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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 109. In particular, the document refers to the assistance provided by the Secretariats to States considering ratification of or accession to the 2010 HNS Protocol, and 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, the preparations for the HNS Convention Workshop in March 2023 and the first session of the HNS Fund Assembly.

*Strategic direction,
if applicable:* 7

Output: 7.12

Action to be taken: Paragraph 37

Related documents: LEG 106/3, LEG 106/3/2, LEG 106/16; LEG 107/3;
resolution A.1123(30); LEG 109/3 and HNS.2/Circ.9

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. 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 entering into force.

3 The six Contracting States received, in 2020, a total quantity of 14,656,355 tonnes of cargo contributing to the general account (document HNS.2/Circ.9). In the first half of 2022, five Contracting States submitted data on contributing cargo received in 2021 in accordance with article 20(5) of the HNS Protocol. The IMO Secretariat is currently still in the process of obtaining the amounts of contributing HNS cargo received in Estonia in 2021.

Promotion and developments regarding the entry into force of the Protocol

4 Since 2010, a number of international workshops have been organized to facilitate the implementation and entry into force of the 2010 HNS Protocol, notably in 2011 in Rotterdam, in 2014 in Rome, and in 2016 in Montreal. The IMO Assembly, at its thirtieth session in 2017, adopted resolution A.1123(30), urging all States to work together towards the implementation and entry into force of the 2010 HNS Protocol and encouraging States to work with industry to assist in the implementation process. The two-day workshop on 26 and 27 April 2018, organized by IMO in cooperation with the IOPC Funds, 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 (refer document LEG 106/3).

5 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 and the International Group of Protection and Indemnity Associations (P & I Clubs), 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.

6 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.

7 Observing that requests from Member States and industry for assistance and information have become more regular and complex than in previous years, it is important that a specific programme of assistance on HNS matters will be organized. With a structured programme and the existing HNS training content that the IMO and IOPC Funds Secretariats have available, it will be possible to offer a "roadshow" in Member States that are key to promote the Convention and the tools available to assist with implementation. This will help to ensure that all Member States apply identical processes when obtaining the HNS reports from their industry and that they submit them correctly to the future HNS Fund Secretariat.

8 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. The Committee, at its 109th session in March 2022, was informed on the progress of adopting national legislation in Belgium and the Netherlands, which would allow them to ratify the 2010 HNS Protocol simultaneously with Germany. The delegation of France confirmed that the objective to ratify the 2010 HNS Protocol in 2023 should be achieved. Furthermore, the Committee was informed that the Philippines was in the final stages of ratifying the 2010 HNS Protocol.

9 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. For example, Estonia was provided with guidance on the setting up of its HNS contributing cargo system as well as clarification of the type of substances to be reported. Active support was also given to France and the Netherlands regarding the interpretation of the system from the government perspective. This included assisting these Member States in their discussions with the industry.

10 Among these contacts, it is important to note that European Chemical Industry Council (CEFIC) has expressed its support for the principle of the "polluter pays" and effective compensation for damages to persons and properties in connection with the carriage of HNS by sea, and invited all parties to collaborate for an effective and efficient ratification and implementation of the 2010 HNS Convention.

11 The IMO and IOPC Funds Secretariats, together with the P & I Clubs, also participated in Interspill 2022, the European oil and chemical spill conference and exhibition which took place in Amsterdam, the Netherlands, from 21-23 June 2022. The conference had a particular focus on the relevance of the 2010 HNS Protocol regarding response measures and was attended by many international and national organizations and representatives from the spill response industry. Furthermore, the IOPC Funds Secretariat had the opportunity to deliver two interactive sessions. One covered HNS reporting and contributions and included a Q&A session with a representative from the Netherlands' chemical industry. The second was delivered with the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC) and introduced the tools and guidelines available relating to HNS incidents and the 2010 HNS Convention.

12 In July 2022, the IOPC Funds Secretariat took part in an online workshop for the Government of Malaysia and the chemical industry. This event attracted the participation of over 100 individuals, providing an excellent opportunity for the IOPC Funds Secretariat to deliver a clear message to a large group, without incurring travel costs or requiring staff to spend significant time travelling. Other States are encouraged to consider holding such online workshops for the purpose of highlighting the value of having the 2010 HNS Convention in force, as well as explaining how to prepare the HNS contributing cargo reports, to a wide audience.

13 In December 2022, the Netherlands organized a regional meeting to discuss progress towards ratification of the HNS Protocol in Belgium, Germany and the Netherlands. The meeting was also attended by Canada, France and the IMO and IOPC Funds Secretariats and had a particular focus on the State responsibilities regarding the HNS reporting system, including reporting requirements and thresholds for particular cargo in cross-border cases.

14 The Secretariats have also continued to engage with Canada following the approval by the Committee, at its 109th session, of their proposal to organize a follow-up HNS workshop to assist work of all Member States towards further ratifications of the 2010 HNS Protocol. The workshop was initially scheduled to take place from 31 October until 1 November 2022. However, to best facilitate State representatives' participation, the workshop will be held from 3 to 4 April 2023, in the week directly following the meeting of the 110th session of the Committee. The resumed workshop will be conducted in person and in hybrid format.

15 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.

16 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).

Developments from the IOPC Funds Secretariat since LEG 109

17 In 2022, the IOPC Funds Secretariat has continued its efforts to contribute to the work undertaken by IMO to support States in their progress towards the ratification of the HNS Convention. The work carried out was reported and discussed at the meeting of the IOPC Funds' governing bodies in March and October 2022 and a summary is reported below.

