

The need for the 2010 HNS Convention and the Canadian Experience



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Overview

- Why now?
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- Canadian Experience – MV Zim Kingston
- Canadian Implementation
- Why did Canada ratify?
- Canadian Stakeholder Views

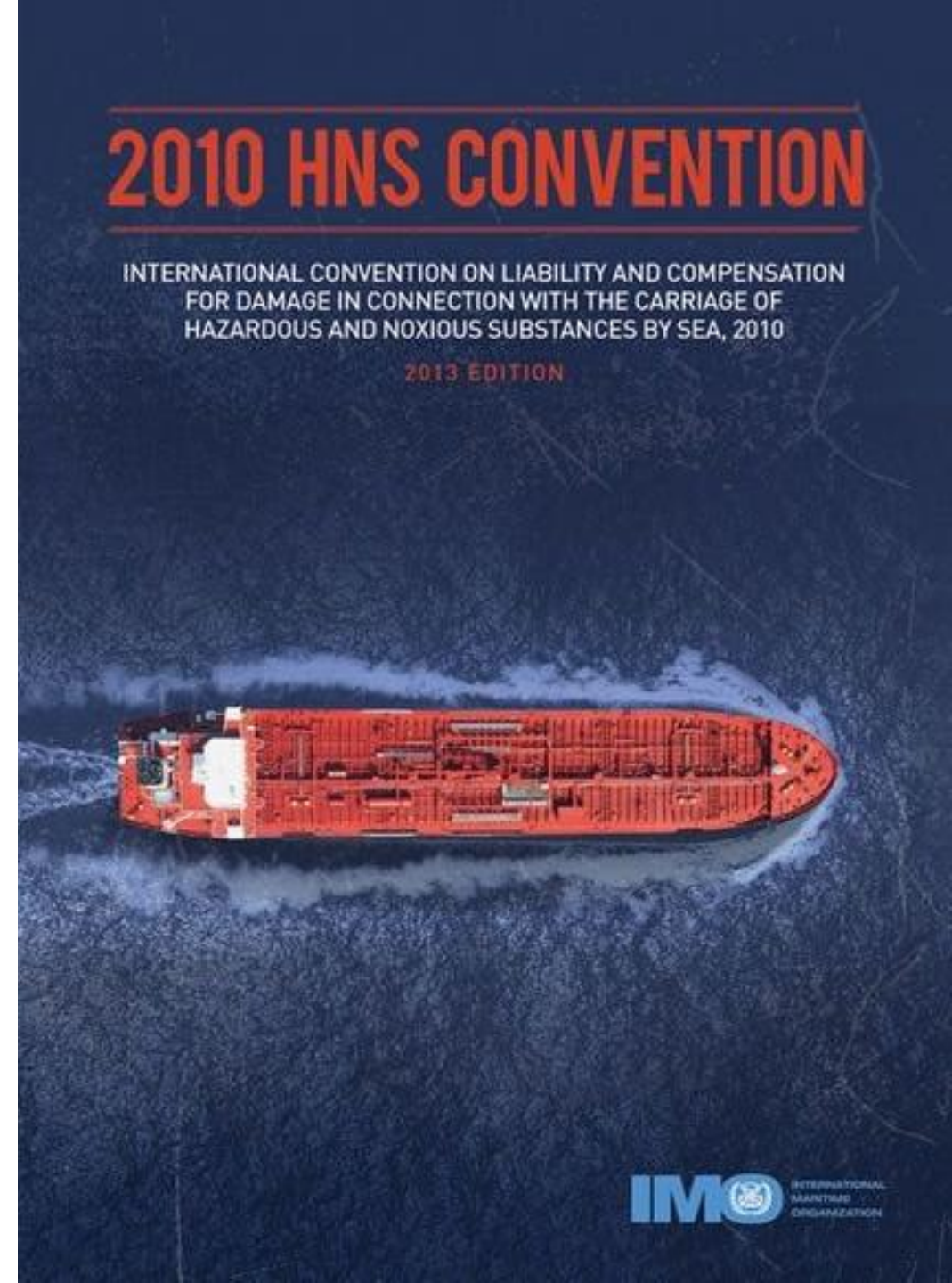


Why now?

