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

Note by the IMO and IOPC Funds Secretariats

SUMMARY

Executive summary: This document reports on the status of work carried out on the 2010 HNS Protocol and the efforts of both the IMO and IOPC Funds Secretariats to promote further ratifications and entry into force of the 2010 HNS Protocol since LEG 107. It refers, in particular, to the improvements made to the HNS Convention website, the review and update of the HNS Finder, and the assistance provided by the Secretariats to States considering ratification of or accession to the 2010 HNS Protocol. This document also provides information on the planned future work to be carried out by the Secretariats with regard to the setting up of the HNS Fund and the preparations for the first session of the HNS Assembly.

Strategic direction, if applicable: 7

Output: 7.12

Action to be taken: Paragraph 31

Related documents: LEG 106/3, LEG 106/3/2, LEG 106/16; LEG 107/3; resolution A.1123(30) and LEG 109/3

Introduction

1 At its 106th session, the Legal Committee recalled that, with the entry into force of the Nairobi International Convention on the Removal of Wrecks on 14 April 2015, the 2010 HNS Convention was the remaining gap in the global framework of liability and compensation conventions.

2 On 10 January 2022, Estonia deposited an instrument of accession to the Protocol, thereby bringing the number to six Contracting States. The Secretariat is currently in the process of verifying the amounts of contributing HNS cargo received in Estonia in 2020. Four of the Contracting States each have more than two million units of gross tonnage. With the present six Contracting States, the 2010 HNS Protocol needs only six more States to ratify or accede to it plus the required contributing cargo, thus the Convention is significantly closer to its entry into force.

Promotion and developments regarding the entry into force of the Protocol

3 As reported in document LEG 106/3, a two-day workshop organized by IMO in cooperation with the IOPC Funds, on 26 and 27 April 2018, concluded that the entry into force of the 2010 HNS Protocol depended on the proactive approach regarding the implementation process by the IMO Member States.

4 From 2018 onwards, the IMO Secretariat, as part of the IMO Integrated Technical Cooperation Programme (ITCP), organized further regional and national workshops, often in conjunction with the IOPC Funds Secretariat, to promote the ratification and implementation of the international liability and compensation regime and has offered to provide further assistance, funded by the IMO ITCP, in the future. Member States are encouraged, individually or as a group, to submit requests to the Secretariat for such activities.

5 In view of the importance of a coordinated approach to the ratification of the Protocol among all States, in order to ensure "a level playing field" between ports and the industry, the IMO Secretariat also offers regional or national workshops in States that do not fall under the ITCP, and would welcome offers to host them.

6 The Committee, at its 108th session in July 2021, noted that the 2010 HNS Protocol was the only treaty emanating from the Legal Committee yet to enter into force. The Committee encouraged Member States that had not yet done so to ratify the Protocol as soon as possible to enable its entry into force. In this regard, the Committee welcomed the information provided by the delegations of Belgium and Germany regarding coordinated efforts with neighbouring states, including the Netherlands, towards the ratification and implementation of the 2010 HNS Protocol. The Committee was also informed that Germany intended to ratify the Protocol in the second half of 2022.

7 The Secretariats are always willing to use the opportunity of national and regional workshops and other overseas trips to give presentations on the HNS Convention. While those activities have been put on hold until further notice as a consequence of the COVID-19 pandemic, fortunately, the demand for online seminars and workshops has increased, and the Secretariats have been able to take part in a number of remote activities to discuss the liability and compensation regime, including the HNS Convention whenever possible.

8 For example, the 1992 Fund Secretariat spent some time discussing the framework of the Convention, the importance of its entry into force in general, and the benefits to those States that ratify it at a regional workshop organized by the Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden (PERSGA) in September 2021. It also delivered an online seminar for the Instituto de Derecho Marítimo (IDDM) in Argentina and Centro de Navegación (CENNAVE) in Uruguay, which was attended by participants from across Latin America, during which it took the opportunity to continue to widen awareness in the region of the HNS Convention.

