



INCIDENTS INVOLVING THE 1992 FUND

SLOPS

Note by the Director

Objective of document:	To inform the Executive Committee of the latest developments regarding this incident and to discuss the possibility of bringing a recourse action against the Greek State.
Summary of the incident so far:	<p>The <i>Slops</i> 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 <i>Slops</i> should not be considered a 'ship' for the purpose of the 1992 Civil Liability and Fund Conventions and that these Conventions did not apply to this incident (sections 2 and 3)</p> <p>Two companies submitted claims for costs of clean-up operations and preventive measures totalling € 323 360 (£1.8 million) ^{<1>} and took legal action against the Fund. Another claim for a sum of US\$985 000 (£780 000), submitted in August 2007 by a third company, is time-barred (section 4).</p> <p>The Court of first instance in Piraeus held that the <i>Slops</i> fell within the definition of 'ship' laid down in the 1992 Civil Liability and Fund Conventions and awarded the claimants the claimed amounts plus legal interest and costs (paragraph 5.2.6). The Fund appealed against the judgement.</p> <p>The Court of Appeal held that the <i>Slops</i> was not a 'ship' under the definition in the Conventions and rejected the claims (paragraph 5.2.7). The claimants appealed against this decision to the Greek Supreme Court.</p> <p>The Supreme Court held that the <i>Slops</i> should be regarded a 'ship' as defined in the 1992 Conventions and referred the case back to the Court of Appeal to examine the merits of the claims (paragraphs 5.2.8 – 5.2.9).</p>
Recent developments	In February 2008 the Court of Appeal rendered its judgement confirming the judgement of the Court of first instance, which awarded the claimants the claimed amount, ie € 323 360 (£1.8 million) plus legal interests and costs (paragraph 5.2.10).

<1>

In this document conversion of currencies has been made on the basis of the exchange rate as at 12 May 2008 (€ = £0.7929, US\$1 = £0.5138 and 1 SDR= £0.82671) except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

The Director considers that the Greek State was in breach of its obligations under the 1992 Civil Liability Convention and recommends that the Executive Committee instruct him to examine further the possibility of bringing a recourse action against the Greek State to recover the sums that the 1992 Fund will have to pay as a result of this incident and to take all necessary steps to protect the interests of the Fund in the meantime (section 6).

Action to be taken:

Decide whether to instruct the Director to further examine the possibility of bringing a recourse action against the Greek State and to take all necessary steps to protect the interests of the Fund in the meantime.

1 Summary of incident

Ship (see notes)	<i>Slops</i>
Date of incident	15.6.00
Place of incident	Piraeus, Greece
Cause of incident	Fire and explosion
Quantity of oil spilled	Approximately 5 000 tonnes of oily water
Area affected	Piraeus, Greece
Flag State of ship	Greece
Gross tonnage (GT)	10 815 GT
P&I insurer	None
CLC Limit	8.2 million SDR (£6.8 million) (estimated)
Compensation	<p><u>Awarded:</u> Two claims totalling € 323 360 (£1.8 million), plus legal interest and costs.</p> <p><u>Time-barred:</u> One claim for US\$985 000 (£780 000). There are no other claims arising from this incident.</p>
Notes:	The Executive Committee decided in 2000 that the <i>Slops</i> should not be considered a 'ship' for the purpose of the 1992 Conventions and that therefore these Conventions did not apply to this incident. However, the Greek Supreme Court ultimately decided that the <i>Slops</i> was a 'ship' as defined in the 1992 Conventions.

2 The incident

- 2.1 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 500m³ 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.
- 2.2 The *Slops* had no liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.
- 2.3 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.

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

- 3.1 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 its conversion, the *Slops* appeared to have remained permanently at anchor at the location where the incident took place 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.
- 3.2 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 carried oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operated (document 92FUND/A.4/32, paragraph 24.3). 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 8.4.2).

- 3.3 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.
- 3.4 The Committee decided that, for the reasons set out above, the *Slops* should not be considered 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 4.3.8).

