

LEGAL COMMITTEE
103rd session
Agenda item 3

LEG 103/3/3
5 April 2016
Original: ENGLISH

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

**Report of a Workshop on the 2010 HNS Convention in Montréal on 17-18 March 2016
and Implementation of the 2010 HNS Convention in Canada**

Submitted by Canada

SUMMARY

Executive summary: This document provides a report to the Legal Committee on the international workshop on the 2010 HNS Convention hosted by Canada on 17-18 March 2016 in Montréal, Québec, Canada. It also provides a status of implementation of the HNS Convention in Canada. The annex to this document contains the programme of the workshop.

Strategic direction: 2

High-level action: 2.0.1

Planned Output: 2.0.1.4

Action to be taken: Paragraph 24

Related document: LEG 101/3/1

Introduction

1 The purpose of this document is to provide the Legal Committee with the outcomes of a workshop hosted by Canada and updates on the status of implementing the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (HNS Convention) in Canada.

Overview of the workshop on the 2010 HNS Convention

2 A workshop on the HNS Convention was hosted by the Government of Canada, in Montréal, Québec, Canada, on 17-18 March 2016. Its purpose was to provide a medium for in-depth discussions about the implementation of the HNS Convention, the opportunity to share lessons learned and best practices and to hear from industry, and to plan next steps to further facilitate the ratification of the 2010 HNS Convention by Member States. The annex provides the workshop programme.

3 Eleven IMO Member States were represented at the workshop: Belgium, Canada, Denmark, Finland, Germany, Italy, Japan, Norway, Portugal, Sweden, and the United States. International organizations, including IMO, the IOPC Funds and ITOPF, as well as a number of international and domestic industry representatives and academics also participated in the workshop.

4 Ms. Joyce Henry, Director General of Marine Policy at Transport Canada, provided the opening remarks. She discussed how the HNS Convention would fill a critical gap in the global liability and compensation regimes by providing adequate coverage for damage arising from the international and domestic carriage of HNS by sea. She also noted the international efforts made to promote and facilitate the entry into force of the HNS Convention, and highlighted Canada's contribution to these efforts. Ms. Henry pointed out that while much has been accomplished in recent years, there is more to do, and States must collectively work to keep moving towards the coming into force of the HNS Convention.

5 The workshop was moderated by Mr. François Marier of Transport Canada and consisted of eight sessions, focusing on the HNS Convention's implementation, its reporting requirements, and discussions on international and regional cooperation to bring the Convention into force. All presentations from the workshop will be available on the HNS Convention's website.

6 The first session provided a history of the work done on the HNS Convention, covering the key events and negotiations that have characterized the period from the 1969 Brussels Conference, adopting the 1992 Civil Liability Convention (1992 CLC), to the 2010 HNS Protocol Diplomatic Conference. Speakers focused their presentations on the challenges and obstacles that needed to be addressed at the time, and how these were tackled by States in the lead up to the 1996 HNS Convention Diplomatic Conference. Speakers also discussed the main issues in the aftermath of the adoption of the 1996 HNS Convention, namely contributions to the Liquefied Natural Gas Account (LNG Account), the concept of "receiver" and the non-submission of contributing cargo reports, and the solutions that were developed by the HNS Focus Group, which allowed for the adoption of the 2010 HNS Protocol.

7 During session two, speakers discussed the international efforts to bring the Convention into force and more specifically, the role played by IMO and the IOPC Funds in this matter. In addition to adopting the consolidated text of the HNS Convention, the IMO Legal Committee has endorsed the *Guidelines on reporting of HNS contributing cargo*, which were prepared following a joint workshop between IMO and IOPC Funds in 2012 in order to facilitate States' submission of contributing cargo data prior to the Convention's entry into force. The work of the HNS Correspondence Group was presented including the completion of the brochure.

8 The Director of the IOPC Funds presented the role of the Funds since the adoption of the HNS Protocol. The IOPC Funds plays an important role in the effort to bring the HNS Convention into force, including administrative tasks to help set up the HNS Fund, to give assistance to IMO, and to make the preparations for the first Assembly of the HNS Fund. As part of this supporting role, the IOPC Funds collaborated on the production and dissemination of information material, including publications and the website. The IOPC Funds also developed the HNS Finder, which includes all substances covered by the HNS Convention and identifies contributing cargo. Over the past few years, the IOPC Funds has also engaged with stakeholders to raise awareness.