HNS Action Plan

18 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.

19 In view of the positive progress towards the entry into force of the 2010 HNS Protocol and request to fulfil the tasks given to the IOPC Funds Secretariat under Resolution 1 of the International Conference of 2010, the Secretariat needs to be able to refer to and work with a complete list of items to be discussed and agreed. Such items will have to be implemented before, during and after the period of entry into force of the 2010 HNS Convention.

Updating of the HNS Finder

20 The HNS Finder is an online database that allows users to search the list of all HNS as defined by the 2010 HNS Convention. It provides information on HNS classification criteria and verifies whether a substance qualifies as contributing cargo. Users can also obtain information on which accounts the contributing substances belong to. It has been in operation since 2011 and has been updated annually by the IOPC Funds Secretariat. The most recent update of the list was completed on 31 May 2022. Additional changes offering further improvements to the users are being set up and will be available from April 2023.

HNS reporting guidelines

21 Ensuring correct HNS reporting is a major issue for existing and future contracting States. The IOPC Funds Secretariat continues to engage with a number of Member States to develop an improved set of guidelines and deliver support for HNS reporting and contributions as a priority.

22 At the moment, the IOPC Funds Secretariat has prepared two questionnaires which encourage State Parties and those expected to soon ratify the Convention to provide information on their domestic legislation regarding HNS reporting, to inform the Secretariat of any issues they have faced and to raise any questions they may have regarding some of the more advanced issues related to HNS reporting.

23 Document LEG 110/3/1, which is submitted separately by the IOPC Funds Secretariat, contains the summary of the main issues to be resolved as well as the questionnaires and the coming steps regarding their use.

Online HNS reporting and financial management system

24 It is one of the HNS Fund Secretariat's future key tasks as Member States are in need for this reporting and payment structure to be in place once the Convention enters into force. However, the task of developing and implementing an online HNS reporting and financial management system is undoubtedly complex. It requires considerable exploration and discussion internally and externally before significant progress can be made. One obvious option to explore is the development of an in-house reporting and financial structure, similar to that developed for oil reporting under the IOPC Funds system.

Development of a draft HNS Convention Claims Manual

25 The IOPC Funds and IMO Secretariats have been working with a number of relevant organizations, namely 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), to develop a draft HNS Convention Claims Manual.

26 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 and adoption by the States Parties during the first meeting of the HNS Fund Assembly. It is one of the first tools that is being developed as a joint effort among several observer organizations.

27 Regarding the management of incidents and their resulting claims, a draft Memorandum of Understanding (MoU) between the HNS Fund and the P & I Clubs will also need to be prepared ahead of the first HNS Fund Assembly, as would an agreement on the funding system of interim payments.

HNS Convention website

28 The IOPC Funds Secretariat continues to update and maintain the website www.hnsconvention.org which is an important tool for accessing information related to the 2010 HNS Convention and its progress towards entry into force. The Secretariat has been maintaining the current version of the site since 2011, ensuring that its infrastructure and content remain fit for purpose.

29 Given the increased interest in the 2010 HNS Convention and the need for additional tools and information, the intention is to introduce new features to correspond to some of the important developments ahead, in particular for:

- .1 a Q&A system to record and share the questions and answers provided to interested parties such as States and industry;
- .2 access to the websites and data of other organizations that have useful information on the subject (IMO, P & I Clubs, Cedre, ITOPF, CEFIC among others); and
- .3 information in relation to the types of HNS transported in large quantities, those that are lost the most, etc.

30 Once the HNS reporting system tool is developed and ready, it will also be accessible from the website, initially to be used as a test in advance of the entry into force of the Convention. It is an item that will take some time to be finalized and will only be made openly available once approved by the HNS Fund Assembly.

Financing of work to be undertaken in 2023 and beyond

31 Given the extensive list of activities to be conducted under the action plan described above, costs are being incurred relating to the work of the IOPC Funds Secretariat. As a consequence, while the HNS budget was around £35,000 in previous years, the Director increased it to £135,000 in the 2023 budget to cover these costs and other administrative tasks in respect of these activities.

32 In addition, the Director will submit a document to the 1992 Fund Assembly proposing that the HNS Fund will pay a flat management fee to the 1992 Fund. Such fee will cover the costs of staff actively involved in the preparation for the entry into force of the 2010 HNS Convention.

33 The management fee will be based on the model used to calculate the fee paid by the Supplementary Fund to the 1992 Fund. All costs incurred by the 1992 Fund for the setting up of the HNS Fund will be reimbursed by the HNS Fund with interest.

Rules of Procedure for the HNS Fund Assembly

34 Based on the effective experience of the IOPC Funds, the Rules of Procedure of the HNS Fund Assembly and any subsidiary bodies should be similar to those of the IOPC Funds' governing bodies where possible. The IOPC Funds Secretariat will prepare draft rules of procedure for the consideration of the HNS Fund Assembly at its first session.

Internal and Financial Regulations of the HNS Fund

35 The HNS Fund Assembly shall develop, apply and keep under review Internal and Financial Regulations related to the aim and related tasks of the HNS Fund. As a consequence, the IOPC Funds Secretariat will prepare draft regulations for the consideration of the HNS Fund Assembly at its first session.

36 The IMO and the IOPC Funds Secretariats will be working in close cooperation to facilitate the opportunity for Member States to become Parties to the 2010 HNS Convention and continue to develop any preparatory items required for the first Assembly of the HNS Fund.

Action requested of the Committee

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