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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

DEFINITION OF SHIP

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Summary:	<p>The 7th meeting of the 3rd Intersessional Working Group considered proposals to amend the international oil pollution compensation regimes and looked at two options to amend the definition of 'ship'.</p> <p>This paper seeks to address the issues raised in the discussion, and proposes treaty text to amend the definition.</p>
Related documents:	92FUND/WGR.3/19/2; 92FUND/A.4/21/1
Action to be taken:	See section 4

1 **Introduction**

- 1.1 Document 92FUND/WGR.3/19/2 discussed at the 7th Working Group meeting proposed two options to amend the definition of 'ship'. The first option was based on the views expressed in document 92FUND/A.4/21/1 presented to the 4th session of the 1992 Fund Assembly and sought to introduce a new definition whereby a dedicated oil tanker would always be a 'ship'. The second option, reproduced below, proposed removal of the wording that was in fact superfluous and which creates confusion in interpretation of the present text. ('Ship' means any sea going vessel and seaborne craft of any type whatsoever 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 cargo of oil in bulk aboard.)
- 1.2 Although the 7th meeting of the Working Group did not reach a consensus on either option, there was general agreement that the existing definition should be amended as and when the opportunity arises. This was also the view of the Assembly which endorsed the outcome of the 2nd Intersessional Working Group (1999 - 2000) which defined the current policy on application of the present definition, while acknowledging that in the light of experience the definition was ambiguous and would require amendments when the regime was revised. Within this context, the co-sponsors believe that it is of fundamental importance to the operation of the regime to

determine the objectives to be achieved by the definition and its coverage in order to consider the necessary amendments to the treaty text.

- 1.3 The existing definition of ship agreed at the 1992 diplomatic conference covers combination carriers through the text referring to the construction or adaptation of a ship for the carriage of oil in bulk as cargo. The 2nd Intersessional Working Group also concluded that an unladen tanker fell within the definition during any voyage after the carriage of cargo of persistent oil but fell outside if it was proved it had no residues on board. At its 5th meeting the 3rd Intersessional Working Group accepted that the interpretation of the definition of 'ship' adopted by the Assembly could give rise to problems since national courts might not accept this interpretation. It is fortuitous that to date the ambiguity of the present definition has not led to any serious dispute on coverage and interpretation following an incident.

2 Objectives

- 2.1 In order to address this problem the co-sponsors believe that the objectives behind the definition should be clearly set out. The definition should be more closely linked with the actual transportation of 'oil' as defined in Article 1 (5) of the 1992 Civil Liability Convention. The scope of the definition should, therefore, only seek to cover:
- (a) dedicated oil tankers;
 - (b) any sea-going vessel when actually carrying oil (as defined in Article 1 of the 1992 CLC) by sea; and
 - (c) any sea-going vessel that has previously carried such oil by sea provided that there are residues of such oil onboard and that the vessel is engaged in a voyage by sea.
- 2.2 Applying these objectives would ensure that the CLC/IOPC Fund regime would apply to pollution damage caused by bunker fuel of dedicated oil tankers in all circumstances. This would include brand new tankers on their first journey as well as unladen tankers, whether or not residues of oil remain aboard.
- 2.3 Damage caused by bunker fuel would only be covered for other vessels if they are carrying oil as presently defined in CLC, by sea as cargo or during subsequent voyages by sea, providing residues of that oil previously carried as cargo are on board.

3 Objectives

- 3.1 The co-sponsors believe that the following definition meets the obligations set out above:

'Ship' means

- (a) any sea-going vessel and any seaborne craft of any type whatsoever, which is constructed or adapted for the carriage by sea of oil in bulk as cargo; or*
- (b) any sea-going vessel and any seaborne craft of any type whatsoever when it is actually carrying oil by sea in bulk as cargo, or during any voyage by sea after such carriage unless it is proved that at the time of an incident it has no residues of such oil aboard.*

- 3.2 Sub-paragraph (a) is intended to cover dedicated oil tankers in all situations, as set out in paragraph 2.1 above. Sub-paragraph (b) covers all other sea going vessels and seaborne craft that are not dedicated oil tankers but nevertheless carry oil in bulk as cargo by sea, or have residues from such carriage. This removes the existing ambiguity in relation to combination carriers.

- 3.3 This definition excludes offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs) except where such a unit is engaged in a voyage from an oil production site to a State and is carrying oil in bulk as cargo. The 2nd Intersessional Working Group concluded that in these circumstances, such oil is considered as contributing cargo for reporting purposes and it is consistent to extend the definition of ship to cover this specific carriage.
- 3.4 Although the discussions at the 7th Working Group meeting were inconclusive on the adoption of the two options presented, there was a broad agreement within the Group that the ambiguity existed in relation to combination carriers. Subsequently, the co-sponsors believe that the principles in section 2 remove the confusion and provide a simpler, more focussed approach to the definition of ship than the two options presented to the 7th meeting of the Working Group.
- 3.5 Also, during the 2nd Intersessional Working Group on the definition of ship differences of opinion were expressed as to the meaning of '*any voyage following* such carriage' in the existing definition of ship. Whilst it was felt by some that this referred to the voyage immediately following the carriage of oil in bulk as cargo, most delegations agreed that it referred to any voyage after such carriage, and not necessarily the voyage immediately after. The definition proposed in this paper seeks to apply the definition further than the immediate voyage.
- 3.6 The proposed definition takes account of a number of aspects from the previous options considered by the Working Group, and the existing definitions contained in the 1969 and 1992 Civil Liability Conventions. The co-sponsors believe that the proposed definition also applies the lessons learned from previous incidents governed by the compensation regimes.

4 Recommendations

The co-sponsors of this paper recommend that the Working Group considers the objectives set out in this paper alongside the proposed definition.