4 Claims for compensation

- 4.1 In October 2000 two Greek companies submitted claims for costs of clean-up operations and preventive measures for €1 536 528 (£1.2 million) and €786 832 (£624 000) plus interest, respectively. 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.
- 4.2 In August 2007, the Fund received a letter from a third Greek company requesting compensation for a sum of US\$985 000 (£780 000) in respect of preventive measures carried out in response to the incident. Since the incident had occurred in 2000, ie more than 6 years since the date of the incident and the claimant had not commenced legal action against the 1992 Fund during that time to prevent his right to compensation becoming time-barred (Article 6 of the 1992 Fund Convention), it was communicated to him that his claim was time-barred.

5 Legal actions

- 5.1 Legal proceedings against the owner of the *Slops*
- 5.1.1 In September 2001 the two companies referred to in paragraph 4.1 took legal action against the registered owner of the *Slops* in the Court of first instance in Piraeus. 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.
- 5.1.2 The companies did not in their court action refer to the 1992 Civil Liability Convention. It appeared that the action was based on the owner of the *Slops* not having fulfilled his contractual obligations to pay the cost of the operations.
- 5.1.3 A hearing took place in October 2002. The owner of the *Slops* did not appear at the court hearing and the Court rendered judgement by default on 13 December 2002 against him for the amounts claimed plus interest.
- 5.1.4 The owner of the *Slops* appealed against the judgment alleging that the assessment of the claims was arbitrary, unilateral and unfair. However, he withdrew his appeal in October 2007.

5.2 Legal proceedings against the 1992 Fund

- 5.2.1 In February 2002 the above-mentioned companies took a separate legal action against the 1992 Fund in the same Court as above. The companies stated that the registered owner had no assets apart from the *Slops*, which had been destroyed by fire and did not even have scrap value. They argued that they had taken all reasonable measures against the owner of the *Slops*, namely legal action against the owner, investigation into the owner's financial situation, requesting the court to arrest the assets belonging to the owner and that the owner should be declared bankrupt. They maintained that, since the owner was manifestly incapable of satisfying their claims, they were entitled to compensation from the 1992 Fund.
- 5.2.2 The 1992 Fund pleaded in its defense that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Civil Liability and Fund Conventions.
- 5.2.3 This action was dealt with by the Court at the same hearing of October 2002 (cf paragraph 5.1.3), as above. The Court also rendered its judgement on 13 December 2002.

Judgement by the Court of first instance in Piraeus

- 5.2.4 In its judgement, the First Instance Court in Piraeus held 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 sea-going vessel for the purpose of carrying oil was 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 sealed or the propeller removed.
- 5.2.5 The Court considered that the owner of the *Slops* did not have any assets apart from the *Slops* which was totally destroyed by the fire and that the claimants had filed a bankruptcy petition against the owner of the *Slops* which was never heard. The Court therefore considered that in view of the financial incapacity of the owner of the *Slops* the claimants were entitled to claim from the 1992 Fund.
- 5.2.6 The Court ordered the 1992 Fund to pay the companies €1 536 528 (£1.2 million) and €786 832 (£624 000) 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 (£73 700). The Fund appealed against this decision to the competent Court of Appeal.

Judgement by the Court of Appeal in Piraeus

- 5.2.7 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. The claimants appealed against this decision to the Greek Supreme Court.

Judgement by the Supreme Court

- 5.2.8 The Supreme Court issued its judgement in June 2006. The majority of the judges held that the Court of Appeal had contravened the substantive law provisions of the 1992 Conventions pertaining to the definition of 'ship'. Consequently, the majority held that at the time of the incident, the *Slops* should be regarded as a 'ship' as defined in the 1992 Conventions as it had the character of a seaborne craft which, following its modification into a floating separating unit, stored oil products in bulk and, furthermore, it had the ability to move by being towed with a consequent pollution risk without it being necessary for an incident to take place during the carriage of the oil in bulk (cf document 92FUND/EXC.38/6, paragraph 2.6).

5.2.9 The Supreme Court, having decided that the 1992 Conventions were applicable to the incident, held that the Court of Appeal's judgement should be set aside and the case be referred back to that Court to examine the merits of the substance of the dispute, ie the quantum of the claim, etc.

