



International Oil Pollution
Compensation Funds

Agenda Item 4	IOPC/NOV24/4/5	
Date	10 October 2024	
Original	English	
1992 Fund Assembly	92A29	●
1992 Fund Executive Committee	92EC83	
Supplementary Fund Assembly	SA21	●

DEVELOPMENT OF A GUIDANCE DOCUMENT

PROCEDURES FOR DETERMINING WHETHER A SHIP FALLS UNDER THE 1992 CIVIL LIABILITY CONVENTION OR THE 2001 BUNKERS CONVENTION

Note by the Director

Summary:

The *Bow Jubail* incident (see documents [IOPC/MAY23/3/6](#) and [IOPC/MAY23/3/6/1](#)), may have broad implications for the definition of a ‘ship’ under the 1992 Civil Liability Convention (1992 CLC) or a ‘ship’ under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention), in particular with reference to tankers capable of carrying both persistent oil and other chemical substances as cargo.

In the court proceedings derived from the *Bow Jubail* incident, the Court of Appeal in The Hague considered that there was no generally accepted standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the Bunkers Convention 2001, ceases to be a ‘ship’ under the 1992 CLC. The Court of Appeal further remarked that consideration should be given by the Parties to the 1992 Fund Convention to the creation of such a standard procedure that could then be followed, with a view to invoking the exception provided for in Article I(1) of the 1992 CLC (document [IOPC/NOV20/11/2](#), paragraph 3.12.7).

At their May 2023 session, the 1992 Fund Executive Committee requested that the Director explore the possibility of developing a guidance document detailing a standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 CLC and as a chemical tanker under the 2001 Bunkers Convention, ceased to be a ‘ship’ under the 1992 CLC. During the discussions, it was also proposed that the Director consider an interpretation of the meaning of the word ‘residues’ in Article I(1) of the 1992 CLC (document [IOPC/MAY23/9/1](#), paragraphs 3.6.25 and 3.6.33).

Since May 2023, the Director has held a number of meetings with industry representatives to discuss the development of a guidance document. After extensive discussions, the Director would like to propose that such guidance be issued as a footnote in the IOPC Funds’ publication ‘Guidance for Member States, Consideration of the definition of ‘ship’’, under Section 3, paragraph 3.1, 2).

Regarding consideration of the interpretation of the meaning of the word ‘residues’, discussions are still taking place and it is expected that a final proposal will be

presented at the regular sessions of the governing bodies in 2025, after all relevant parties have had the opportunity to consider the issue in detail.

Action to be taken:

1992 Fund Assembly

- (a) Take note of the information contained in this document, and
- (b) decide whether to authorise the Director to incorporate the proposed footnote in the IOPC Funds' publication 'Guidance for Member States, Consideration of the definition of 'ship'', under Section 3, paragraph 3.1, 2).

Supplementary Fund Assembly

Information to be noted

1 Background information

- 1.1 At their May 2023 session, the 1992 Fund Executive Committee requested that the Director explore the possibility of developing a guidance document detailing a standard procedure to determine when a ship that can serve both as an oil tanker under the 1992 Civil Liability Convention (1992 CLC) and as a chemical tanker under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention), ceased to be a 'ship' under the 1992 CLC. It was also proposed during these discussions, that the Director consider an interpretation of the meaning of the word 'residues' under Article I(1) of the 1992 CLC (document [IOPC/MAY23/9/1](#), paragraphs 3.6.25 and 3.6.33).
- 1.2 During the discussions, it was also suggested that, as part of the investigation, the Secretariat could investigate the number of dual use tankers that may be on various registers, to determine whether this was a narrow pool or if it extended to a point whereby, going forward, a guidance document could meaningfully impact on the industry itself.
- 1.3 At that same session, the Director noted that the 1992 Fund's position in this case had been that there was already a standard procedure under the International Convention for the Prevention of Pollution from Ships (MARPOL). He also acknowledged that, following the decision of the courts in the Netherlands, further guidance might need to be developed. The Director confirmed that he would consult with the joint Audit Body and industry representatives and that he would present a proposal for the way forward in developing a guidance document at a future session of the governing bodies.

