



INCIDENTS INVOLVING THE 1992 FUND

SLOPS

Note by the Director

Summary:

The *Slops* suffered a fire and explosion whilst at anchor in the port of Piraeus (Greece). At its July 2000 session the Executive Committee decided that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and that these Conventions did not apply to this incident.

Two companies that carried out clean-up operations took legal action against the 1992 Fund. At its July 2002 session the Executive Committee decided that the companies had not provided any information which would modify its position that the *Slops* should not be considered a 'ship' and instructed the Director to oppose the action.

The Court of first instance rendered its judgement on 13 December 2002, holding that the *Slops* fell within the definition of 'ship'. The 1992 Fund appealed against the judgement.

In a judgement rendered on 16 February 2004, the Court of Appeal overturned the judgement of the Court of first instance and held that the *Slops* did not meet the criteria required by the Conventions and therefore could not be considered a 'ship'. The claims against the Fund were therefore rejected.

The claimants have appealed against this judgement to the Supreme Court

Action to be taken: Information to be noted.

1 The incident

- 1.1 On 15 June 2000, the Greek-registered waste oil reception facility *Slops* (10 815 GT) laden with some 5 000m³ of oily water, of which 1 000 – 2 000 m³ was believed to be oil, suffered an explosion and caught fire at an anchorage in the port of Piraeus (Greece). An unknown but substantial quantity of oil was spilled from the *Slops*, some of which burned in the ensuing fire.
- 1.2 The *Slops* had no liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.

- 1.3 Port berths, dry docks and repair yards to the north of the anchorage were impacted before the oil moved southwards out of the port area and stranded on a number of islands. A local contractor carried out clean-up operations at sea and on shore.

2 Applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention

- 2.1 The *Slops*, which was registered with the Piraeus Ships Registry in 1994, was originally designed and constructed for the carriage of oil in bulk as cargo. In 1995 it underwent a major conversion in the course of which its propeller was removed and its engine was deactivated and officially sealed. It was indicated that the purpose of the sealing of the engine and the removal of the propeller was to convert the status of the craft from a ship to a floating oily waste receiving and processing facility. Since the conversion the *Slops* appeared to have remained permanently at anchor at its present location and had been used exclusively as a waste oil storage and processing unit. The local Port Authority confirmed that the *Slops* had been permanently at anchor since May 1995 without propulsive equipment. It was understood that the oil residues recovered from the processed slops were sold as low-grade fuel oil.
- 2.2 In July 2000 the Executive Committee considered the question of whether the *Slops* fell within the definition of 'ship' under the 1992 Civil Liability Convention and the 1992 Fund Convention. The Committee recalled that the 1992 Fund Assembly had decided that offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs), should be regarded as ships only when they carry oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate. The Committee noted that this decision had been taken on the basis of the conclusions of an Intersessional Working Group that had been set up by the Assembly to study this issue. The Committee also noted that although the Working Group had mainly considered the applicability of the 1992 Conventions in respect of craft in the offshore oil industry, there was no significant difference between the storage and processing of crude oil in the offshore industry and the storage and processing of waste oils derived from shipping. It was further noted that the Working Group had taken the view that in order to be regarded as a 'ship' under the 1992 Conventions, an offshore craft should *inter alia* have persistent oil on board as cargo or as bunkers (document 92FUND/A.4/21, paragraph 7.4.2).
- 2.3 A number of delegations expressed the view that since the *Slops* was not engaged in the carriage of oil in bulk as cargo it could not be regarded as a 'ship' for the purpose of the 1992 Conventions. One delegation pointed out that this was supported by the fact that the Greek authorities had exempted the craft from the need to carry liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.
- 2.4 The Committee decided that, for the reasons set out above, the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Civil Liability Convention and 1992 Fund Convention and that therefore these Conventions did not apply to this incident (document 92FUND/EXC.8/8, paragraph 4.38).

3 Legal actions

Proceedings before the court of first instance

- 3.1 In February 2002 two Greek companies took legal action in the Court of first instance in Piraeus (Greece) against the registered owner of the *Slops* and the 1992 Fund claiming compensation for costs of clean-up operations and preventive measures for €1 536 528 (£1.0 million) and €786 329 (£535 000) (plus interest), respectively. The companies alleged that they had been instructed by the owner of the *Slops* to carry out clean-up operations and to take preventive measures in response to the oil spill. The companies stated that they had requested the owner of the *Slops* to pay the above-mentioned costs but that he had failed to do so.