Judgement by the Court of Appeal on the merits of the claims

5.2.10 In February 2008 the Court of Appeal rendered its judgement confirming the judgement of the Court of first instance referred to in paragraph 5.2.6, which awarded the claimants the claimed amount, ie € 323 360 (£1.8 million) plus legal interest from the date of service of the writ (12 February 2002) to the date of payment and costs of €3 000 (£73 700).

Director's considerations

5.2.11 The Director has examined the situation with regard to these legal proceedings. Since the judgement by the Court of Appeal is final (ie is a final decision as meant in Article 8 of the 1992 Fund Convention), it is enforceable against the 1992 Fund.

5.2.12 Since the owner of the *Slops* does not have any assets to pay the judgement (see paragraph 5.2.5) the 1992 Fund is making the necessary arrangements through its Greek lawyer to pay the amounts awarded.

6 Possible recourse action against the Greek State

6.1 The Director has made a preliminary study of the possibility of taking recourse action against the Greek State to recover the amounts the 1992 Fund will have to pay in compensation in respect of this incident.

6.2 The following provisions of the 1992 Civil Liability and Fund Conventions are relevant:

6.3 Article VII of the 1992 Civil Liability Convention provides as follows:

(1) The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, to cover his liability for pollution damage under this Convention.

...

(2) A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry.....

...

(10) A Contracting State shall not permit a ship under its flag to which this Article applies to trade unless a certificate has been issued under paragraph 2 or 12 of this Article.

(11) Subject to the provisions of this Article, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an off-shore terminal in its territorial sea, if the ship actually carries more than 2,000 tons of oil in bulk as cargo.

...

6.4 Article 9.2 of the 1992 Fund Convention provides that:

Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

Director's considerations

- 6.5 The *Slops* was registered in Greece, a Contracting State to the 1992 Conventions. The *Slops* was laden with some 5 000m³ of oily water, of which 1 000 – 2 500m³ was believed to be oil. This means that, according to the highest estimation, the *Slops* was, at the time of the incident, carrying more than 2 000 tonnes of oil. In any event, although Article VII.1 requires that the ship is insured at any time when it is actually carrying more than 2 000 tonnes of oil in bulk as cargo, the capacity of the ship should also be taken into account, since in practice a ship will be insured to cover its capacity to carry rather than to cover what it is actually carrying at any given moment. Since the *Slops*, with 10 815 GT, was capable of carrying up to some 5 800 tonnes of oil as cargo, the fact that at least half the contents were reportedly water would not necessarily have a bearing on the obligation to carry insurance. It can therefore be argued that the *Slops* should have carried insurance for oil pollution liability in accordance with the 1992 Civil Liability Convention.
- 6.6 It follows from Article VII of the 1992 Civil Liability Convention that the Greek authorities should have ensured that the *Slops* carried insurance as required under that Convention. However, the Greek authorities permitted the *Slops* to trade without a certificate of insurance in contravention of Article VII.10.
- 6.7 On the basis of his investigations so far, the Director is of the opinion that the *Slops* did not carry insurance for oil pollution liability as required by the 1992 Civil Liability Convention and that it was the obligation of the Greek State to ensure that the *Slops* did carry such insurance and that, therefore, the Greek State was in breach of its obligations under the 1992 Civil Liability Convention.
- 6.8 The total amount claimed as a result of this incident, i.e. € 323 360 (£1.8 million) and US\$985 000 (£780 000), is well below the estimated limit of the *Slops* under Article V of the Civil Liability Convention, i.e. some 8.2 million SDR (£6.8 million). As mentioned in paragraph 5.2.5, it would appear that the owner is financially incapable of meeting his obligations. As a result of the Greek State breaching its obligations under the 1992 Conventions, the 1992 Fund will have to pay compensation which would have otherwise been covered by the *Slops*' insurer and therefore will suffer a loss.
- 6.9 In view of the above, the Director recommends that the Executive Committee instruct him to examine further the possibility of bringing a recourse action against the Greek State to recover the sums that the 1992 Fund will have to pay in compensation as a result of this incident and to take all necessary steps to protect the interests of the Fund in the meantime.

7 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to decide whether to instruct the Director to examine further the possibility of bringing a recourse action against the Greek State and to take all necessary steps to protect the interests of the 1992 Fund in the meantime.
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