2 Guidance document on the standard procedure to determine when a ship ceases to be a 'ship' under the 1992 CLC

- 2.1 Since May 2023, the Director has consulted with the joint Audit Body to discuss the development of a proposal for the way forward, and has held a number of meetings with industry representatives to discuss the development of guidance on a procedure to determine whether a ship falls under the 2001 Bunkers Convention or the 1992 CLC.
- 2.2 Further to these discussions and after consideration, the Director would like to propose that the guidance be issued in the form of a footnote in the IOPC Funds' existing publication 'Guidance for Member States, Consideration of the definition of 'ship''^{<1>}, under Section 3 'Illustrative list of vessels

^{<1>} Available under the Publications Section of the IOPC Funds' website www.iopcunds.org and attached for reference at the Annex to this document.

falling clearly within the definition of ‘ship’, paragraph 3.1, 2). This publication provides a general guide to the consideration of the definition of ‘ship’ under the 1992 CLC.

2.2.1 Article I(1) of the 1992 CLC defines a ‘ship’ as:

‘any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage **unless it is proved that it has no residues of such carriage of oil in bulk aboard**’.

2.2.2 The proposed text of the footnote is as follows:

‘Where a vessel undergoes cleaning and flushing of its cargo tanks, slop tanks, residual oil tank and all associated pumps and pipelines in accordance with Annex I, Chapter 4 of MARPOL 73/78; and any oil, tank washing and/or oily mixture have been discharged or transferred off the vessel, the Master’s declaration in the vessel’s Oil Record Book will be *prima facie* evidence that the vessel is free of residues.’

2.2.3 In accordance with this footnote, it would therefore be understood and accepted that the vessel is clean and free of residues unless evidence to the contrary is produced.

2.2.4 Consequently, should the 1992 Fund Assembly authorise the Director to incorporate the proposed footnote in the IOPC Funds’ publication ‘Guidance for Member States, Consideration of the definition of ‘ship’’, as recommended in paragraph 2.2 above, a standard procedure would be established. Therefore, if the shipowner can prove that he has followed such procedure, the incident would fall under the 2001 Bunkers Convention, as opposed to the 1992 CLC ..

3 Interpretation of the meaning of the word ‘residues’ under Article I(1) of the 1992 CLC

3.1 During discussions at the May 2023 sessions of the governing bodies, it was also proposed that the Director consider an interpretation of the meaning of the word ‘residues’ under Article I(1) of the 1992 CLC, to ensure that there was a common understanding among Member States as to whether the wording of ‘**no residues of such carriage of oil**’ in that Article required that, physically, no oil would be found in the oil tank, or rather that tank would be sufficiently cleaned that the risk of pollution was essentially the same as a tanker which was not carrying oil on board as cargo.

3.2 Discussions with industry representatives are still taking place regarding the interpretation of the meaning of the word ‘residues’, and it is expected that a final proposal will be presented to the governing bodies when all relevant parties have had the opportunity to consider the issue in detail.

4 Director’s considerations

4.1 The Director is grateful to the industry representatives involved for their collaboration in developing this guidance footnote to complement the standard procedure under the International Convention for the Prevention of Pollution from Ships (MARPOL), and understands that, subject to the approval of the footnote by the 1992 Fund Assembly, a circular will be issued by the International Group of P&I Associations (International Group) to draw attention to this guidance, thus raising awareness of the issue.

4.2 At the same time, the Director will continue his review of the interpretation of the word ‘residues’ by reviewing existing conventions and guidance documents in order to achieve a clear understanding of the current interpretation. Parallel to this review the Director is investigating the number of dual use

tankers that may be on various registers. The results of the review and investigation will be presented at the regular sessions of the governing bodies in 2025.

5 Action to be taken

5.1 1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) take note of the information contained in this document, and
- (b) decide whether to authorise the Director to incorporate the proposed footnote in the IOPC Funds' publication 'Guidance for Member States, Consideration of the definition of 'ship'', under Section 3, paragraph 3.1, 2).

