

LEGAL COMMITTEE  
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Agenda item 3

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Pre-session public release:

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

**Report of the HNS workshop held at IMO Headquarters on 3 and 4 April 2023  
Note by the IMO and IOPC Funds Secretariats**

**SUMMARY**

*Executive summary:* As indicated in document LEG 111/3, this document provides in its annex the report of the HNS workshop which was held at IMO Headquarters on 3 and 4 April 2023 to assist the work of all Member States towards ratification of or accession to the 2010 HNS Protocol.

*Strategic direction, if applicable:* 7

*Output:* 7.12

*Action to be taken:* Paragraph 2

*Related document:* LEG 111/3

**Introduction**

1 As mentioned in document LEG 111/3, this document provides in its annex the report of the HNS workshop which was held at IMO Headquarters on 3 and 4 April 2023 to assist the work of all Member States towards ratification of or accession to the 2010 HNS Protocol.

**Action requested of the Committee**

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

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## ANNEX

### **Report of the Workshop on the 2010 Hazardous and Noxious Substances Convention IMO Headquarters 3 and 4 April 2023**

#### *Working towards the HNS Convention's entry into force*

The International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) was established in 2010, amending a previous instrument adopted in 1996. But 13 years on, it has still to enter into force because the requisite number of States has yet to ratify it.

The 2010 HNS Convention aims to put in place a globally agreed regime for adequate, prompt and effective compensation in the event of an incident at sea involving hazardous or noxious substances. It establishes the principle that the 'polluter pays' through an international system involving the shipping, oil, gas, chemical, petrochemical and other HNS industries, and provides the framework for such a system.

Former IMO Secretary-General Kitack Lim has described the HNS Convention as "the last piece in the puzzle" needed to ensure that those who have suffered damage caused by HNS cargoes carried on board ships have access to a comprehensive and international liability and compensation regime.

With a view to accelerating the Convention's entry into force, and to help understand what is a complex area, IMO and IOPC Funds jointly hosted a workshop, organised by Canada, to assist Member States work towards ratification. The hybrid event (3-4 April) at IMO Headquarters brought together contracting States, industry experts and other key stakeholders.

The 2010 HNS Convention will enter into force 18 months after the date on which it is ratified or acceded to by at least 12 States. Currently eight have done so: Canada, Denmark, Estonia, France, Norway, Slovakia, South Africa, and Türkiye. In addition, a volume is required of at least 40 million tonnes of contributing cargo in the preceding calendar year. The requirement of having four States with more than two million units of gross tonnage for the Convention to enter into force has already been met.

Opening the two-day workshop, Frederick Kenney, former Director of IMO's Legal Affairs and External Relations Division, thanked Canada for organising the workshop and added:

"The reason we are here is to get ratifications of the 2010 HNS Protocol in order to get the Convention into force to better protect from HNS spills. We received news last week from the Kingdom of the Netherlands, the Kingdom of Belgium and the French Republic plus previously from the Federal Republic of Germany and the Philippines about their commitment to ratification. It means we are getting close, but we need more ratifications."

At its 110th session (LEG 110, 27-31 March 2023), the Legal Committee welcomed statements by several delegations, including Belgium, France and the Kingdom of the Netherlands, reiterating their commitments towards ratification and further implementation of the HNS Convention. They are expected to deposit their instruments in the course of 2023 and 2024.

Gaute Sivertsen, Director of the IOPC Funds, described the workshop as timely because work on ratifications had picked up after the COVID-19 pandemic. He said that the administrative work to keep track of the IOPC Funds' 250 contributors from its worldwide membership was already "substantial".

He indicated that the HNS Fund, to be created under the 2010 Convention, will probably have 10 times as many contributors, making the HNS reporting management extremely difficult. As a consequence, more human and technical resources would be needed, raising costs and complications which would be borne by governments and the industry. "This will be make or break for the HNS Fund," he warned.

Following previous discussions with a number of States, Mr Sivertsen said, it was recognised that an efficient and jointly approved system for reporting HNS contributing cargo was key to ensuring the success of that Convention. This workshop should help, focusing in detail on the challenges faced by States and industry in relation to the reporting of HNS as contributing cargo.

