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

Domestic implementation of the 2010 HNS Convention

Submitted by Canada

SUMMARY

Executive summary: This document provides an overview of key issues and considerations for States in the domestic implementation of the 2010 HNS Convention, based on Canada's experience

Strategic direction, if applicable: 6

Output: 6.12

Action to be taken: Paragraph 18

Related documents: LEG 104/3 and LEG 105/3

Introduction

1 Since its adoption in April 2010, the Legal Committee has had on its agenda the facilitation of the entry into force and harmonized interpretation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (2010 HNS Convention).

2 Since then, the Legal Committee, with the support of States and observer delegations representing the affected industry, e.g. shipowners, insurers and cargo interests, has undertaken a number of key activities to provide important and useful information to facilitate the implementation and ratification/accession process. These activities include:

- .1 a 2012 workshop organized in cooperation with the International Oil Pollution Compensation (IOPC) Funds to adopt the *Guidelines on reporting of HNS contributing cargo* (LEG 100/3). These Guidelines were adopted at the 100th session of the Legal Committee;
- .2 the constitution of an HNS correspondence group from 2014 to 2017;

- .3 the publication of the brochure *The HNS Convention: Why it is Needed* in February 2016;
- .4 the publication of the presentation *HNS Incident Scenarios* in October 2017;
- .5 the adoption of Assembly resolution A.1123(30) in December 2017 to urge States to implement and become Parties to the 2010 HNS Protocol; and
- .6 the holding of a two-day workshop, in cooperation with the IOPC Funds, in April 2018.

3 States have consistently raised that the principal issue or obstacle for the effective and early implementation of the 2010 HNS Convention is with regard to the reporting of HNS contributing cargo. This is despite the amendments brought in the 2010 HNS Protocol that eliminated the need to report HNS receipts in packages or containers, as well as the IMO and IOPC Funds' efforts to simplify the reporting process with the adoption of the Reporting guidelines in 2013.

4 In this document, Canada wishes to offer States working towards implementation and ratification or accession some potential solutions to the most common issues faced during the reporting stage, based on its experience with the Convention to date.

HNS contribution cargo reporting

5 While the adoption of the 2010 HNS Convention removed packaged and containerized HNS from the reporting obligations, and thus substantially simplified the reporting process, the implementation of the reporting obligations may yet present a challenge to any State authority. Canada's implementation process spanned several years and raised the following issues or questions:

- .1 What stakeholders need to be consulted and how to best approach them?
- .2 Whether to exclude ships under 200 gross tonnes carrying packaged and trading in coastal waters (article 5 of the 2010 HNS Convention)?
- .3 How to collect information from both physical receivers, agents and principles?
- .4 How to deal with transhipped HNS?
- .5 What is the most effective means to collect reports?

Consulting stakeholders

6 In Canada's experience, consultations with domestic stakeholders focused primarily on the reporting and contribution requirements regarding the future HNS Fund. Given the broader range of commodities covered by the reporting requirements, there was a need to inform stakeholders of the requirements and the policy drivers behind them. The fact that the requirements are similar to those under the 1992 Fund Convention, in that they are limited to receipts of HNS and shipments in bulk only, eliminated a large number of stakeholders potentially captured by the reporting requirements.

7 The process followed by Canada with regard to consulting stakeholders involved the following steps:

- .1 issuance of a general discussion paper in 2010 recommending the adoption and ratification of the Convention;
- .2 targeted discussions with key stakeholders in specific industries, namely maritime law, marine insurance, oil and gas, and chemicals;
- .3 following the adoption of implementing legislation, the issuance of a second discussion paper in 2015 targeting those sectors which may be affected by the reporting requirements, namely oil and gas (both upstream and downstream), chemicals, liquefied natural gas, liquefied petroleum gas, mining, fertilizers, aluminium, forest products, electricity production and independent storage terminals. This was done primarily by targeting national industry associations representing the majority of companies. These associations often have established committees dealing with common or horizontal issues, such as dangerous goods management, and taking advantage of such committees proved highly effective; and
- .4 continued consultations during the formal regulatory process of pre-publication and publication of regulations containing the reporting requirements.

8 Canada is willing to share its two discussion papers (available in English and French) with any interested State authority if it may assist them in their implementation.

9 The most common questions raised during the consultation stage, and the responses provided, were as follows:

- .1 Question 1: Are other States also working towards becoming Parties?
Answer 1: Yes, to date four States have become Parties and several others are advancing their domestic implementation. Of note, the European Council issued a decision in April 2017 instructing its Member States to become Parties to the Convention within four years.
- .2 Question 2: When will contributions begin and how much will this cost us?
Answer 2: The Convention is not expected to enter into force until 2022-23 at the earliest. It is difficult to estimate how much the contributions will be at this time, however we estimate that they will be somewhat low given the spreading of the financial burden among many receivers. There are also few examples of past HNS incidents that would require significant amounts of compensation to be paid to victims.
- .3 Question 3: How do we know what substances are covered?
Answer 3: The online HNS Finder available at: (<http://www.hnsconvention.org/hns-finder/>) is a very useful tool that is continuously updated. Specifically, it allows stakeholders to search what bulk HNS are subject to reporting.
- .4 Question 4: Is an international regime more advantageous than a domestic one?
Answer 4: This has been the experience with oil pollution from tankers where the pooling of risk and sharing of the financial burden has meant significant amounts of compensation available at a relatively low cost to domestic industry. To replicate such a regime on a national scale would represent far greater costs for industry.

