



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

FOURTH INTERSESSIONAL
WORKING GROUP
Agenda item 2

92FUND/WGR.4/7/2
22 May 2007
Original: ENGLISH

NON-TECHNICAL MEASURES TO PROMOTE QUALITY SHIPPING FOR CARRIAGE OF OIL BY SEA

THE ISSUING AND WITHDRAWAL OF FINANCIAL SECURITY CERTIFICATES UNDER THE 1992 CIVIL LIABILITY CONVENTION

Submitted by Canada and France

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| Summary: | The objective of this paper is to further discuss the linking of the issuing and withdrawal of CLC Certificates by States to the quality of a ship. |
| Action to be taken: | Discuss the ability of the Assembly to make a policy decision with regards to the authority of Member States to establish other conditions for the issuing of CLC Certificates (cf section 3). |

1 Introduction

- 1.1 Under Article VII of the 1992 Civil Liability Convention (1992 CLC), a shipowner is required to maintain insurance or financial security to cover his liability under the Convention. Contracting States to the Convention issue a certificate (CLC Certificate) to the shipowner attesting that such insurance or other financial security is in force.
- 1.2 At its 10th extraordinary session, held in February/March 2006, the 1992 Fund Assembly adopted the terms of reference for the Working Group on Non-Technical Measures to Promote Quality Shipping for Carriage of Oil by Sea (document 92FUND/A/ES.10/18, paragraphs 5.8-5.13). The focus of the Working Group includes considering the criteria for the issuance of CLC Certificates as well as achieving better transparency between insurers, shipowners and cargo interests.
- 1.3 At the second meeting of the Working Group in March 2007, several States indicated their interest to discuss, in future meetings of the Working Group, linking the quality of the ship to the issuing of CLC Certificates. In fact, some States informed the Working Group that they do indeed take into account the quality of the ship prior to issuing a CLC Certificate.
- 1.4 The co-sponsors of this paper propose that the Working Group discuss the potential for new measures that would provide States with a mechanism to review and, where appropriate, to withdraw CLC Certificates based on the quality of a ship.

2 **Background**

2.1 The 1992 CLC currently gives States the ability to issue and/or withdraw a CLC Certificate based on the quality of a ship's insurance or financial security. However, States may also have the ability to set other conditions or criteria for the issuance of a CLC Certificate, as per Article VII, paragraph 6 of the CLC, which reads:

'The State of registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.'

2.2 At the first meeting of the Working Group in May 2006, the International Group of P&I Clubs urged States to focus on developing and supporting measures aimed at identifying substandard ships, so that if a ship was not brought up to the required standard, its insurance cover could be withdrawn and it would effectively be prevented from trading. In her summarising of the discussion, the Chair of the Working Group noted that there was general agreement regarding the importance of flag States and the need to encourage transparency between flag States through the sharing of information.

2.3 Other international fora, namely the Maritime Transport Committee of the Organization for Co-Operation and Economic Development (OECD) has also considered the creation of information sources such as websites with lists of substandard ships by using a number of sources, including the various Port State Control Memoranda of Understanding (MOU) and Equasis.

2.4 There are ten regional Port State Control regimes that ensure that vessels trading in each of the regions covered by the regimes are not substandard. These are:

- the Paris MOU (25 members);
- the Tokyo MOU (18 members);
- the Indian Ocean MOU (13 members);
- the Black Sea MOU (6 members);
- the Viña del Mar Agreement (13 members);
- the Caribbean MOU (21 members);
- the Mediterranean MOU (10 members);
- the Abuja MOU (16 members);
- the Riyadh MOU (6 members); and
- the United States Coast Guard

2.5 The co-sponsors of this paper have conducted some preliminary research in four of the ten Port State Control regimes with accessible and searchable databases. These included the Paris MOU, the Tokyo MOU, the Indian Ocean MOU, and the Black Sea MOU. The research concluded that in 2006, there were a total of 156 detained oil tankers in these four MOU's with an average of 15 deficiencies per ship. Furthermore, 11% of the Paris MOU's list of banned ships are oil tankers as well as 9% of those banned by the European Union. A search of the other six Port State Control regimes would likely produce similar results. Such information produced by the regimes as well as others such as Equasis could be a reliable and important source of information for States concerned with the quality of a ship requesting a CLC Certificate.

3 **Proposal**

3.1 The co-sponsors propose that the Working Group discuss the ability for the Assembly to make a policy decision with regards to the authority of Member States to establish other conditions for the issuing of CLC Certificates.

3.2 The Assembly has used a similar approach by taking policy decisions in the past in response to specific problems or needs. The policy decisions taken by the Assembly became binding on all

Member States such as, for example, the policy decision on floating storage units (FSUs) and floating, production, storage and offloading units (FPSOs); or ship-to-ship oil transfer operations as well as the recent policy decision regarding the admissibility criteria for removal of oil from wrecks. In all of these policy decisions, the Assembly has interpreted the Conventions through a common understanding among all Member States in the absence of specific provisions in the Conventions.

- 3.3 Should the Working Group agree to make a recommendation to the Assembly on the authority of Member States to issue and withdraw CLC Certificates based on the quality of the ship, it is proposed that the Working Group consider developing measures that would link the quality of the ship to the issuing and withdrawal of CLC Certificates. Such a potential measure would be to utilize the information found in Port State Control Regimes and other sources. This would allow a potential tracking of the detentions and banning of ships carrying oil in bulk. Subsequently, flag States, the insurer and the State issuing the CLC Certificate (if different from the flag State) would be aware of the potential risk posed by the ship in question and allow the State to review and, where appropriate, to not issue and/or withdraw the CLC Certificate until the ship was brought up to the required standard.

4 Action to be taken by the Working Group

The Working Group is invited

- (a) to take note of the information contained in this document; and
 - (b) to discuss the ability of the Assembly to make a policy decision with regards to the authority of Member States to establish other conditions for the issuing of CLC Certificates (section 3).
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