Mr Sivertsen also told workshop participants that, with that in mind, his organization has put forward proposals for a simplified method of HNS reporting, an issue that was raised repeatedly over the two days of discussion.

#### *Purpose and benefits of the HNS Convention*

Day one of the workshop focused on what the HNS Convention is intended to do, with examples of when and how it might apply using actual incidents as case studies.

IMO's Jan de Boer gave an overview of the HNS Convention and its key features. He began by outlining the history that resulted in its adoption: international action on liability and compensation led by IMO following the 1967 Torrey Canyon oil spill. The grounding of the super tanker off the UK coast caused enormous damage to marine life in British and French waters, and to the livelihoods of local people.

The Torrey Canyon disaster raised issues of who should be held responsible for damage caused by oil pollution, the basis for determining liability and the level of compensation for damage. The HNS Convention covers incidents involving hazardous and noxious substances, but also incidents involving fire and explosion risks caused by persistent oil.

Mr De Boer explained that the HNS Convention would see the establishment of an HNS Fund from which compensation would be paid if a shipowner's liability was insufficient, and they were unable to meet their obligations – or if they were exonerated. The Fund will be financed through contributions paid post-incident by receivers of HNS cargoes.

He also highlighted the breadth of application of the Convention as it covers not only the consequences of an HNS incident at sea, but also on land and in dealing with air pollution. Under the treaty, damage means loss of life or personal injury; loss of or damage to property; economic losses; the costs of clean-up; preventive measures; and reasonable measures of reinstatement of the environment.

#### *Domestic Implementation of the HNS Convention: key considerations*

Countries at different stages of implementing the HNS Convention provided the workshop with reports on the processes involved and issues pertinent to their nations' circumstances. Belgium and the Kingdom of the Netherlands said they are working in coordination with each other and with Germany because of parallels in their situations. The three States plan to ratify the HNS Convention in 2024.

Both Belgium and the Kingdom of the Netherlands have a high proportion of HNS cargo that transits through their borders to neighbouring countries, and they stressed the challenge of defining, therefore, who the Receiver of goods in transit is. Belgium highlighted the volume of

traffic in its area of the North Sea and, therefore, the need to take action to limit liability before a serious incident happens.

An important condition of ratification is having certainty about a level playing field, the Kingdom of the Netherlands said.

Canada reported that, in considering whether they need the Convention, they looked at the number of accidents, the length of their coastline, the types of hazardous or noxious substances coming to Canada, and the number of ships carrying HNS. Stakeholders are broadly supportive of the Convention, the workshop was told, not least because it demonstrates responsible management within the shipping industry.

Denmark explained that the country's parliament legislated in 2005 to implement the original 1996 Convention, and they had signed up to the 2010 Convention in 2011. The key consideration at that stage was whether it would substantially improve the compensation process and limit the risk of environmental disaster in Danish waters.

France told the workshop that they hoped to conclude the ratification process by the end of 2023. The French Maritime Affairs department will oversee the system, although the need to build up their regulatory knowledge of declarations and financial checks was acknowledged. An obligation to notify, backed by penalty payments for failure to do so, was introduced in France three years ago.

The workshop heard that the Norwegian parliament approved ratification of the HNS Convention in 2015 and the Swedish parliament approved its legislation to ratify the Convention in 2018.

Türkiye highlighted its proximity to some of the busiest waterways in the world: 8,000 ships pass the country each year, of which almost a quarter carry dangerous goods – a number that is increasing. It became a contracting State to the HNS Convention in 2017. It plans to incorporate a dangerous cargo monitoring system into its Maritime Single Window.

The session ended with questions from the floor. The Bahamas asked, from the perspective of a flag State, how the Convention might work in relation to the carriage and storage of alternative fuels. Canada responded by saying this was something that would be considered soon but that the HNS Convention was an important first step.