Issuing a declaration under article 5

10 Article 5 of the 2010 HNS Convention provides States with the option to exclude certain ships from the application of the Convention. These are ships of 200 gross tonnes and under that carry HNS only in packaged form and are engaged only in domestic trade between ports or terminals of that State. While making such a declaration does not impact any reporting requirements, it would impact the overall application of the Convention to such ships. While there are not many such ships trading exclusively in Canada's coasting trade, making this declaration removed a potential barrier to the Convention's effective implementation. These smaller ships are engaged in local resupply of communities and may not be able to meet the compulsory insurance requirements due to a limited market.

11 States may make such a declaration at the time of ratification or accession or anytime thereafter. However, the decision to make the declaration is largely a policy one that may be more relevant in States with longer coastlines or internal waterways with small ships that may carry packaged HNS. Thus, early consideration during the legislative and treaty consideration stages would be important.

Collecting reports from physical receivers, agents and principals

12 The 2013 *Guidelines on reporting of HNS contributing cargo* promote that States focus efforts on collecting reports from physical receivers prior to ratification or accession. At the same time, the Guidelines encourage States to collect information from receivers who would be agents and principals. In Canada's experience, the collection of reports of bulk HNS receipts from physical receivers is straightforward once the potential receivers were identified. The legal requirements are very similar to those of the 1992 Fund Convention for persistent oil. At the time of implementation and particularly during the consultation stage, Canadian authorities chose to collect information from agents and principals, which will be required once the 2010 HNS Convention comes into force.

13 For Canada, implementing the collection of information of reports from agents and principals was important at an early stage to avoid an additional regulatory step. It was also seen as necessary in the period before the 2010 HNS Convention comes into force to allow time to adjust the reporting mechanism as needed. This was largely facilitated by:

- .1 direct and consistent communication with companies and independent storage terminals that would be agents or principals;
- .2 clear rules for both agents and principals on their obligations and the information they need to provide; and
- .3 an easy reporting mechanism with minimal administrative burden.

Transshipment of HNS

14 The reporting of HNS receipts is intended to exclude HNS that is transhipped as per the definition of "contributing cargo" in article 1(10). This exclusion applies to HNS that is transhipped either from ship to ship or via a storage terminal or tank on shore. It is important to recall that this exclusion does not apply to persistent oil (i.e. "contributing oil" as defined in the 1992 Fund Convention) given that oil will be reported to the HNS Fund in the same manner as currently done to the IOPC Funds (article 19(1)(a)(i)). Some States implementing the 2010 HNS Convention have expressed uncertainty with regard to how this exclusion should be implemented. In fact, the 2013 Reporting guidelines advise that any precisions on

how to treat transhipped HNS would be up to the HNS Fund Assembly to decide upon, if necessary.

15 Canada has implemented this provision and is collecting reports which include transhipped HNS insofar as it is transhipped in Canada. Domestic stakeholders have been advised that they should only count the transhipped HNS at its final destination. Should that destination be outside of Canada, it is not included in the total amount of HNS reported for that calendar year. Canada has not imposed any time limitation on how long HNS can remain in a transhipped status, i.e. in a storage tank, and thus does not require the reporting of the transhipped HNS should it not have reached its final destination by the end of the calendar year. However, the key principle is that the HNS needs to have been received with the intent to be transhipped and HNS that is stored and resold or transformed, such as in a refinery, needs to be reported as if it was received at that port or terminal.

Most effective means of reporting

16 Finding the most effective means of facilitating reporting is key to a State authority managing the reliable collection of data. For some States with few receivers reporting contributing cargo, the usage of the model forms available on the HNS Convention website are sufficient. For other States with several receivers, including ones collecting information on agents and principals, an electronic reporting system may be more effective. Certain State authorities may already have systems, either for the collection of oil reports for the IOPC Funds or for customs purposes, which they can leverage and utilize for the reporting of HNS cargo.

17 During the regulatory process when the reporting obligations were being developed, Canadian authorities developed an electronic reporting system that is being used for the dual purpose of reporting oil for the IOPC Funds and HNS. The development of this electronic reporting system was key to successfully and seamlessly implementing the reporting obligations. From the time the reporting regulations were published in December 2016 and the deadline to report contributing cargo for the 2017 calendar year (28 February 2018), the system was tested and improved based on stakeholder feedback. It allows for reporting as either a physical receiver, agent or principal, and multiple times during the year or once at year end. In Canada's experience, continuous communication with companies and terminals that are required to report is crucial, as well as developing clear and concise material to summarize the reporting obligations. These were delivered in webinars and one-to-one discussions with affected stakeholders. Canada would offer to share its material and demonstrate its electronic reporting system to any interested States if it may assist them in their implementation.

Action requested of the Committee

18 The Legal Committee is invited to take note of the information in this document and take action as appropriate.