Group and, in particular, information to be shared among its members. Some documents were provided as background information on HNS Protocol Blog.

6 The second informal meeting on 23 October 2014 focused on two issues. The first issue involved a discussion on the idea of developing a new publication, known as “HNS Made Easy”, as well as developing a series of HNS incident scenarios (see section below). The second issue consisted of a short discussion on an international coordinated implementation and ratification effort working towards the 2010 HNS Convention’s coming into force (see section below).

**National Legislation and Status of 2010 HNS Convention Chart**

7 One of the main purposes of the Correspondence Group is to provide states and others the ability to easily share and disseminate information, such as examples of national legislation implementing the 2010 HNS Convention. This is particularly useful for the provisions dealing with the HNS contributing cargo reporting requirements. To date, Canada and Denmark have made their national legislation available on the HNS Blog under the “Documents” tab of the Blog: <https://hnsprotocol.wordpress.com/key-documents/>. Other states are encouraged to also share their legislation, regulations or relevant orders.

8 The Correspondence Group agreed that it would be beneficial to develop a chart that would provide the status of implementation and ratification efforts of states. The information would be provided by each state and updated as necessary. The intent is to provide timely and accurate information and contribute to the entry into force of the 2010 HNS Convention. States are encouraged to provide a status and the link to the chart can be found on the [HNS Protocol Blog](http://hnsprotocol.wordpress.com/).

**“HNS Made Easy” Publication**

9 There are currently many sources of information on the 2010 HNS Convention. They include the IMO’s 2013 publication compiling a number of texts related to the HNS Convention, among which the consolidated text of the Convention and the Overview. Another important reference in that publication are the *Reporting Guidelines on the Submission of HNS Contributing Cargo*, adopted at a November 2012 workshop organized jointly by the IMO and the IOPC Funds, and endorsed at LEG 100 (see document LEG 100/3). The website <http://www.hnsconvention.org> and a brochure published by the IOPC Funds, among others are also useful. However, these documents and publications focus mainly on the functioning of the 2010 HNS Convention and are aimed at officials in states working on the implementation of the Convention.

10 The Correspondence Group has discussed the idea of creating a new publication, known as “HNS Made Easy” that would serve a different purpose of promoting the 2010 HNS Convention by focusing on the fundamental public policy intent of the Convention. Rather than explain how the Convention would work once it comes into force, it would provide to the public, stakeholders and decision-makers information about the gap in global liability and compensation regimes that the Convention would fill. It is important to note that this would not be a legal or policy document but rather a promotional document.

11 The “HNS Made Easy” would contain a simple message and focus on the 2010 HNS Convention’s objectives. It could be used as a tool to engage with private sector stakeholders during the consultation phase of the implementation of the Convention in a given state. More importantly, it could also be used to inform decision-makers in state administrations, by highlighting the risks involved in transporting HNS by ship and the benefits of a global regime.

**HNS Scenarios**

12 Members of the Correspondence Group, including states and observer delegations, have also highlighted the need for better understanding and information of potential HNS incident scenarios and the coverage that the 2010 HNS Convention would offer in each scenario. While such scenarios would be hypothetical in nature, there are actual past HNS incidents that can inform the development of such scenarios. Scenarios could include various major HNS commodities being transported in bulk, such as LNG, LPG and certain chemicals, as well as those commonly transported in packages or containers.

13 These scenarios would be separate from the “HNS Made Easy” publication and would likely be in the format of PowerPoint presentation slides that could be used by any state officials or industry stakeholders as part of information and decision packages.

**Current Status and Next Steps for “HNS Made Easy” and HNS Scenarios**

14 A preliminary draft text of the “HNS Made Easy” publication was circulated among the members of the Correspondence Group (see Annex 2). It was generally agreed that this was a good starting point for the further development of this publication. Subsequent discussions took place between the Coordinator of the Correspondence Group and the IMO and IOPC Funds Secretariats on possible next steps. The International Tanker Owners Pollution Federation (ITOPF) was also included in these discussions, given their expertise and knowledge of HNS incidents, which would be a valuable contribution to further developing this publication. Given the time needed to further develop a draft that could be considered by the Correspondence Group and subsequently the Legal Committee, a further document will be submitted to the Committee at this session with the outline of the “HNS Made Easy” publication for consideration.