9 During session three, speakers provided participants with information on existing insurance coverage for HNS incidents and historic incident data. The International Group of P&I Associations (International Group) provided information on the existing coverage for HNS

incidents as well as the historical incident data prepared by the International Group for the 2010 Diplomatic Conference. Between 2002 and 2010, 192 HNS incidents were reported, and 189 of these fell within the shipowner's limit under the HNS Convention, totalling 152.8 million Special Drawing Rights paid by the shipowners and their insurers. If the HNS Convention comes into force, historical data suggests the insurers would bear the greater responsibility for payments of claims, and not the HNS Fund.

10 While HNS carried by sea almost doubled from 2000 to 2016, ITOPF reported that the number of serious incidents has fallen over the years. However, response to incidents is becoming increasingly complex, as there are heightened concerns for the environment, sensitive resources, and human health. In addition, incidents increasingly involve containerships carrying dangerous goods, which can result in difficulties locating and identifying substances. Response to HNS incidents involve complex logistics and varied equipment, and differ substantially from oil spill responses. The HNS Correspondence Group is currently developing HNS incident scenarios to help inform stakeholders and decision-makers how the HNS Convention would apply. The three draft scenarios that were presented to participants outline the type of incident, the type of impacts associated with the incident, and the type of costs and compensation.

11 During session four, a panel of industry representatives from the shipping, chemical and petroleum sectors were invited to give their views on the HNS Convention. Despite the fact that the HNS Convention represents a new liability regime for shipowners, the shipping industry strongly supports its early entry into force. The HNS Convention is seen as an essential tool to ensure uniformity and avoid a patchwork of regimes, and to support social acceptability of HNS carriage by sea. The shipping industry representatives acknowledged that the HNS Convention is based on the same principles as the Civil Liability Convention and Fund Convention, and that the HNS Convention enables shipowners to limit their liability. For its part, the European chemical industry supports in principle the HNS Convention, provided that the Convention is uniformly implemented in major European Union (EU) Member States in a coordinated manner, and that reporting of contributing cargo does not create unnecessary bureaucratic burden for companies. The chemical industry is of the view that States should take coordinated action to implement the Convention as soon as possible. Despite some concerns related to the administrative burden for reporting, the costs and the sharing of commercial information, the Canadian petroleum industry supports the adoption of the HNS Convention and demonstrated its potential impact on the downstream petroleum sector.

12 In session five, speakers presented the current status of implementation of the HNS Convention in Canada, Denmark and Norway. In Denmark, the parliamentary process to adopt the Act implementing the HNS Convention did not present any significant obstacles, as Parliament had already adopted an Act in 2005 to implement the 1996 HNS Convention. Therefore, only minor adjustments to the legislation were necessary. Public consultation was carried out in 2012, and no major objections were raised. The Act was introduced to Parliament and adopted in 2013. Reporting requirements are already in force, and the other provisions will enter into force simultaneously with the HNS Convention. The order on the reporting obligation of receivers of bulk HNS came into force in 2015 retroactive to 2014.

13 Following consultations which resulted in broad support from stakeholders, Norway passed the legislation to implement the HNS Convention in May 2015. The provision on reporting requirements has entered into force. Regulations to implement the reporting obligations entered into force on 1 January 2016. The first reporting requirement will be on 15 March 2017 for contributing cargo received in the calendar year 2016.

14 Session six focused on issues facing States in the implementation of the reporting requirements and the system for collecting reports. Canada provided an overview of the reporting requirements it is in the process of developing, focusing on the issues addressed throughout the process, including the definition of carriage by sea, associated persons, and cargo in transit. Canada also gave a demonstration of the electronic reporting system it is developing, and mentioned that it could be shared with interested States at no cost. For its part, Denmark presented an overview of the reporting requirements in place, focusing on key issues that were raised by stakeholders during the consultation process. To report receipts of bulk HNS, receivers must use the receiver model reporting form developed by IMO and the IOPC Funds. In 2015, Denmark successfully collected reports for the first time for the 2014 calendar year.

15 The IOPC Funds reminded participants that States must submit reports on contributing cargo received in one year at the time of ratification, and annually thereafter. Failure to do so would result in sanctions taken in accordance with the HNS Convention. The IOPC Funds also provided details on the financing of the HNS Fund, specifying that the four separate accounts would be established once minimum thresholds are met for each of them. The IOPC Funds then presented a formula for the calculation of contributions based on the total levy and the total contributing cargo received in the year of reference.