5.2 Supplementary Fund Assembly

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

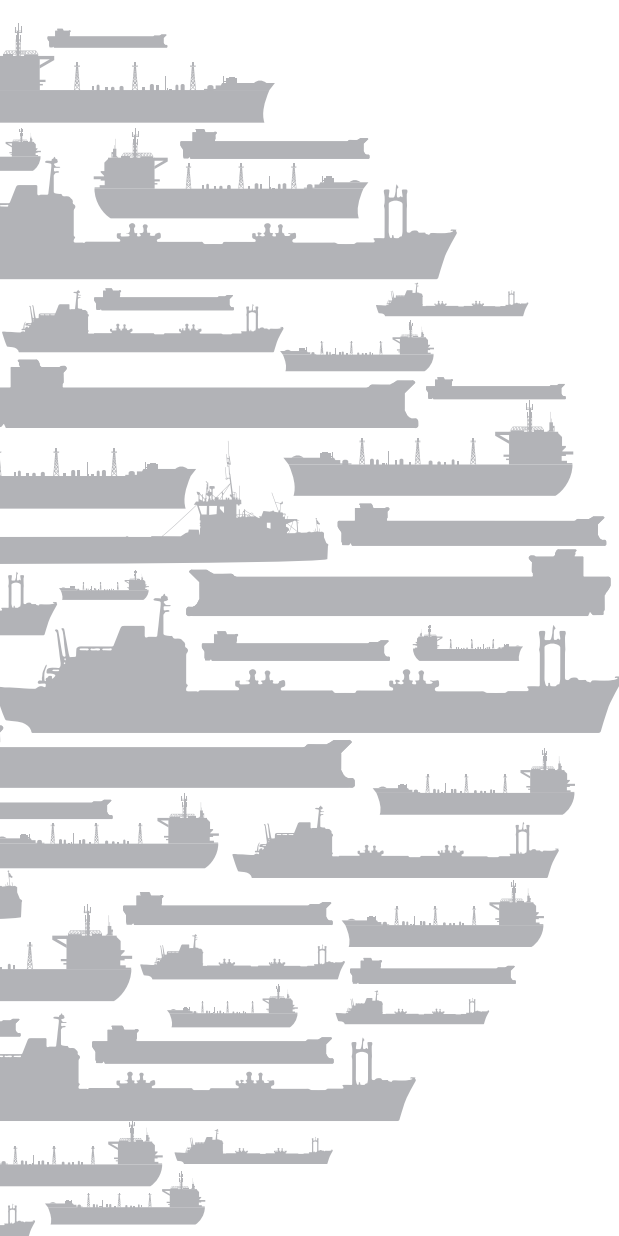
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Guidance for Member States

Consideration of the definition of 'ship'

2016 Edition



This guidance document provides a general guide to the consideration of the definition of 'ship' under the 1992 Civil Liability Convention.

This document may assist in determining whether compensation should, in principle, be paid following an oil spill incident.

This document reflects the decision taken by Member States of the International Oil Pollution Compensation Fund, 1992 (1992 Fund) at the October 2015 session of the 1992 Fund Administrative Council (document IOPC/OCT15/11/1, paragraph 4.3.23), and should not be seen as an authoritative interpretation of the relevant international Conventions.

1. What has been agreed in respect of the issue regarding the definition of 'ship'

1.1 In October 2015, the 1992 Fund Administrative Council, agreed to accept the recommendations of the seventh intersessional Working Group regarding the illustrative list of vessels which fall clearly within or outside the definition of 'ship' under Article I(1) of the 1992 Civil Liability Convention (1992 CLC).

1.2 The Administrative Council noted that the Working Group had emphasised that the list is not exhaustive and is only illustrative of the craft which clearly fall within the definition of 'ship' or clearly fall outside the definition, and that other craft with similar characteristics may fall within or outside the definition depending on the circumstances, which are to be considered on a case-by-case basis.

2. The 'hybrid approach'

2.1 Due to the difficulties that might arise in attempting to classify certain categories of vessels or scenarios as within or outside the definition of 'ship' under Article I(1) of the 1992 CLC, the 1992 Fund Administrative Council decided to adopt a 'hybrid approach' whereby Member States would rely on the agreed illustrative list of vessels which fall clearly within or outside the definitions where possible, and use the concept of the 'maritime transport chain' as an interpretive tool for addressing those 'grey areas' or situations where it was not clear if the craft was a 'ship' or not.

3. Illustrative list of vessels falling clearly within the definition of 'ship'

3.1 The list of vessels which fall clearly within the definition of 'ship' is as follows:

- 1) A seagoing vessel or seaborne craft constructed or adapted for the carriage of oil in bulk as cargo when it is actually carrying oil in bulk as cargo;
- 2) A seagoing vessel or seaborne craft in ballast following a voyage carrying oil with residue of oil onboard;
- 3) A craft^{<1>} carrying oil in bulk as cargo being towed (or temporarily at anchor for purposes incidental to ordinary navigation or force majeure or distress);
- 4) A ship capable of carrying oil and other cargoes (i.e. an Oil Bulk Ore carrier (OBO)) when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues;

^{<1>} This could be a barge or an offshore craft.