15 The development of HNS Scenarios is thought to be a more involved process and it draws on different sources of information and knowledge. The Correspondence Group agreed that this would also be a good product to further develop. The Coordinator of the Correspondence Group further discussed this with the IMO and IOPC Funds Secretariats, as well as with ITOPF, and highlights the time required to further develop such scenarios.

16 Both the “HNS Made Easy” and the HNS Scenarios will require additional time for the Correspondence Group to consider and complete. This is important as their aim is to visually lay out the information and organize it in a way that is effective and that also captures the reader’s attention.

**HNS Coordination Meeting and Potential Resolution for LEG 103 in 2016**

17 The Correspondence Group considers that it would be beneficial for a coordination meeting to take place in 2015. Such a meeting can be in combination with a workshop that would finalize and launch the “HNS Made Easy” publication and HNS Scenarios. The goal of a coordination meeting would be to allow state officials to exchange views on their implementation and ratification efforts, with the intent of determining a timeframe for the 2010 HNS Convention’s entry into force. It has long been recognized that given the Convention’s entry into force requirements, in particular that of 40 million tonnes of contributing cargo reported to the General Account, and that it is a contributory instrument, a coordinated effort is needed to reach the critical mass of states needed to trigger the entry into force. This is especially important because of regional economic implications and for the initial setting-up of the HNS Fund which will require a substantial number of administrative and policy decisions.

18 Following the coordination meeting, the Correspondence Group could consider developing a Resolution for the consideration of the Legal Committee at its next session. This Resolution would encourage states to continue implementing the 2010 HNS Convention in order to potentially bring the Convention into force within a certain timeframe. Such a Resolution would benefit states that are concerned about whether there will be a sufficient number of states with substantial contributing cargo to the HNS Fund, and it would ensure a balanced sharing of the financial burden.

**Other Relevant Developments in 2014**

19 There were two workshops and conferences of note that took place in 2014 where the topic of the 2010 HNS Convention was presented and discussed. The first was a one-day workshop organized by the Government of Italy on 10 October 2014 in Rome. A separate document submitted by Italy provides a report of the outcomes of the workshop. The second was the 9th International Congress on Maritime Law organized by the Ibero‑American Institute for Maritime Law (IIDM) on 18-20 November 2014 in Lisbon, Portugal. The Congress included a session on the IMO Legal Committee and a presentation by the Coordinator of the HNS Correspondence Group.

**Conclusions**

20 The Correspondence Group has proven to be a beneficial forum for states to continue to exchange views and share information and best practices on the implementation of the 2010 HNS Convention. In addition, there are three specific items that the Correspondence Group could further develop and report on at the next session of the Legal Committee. These are:

* “HNS Made Easy” publication (see further details in separate document LEG 102/3/X);
* HNS Scenarios; and
* Resolution on Implementation and Entry into Force of the 2010 HNS Convention.

21 At this time, there does not appear to be a need to consider any items within a working group at the Legal Committee’s upcoming session. It is recommended that the Legal Committee extend the mandate of the Correspondence Group to report on its work at its next session.

**Action requested of the Legal Committee**

22 The Legal Committee is invited to:

1. take note of the information contained in this document, and
2. to extend the mandate of the Correspondence Group and to report at its next session.

**ANNEX 1**

**INFORMAL MEETING ON THE 2010 HNS CONVENTION**

**APRIL 30, 2014**

**LONDON, UK**

The meeting was chaired by Mr. François Marier of Canada, who is the Coordinator of the HNS Correspondence Group.

The meeting was attended by representatives of the following states, associate members, and observer delegations of intergovernmental organizations and non-governmental organizations:

Argentina, Australia, Belgium, Canada, China, Cyprus, Denmark, Germany, Greece, Finland, France, Israel, Italy, Japan, Luxembourg, Malaysia, Marshall Islands, Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Republic of Korea, Singapore, Sweden, Turkey, United States, Faroe Islands, European Commission, IMO, IOPC Funds, BIMCO, ICS, International Group of P&I Clubs and the Nautical Institute.

**1. HNS Correspondence Group Means of Communication**

* 1. The Correspondence Group will communicate using two means: by email and through the HNS Protocol Blog (<http://hnsprotocol.wordpress.com/>) as an effective way of posting documents and other pertinent information. The representatives of the IOPC Funds Secretariat indicated that the Blog is public and any member of the Correspondence Group can contribute. A link to the Blog is available through the HNS Convention’s website (<http://www.hnsconvention.org>).

