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4th extraordinary session  
Agenda item 14

71FUND/A/ES.4/13  
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Original: ENGLISH

## CERTIFICATES OF INSURANCE AFTER 15 MAY 1998

Note by the Director

<b>Summary:</b>	The question of the recognition of certificates of insurance issued under the 1969 Civil Liability Convention or the 1992 Civil Liability Convention after 15 May 1998 will be considered by the Legal Committee of IMO in April 1998.
<b>Action to be taken:</b>	Information to be noted.

1 The Legal Committee of the International Maritime Organization (IMO) will be invited to consider at its 77th session, to be held from 20 to 24 April 1998, a document submitted by the delegations of Norway and the United Kingdom on the question of the recognition of certificates of insurance issued under the 1969 Civil Liability Convention or the 1992 Civil Liability Convention after 15 May 1998 (IMO document LEG 77/10/1). This document is attached.

2 As the Legal Committee's 77th session will be held the week before the 4th extraordinary session of the 1971 Fund Assembly, the Director will be able to report to the Assembly on the outcome of the discussions within the Legal Committee.

### Action to be taken by the Assembly

3 The Assembly is invited to take note of the information contained in this document.

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LEGAL COMMITTEE  
77th session  
Agenda item 10

LEG 77/10/1  
20 March 1998  
Original: ENGLISH

## ANY OTHER BUSINESS

### CLC Insurance Certificates

#### Submission by Norway and the United Kingdom

#### SUMMARY

**Executive summary:** This submission proposes a pragmatic solution to the problems caused by the fact that, from 16 May 1998, States Parties to the 1992 CLC will cease to be party to the 1969 CLC.

**Action to be taken:** Paragraph 18

**Related documents:** -

#### Introduction

1 Article VII of the International Convention on Civil Liability for Oil Pollution Damage (CLC) makes insurance compulsory for ships carrying more than 2,000 tons of oil in bulk as cargo. Such ships must carry a certificate issued by a State as proof of compliance with this requirement.

2 Since 30 May 1996, two versions of the CLC have been in force simultaneously: the original Convention of 1969, and that Convention as amended by the Protocol of 1992. This has not created many practical difficulties, however; those States which are party to both the 1969 and 1992 CLC have generally continued to accept certificates issued by States which are party only to the 1969 CLC.

3 On 16 May 1998 States Parties to the 1992 CLC will cease to be party to the 1969 CLC. This has resulted in some confusion regarding the issue and recognition of CLC certificates. This paper proposes a pragmatic solution.

#### The legal framework and State practice

4 Article VII of the 1969 CLC only makes explicit provision for each State Party to issue certificates to ships flying its flag and for their mutual recognition by other States Parties. Article VII of the 1992 CLC makes clear that States Parties may also issue certificates to ships flying the flag of non-party States and that these must be recognised by other States Parties.

5 However, the changes made to article VII by the 1992 Protocol simply put long-standing State practice on a clear legal footing.

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6 Legislation implementing the 1969 CLC in the United Kingdom and in Norway makes explicit provision for the issue of certificates to ships flying the flag of non-party States. The co-sponsors are not aware of any case where the validity of such a certificate has been challenged by another State Party to the 1969 CLC. It has also always been the practice of the co-sponsors to accept 1969 CLC certificates which other States Parties have issued to ships flagged in non-party States.

7 Indeed, it can be argued that, while article VII of the 1969 CLC makes no explicit provision for this long-standing practice, it does implicitly require an arrangement of this nature to be developed. Article VII(11) places a duty on port States to ensure that all ships comply with the requirements of article VII, irrespective of flag. The issue of certificates to ships flying the flag of non-party States and their mutual recognition is the most effective means of doing this.

### **Proposal**

8 From 16 May 1998, the owners of ships flying the flag of a State Party to the 1969 CLC will need to have obtained a 1969 CLC certificate from their flag State and a 1992 CLC certificate from a State Party to the 1992 CLC. They can then trade freely, confident in the knowledge that these certificates will be accepted by other States Parties.

9 The position is less simple for ships flying the flag of States Parties to the 1992 CLC. The co-sponsors propose that the most practical way forward is to encourage States Parties to the 1969 CLC to continue the established practice of issuing 1969 CLC certificates to ships flying the flag of non-party States and accepting such certificates issued by other States Parties to the 1969 CLC.

10 The Committee may also wish to discuss whether it should encourage States Parties to the 1969 CLC to consider accepting CLC certificates issued by States Parties to the 1992 CLC.

#### (A) Continued issue of certificates by States Parties to the 1969 CLC

11 The co-sponsors invite the Committee to confirm that States Parties to the 1969 CLC should continue to issue certificates to ships flying the flag of non-party States and that these should be recognised by other States Parties to the 1969 CLC.

12 This should enable the owners of ships flagged in a State Party to the 1992 CLC to continue to trade freely by obtaining two certificates: a 1992 certificate from their flag State (e.g. Norway or the United Kingdom), and a 1969 CLC certificate from a State Party to the 1969 CLC (e.g. Panama).