5) Offshore craft^{<2>} that have their own independent motive power, steering equipment for seagoing navigation and seafarer onboard so as to be employed either as storage units or carriage of oil in bulk as cargo and that have the element of carriage of oil and undertaking a voyage; and

6) Craft that are originally constructed or adapted (or capable of being operated) as vessels for carriage of oil, but later converted to FSOs, with capacity to navigate at sea under their own power and steering retained and with seafarer onboard and that have the element of carriage of oil and undertaking a voyage.

3.2 The owner of a vessel which falls clearly within the definition of 'ship', and which carries more than 2 000 tons of oil in bulk as cargo, is required to maintain insurance or other financial security, to cover his liability for pollution damage under the 1992 CLC, in accordance with Article VII(1) of the 1992 CLC.

3.3 Similarly, a Contracting State shall issue a certificate to vessels falling within the definition of 'ship' in accordance with Article VII(2) of the 1992 CLC.

4. Illustrative list of craft which clearly fall outside the definition of 'ship'

4.1 The list of vessels which clearly do not fall within the definition of 'ship' is as follows:

- 1) Barges certified or classed only for use on inland water ways;
- 2) Vessels which are not constructed or adapted for the carriage of oil in bulk as cargo. Such categories include 'non-tanker' vessels, such as:
 - (a) Container vessels;
 - (b) Cruise Ships;
 - (c) Tugs;
 - (d) Dredgers;
 - (e) General cargo vessels;
 - (f) Diving support vessels;
 - (g) Bulk carriers;
 - (h) Passenger vessels;
 - (i) Car carriers;
 - (j) Fishing vessels; and
 - (k) Ferries.

^{<2>} The term 'offshore craft' could be a Floating Drilling Production Storage and Offloading unit (FDPSO), Floating Production Storage and Offloading unit (FPSO), Floating Storage and Offloading unit (FSO) or Floating Storage Unit (FSU) whether purpose-built, or converted or adapted from seagoing vessels constructed for the carriage of oil.

3) Vessels or craft involved in:

- (a) Exploration, for example jack-up rigs or Mobile Offshore Production Units (a jack-up platform whether or not it carries oil, gas and water separation equipment); or
- (b) The production or processing of oil, for example Drill-ships, FDPSOs, and FPSOs, including separation of water and gas, and its management.

4.2 Vessels or craft which do not fall within the definition of 'ship', are not required to maintain insurance or other financial security, to cover liability for pollution damage under the 1992 CLC, in accordance with Article VII(1) of the 1992 CLC.

4.3 Similarly, there is no requirement for the Contracting State to issue a certificate attesting that insurance or other financial security is in place in accordance with the provisions of the 1992 CLC, in respect of those vessel types which clearly do not fall within the definition of 'ship'.

5. Maritime Transport Chain

5.1 Where in a situation it is not clear whether a vessel falls within or outside the definition of 'ship' from the lists above, the situation will be solved by the decision of the 1992 Fund governing bodies on a case-by-case basis, using the maritime transport chain, as an interpretive tool.

5.2 The concept of the maritime transport chain is designed to reflect the realisation by the maritime community of the dangers of pollution created by the international maritime carriage of oil in bulk as cargo.

5.3 The maritime transport chain commences after the loading of oil and concludes when the oil is finally discharged into a port or terminal installation as defined in Article 1.8 of the 1992 Fund Convention. This maritime transport chain includes maritime operations or transportation of oil. Maritime operations include ship-to-ship (STS) operations; periods of waiting; storage (excluding those without navigational capability)^{<3>}; and anchoring pending final delivery to a port, terminal installation or final consumer/recipient^{<4>}.

5.4 Examples of the maritime transport chain appear at the Annex.

^{<3>} The maritime transport chain terminates at storage facilities without navigational capability and another maritime transport chain begins when the oil is loaded from such storage facilities to a vessel.

^{<4>} It could be fuel oil delivered from a ship that is storing it for transfer to a ship that will use it for its engines. In this case, the maritime transport chain would finalise when the oil is transferred to the ship that uses it.

Examples of when the maritime transport chain commences and concludes

Example 1 – loading oil from an onshore source

In the case of oil produced on land, the maritime transport chain commences when the oil is loaded as bulk cargo into a seagoing or seaborne craft and ends when the oil is discharged in a port or terminal installation in the territory of a Member State.

If that oil was then to be reloaded into another vessel for transportation, either internally (cabotage) within the Member State's territorial waters or exclusive economic zone (or equivalent), or outside of the territorial waters or exclusive economic zone (or equivalent), this would amount to a new maritime transport chain.