- 3.2 In their pleadings the companies stated that the *Slops* was constructed exclusively to carry oil by sea (ie was constructed as a tanker), that it had a nationality certificate as a vessel and that it was still registered as a tanker with the Piraeus Ship's Registry. They also maintained that even when the *Slops* operated as an oil separation unit (a slops handling unit), it floated at sea and that its only purpose was to carry oil in its hull. They mentioned that the *Slops* did not have any liability insurance under the 1992 Civil Liability Convention.
- 3.3 The Court rendered its judgements on the actions in December 2002.
- 3.4 As regards the actions against the 1992 Fund, the Court of first instance held in its judgement that the *Slops* fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. In the Court's opinion, any type of floating unit originally constructed as a seagoing vessel for the purpose of carrying oil is and remained a ship, although it might subsequently be converted into another type of floating unit, such as a floating oil waste receiving and processing facility, and notwithstanding that it might be stationary or that the engine might have been temporarily removed or the propeller sealed. The Court ordered the 1992 Fund to pay the companies €1 536 528 (£1.1 million) and €786 832 (£550 000) respectively, ie the amounts claimed, plus legal interest from the date of service of the writ (12 February 2002) to the date of payment and costs of €93 000 (£65 000).
- 3.5 As regards the actions against the registered owner of the *Slops*, who did not appear at the court hearing, the Court rendered a default judgement against him for the amounts claimed plus interest.

Proceedings before the Court of Appeal

- 3.6 In February 2003 the Executive Committee considered the question of whether to appeal against the judgement. During the discussion a number of delegations pointed out that the decision by the Committee that the *Slops* should not be considered a 'ship' for the purposes of the 1992 Conventions was based on a policy decision by the Assembly regarding the conditions under which floating storage units should be considered a 'ship' for the purpose of the Conventions, namely only when they were carrying oil in bulk, which implied that they were on a voyage. Those delegations referred to the preamble to the Conventions, which specifically referred to the transportation of oil. The Committee decided that the 1992 Fund should appeal against the judgement (document 92FUND/EXC.20/7, paragraph 3.5.15).
- 3.7 In its appeal the 1992 Fund argued that the Court of first instance had erroneously considered that the *Slops* was at the time of the incident carrying oil, regarding the mere existence on board of oil residues as 'carriage', ie transportation. It also argued that although the Court had considered that the 2 000m³ of oil on board was carried in the sense that it was intended to be transported to the oil refineries, there was no evidence that this would be the case. The Fund drew attention to a document issued by the Ministry of Merchant Marine proving beyond doubt that the *Slops*, which constituted a floating industrial unit for the processing of oil residues and separating them from water, had operated continuously as such a unit from 2May 1995 and had been permanently anchored since that date without any propulsion equipment. The Fund maintained that the *Slops* had not been intended to carry oil residues by sea to oil refineries and had never carried out such operations during the time it served as a floating oil residue processing facility, such carriage having been performed by the use of barges owned by third parties, which went alongside the *Slops* to receive the oil residues and transported them to the refineries for further processing. The Fund further argued that the *Slops* did not have the liability insurance required under Article VII.1 of the 1992 Civil Liability Convention and that this requirement had never been imposed by the Greek authorities upon the *Slops*. It was pointed out that the Greek authorities were obliged under Article VII.10 not to permit a vessel flying the Greek flag to carry out commercial activities without such a certificate of insurance. The Fund concluded that in view of these facts, the *Slops* could not be considered to fall within the definition of 'ship' in the 1992 Conventions.

