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| LEGAL COMMITTEE  103rd SESSION  Agenda item 3 | LEG 103/3/2  XX April 2016  Original: ENGLISH |

**facilitation of the entry into force and harmonized interpretation of the 2010 hns protocol**

**Proposed resolution on the implementation and entry into force of the 2010 HNS Protocol**

**Submitted by Canada […]**

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| **SUMMARY** | |
| *Executive summary:* | This document proposes a draft resolution on the implementation and entry into force of the 2010 HNS form the consideration of the Legal Committee and onward transmission to the Assembly. |
| *Strategic direction:* | 2 |
| *High-level action:* | 2.0.1 |
| *Output:* | 2.0.1.4 |
| *Action to be taken:* | Paragraph 7 |
| *Related documents:* | LEG 101/3, LEG 101/12, LEG 102/3, LEG 102/12 and LEG 103/3 |

**Introduction**

1 The purpose of this document is to introduce the proposed resolution on the implementation and ratification of 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).

**Background**

2 The 2010 HNS Protocol recognizes that the dangers posed by the world-wide carriage by sea of hazardous and noxious substances means a need to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage of such substances. The entry into force of the 2010 HNS Protocol would result in filling a critical gap in the global network of liability and compensation regimes. Eight states signed the 1996 HNS Convention, subject to ratification, however it never came into force because of a number of underlying issues preventing the entry into force provisions from being met. The 2010 HNS Protocol which was also signed by eight states subject to ratification, was developed and adopted to resolve all outstanding issues that prevented the coming into force of the 1996 HNS Convention.

3 At its 101st session in April 2014, the IMO Legal Committee established an HNS Correspondence Group to provide a forum for discussion and information sharing among States and industry stakeholders working towards the 2010 HNS Protocol’s entry into force. The Legal Committee extended its mandate at its 102nd session in April 2015 until its next session and added the development of three specific items to its Terms of Reference, including a draft resolution on the implementation and entry into force of the 2010 HNS Protocol.

4 To ratify the 2010 HNS Protocol, States must collect reports on the quantities of HNS received in the states for the calendar year prior to ratification. To enter into force, the 2010 HNS Protocol must be ratified by at least twelve States that together have received a total quantity of at least 40 million tonnes of cargo contributing to the general account. Four of those States must each have a registered tonnage of not less than two million. The 2010 HNS Protocol will enter into force 18 months after the entry into force criteria have been met.

**Overview of the Proposed Resolution on the Implementation and Entry into Force of the HNS Convention**

5 The need to report on the quantities of HNS received in a state for the calendar year prior to that State’s ratification lengthen the implementation period for Governments and require a well-planned implementation schedule. In addition, the 2010 HNS Protocol’s unique entry into force provisions make an internationally coordinated approach to its implementation beneficial. This would make it more likely that the necessary critical mass of states ratifies within close proximity, minimizing any perceived risks associated with ratifying separately, and promote a more timely entry into force of the 2010 HNS Protocol.

6 The proposed resolution urges States, in particular those with major ports and industries receiving HNS contributing cargo and those with larger ship registries, to take the steps necessary to implement the 2010 HNS Protocol domestically with the aim of rapidly bringing the Protocol into force. The proposed resolution also encourages States to participate in the HNS Correspondence Group and to collaborate with industry and other States and share best practices to facilitate the entry into force of the Protocol. In addition, the proposed resolution encourages collaboration among States to coordinate efforts to trigger the 2010 HNS Protocol’s entry into force criteria, such as ratifying or acceding to the Protocol in groups. Finally, the draft resolution proposes a target ratification date of 2020, which would allow the Protocol to enter into force in 2022.

7 The HNS Correspondence Group considered the attached draft resolution and the sponsoring states are committed to a global solution to provide certainty to the shipping and cargo sectors while ensuring prompt and adequate compensation for HNS incidents. The sponsoring states are also committed to working together to bring the 2010 HNS Protocol into force within an agreed upon timeframe.

**Action requested of the Legal Committee**

8 The Legal Committee is invited to:

.1 take note of the information contained in this document;

.2 to adopt the proposed resolution; and

.3 once adopted, forward the resolution to the IMO Assembly.

**DRAFT - [LEGAL COMMITTEE][ASSEMBLY] RESOLUTION ON IMPLEMENTATION AND ENTRY INTO FORCE OF THE 2010 HAZARDOUS AND NOXIOUS SUBSTANCES PROTOCOL**

THE [LEGAL COMMITTEE] [ASSEMBLY],

RECALLING the adoption of 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 (HNS Protocol) resolved all outstanding issues that prevented its coming into force,

RECOGNIZING the dangers posed by the world-wide carriage by sea of hazardous and noxious substances and the need to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with such carriage,

CONSIDERING that the entry into force of the HNS Protocol would result in filling a critical gap in the global network of liability and compensation regimes and that eight States are signatories to the HNS Protocol but that at [.. June 2016], no State has become party to it,

NOTING that the Legal Committee re-established a Correspondence Group in April 2014 to promote the HNS Protocol and facilitate its entry into force,

RECALLING the importance of Governments being mindful of the time needed for effectively implementing the HNS Protocol, and thus of the need for well-planned time schedules for the implementation process,

BELIEVING that it is desirable for Member States to work in a co-ordinated approach towards the implementation of the HNS Protocol which is needed in order to have a critical shipping tonnage and mass of HNS contributing cargo to trigger its entry into force,

RECOGNIZING the desirability that those Member States that are ready to implement and ratify the HNS Protocol will be followed by other Member States which represent a certain volume of HNS contributing cargo,

CONSCIOUS that the ultimate effectiveness of any instrument depend, *inter alia*, upon all States:

(a) becoming Party to the instrument

(b) implementing it fully and effectively, and

(c) enforcing it rigorously;

INVITES Member States to implement and ratify, or accede to, the HNS Protocol at their earliest convenience;

URGES Member States that represent a volume of HNS contributing cargo or registered tonnage that would significantly contribute to the Convention’s entry-into-force provisions to implement and ratify, or accede to, the HNS Protocol in or before the [year 2020];

ENCOURAGES Member States to ratify or accede to the HNS Protocol in groups and thereby minimalizing the risks for those Member States who wish to ratify or accede to it alone;

URGES all Member States to place a high priority on working together towards the rapid implementation and entry into force of the HNS Protocol, and in resolving any practical difficulties in setting up the new regime;

[ENCOURAGES FURTHER all States to participate in the on-going work of the HNS Correspondence Group and to work together with industry to assist in the implementation process by using the tools that are made available and sharing best practices on identifying receivers, contributing cargo and other relevant information; and]

[REQUESTS the Legal Committee, when reporting to the Assembly, specifically to address the progress made and practical issues encountered in accepting and implementing the HNS Protocol.]

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