

CIL-NCLOS Workshop

Protection of the Marine Environment and Shipping Contemporary Challenges and New Approaches

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Session 5. Emerging Challenges to the Marine Environment: Case Studies

Challenge of Dark Ships to Protection of the Marine Environment

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Economic Sanctions & Dark Fleet



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In response to the economic sanctions imposed by the United States and the European Union on the Russian Federation, Iran, and Venezuela, unscrupulous owners and operators have developed a “dark fleet” of oil tankers that engage in illegal operations in order to circumvent the sanctions.

The 2023 IMO Resolution listed operations by tankers in the dark fleet that undermine the safety of navigation and threaten the marine environment:

- (a) not having adequate liability insurance for oil pollution damage
- (b) intentionally avoiding ship inspections;
- (c) undermining environmental protection; and
- (d) illegitimately switching off Automatic identification system (AIS) or Long-range identification and tracking (LRIT) transmissions.

Tankers In Dark Fleet Avoid Regulations and Inspections

- They avoid flag State regulation because they are registered in States that are either unable or unwilling to exercise effective jurisdiction and control
- Some have even been registered in land-locked States that are not a party to any IMO Conventions
- They avoid port State regulation because they never enter a port where they may be subject to a port State control inspection
- They anchor outside the territorial sea limits where they receive fuel, food, water and spare parts from shore-based suppliers

Liability Insurance for Oil Pollution Damage

- 1992 CLC places strict liability – liability even in the absence of fault – on the registered shipowner for pollution damage caused by the escape or discharge of persistent oil from their ship up to the measurable economic loss or damage to coastal States, with very few exceptions
- The shipowner is obliged to maintain insurance or other forms of financial security
- A certificate attesting that such insurance or other financial security is in force in accordance with the provisions of 1992 CLC shall be issued to each ship after the appropriate authority of a State Party has verified its compliance with the Convention

Liability Insurance for Oil Pollution Damage



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- Most oil tankers in the dark fleet do not have 1992 CLC-compliant insurance issued by members of the P&I Clubs
- Some tankers in the dark fleet are flagged in States that are not parties to 1992 CLC, such as Eswatini, Sudan and São Tomé and Príncipe.
- Even if the flag State of a dark ship is a party to the 1992 CLC, it may not be possible to identify the owner, and the tanker may have an insurance policy containing clauses which will make it extremely difficult or impossible for the coastal State to claim compensation.

STS Operations in EEZ of Coastal States

- Tankers in the dark fleet anchor outside the territorial sea of coastal States and do a ship-to-ship transfer of the cargo to another tanker
- The STS operations pose a serious risk to the marine environment of coastal States
- The international rules on the prevention of pollution from the STS operations at sea are set out in Regulations 41 and 42 of Chapter 8, Annex I of MARPOL 73/78
- Regulation 42 provides that an oil tanker that plans an STS Operation in the territorial sea or EEZ of a coastal State shall notify the coastal State not less than 48 hours in advance of the scheduled STS Operations

Automatic Identification Systems (AIS)

- Regulations 19 and 19-1 of Chapter V of SOLAS require commercial ships to have on board an AIS that provides the ship's position, identification, navigational status, and other safety-related information to other ships and to coastal States.
- As AIS signals are relied upon by other vessels for safety of navigation, the act of switching it off could lead to a severe risk of a collision with other ships in the vicinity, especially in bad weather
- The 2023 IMO Resolution pointed out that tankers in the dark fleet intentionally turn off their AIS or spoof their location to hide their location from coastal States before engaging in STS Operations.

STS Operations in EEZ of Coastal States

- In practice, the tankers in the dark fleet engaging in an STS Operation in the maritime zones of a coastal State do not notify the coastal State or provide it with information as required under IMO rules.
- This problem was reported to the Legal Committee of the IMO at its 110th Session (27 – 31 March 2023) that consequently led to the adoption of the 2023 IMO Resolution
- **Legal Issue: What actions can coastal States take against tankers in the dark fleet that engage in STS operations in their EEZ in violation of IMO Regulations on STS operations and AIS signals?**

Passage Rights of Tankers in Dark Fleet

- Coastal States can prohibit the entry of suspect dark ships into their ports of internal waters
- But under UNCLOS ships of all States have passage rights through the territorial sea and through straits used for international navigation and archipelagic waters
- Issue: Can coastal States approach oil tankers exercising passage in waters subject to their sovereignty to check whether the tankers have certificates proving their have liability insurance?

Thanks for your Attention

Robert Beckman