#### *HNS Incidents: Risks and Claims*

Through presentations from those involved in responding to incidents, the workshop considered the risks posed by shipping hazardous and noxious substances, and the types of losses and damage that could result from an HNS incident.

Angela Pinzon of ITOPF, a not-for-profit organization that provides technical advice worldwide on responding to oil or chemical spills from ships, outlined the steps involved in an HNS incident response: identification of the hazard and evaluation of its likely behaviour, for instance how a chemical might react with water, fire or other substances on board, followed by decisions on how best to tackle the incident.

Ms. Pinzon noted the need for highly specialised knowledge. Other challenges outlined included access to the right kind of Personal Protection Equipment (PPE), gathering accurate information on which to base decisions, and considerations around waste management.

Christophe Logette from Cedre, French experts in water pollution contingency planning and response, said there is no one-size-fits-all response because of the complexity and unpredictability of HNS-related events. He highlighted Cedre's work to develop a chemical database with guidance and a modelling tool for responders and the maritime industry more broadly.

Sue Watkins from the International Group of P & I Clubs, spoke on behalf of insurers in the sector. The International Group is one of the parties drafting the HNS Convention claims manual - evidence, she said, of its backing for the treaty.

She provided data on the number and cost of incidents involving hazardous or noxious substances since 2002: The best available data shows that in the years 2002 to 2019, just four incidents would have been a cost to the HNS Fund.

Ms Watkins concluded that, whilst images of incidents can look dramatic and damage can be extensive, the costs are generally well within the HNS Fund's limit of liability and that most of the financial exposure will still be borne by ship owners and their insurers. However, incidents do occur, she cautioned, and the HNS Convention is needed to ensure that those who might suffer damage have access to a comprehensive and global liability and compensation regime, similar to that available to those affected by oil spills.

#### *Examples of why the HNS Convention is needed*

The workshop heard about real incidents involving hazardous substances and the issues that they highlighted.

Dr Conor Bolas of ITOPF, detailed the response to the sinking in May 2021, off Sri Lanka, of the containership, X-Press Pearl, following a fire. The ship had 320 metric tonnes of low sulphur fuel oil (LSHFO) onboard and was carrying 1,486 containers, of which 81 contained dangerous goods (including methanol, sodium methylate, nitric acid, and carbon dioxide), along with plastic nurdles. Other cargo included metal ingots, decomposing foodstuffs, urea and assorted oils. Burnt debris fell into the sea and the nurdles contaminated 300km of shoreline.

Following an evaluation of risks as a result of the incident, it was deemed unnecessary to evacuate. Modelling predicted that smoke and chemical plumes would dissipate before reaching shore, although environmental monitoring was required.

Stephan Hennig, the UK Secretary of State's representative for Maritime Salvage and Intervention, described when, in 2012, the containership Flaminia experienced a fire and explosion in international waters in the Atlantic. Three died. The main concern centred on what might result from different cargoes possibly mixing – the ship was carrying 54 different types of cargo and had 59 containers of dangerous goods. It transpired that the contents of 34 containers had been incorrectly declared.

Public health authorities in the United Kingdom were concerned about moving the ship to a place of refuge due to the risk of hazardous fumes being blown towards the land. A multi-national assessment team was assembled to ensure the vessel could safely transit through the English Channel to JadeWeserPort in Germany. Once alongside, and several weeks after the initial fire, paper and cellulose cargoes reignited.

### *Views from industry*

The workshop heard from several organizations representing all sides of the shipping industry: ICS, P & I Clubs, CEFIC, FETSA, OCIMF, and WLPGA, were all unanimous in wanting to see the HNS Convention enter into force. Whilst some concerns were voiced about aspects specific to their particular sectors, and the need for a level playing field was reiterated, the "polluter pays" principle and the concept of globally shared responsibility were cited as reasons to support the Convention.

Canada's Francois Marier, moderator, commented on unanimity across so many trade associations: "It is incumbent on us as State representatives to actually make it [the HNS Convention's entry into force] happens. It is important that we hear that unanimous message," he said.