**2. Status of Implementation**

2.1 Updates on the implementation of the HNS Convention were provided by the following states:

* Denmark: Legislation has already been adopted and the reporting requirements will become mandatory starting in 2015 and these are following the Guidelines endorsed by the IMO Legal Committee.
* Sweden: A Bill is being drafted to be introduced in late 2014 or early 2015. The reporting would then take place in 2016. There have been discussions concerning the impact and cost of the HNS Fund on the chemical industry and questions as to how much the Fund would cost in terms of administration and compensation.
* Malaysia: The text of the Convention is being drafted into law and there is a need to ensure the reporting mechanisms are in place and avoid duplication. Potential contributors have been identified and the government is looking at the most efficient way to proceed.
* Norway: Public consultations on the adoption of the Convention are ending on June 26, 2014 and a Bill will soon follow. The Ministry of Justice is responsible for this aspect.

**3. Issues and Actions for the Correspondence Group**

* 1. The delegation of Denmark committed to sharing the link to the English version of its HNS contributing cargo reporting requirements on the HNS Protocol Blog.
	2. The delegation of Sweden referred to document LEG 80/10/2, which includes a provisional estimate of HNS receipts. The document will be posted on the HNS Protocol Blog and the delegation inquired whether the estimates could be updated by States themselves.
	3. The question was asked whether there was an update available of the document LEG/CONF.17/6 submitted by the International Group of P&I Clubs, which is an analysis of HNS claims data between 2002 and 2010. The delegation of the International Group of P&I Clubs indicated that to do so would be a significant undertaking by the individual Clubs and to their knowledge there was no recent HNS incident that would have been significant to impact this analysis in any way.
	4. The delegation of France referred to the revision of the FAL Convention and the Belgian proposal to include the name of the receiver of HNS on the FAL Form 7 Dangerous Good Manifest. The document would be shared on the HNS Protocol Blog to inform delegations attending the meetings of FAL and its working group.
	5. The delegation of the Netherlands indicated that regional interests and port competition are important matters for that delegation and stakeholders in the Netherlands. It asked whether any lessons learned from the entry into force of the CLC and Fund Convention could be shared with the Correspondence Group and if those who triggered the entry into force were mainly large contributors to the IOPC Fund and if the entry into force was done in a coordinated fashion. The Coordinator replied that he would search for any relevant information concerning the entry into force of the CLC and Fund Convention. This information could then be shared and discussed within the HNS Correspondence Group.
	6. The delegation of Turkey referred to its idea of creating an HNS Promotion Group, which would consist of national experts who would undergo a special training in order to assist in the promotion of the HNS Convention. A proposal will be circulated within the Correspondence Group in advance of the next IOPC Funds meeting in October.
	7. The representatives of the IOPC Funds provided an update on its activities, which included attending workshops in Malaysia and Malta.

**4. Conclusion**

4.1 The Coordinator of the Correspondence Group will draft a report of the meeting and share it along with a list of members of the Group.

4.2 With regards to the report of the Correspondence Group to the 102nd session of the IMO Legal Committee, the Coordinator will draft a report and circulate it among the members of the Correspondence Group for comment in due course.

**ANNEX 2**

**INFORMAL MEETING ON THE 2010 HNS CONVENTION**

**October 23, 2014**

**LONDON, UK**

The meeting was chaired by Mr. François Marier of Canada, who is the Coordinator of the HNS Correspondence Group.

The meeting was attended by representatives of the following states and observer delegations of intergovernmental organizations and non-governmental organizations: Argentina, Australia, Canada, Cyprus, Denmark, Germany, Greece, Estonia, Finland, France, Iran, Italy, Japan, Kenya, Latvia, Malaysia, Malta, Marshall Islands, Netherlands, New Zealand, Norway, Peru, Poland, Singapore, Spain, Sweden, Turkey, United Kingdom, European Commission, IMO, IOPC Funds, ICS, International Group of P&I Clubs, ITOPF, and World LP Gas Association.

**1. Statement by the United Kingdom**

* 1. The delegation of the United Kingdom made a statement that given the ramifications of the decision to wind-up the 1971 Fund; it is reviewing its position on the HNS Convention.