9 The IMO Secretariat, together with the Secretariat of the Pacific Regional Environment Programme (SPREP) and the Pacific Community (SPC), delivered a regional workshop on the ratification and effective implementation of conventions relating to response, including liability and compensation, for oil spills and HNS incidents concerning the 14 Pacific Island States. The workshop discussed the challenges that are confronting the Pacific Island States in establishing a clear and coherent policy and legal regime in respect of the response to oil and HNS spill incidents, and liability and compensation from damage arising therefrom, as well as establishing a cooperative arrangement in cases of spills.

10 The activity took place in two phases: phase 1 took place virtually during the last two weeks of October 2021 and phase 2 will be conducted in the last two weeks of February 2022. The break in the schedule of the workshop delivery was planned to allow the participants time to draw up their country action plans by identifying the steps to be pursued at the national level to accelerate ratification and implementation of the covered conventions; implement the conventions into national law (drafting of legislation); and draft a blueprint for effective implementation of the Pacific Islands Regional Marine Spill Contingency Plan (PACPLAN).

11 The HNS Convention also forms an important element of the programme for the IOPC Funds annual Short Course participants, which was last held in June 2021.

12 Government authorities and other interested stakeholders have continued to contact both the IMO and IOPC Funds Secretariats to obtain clarification on certain aspects of the Convention, for assistance or to seek further information on HNS matters in general. In particular, a meeting was held in September 2021 with South Africa to provide assistance with its reporting of HNS cargo. That meeting led to further discussions and an update of the 2020 reporting information, which was expected to be speedily reported to IMO as the depositary of the 2010 HNS Protocol. Moreover, Estonia was provided with guidance on the setting up of its HNS contributing cargo system as well as the clarification of the type of substances to be reported.

13 Furthermore, the potential maximum level of contributions for receivers to the HNS Fund (based on data presently available) were discussed with the Netherlands on the basis of document LEG 108/3 on Analysis of claims data on the list of HNS incidents involving vessels entered in a member Club of the International Group of Protection and Indemnity Associations in the period 2010 to 2019, submitted by the International Group of Protection and Indemnity Associations (P & I Clubs).

14 The Secretariats have also continued to engage with Canada and have offered their support and assistance to a number of the State's initiatives as it prepares for and promotes entry into force of the Convention. This includes support to the workshop Canada is planning to organize during 2022, as described in document LEG 109/3.

15 In addition, a number of contacts have been made with France to discuss their experience in their first year of HNS Reporting (2020), in preparation for their future ratification of the Protocol. The discussions were conducted by representatives of the Ministry of Marine Affairs, in connection with representatives of the chemical and oil industries, and were mostly aimed at clarifying the definition of receiver in the various possible situations and improving the explanations provided by the Administration to the potential contributors.

16 Where questions have arisen from government contacts or organizations on matters which are likely to be relevant and of interest to others considering ratification or dealing with HNS matters, with the permission of the parties involved, both the questions and answers have been published on the HNS Convention website.

IOPC Funds meeting – November 2021

17 In November 2021, during the meeting of the IOPC Funds, the 1992 Fund Assembly recalled that Resolution 1 of the International Conference, which adopted the 2010 HNS Protocol, requested the 1992 Fund Assembly to instruct the Director of the IOPC Funds to carry out tasks necessary for the setting up of the HNS Fund and to make preparations for the first session of the HNS Assembly.

18 At its seventh session held in October 2010, the 1992 Fund Administrative Council instructed the Director:

- .1 to carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the 2010 HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention;
- .2 to give all necessary assistance for setting up the HNS Fund; and
- .3 to make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization (IMO), in accordance with Article 43 of the 2010 HNS Convention.

19 Based on that instruction, the 1992 Fund Secretariat has been regularly reporting on its progress to the 1992 Fund Assembly and, in close cooperation with the IMO Secretariat, to the Legal Committee.

Developments since LEG 107

Improvements to the HNS Convention website, including the HNS Finder

20 The HNS Convention website (www.hnsconvention.org) is an important tool for accessing information related to the HNS Convention and its progress towards entry into force. The 1992 Fund Secretariat established and has been maintaining the site since 2011, while also ensuring that its structure and content remain fit for purpose.