### *HNS Convention reporting requirements*

Day two of the workshop began with a look at the reporting requirements contained in the HNS Convention. IMO and IOPC Funds provided an overview of the reporting system as laid out by the Convention and how it will work once in force. They outlined States' reporting obligations before and after it enters into force. Aspects highlighted included the definition of contributing cargoes, the requirement to report annually and to provide the identity of the Receiver of the hazardous cargo.

The definition of the Receiver was an issue raised by panel members and Member States throughout the two days of discussion. Under article 1.4(a) of the Convention, the Receiver is usually the person who physically receives HNS contributing cargo, or a third party designated by the person who physically receives it on behalf of that third party - for example, a storage company acting as an agent. But article 1.4(b) allows States to establish their own definition of a Receiver through domestic legislation.

Thomas Liebert of IOPC Funds reported that aspects of article 1.4(a) were causing difficulties and, as mentioned by his Director during the opening, he suggested that using the definition of Receiver under the article 1.4(b) provision would simplify the reporting process.

For that to occur, Mr Liebert said, the solution should be to use the option of Article 1.4(b), under which States can rely on the physical receiver only, and not use the Agent/Principal option within Article 1.4(a). This would mean that States put the obligation of reporting and contributing solely on the Physical Receivers, in the same way as they do for the purpose of managing oil reporting and contributions for the IOPC Funds. This would significantly simplify the management of reporting and contributions for States and for the HNS Fund, he said.

Mr Liebert also stated that a key focus is on developing an efficient and jointly approved system for reporting HNS contributing cargo, considered essential to facilitating entry into force of the Convention, as well as the effective functioning of the HNS Fund once established. He reported that the IOPC Funds is looking at how it can support States and their industry in managing the reporting process going forward.

The HNS Convention website was recommended as a source of additional useful information. Belgium, Canada, Denmark, France, the Kingdom of the Netherlands, Norway, Sweden and Türkiye each reported to the workshop on the reporting systems they operate and the sanctions they have in place for compliance failures. Issues they identified with the process included the definition of Receiver, for instance in countries through which high levels of HNS cargoes transit, and confusion around the classification for reporting purposes of what constitutes a hazardous or noxious cargo.

*Information sharing in regional break-out groups*

To enable the exchange of information related to the implementation of the HNS Convention and help work through any related issues, those attending the workshop were split into three regional groups: Europe delegations, Americas delegations, and Asia and Oceania delegations. African nations were asked to join whichever group was most appropriate, for example by virtue of geographic proximity.

The workshop then reconvened to hear about the salient points discussed. By now familiar concerns about the definition of some terms under the HNS Convention, ownership of HNS cargoes, interpreting reporting requirements and the need for a level playing field were referenced. In addition, concerns around differences in capacity amongst States to implement the Convention and a desire for technical assistance were expressed. Also highlighted was a suggestion that, 13 years on from the adoption of the Convention, there is a need to convince countries as to why they should prioritise its implementation and ratification, perhaps with a concise information leaflet developed for Ministers explaining the importance of getting this done - and quickly.

IMO's Frederick Kenney acknowledged that, whilst there is material of that kind available to high-level decision makers, the treaty is complex and there is now a need for that material to be updated.

*Looking to the future*

The IOPC Funds assured the workshop that they will continue to assist States to find an easier way forward regarding HNS reporting systems, and to finalise the draft, together with all relevant organizations, of the HNS Claims manual ready for approval when the Convention enters into force.

Progress on ratification by countries was noted, and the meeting was reminded that once the conditions are met, there would be 18 months before the treaty enters into force, during which time a lot of decisions will need to be taken.

In summarizing the workshop, moderator Francois Marier said it was agreed that the aim of the Convention, of establishing a global liability and compensation regime for incidents involving hazardous and noxious substances, is important. He noted that some issues remain to be resolved – the majority around the practicalities of reporting requirements – and the need for training and technical cooperation, particularly amongst States in the early stages of implementation.

IMO's Frederick Kenney concluded the event by thanking those who had taken part and clarifying what States needed to reach the point of ratifying the HNS Convention.

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