Example 2 – loading oil from a unit which received oil from an offshore source

A logical explanation of when the maritime transport chain commences for scenarios where oil is produced offshore, is when oil is loaded into a vessel other than the one which received the oil directly from the subsea well to which it was connected.

Typically, such scenarios would include:

A seagoing vessel or seaborne craft loading oil from:

- i) Another seagoing or seaborne craft in a typical ship-to-ship (STS) transfer operation (This item would only belong in this list if the seagoing/seaborne craft that was discharging oil had received that oil directly from a well);
- ii) FPSO;
- iii) FDPSO;
- iv) Jack-up rigs;
- v) Mobile offshore production units; or
- vi) FSO

In the case of the FSO, if it was a purpose-built FSO or craft as mentioned in paragraph 3.1 (5) or (6) of the Guidance document, the question would be whether the FSO or the craft was also carrying oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate. If so, the FSO itself would also be classed as a ship under the 1992 Civil Liability Convention (1992 CLC), as well as the receiving vessel. However, the FSO would fall outside the scope of the 1992 Conventions when it leaves the offshore field for operational reasons or simply to avoid bad weather.

For other cases involving such offshore craft, specifically FPSOs and FDPSO units, the vessels are not within the maritime transport chain covered by the compensation regimes, since the activities of exploration, drilling, production or processing, are outside the scope of the compensation regime.

Example 3 – loading oil from a mooring or platform which received oil from an offshore source

There is a second situation where oil is produced offshore, where it could be said that the maritime transport chain commences when the oil is loaded into a seagoing or seaborne craft constructed or adapted for the carriage of oil in bulk. Much of the offshore oil produced is brought to the surface from subsea wells via pipes ('risers') leading from the seabed, up to a fixed mooring buoy or platform, rather than directly to a vessel. The oil is then pumped into a tanker, or series of tankers, FSO or FPSO, which connect to the fixed mooring buoy or platform.

In most cases a vessel, (typically a tanker) would attach to the platform or mooring, load the oil cargo, then depart on its voyage laden with oil, in which case, once the tanker had loaded the cargo, it would fall within the definition of 'ship' contained within Article I(1) of the 1992 CLC. It is submitted that if an FSO which has its own independent motive power, steering equipment for seagoing navigation and seafarer with certification of competency on board, attached to the platform or mooring buoy, loaded the oil cargo, then departed on its voyage laden with oil, only once the FSO had loaded the cargo, would it fall within the definition of 'ship' contained within Article I(1) of the 1992 CLC.

However, in some cases, an FSO that has its own independent motive power, steering equipment for seagoing navigation and seafarer with certification of competency on board and the appropriate connection device to attach to the platform or mooring, would attach to the mooring buoy or platform, then pump the oil collected onto a vessel (typically a tanker). In this case involving an FSO and a vessel, one maritime transport chain would commence when the oil was transferred onto the vessel, and if the FSO disconnected from the platform or mooring buoy, a separate maritime transport chain would commence in respect of that operation involving such an FSO.

<5> In some cases, cargoes are laden purely for arbitrage or speculative purposes, awaiting an increase in the oil price, and subsequently the ownership of the oil and its final destination may change many times before final delivery.

<6> The maritime transport chain terminates at storage facilities without navigational capability and another maritime transport chain begins when the oil is loaded from such storage facilities to a vessel.

<7> It could be fuel oil delivered from a ship that is storing it for transfer to a ship that will use it for its engines. In this case, the maritime transport chain would finalise when the oil is transferred to the ship that uses it.

Points to note

In Examples 1-3 above, the maritime transport chain would commence, irrespective of whether or not the cargo had a known destination at the time of loading<5>.

Furthermore, even if the final destination of the oil cargo remains unknown, and as a consequence, the carrying vessel is directed to anchor at a location for an extended period of time, the carrying vessel or seaborne craft nevertheless remains within the maritime transport chain until the cargo is finally delivered.

It is important to note that all the examples are based on the following assumptions:

- a) the vessel involved is laden with 'oil' as defined in Article I(5) of the 1992 CLC; and
- b) the 'maritime transport chain' includes maritime operations or transportation of oil after loading, until final discharge into a port or terminal installation, as defined in Article 1.8 of the 1992 Fund Convention. These maritime operations include STS operations; periods of waiting; storage (excluding those without navigational capability)<6>; and anchoring pending final delivery to a port, terminal installation or final consumer/recipient<7>.



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