21 One of its key features is the HNS Finder, which is an online database of substances that fall within the definition of HNS, including contributing cargo. The Finder is aimed at facilitating the identification of HNS contributing cargo by entities liable to submit reports. It has been in operation since 2011 and has been updated annually by the 1992 Fund Secretariat. The most recent update of the list was completed in March 2021.

22 Following a full review of the database in 2020, which was carried out in cooperation with IMO and external experts, it was decided that an archive system should be created to facilitate access to previous years' lists of substances. This is now accessible using the Access Archived Data function. The archive will be updated annually from now on and made available at the end of May every year, which corresponds to the submission deadline under the 2010 HNS Protocol.

23 In addition to the HNS Finder, the website provides access to a number of useful resources which may assist government or industry representatives and other stakeholders in better understanding the HNS Convention. In January 2022, a document library will be added to the site, which will bring together all recent HNS Convention-related documents issued for consideration by the IMO Legal Committee and the 1992 Fund Assembly as well as key IMO circulars.

MHB substances

24 In respect of the application of the 2010 HNS Convention to substances that are hazardous when carried in bulk (MHB substances), the IMO Secretariat continues to carry out further work to update the list of substances, as referred to in Circular Letter No.3144, to take into account a number of amendments relating to the International Maritime Solid Bulk Cargoes Code (IMSBC Code).

Engagement with industry

25 In November 2021, the IOPC Funds Secretariat was contacted by the European Chemical Industry Council (CEFIC), who were already in discussions with the P & I Clubs on a number of issues, to provide guidance in relation to a number of queries the organization had in respect of contribution matters. CEFIC confirmed its support for the entry into force of the Convention and has expressed an interest in providing assistance and support to States in an effort to ensure reporting practices are implemented in a uniform manner across European States.

Future work to set up the HNS Fund

26 Once the conditions for entry into force set out in Article 21 of the 2010 HNS Protocol are fulfilled, the IMO Secretary-General will, in accordance with article 43 of the 2010 HNS Convention, convene the first session of the Assembly of the HNS Fund, which will have to take decisions on a number of issues related to the setting up of the HNS Fund. The Secretariat of the 1992 Fund is focusing its preparatory work on a number of specific areas, as reported previously in document LEG 106/3/2.

Further administrative tasks

27 Having initially prioritized the issue of HNS contributing cargo reporting, in particular the updating of the HNS Finder which is considered to be an important tool in support of States' implementation of the HNS Convention, the Secretariats have now turned their attention to the administrative tasks related to the handling of claims for compensation. The IOPC Funds Secretariat has established an informal group, together with the IMO Secretariat and a number of organizations with relevant expertise, namely the Centre of Documentation, Research and Experimentation on Accidental Water Pollution (Cedre), the International Chamber of Shipping (ICS), the P & I Clubs and ITOPF Limited (ITOPF). The purpose of the group is to discuss the way forward on this important and complex matter, in particular the preparation of a draft HNS Claims Manual.

28 The group has so far met on four occasions: in November 2020, and in February, May and December 2021. The group has divided its work into thematic sub-groups to examine the technical and legal aspects specific to the HNS Convention and is in the process of developing draft texts.

29 Although no target date for completion of the work has been agreed at this point, the intention is to have a draft HNS claims manual ready for consideration by the first HNS Fund Assembly to be convened after the entry into force of the 2010 HNS Protocol.

30 In 2019, the IOPC Funds Secretariat had begun work on an action plan to be developed in cooperation with other stakeholders, such as IMO and the P & I Clubs, and in consultation with the Contracting States to the HNS Protocol, setting out the priorities for undertaking the other administrative tasks required for the establishment of the HNS Fund. However, due to the limited resources available within the Secretariat to work on HNS matters and the impact of the global COVID-19 pandemic, this item had to be put on hold in 2020 and 2021. It is the intention of the 1992 Fund Secretariat to return to working on this item as a priority in 2022. The IMO Secretariat will be working in close cooperation with the IOPC Funds Secretariat on any preparatory items for the first Assembly of the HNS Fund.

Action requested of the Committee

31 The Legal Committee is invited to take note of the information contained in this document and comment, as it may deem appropriate.