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REPORTS OF SUB-COMMITTEES

Outcome of BLG 12

Draft amendments to MARPOL Annex I (Transfer of oil cargo between oil tankers at sea)

Submitted by Liberia, Marshall Islands, Singapore, United States, International Association of Independent Tanker Owners (INTERTANKO), International Chamber of Shipping (ICS) and Oil Companies International Marine Forum (OCIMF)

SUMMARY

Executive summary: This submission provides comments on certain aspects of the report of BLG 12. Specific attention is drawn to the proposed amendments to MARPOL Annex I to regulate transfer of oil cargo between oil tankers at sea (STS Transfers) and their potential impact on historical principles of high seas freedoms of navigation. In the view of the co-sponsors, proposed regulation 42 requires certain advance notifications that would infringe upon these principles in a manner that is not justified

Strategic direction: 7.1

High-level action: 7.1.2

Planned output: 7.1.2.1

Action to be taken: Paragraph 19

Related documents: MEPC 58/10, BLG 12/8/1, BLG 12/17, MEPC 53/20 and MEPC 53/24

Introduction

1 This document is submitted in accordance with the provisions of paragraph 4.10.5 of the Guidelines on the organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies (MSC-MEPC.1/Circ.2). It comments on document MEPC 58/10, submitted by the Secretariat, reporting on the outcome of BLG 12.

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2 The co-sponsors thank all that participated in developing the draft amendments to MARPOL Annex I and very much appreciate their excellent work and co-operative spirit.

3 During the debate at BLG 12, many delegations spoke to express their objection to the advance notification requirements of regulation 42, as it was proposed to be formulated, and to how the decision of the Sub-Committee was developed and characterized (BLG 12/17, paragraphs 8.13 to 8.20 and 8.23 to 8.25).

4 Further, during the drafting process, it became apparent that the regulation would in effect impose a mandatory waiting period of 48 hours for STS transfers. This mandatory waiting period may have very substantial and detrimental economic and operational consequences.

5 The co-sponsors further note that the present proposed amendments vary substantially from the original submission (MEPC 53/20) that led to creation of the new work programme item upon which these amendments are based.

6 Specifically, the original submission was founded largely upon concerns related to fuel transfers outside of harbour waters and FPSO/FSU operations. Those operations are now excluded from the proposed amendments. Further, although we can agree that there is environmental benefit from the proposed amendments, we cannot agree that there is a compelling need regarding STS transfers beyond the territorial seas to justify waiving important historical rights of high seas freedom of navigation. See instructions from this Committee at MEPC 53/24, paragraph 20.5.

Geographic scope of the proposed regulations

7 The most complex of elements within this issue can easily be resolved by creating regulations of general applicability. This is similar to how the rest of MARPOL Annex I is constructed. The correspondence group and the BLG Sub-Committee have done so, with the exception of draft regulation 42.

8 Advance notification in the Exclusive Economic Zone (EEZ) is not at all similar to the existing MARPOL Annex I requirements, in that there has never been an advance reporting requirement and Annex I has never previously given the EEZ any special status in its regulations. Rather, similar matters have been left to the contracting Governments to interpret and apply, consistent with customary international law.

9 Thus, draft regulation 42, if it is to require advance notification in the EEZ, is not agreeable to the co-sponsors because of its negative impact on freedoms of navigation, historically enjoyed by both commercial and non-commercial ships.

Freedom of navigation principles

10 The historical principles of high seas freedom of navigation are founded in customary international law and memorialized in Articles 58 and 87 of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS).

11 Regulation of ship-to-ship (STS) transfers in the territorial sea through advance notification does not raise legal or policy concerns. Those principles that apply in the territorial sea are found in Article 21 of UNCLOS.

12 High seas freedom of navigation is a right within the EEZ, and is critically important to the free flow of commerce and to strategic security interests. Advance notification of intentions to engage in a high seas freedom of navigation is incompatible with the rights enjoyed by all ships to operate beyond the territorial sea. The co-sponsors do not support waiving these important rights via the proposed Chapter 8, in the case where neither of the vessels involved in the STS transfer intends to enter a port or place within the coastal State.

The proposed solution

13 We suggest that the draft regulation 42 should be deleted from the present amendments and referred back to the BLG Sub-Committee for further development as a set of Guidelines or for reformulation as a subsequent amendment to MARPOL Annex I, once the concerns raised in this paper have been sufficiently addressed.

14 Permanently deleting regulation 42 would leave the matter to the discretion of the relevant port or coastal State, to impose any such requirements in their territorial sea, and to the extent permitted by customary international law.

15 Alternatively, modifying it to only require notification within the territorial sea or internal waters would serve to provide a framework for regulating STS transfers without undermining vitally important principles of freedom of navigation.

Mechanisms addressing environmental concerns

16 With regard to environmental protection, there are currently existing mechanisms which could enable Member States to effectively monitor, regulate, or prevent incidents related to STS transfers occurring in their EEZ that do not require any changes to existing MARPOL Annex I regulations. These include:

- .1 OPRC (response arrangements);
- .2 LRIT (passive vessel location reporting via flag States, when it becomes operational);
- .3 AIS (passive vessel location data);
- .4 conditions of port entry related to the STS transfer;
- .5 regulation of STS service providers that operate from the coastal State;
- .6 voluntary measures; and
- .7 bilateral agreements between coastal and flag States.

17 These existing mechanisms provide a comprehensive range of tools for a State to safely regulate and monitor STS transfers occurring beyond the territorial sea, without compromising historical principles of freedom of navigation. The co-sponsors therefore do not consider that there is a compelling need for advance notification of these STS transfers, where neither vessel intends to enter a port of the coastal State.

Conclusion

18 The co-sponsors do not support advance notification of STS transfers beyond the territorial sea, where neither of the involved vessels is entering a port of the coastal State or flies the flag of the coastal State. Regulation 42 should be modified or deleted as suggested in paragraphs 13 through 15 above.

Action requested of the Committee

19 The Committee is invited to consider the proposal made in paragraph 13 and take action as appropriate.