#### (B) Acceptance of CLC certificates issued by States Parties to the 1992 CLC

13 The Committee may also wish to consider encouraging States Parties to the 1969 CLC to accept CLC certificates issued by States Parties to the 1992 CLC. Two options are possible: either States Parties to the 1969 CLC could accept 1992 CLC certificates, or States Parties to the 1992 CLC could continue to issue hybrid certificates referring to both the 1969 and 1992 CLC after 15 May 1998. This approach has both advantages and disadvantages.

14 The main advantage of the approach is that it would allow the owners of ships flagged in a State Party to the 1992 CLC to avoid the administrative burden of having to obtain two separate CLC certificates from two separate maritime administrations. It is also arguably in keeping with the spirit of resolution 1 adopted by the diplomatic conference which adopted the 1992 Protocols. This resolution, the text of which is annexed to this document, recommends that States Parties to the 1969 CLC and States Parties to the 1992 CLC mutually recognise and accept certificates issued by one another. The approach also reflects the

fact that, in practice, any ship which has insurance cover for claims under the 1992 CLC should also have cover for claims under the 1969 CLC".

15 The main disadvantage of the approach is that its legal basis is unclear. The conference resolution referred to above can be interpreted as applying only to the transitional period which ends on 15 May 1998. Moreover, it recommends that certificates should be accepted to the extent and under the conditions provided for in article VII(7) of the 1969 and 1992 CLC. On one interpretation, therefore, these provisions can be argued not to impose any obligation regarding the mutual recognition of certificates after the end of the transitional period.

16 Moreover, article VII(11) of the 1969 CLC requires States Parties to the 1969 CLC to ensure that all ships calling at their ports and terminals have a 1969 CLC certificate; and article VII(9) of the 1992 CLC would appear to prevent a State which is party to the 1992 CLC alone from issuing a CLC certificate which refers to the 1969 CLC.

17 Because of the potential difficulties discussed above, the co-sponsors do not see this approach as an alternative to that set out under (A) above. Rather, we propose that the Committee should adopt the approach outlined under (A) and discuss whether that mentioned under (B) could have a role to play in ensuring that, as far as practicable, all oil tankers with proper insurance cover can continue to operate internationally after 15 May 1998 with the minimum of disruption.

#### **Action requested of the Committee**

18 In order to minimise the practical problems caused when States Parties to the 1992 CLC cease to be party to the 1969 CLC, the co-sponsors request that the Committee:

- (a) recommend that States Parties to the 1969 CLC continue the established practice of issuing 1969 CLC certificates to ships flying the flag of non-party States and accept such certificates issued by other States Parties to the 1969 CLC; and
- (b) discuss whether it would be legally and practically possible for States Parties to the 1969 CLC to accept CLC certificates issued by States Parties to the 1992 CLC as proof that a ship has insurance cover as required by the 1969 CLC.

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There are two exceptions to the general rule that the scope of the 1992 CLC is wider than that of the 1969 CLC. The first is that, at least in theory, the definition of "oil" in the 1992 CLC is more restrictive as it does not cover whale oil. The second is that the definition of "ship" in the 1992 CLC covers only ships constructed or modified to carry oil in bulk, while the definition in the 1969 CLC covers any ship which is actually carrying oil in bulk. In practice, however, any ship carrying more than 2,000 tons of whale oil, and any ship carrying more than 2,000 tons of oil when not constructed or modified to do so, is likely to be engaged in clandestine activities and may well have no valid insurance cover.

## ANNEX

## RESOLUTION 1

**RESOLUTION ON THE RECOGNITION OF CERTIFICATES ISSUED IN ACCORDANCE WITH THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969 AND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1992**

THE CONFERENCE,

CONSIDERING that for a period during which the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the International Convention on Civil Liability for Oil Pollution Damage, 1992, co-exist it is desirable that Parties to these Conventions make all efforts to facilitate the recognition of certificates required by the Conventions,

RECOMMENDS that Parties to the International Convention on Civil Liability for Oil Pollution Damage, 1969, and Parties to the International Convention on Civil Liability for Oil Pollution Damage, 1992, apply the following practice in respect of the issue and the recognition of certificates:

- (a) Parties to the International Convention on Civil Liability for Oil Pollution Damage, 1969, and Parties to the International Convention on Civil Liability for Oil Pollution Damage, 1992, issuing certificates attesting that insurance or other financial security is in force in accordance with the provisions of the respective Conventions, should use the document in the form annexed to this resolution and, in so far as is appropriate in each respective case, should certify that the requirements of both Conventions are satisfied.
- (b) Parties to the International Convention on Civil Liability for Oil Pollution Damage, 1969, on the one side and Parties to the International Convention on Civil Liability for Oil Pollution Damage, 1992, on the other side should mutually recognize and accept certificates issued by the appropriate authority in accordance with the provisions of the respective Conventions. The certificate should be accepted to the extent and under the conditions provided for in article VII, paragraph 7, of the relevant Conventions, including the procedure of consultation.