- HNS incidents **ARE** happening.
- Consequences of HNS incidents can be **SIGNIFICANT** and **COSTLY**.
- The Convention will be entering into force soon, bringing with it several features and benefits that will improve with more signatories.

Why the 2010 HNS Convention?

- No other international mechanism provides fair, adequate and universal compensation for HNS incidents.
- International conventions create uniformity of law: Global rules for a Global industry.
- Based on proven system of the IOPC Funds.
- Creates shared responsibility, polluter-pays regime between the shipowner and cargo-owner.
- Liability and compensation is paid post-incident, based on actual costs/damage.
- Without international solutions, domestic solutions tend to be more costly.



Canadian Experience – *MV Zim Kingston*

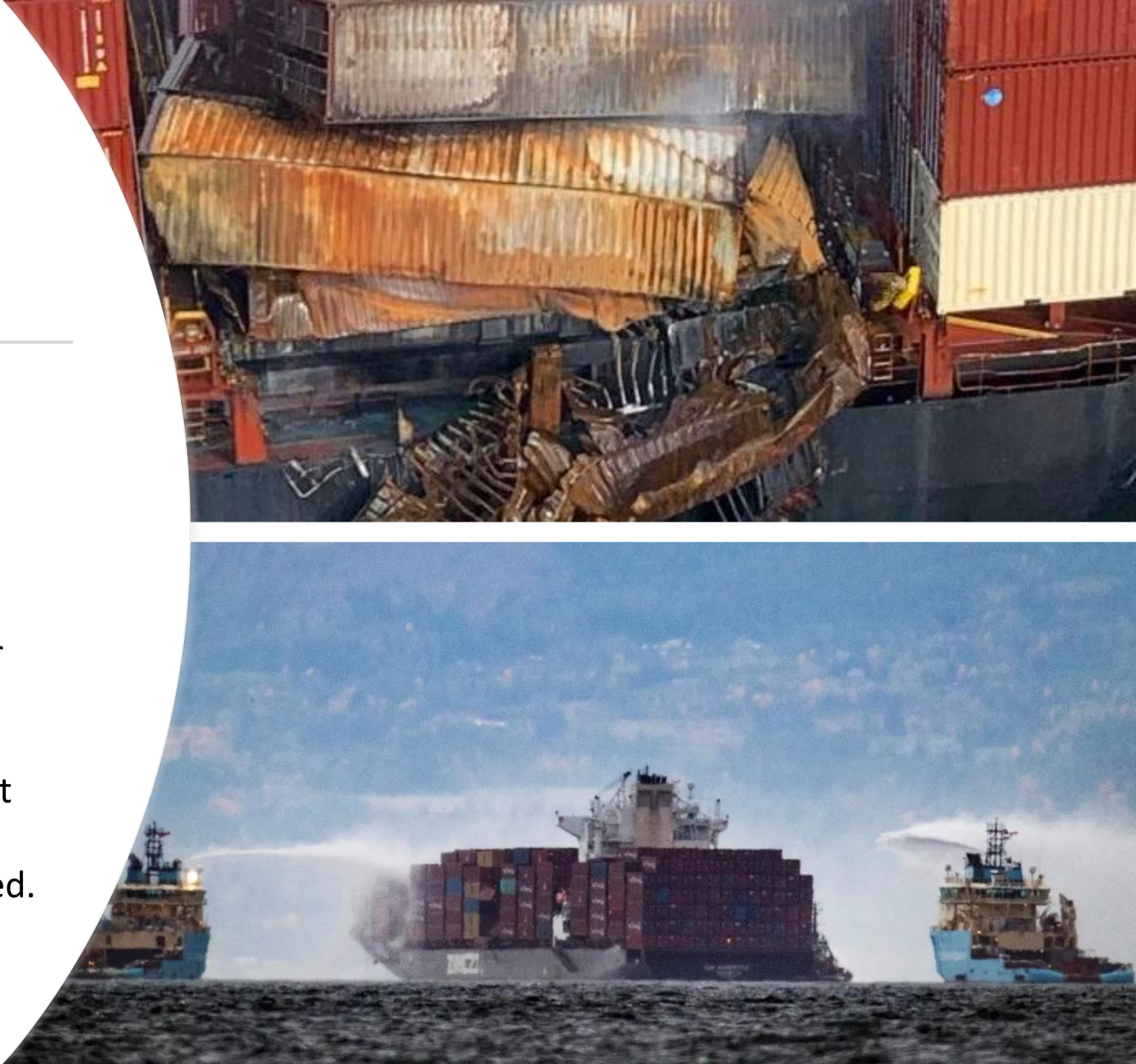


- In Oct. 2021, the container ship, MV ZIM Kingston lost 109 containers in heavy seas during a storm off Canada's west coast.
- While anchored near Victoria on Vancouver Island, several containers caught fire.

Canadian Experience

– *MV Zim Kingston*

- Two of the containers contained potassium amyl xanthate, which is classified as a hazardous and noxious substance. Many of the containers sank and most remain unaccounted for.
- Risk for potassium amyl xanthate:
 - Spontaneous combustion can occur upon exposure to moisture and/or heat
 - Emits a flammable gas upon contact with water or water vapour
 - Fatal if swallowed. Harmful if inhaled. And can cause other health effects.



