

LEGAL COMMITTEE
111th session
Agenda item 3

LEG 111/3
16 January 2024
Original: ENGLISH
Pre-session public release:

**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 110. In particular, the document refers to the outcome of the HNS Convention Workshop in April 2023, 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 and the first session of the HNS Fund Assembly.

*Strategic direction, 7
if applicable:*

Output: 7.12

Action to be taken: Paragraph 21

Related documents: LEG 106/3, LEG 106/3/2, LEG 106/16; LEG 107/3; resolution A.1123(30); LEG 109/3; LEG 110/3 and HNS.2/Circ.11, HNS.2/Circ.11/12 and HNS.2/Circ.11/13/Rev.1

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 23 October 2023, France deposited an instrument of ratification and on 21 November 2023, Slovakia deposited an instrument of accession to the Protocol, thereby bringing the number to eight Contracting States. Five of the Contracting States have each more than two million units of gross tonnage. With the present eight Contracting States, the 2010 HNS Protocol needs only four 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 eight Contracting States received, in 2022, a total quantity of 17,527,853 tonnes of cargo contributing to the general account (document HNS.2/Circ.13/Rev.1). In the first half of 2023, six Contracting States submitted data on contributing cargo received in 2022 in accordance with article 20(5) of the HNS Protocol (document HNS.2/Circ.11).

4 Once the conditions for entry into force of the 2010 HNS Protocol are fulfilled, the Secretary-General of IMO will, in accordance with article 43 of the 2010 HNS Convention, convene the first Assembly meeting of the HNS Fund. Meanwhile, 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.

Promotion and developments regarding the entry into force of the Protocol

5 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 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).

6 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.

7 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. Observing that requests from Member States and industry for assistance and information have become more regular and complex than in previous years, it was important that a specific programme of assistance on HNS matters be organized. With the existing HNS training content that the IMO and IOPC Funds Secretariats have available, it is possible to offer a 'roadshow' in Member States that are key to promoting 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 As an example, the IOPC Funds Secretariat was invited by the Nigerian Maritime Administration and Safety Agency (NIMASA), to deliver a webinar and training exercise on the 2010 HNS Convention in September 2023. The event was attended by various Departments within the Agency, including a dedicated HNS Unit. That Unit is working on the preparations for Nigeria to accede to the Convention and has already organized two interactive meetings with key stakeholders. One of the recommendations from those meetings was to train the HNS Unit officers on the Convention and the benefits of Nigeria becoming a contracting State. The Secretariat delivered a general overview of the Convention and the types of damage and claims covered by it. It also focused on the importance of accurate reporting of contributing cargo and led an exercise on identifying relevant substances and who

would be required to report those substances as a 'receiver' of the cargo. Once Nigeria has acceded to the 2010 HNS Protocol, it is anticipated that further training will be organized in respect of its implementation.

9 The Committee, at its 110th session in March 2023, noted the commitments of delegations, including Belgium, France and the Kingdom of the Netherlands, towards ratification and further implementation of the HNS Protocol and expected the deposit of instruments by their countries in the course of 2023 and 2024. Many delegations noted that it was important to coordinate their positions with other States where major ports were located to ensure a global level playing field between ports and the industry. The entry into force of the HNS Protocol was needed more than ever due to the change in transport of HNS substances in the context of climate change and the decarbonization of the shipping sector. The need for different fuels such as ammonia, ethanol, biodiesel and other new components that comprised alternative fuels was a paradigm shift that would also demand an appropriate liability and compensation regime.

10 On 3 and 4 April 2023, during the week directly following the 110th session of the Committee, a follow-up HNS workshop was organized at IMO Headquarters by the delegation of Canada in cooperation with IMO and the IOPC Funds to assist the work of all Member States towards ratification of or accession to the 2010 HNS Protocol. The workshop, which was held in hybrid format, was attended, either in person or remotely, by over 200 representatives from Member States and industry. The report of the HNS workshop is attached in the annex to document LEG 111/INF.4.

11 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.