- 3.8 Further, the 1992 Fund drew the Court's attention to Resolution N°8 adopted in May 2003 by the Administrative Council, in which the Council expressed the view that the courts of States Parties to the 1992 Conventions should take into account the decisions of the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of the Conventions.
- 3.9 The Court of Appeal rendered its judgement on 16 February 2004. The Court held that the *Slops* did not meet the criteria required by the 1992 Civil Liability Convention and the 1992 Fund Convention and rejected the claims. The Court interpreted the word 'ship' as defined in Article I.1 of the 1992 Civil Liability Convention as a seaborne unit which carries oil from place A to place B.
- 3.10 The Court of Appeal took into consideration evidence submitted by the Fund which clearly showed that, at the time of the incident, the *Slops* did not operate as a seagoing vessel or a floating unit for the purpose of transporting persistent oil in its tanks. The Court accepted the Fund's position that the *Slops*, which had originally been built as a tanker, had performed its last voyage as an oil-carrying vessel in 1994. The Court also noted that the *Slops* had been subsequently sold to Greek interests, who had converted it into a floating waste oil storage and processing unit and to this effect had removed its propeller and sealed its engine and that the Pireaus Central Port Authority had confirmed that the *Slops* had remained permanently at anchor since May 1995 without propulsive equipment. The Court also referred to the fact that the relevant Greek authorities had not required that the *Slops* be insured in accordance with Article VII.1 of the 1992 Civil Liability Convention and that this also indicated that the *Slops* could not be considered as a 'ship' under the 1992 Conventions.
- 3.11 The claimants have appealed to the Supreme Court.

Proceedings before the Supreme Court

- 3.12 In the pleadings before the Supreme Court, the claimants have argued that the *Slops*, which by its construction had all the characteristics of a vessel carrying oil, was anchored and used as a floating receiving and separating unit of oil products transferred from other vessels. They have also stated that as a result of fire, a large quantity of oil loaded in bulk as cargo in the vessel's cargo tanks was spilled. The claimants have maintained that the Court of Appeal made an incorrect interpretation of the definition of 'ship' in the 1992 Civil Liability Convention. In the claimant's view, it is clear that the wording of the definition and its purpose is not only to prevent pollution but also to compensate victims of oil pollution and those who contribute to prevention of such pollution. The claimants have further maintained that the definition of 'ship' covered also a craft which by its construction was designed to carry oil and which at the time of the incident did not perform voyages and (for a brief or longer period of time) was stationary, operating as a receiving and separating unit for oil or oily residues and carrying oil in its cargo tanks. This was in the claimant's view particularly so when the craft had oily residues from the carriage on board and constituted a high risk of causing pollution in vital areas such as ports. The claimants have also maintained that the Court of Appeal had considered an issue that was not pleaded, holding that it could not support the view that there were oil residues from the *Slops'* last voyage at the time of the incident. They have also argued that the definition of 'ship' introduced a rebuttable presumption that there were residues on board, but that the Fund had not rebutted this presumption.
- 3.13 Subject to any instructions the Executive Committee may wish to give him, the Director intends to submit pleadings to the Supreme Court maintaining that the Court of Appeal has interpreted the definition of 'ship' correctly and that the appeal should be dismissed. It is intended to refer to the reasons put forward by the Fund in the proceedings before the Court of Appeal and to support that Court's reasoning. In the pleadings before the Court of Appeal the Fund made the point that it was not possible that the residues from previous voyages had remained onboard in view of the *Slops* conversion to a floating oil recovery facility. In the pleadings to the Supreme Court, the

Fund will also maintain that in any event the alleged rebuttable presumption would not apply in this case.

- 3.14 In their pleadings to the Supreme Court, the claimants have also suggested that the Court of Appeal judgement lacks proper legal foundation and contains insufficient reasoning.
- 3.15 The Fund's lawyers in Greece have advised the Director that the claimants' objections as to the Court of Appeal's evaluation of the evidence is not a question of law and that under the Greek Code of Civil Procedure, the Supreme Court does not re-consider the evaluation of evidence unless the Court of Appeal's finding is vague or unclear which is not the case in respect of the *Slops* incident.
- 3.16 When discussing the Court of Appeal proceedings, the Executive Committee decided at its 22nd session in October 2003 that 1992 Fund Resolution N°8 adopted by the Assembly in May 2003, which stated that national courts in States Parties to the 1992 Conventions should take into account the decisions of the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of the Conventions, should be brought to the attention of the Court of Appeal. The Director intends to include Resolution N°8 in the Fund's pleadings to the Supreme Court.
- 3.17 A hearing at the Supreme Court is set for late February 2005.

4 Action to be taken by the Executive Committee

The Executive Committee is invited to

- (a) take note of the information contained in this document; and
- (b) to give the Director such instructions in respect of the proceedings before the Supreme Court as it may deem appropriate.
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