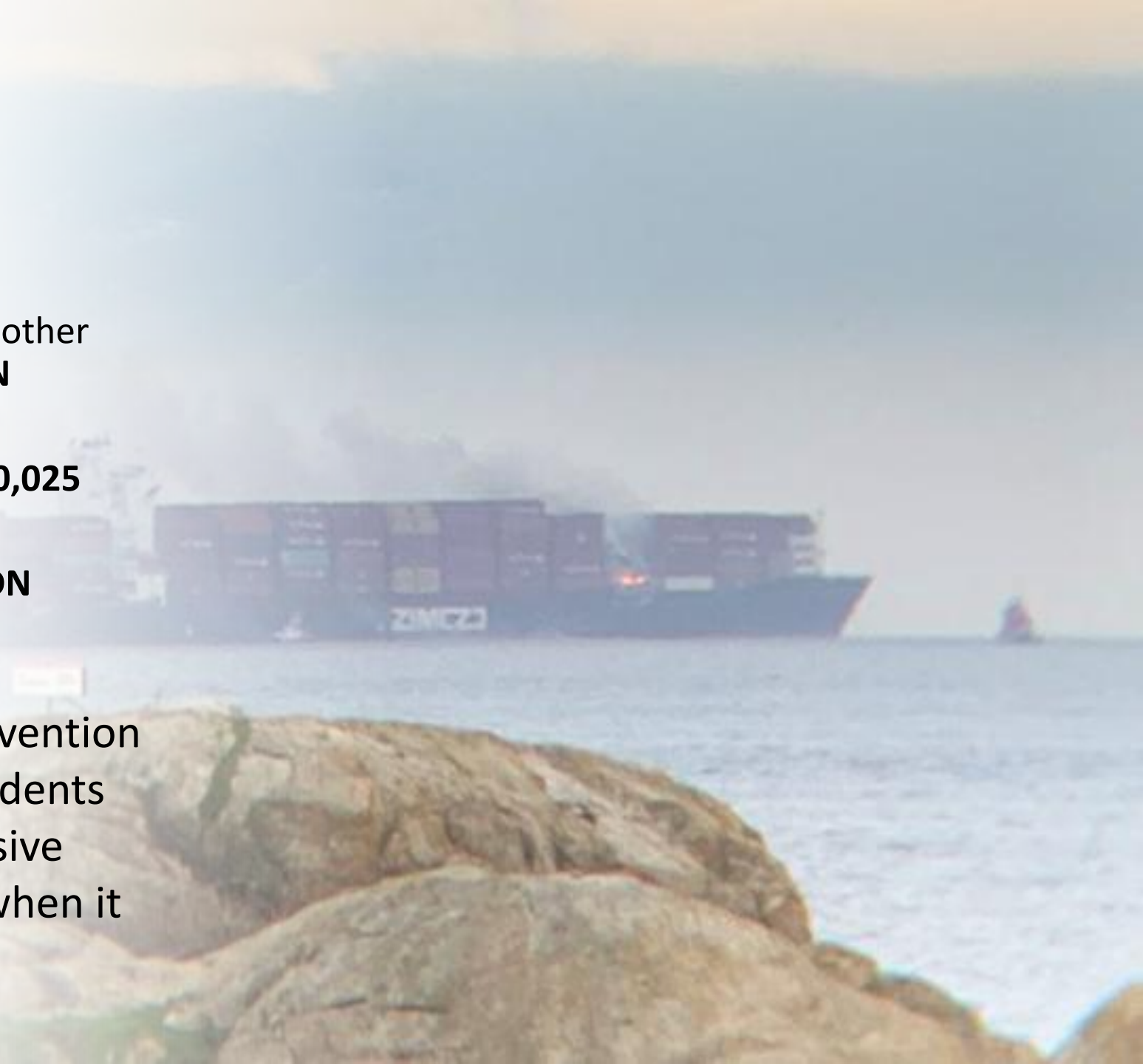
Canadian Experience

– *MV Zim Kingston*

Liability for MV Zim Kingston (40,030 GT):

- Shipowner's liability under LLMC for 'any other claims' = **22,964,533 SDR or \$43.4 M CDN**
 - Shipowner's liability under the HNS Convention for 'packaged goods' = **77,100,025 SDR or \$146 M CDN**
- + HNS Fund up to 250 M SDR or \$473 M CDN**

Canada's ratification of the HNS Convention reassured Canadians that future incidents would be covered by its comprehensive liability and compensation regime, when it comes into force.



Canadian Implementation

- Canada implemented the HNS Convention into Canadian law in 2014.
- In 2016, Canada established the necessary reporting requirements to support ratification of the convention.
- Canada elected to implement the definition of receiver in article 1.4(a) (the agent/principal approach) for reporting, allowing the physical receiver of goods to identify their actual owner, who would then become liable for contributions.
- After one year of collecting reports, Canada became the second state to ratify the HNS Convention in April 2018.
- After eight years of collecting reports on HNS, Canada is considering implementing the definition of receiver in article 1.4(b), to streamline the administrative burden associated with reporting.



Why Did Canada Ratify?

- The HNS Convention fills a critical gap in the marine liability and compensation system.
- It mirrors the highly successful comprehensive international regime that exists for ship-source oil incidents.
- Provides a broader base of compensation than would a domestic regime.
- Provides the basis for legal uniformity among major maritime nations.

Canadian Stakeholder Views

- Canada consulted a wide variety of stakeholders and industry groups including shipowners, legal, energy, chemical, agriculture, mining, forestry, manufacturing, and heavy-industries.
- Stakeholders were highly supportive of ratifying the 2010 HNS Convention.
- Certain industry members testified to Parliament in support of ratifying the Convention.
- Industry acknowledged that the impact of a major chemical incident in Canadian waters could be “ruinous” for a single company.
- Industry preferred an international fund to a domestic fund, as the costs would be shared amongst a broader base, and contributions are primarily collected post-incident.
- Potential reporters emphasized the need for reporting requirements that would ensure correct reporting and monitoring of data to ensure fairness and efficiency.

Comments or Questions?

If you need more information or have any questions, please email:

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