16 In session seven, speakers discussed international and regional efforts being made to collaborate on domestic implementation and bringing the HNS Convention into force. On 10 December, 2015, the EU Council agreed on two proposals aiming at authorizing EU Member States to ratify the 2010 HNS Protocol. In order for these proposals to be adopted, they must be considered and approved by the European Parliament and the Council of Ministers. It is expected these proposals will be adopted within the next few months. From the European perspective, simultaneous and coordinated ratification and entry into force are viewed as necessary to not distort competition between ports, to minimize administrative burden for ships and reporting, and to avoid a modal shift to road transportation. IMO presented that while the HNS system is more complicated than the IOPC Funds system, it is achievable. The HNS Fund uses the same basic model as the IOPC Funds. IMO also recalled that the guidelines on reporting of HNS contributing cargo are a valuable tool for States as they provide guidance in the period leading up to the Convention's entry into force.

17 The workshop culminated with a discussion on the draft IMO Legal Committee resolution on the implementation and entry into force of the HNS Convention. The main components of the resolution, including setting out a timeframe, were discussed in a plenary. The aim of the resolution is to encourage States to implement and ratify the HNS Convention with the goal of bringing the Convention into force within a set timeframe. The draft resolution is provided to the 103rd Legal Committee for discussion as part of the mandate of the HNS Correspondence Group.

18 In closing, Mr. Daniel Haché, Director of International Marine Policy at Transport Canada thanked the speakers for their valuable contributions to this workshop, which increased our understanding of the Convention and its implementation process. As with great knowledge comes great responsibility, Mr. Haché stressed that the entry into force of the Convention can only be achieved through ongoing dialogue between Governments, relevant international organizations, and industry stakeholders.

Status of implementation of the 2010 HNS Convention in Canada

19 Since the adoption of the 2010 Protocol, Canada has been actively promoting the HNS Convention nationally and internationally, while consistently working toward the implementation of the Convention in Canadian law.

20 Amendments were made to the Marine Liability Act in December 2014, and contained all necessary provisions to implement the HNS Convention in Canada. Provisions dealing with reporting are all in force. The remaining provisions, such as the compulsory insurance requirements, will not come into force until Canada has ratified the HNS Convention and it enters into force internationally. The amendments also provide for regulation-making powers to set out reporting requirements for receipts of bulk HNS. Transport Canada is in the process of finalizing regulations to require receivers of bulk HNS cargo in Canada to report on the quantities of cargo received in a calendar year.

21 Transport Canada worked closely with stakeholders in the shipping, chemical and oil industries during the development of the 2010 HNS Protocol and the amendments to the Act. Transport Canada continues to work with these stakeholders throughout the development of the proposed regulations. A discussion paper focused on the HNS reporting requirements was distributed to stakeholders in March 2015 and discussions were held with many affected industry associations and companies as needed. Any views expressed during consultations were taken into consideration and integrated where possible into the draft of the proposed Marine Liability and Information Return Regulations, which was shared with stakeholders in January 2016. Stakeholders will have an opportunity to comment on these again through the official publication process.

22 Stakeholders have not expressed significant concerns with the proposed regulatory requirements, as they do not present a significant increase in burden to industry and they are necessary to implement the HNS Convention, which is seen as a benefit by the HNS industry in Canada.

23 The proposed reporting regulations are expected to be published in the spring of 2016 for public review and consultation. The regulations are expected to come into force on 1 January 2017 and the first report from receivers for the 2017 calendar year would be due by 28 February 2018. To effectively collect reports of contributing cargo, Transport Canada is in the process of building an electronic reporting system.

Action requested of the Legal Committee

24 The Legal Committee is invited to:

- .1 take note of the information contained in this document; and
- .2 to comment as it deems necessary.

ANNEX

**WORKSHOP ON THE HNS CONVENTION
PROGRAMME**

Day 1 – 17 March 2016

J. Armand Bombardier Theatre, McCord Museum, Montréal, Québec, Canada

Morning	
8:00-9:00am	Registration
9:00-9:15am	<p>Opening Session</p> <ul style="list-style-type: none"> Welcome Remarks by Mr. François Marier, Manager and Senior Policy Advisor, Transport Canada Opening Remarks by Ms. Joyce Henry, Director General, Marine Policy, Transport Canada
9:15-10:30am	<p>Session 1: How we got here: History and Background of the 2010 HNS Convention</p> <p>Speakers</p> <p>Mr. Alfred H. Popp, QC Administrator of the Ship-source Oil Pollution Fund, Canada</p> <p>Prof. Erik Røsaeg Professor, Scandinavian Institute of Maritime Law, University of Oslo, Norway</p> <p>Mr. Mark Gauthier Retired General Counsel, Maritime Law Secretariat Department of Justice, Government of Canada</p>
10:30-11:00am	Coffee Break (McCord Museum's Atrium)
11:00am-12:00pm	<p>Session 2: International Efforts to Bring the 2010 HNS Convention into Force</p> <p><u>Speakers</u></p> <p>Mr. Jan Engel de Boer Senior Legal Officer, International Maritime Organization</p> <p>Mr. François Marier Manager and Senior Policy Advisor, International Marine Policy, Transport Canada</p> <p>Mr. José Maura Director, International Oil Pollution Compensation Funds</p>
12:00-1:30pm	Lunch (McCord Museum's Atrium)