**2. HNS Made Easy and Incident Scenarios**

2.1 The Chair of the meeting presented the idea of creating a new publication, known as “HNS Made Easy”, which is intended to provide fundamental information on the intent of the HNS Convention and the gap in global liability and compensation regimes it would fill. The target audience would be the industry stakeholders, high-level decision-makers and the public. Furthermore, an interest has been expressed by industry stakeholders to prepare a series of scenarios of potential HNS incidents and the compensation aspects of such incident scenarios. The representative of IMO indicated that it is intended to provide a simple message rather than the details as to how the HNS Convention would function as this is already provided for in other publications, primarily produced by the IOPC Funds. A proposed initial-draft text was circulated at the meeting (see Annex A).

2.2 The representative of ITOPF indicated that it is very interested in collaborating with IMO and member states on the production of such a publication. He also pointed to the film series that ITOPF has produced on oil pollution as very useful and giving a comprehensive message. It was noted that should an HNS Made Easy publication and film be produced then it would benefit in being produced in a collaborative way and that ITOPF had worked in that way in producing the new “Responding to Marine Oil Spills” series:

<http://www.itopf.com/knowledge-resources/library/video-library/video/7oil-spill-compensation/>

In this series ITOPF had been able to provide the base funding for the filming with in kind contribution of time and access to resources being made by the collaborative partners.

2.3 It was generally agreed that such a publication would be very helpful to more effectively engage with stakeholders and decision-makers. The following views were presented:

* The message should be simple and focus on what is the objective of the HNS Convention in terms of providing a robust and comprehensive liability and compensation regime.
* The private sector usually takes a more pragmatic view and it is important to engage them before a major incident occurs. There should be information on past incidents, which grabs the attention of the industry affected as there are uncertainties in potential costs, particularly on the contributor side.
* The focus should be on the risks and exposure that transporting HNS by ship poses which goes beyond the current applicable regimes.
* There is information available on past HNS incidents from various sources (i.e. P&I Clubs, Cedre, etc.).
* There is a lack of understanding on the current coverage and what the HNS Convention would cover. The main concerns from industry focus on loss of life, personal injury, as well as damages to shore facilities and to the environment (pollution, toxic and corrosive risks, also for nearby populations). An example of which is the LNG industry.
* The publication could also address the scenarios in terms of what the HNS Convention would cover if it were in force. However, it was also recognized that it would be difficult to estimate what bringing the HNS Convention in force would cost to contributors. Emphasis should be on the post-event levying of contributions to be cost-effective for industry.
* It would be important to develop this publication further through the IMO Correspondence Group.

**3. International Coordinated Implementation and Ratification**

* 1. The Chair of the meeting discussed the need to ensure an international coordinated implementation and ratification effort among those states that have an interest in bringing the HNS Convention into force. It was recalled that a recent regional workshop in Italy had attracted a great interest from industry and member states also from outside Europe. It was suggested that the signatory states and others that are advancing their implementation should meet in 2015 to discuss these efforts and potentially agree to a timeframe to bringing the Convention into force.
	2. It was recognized that a common approach was important to many states due to regional competition and considerations. Some states are also looking for more information on how other states have implemented the HNS Convention in terms of legislation and regulations as well as the administration of the reporting system.
	3. The European Union member states are currently discussing the authorization to ratify the Protocol.
	4. It was proposed to create a table that would be circulated to interested states to provide information on the status of their implementation of the HNS Convention. The Chair of the meeting committed to creating such a table and circulating it within the Correspondence Group.

**4. Conclusion**

4.1 The Chair of the meeting will draft a report of the meeting and share it along with a list of members of the Correspondence Group.

**ANNEX**

**HNS MADE EASY – INITIAL DRAFT TEXT**

* Shipping is truly, and inherently, a global industry. The international shipping industry is responsible for carrying 90% of world trade and is critical to the functioning of global commerce.
* Much of global trade involves ships that can carry hazardous and noxious substances (HNS), which are critical components of manufacturing and energy production. However, in the unlikely event of an incident or spill, these HNS can be threat to safety, the environment and human health.
* HNS includes volatile and dangerous substances that can explode causing loss of life and personal injury. Others can be toxic to nearby populations. The marine environment can also be polluted disrupting economic activities, such as fishing and tourism, which depend on clean oceans.
* The international community has developed measures to prevent incidents from occurring in the first place and to effectively prepare for and respond to such incidents when they do occur.
* Incidents can be costly to clean-up and response measures can vary greatly depending on the type of HNS involved.
* There is currently no global mechanism in force to address losses and damages resulting from an HNS incident.
* The 2010 HNS Convention is the culmination of a global effort to address a critical gap in the network of liability and compensation regimes.