12 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 110

13 In accordance with resolution 1 of the International Conference on the revision of the HNS Convention, which adopted the 2010 HNS Protocol, and based on its Action Plan, the IOPC Funds Secretariat has continued to carry out the tasks necessary to set up the HNS Fund and to make preparations for the first session of the HNS Fund Assembly. During 2023, the IOPC Funds Secretariat continued to take opportunities to promote the entry into force of the 2010 HNS Convention, to engage with interested States and other key stakeholders, and to share information with industry representatives through the delivery of training and outreach activities. These included webinars and other activities organized in close cooperation with the Legal Affairs and External Relations Division and Technical Cooperation and Implementation Division of IMO.

14 At the HNS workshop of April 2023, mentioned in paragraph 10, the definition of 'Receiver' was an important issue raised by participants throughout the two days of discussion. Under article 1.4(a) of the 2010 HNS Convention, 'Receiver' means the person who physically receives HNS contributing cargo, or a person (principal) disclosed by the physical receiver, for example a storage company, acting as an agent for another person. However, article 1.4(b) allows States to establish their own definition of a 'Receiver' through domestic legislation, on the condition that this results in the same total of HNS contributing cargo which would have been received under article 1.4(a).

15 The Secretariat indicated that aspects of article 1.4(a) were causing difficulties and it was suggested that using the definition of 'Receiver' under the article 1.4(b) provision would simplify the reporting process as contracting States can rely on the physical receiver only, and not use the agent/principal option within article 1.4(a). A number of States indicated that they were open to discussion on solutions to the definition of 'Receiver' and changes to the current HNS Contributing Cargo Reporting Guidelines, but more time and further detailed considerations were still necessary. The Secretariat has continued to spend time engaging with States and the industry in order to make further progress towards an improved set of reporting guidelines.

16 Another HNS workshop is scheduled to take place at the end of the April 2024 sessions of the IOPC Funds' governing bodies, during the week following the 111th session of the Legal Committee. This workshop, which will be organized in consultation with the IMO Secretariat, will have the focus on the finalization of the required improvements of the HNS Reporting Guidelines.

17 Another important task, which started at the end of 2023, is the development and implementation of an online HNS reporting and financial management system. This project is complex and requires detailed discussion before significant progress can be made. So far, the decision has been taken to develop an in-house tool, based on the one developed for the Oil Reporting System (ORS) under the IOPC Funds. As a consequence, the work to be undertaken for HNS will facilitate a merging with the current ORS, facilitating the work of States and contributors which will be States Parties to both the IOPC Funds and the HNS Fund.

18 A further important function of the IOPC Funds' Secretariat is to develop and maintain the website www.hnsconvention.org, which, among other useful information, includes the HNS Finder tool, an online database that allows users to search the list of all HNS as defined by the 2010 HNS Convention. The most recent update of the list was completed in 2023, including a number of additional research improvements to facilitate its use.

19 As regularly indicated, the draft HNS Convention Claims Manual, on which 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), together with the IMO Secretariat, have exerted significant efforts and are in the process of finalizing a text, will be circulated for comments among contracting States once the entry-into-force conditions of the 2010 HNS Protocol are fulfilled.

20 All costs incurred by the IOPC Fund, 1992 (1992 Fund) for the setting up of the HNS Fund will be reimbursed by the HNS Fund with interest. In order to ensure sufficient capacity to deliver all tasks necessary to set up the HNS Fund and make preparations for the first session of the HNS Fund Assembly, an appropriation of £135,000 was approved by the 1992 Fund Assembly for 2023 to cover a larger number of activities and additional administrative tasks. An appropriation of £424,000 has been included in the 2024 budget for the 1992 Fund, to cover the costs for the preparations of the HNS reporting system and other administrative tasks in respect of the HNS Fund, including to pay a flat management fee to the 1992 Fund, as well as the cost of the new post of HNS Project Officer. The management fee is based on the model used to calculate the fee paid by the Supplementary Fund to the 1992 Fund.

Action requested of the Committee

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