Afternoon	
1:30-3:00pm	<p>Session 3: HNS Incidents – Past, present and future</p> <ul style="list-style-type: none">• Existing insurance coverage for HNS incidents and historic HNS incident data• HNS incident scenarios being developed as part of the mandate of the correspondence group <p><u>Speakers</u></p> <p>Mr. David Baker Senior Policy Advisor, International Group of P&I Associations</p> <p>Dr. Annabelle Nicolas-Kopec Senior Technical Adviser, International Tanker Owners Pollution Federation (ITOPF)</p> <p>Mr. Thomas Liebert Head of External Relations and Conference Department, International Oil Pollution Compensation Funds</p>
3:00-3:30pm	Coffee Break (McCord Museum's Atrium)
3:30-5:00pm	<p>Session 4: Industry Views Panel</p> <p><u>Speakers</u></p> <p>Mr. Jos Verlinden Director, Transport and Logistics, European Chemical Industry Council</p> <p>Mr. Viggo Bondi Chairman of Maritime Law Committee, International Chamber of Shipping</p> <p>Ms. Sonia Simard Director, Policy and Government Affairs, Shipping Federation of Canada</p> <p>Mr. Rob Hoffman Director, Government and Stakeholder Relations, Canadian Fuels Association</p>
6:30-9:00pm	Reception hosted by Transport Canada (McCord Museum's Atrium)

**WORKSHOP ON THE HNS CONVENTION
PROGRAMME
Day 2 – 18 March 2016
J. Armand Bombardier Theatre, McCord Museum, Montréal, Québec, Canada**

Morning	
9:00-10:30am	<p>Session 5: Examples and Best Practices in Domestic Implementation</p> <p>Speakers will provide practical examples of how a state has implemented the Convention domestically, focusing on the mechanism and process, and share best practices.</p> <p><u>Speakers</u></p> <p>Ms. Caitlin O'Boyle Policy Analyst, International Marine Policy, Transport Canada Government of Canada</p> <p>Mr. Jan Gabrielsen Senior Advisor, Danish Maritime Authority, Government of Denmark</p> <p>Ms. Hilde Flåten Senior Agency Governance Adviser, Norwegian Ministry of Trade, Industry and Fisheries, Government of Norway</p>
10:30-11:00am	Coffee Break (McCord Museum's Atrium)
11:00am-12:30pm	<p>Session 6: HNS Reporting</p> <p>Speakers will discuss issues facing States in the implementation of the reporting requirements, including agent/principle relationship, cargo in transit exception, thresholds for reporting, enforcement and verification of reporting, and system for collecting reports.</p> <p><u>Speakers</u></p> <p>Ms. Caitlin O'Boyle Policy Analyst, International Marine Policy, Transport Canada</p> <p>Mr. Jan Gabrielsen Senior Advisor, Danish Maritime Authority, Government of Denmark</p> <p>Mr. Thomas Liebert Head of External Relations and Conference Department , International Oil Pollution Compensation Funds</p>
12:30-2:00pm	Lunch (McCord Museum's Atrium)

Afternoon	
2:00-3:00pm	<p>Session 7: International and Regional Cooperation</p> <p>Speakers will discuss international and regional efforts being made to collaborate on domestic implementation and bringing the Convention into force.</p> <p><u>Speakers</u></p> <p>Ms. Anyès Nauwelaerts Lawyer, Federal Public Service Mobility and Transport, Government of Belgium</p> <p>Mr. Jan Engel de Boer Senior Legal Officer, International Maritime Organization</p>
3:00-3:15pm	Coffee Break (McCord Museum's Atrium)
3:15-4:15pm	<p>Session 8: IMO Resolution on HNS Convention</p> <p><u>Moderator</u></p> <p>François Marier Manager and Senior Policy Advisor, International Marine Policy, Transport Canada, Government of Canada</p>
4:15-4:30pm	<p>Next Steps and Closing Session</p> <ul style="list-style-type: none">• Closing Remarks by Mr. Daniel Haché, Director, International Marine Policy, Transport Canada