

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	Agenda item: 4	IOPC/OCT10/4/3/1	
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APPLICATION OF THE 1992 CONVENTIONS TO SHIP-TO-SHIP OIL TRANSFER OPERATIONS AND FLOATING STORAGE

Submitted by Denmark

Summary:	<p>The Danish authorities have received applications from several operators wanting to perform what might be described as extended ship-to-ship (STS) operations or floating storage. This has given rise to questions regarding the coverage under the 1992 Civil Liability and Fund Conventions. The questions that have arisen relate to the time period a vessel can remain at the same position at anchor before continuing its voyage, including vessels involved in STS oil transfer operations.</p> <p>The question arises as to whether the 'mother' vessel falls within the definition of 'ship' under the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention as interpreted by the 1992 Fund Assembly as well as the implications regarding contributions.</p>
Action to be taken:	<p><u>1992 Fund Assembly</u></p> <p>Decide whether vessels involved in the scenarios described in paragraphs 3.2 - 3.5 fall within the definition of 'ship' under the 1992 CLC and 1992 Fund Convention; and if not, to decide on the application of Article 10.1 (a) of the 1992 Conventions.</p> <p><u>Supplementary Fund Assembly</u></p> <p>Information to be noted.</p>

1 **Introduction**

- 1.1 The Danish authorities have received applications from several operators wanting to perform what might be described as extended ship-to-ship (STS) operations or floating storage.
- 1.2 This has given rise to questions regarding the application of and coverage under the 1992 Conventions. The questions that have arisen relate to the time period a vessel (which is carrying oil that is subject to the payments of contributions to the IOPC Funds when it is received in a port) can remain at the same position at anchor before continuing its voyage, and still be covered by the 1992 Conventions
- 1.3 In the understanding that such a policy issue is not for the Secretariat to give advice on, the Danish Government seeks clarification from the 1992 Fund Assembly as regards how the 1992 Fund policy should be interpreted and applied to these situations.

2 Traditional STS operations

- 2.1 A considerable number of STS operations take place in Danish territorial waters every year, due to the oil export from other countries and the sheltered waters of the sea areas.
- 2.2 The receiving mother vessel in these operations is a vessel with a deadweight of up to 300 000 metric tonnes which, because of its size, cannot navigate through the narrow and somewhat shallow Danish Straits (the Great Belt and/or the Sound). The mother vessel is therefore at anchor for a few days (typically between one and eight days), while oil is being discharged from smaller tankers. The mother vessel, which is typically not Danish flagged, then continues its voyage.
- 2.3 Prior to such STS operations, the Danish authorities are notified and the STS operations take place in accordance with national legislation and the IMO rules on STS operations (cf Res. MEPC.186(59)).
- 2.4 There is no doubt that any oil spill stemming from the transfer of oil or from incidents involving the mother vessel during the isolated STS operations will be covered by the IOPC Funds.

3 Extended STS operations or floating storage

- 3.1 Some examples might help illustrate the issues that have arisen.
- 3.2 The first scenario is floating storage which does not include a STS operation: a loaded supertanker enters Danish waters and stays at the same position for one to three months or maybe for up to 12 months before it continues its voyage.
- 3.3 A second scenario is the traditional STS operation followed by floating storage, ie, after the mother vessel has been loaded over a few days, it stays (loaded) at the same position for one to three months or maybe for up to 12 months. The mother vessel/supertanker then continues its voyage.
- 3.4 In the third scenario a mother vessel enters Danish waters and remains at the same position at anchor for one to three months or maybe for up to 12 months, while STS operations take place several times during that period (each time for between one and eight days). Oil would be transported from, for example, the Baltic (for instance Tallinn) to Kalundborg or Frederikshavn in Denmark by a shuttle service where feeders, through STS operations, load a mother vessel (a Suezmax or Very Large Crude Carrier (VLCC)). The mother vessel is only being loaded. The mother vessel/super tanker then continues its voyage.
- 3.5 In the fourth scenario the mother vessel enters Danish waters, the time period is the same as above, but the oil is transferred both to and from the mother vessel, ie feeder tankers load the mother vessel but oil may also be unloaded from the mother vessel to a feeder tanker. The mother vessel then continues its voyage.
- 3.6 The question is whether the mother vessel in the scenarios described falls within the definition of 'ship' under the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention as interpreted by the 1992 Fund Assembly.
- 3.7 The uncertainty of the application of the 1992 Conventions and the decisions made by the 1992 Fund Assembly at its October 2006 session, has resulted in the Danish authorities not having permitted tankers to remain at the same position for more than a few days.
- 3.8 However, because of the general nature of the situations, the Danish Government feels that a decision as to whether such vessels fall within the definition of 'ship' should be taken by the 1992 Fund Assembly.

4 Criteria for vessels falling within the definition of 'ship' in the 1992 Conventions

4.1 The definition of 'ship' in Article I.1 of the 1992 CLC reads:

'Ship' means 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.

This definition is incorporated in the 1992 Fund Convention.

4.2 To fall within the definition of 'ship' the mother vessels should fulfil two criteria; firstly, they should be 'constructed or adapted for the carriage of oil in bulk as cargo' and secondly, they should be on a voyage ('carrying oil in bulk as cargo'). Further, as regards vessels involved in STS operations, the question of whether the vessels are semi-permanently anchored should be considered.

Are the vessels 'constructed or adapted for the carriage of oil in bulk as cargo'?

4.3 The vessels are constructed for and operating as regular oil tankers engaged in the carriage of oil at sea. No processing or modification of the oil takes place on board.

4.4 All vessels in the scenarios in paragraphs 3.2 to 3.5 are registered as tankers for the carriage of crude oil and products. They are manned as tankers and ready to sail at any time and they are insured for pollution liabilities and equipped with CLC certificates.

4.5 The Danish Government is of the view that the mother vessels thus fulfil the criteria for being 'constructed or adapted for the carriage of oil in bulk as cargo'.

Are the vessels on a voyage ('carrying oil in bulk as cargo')?

4.6 Today some supertankers which have been loaded with oil in, for example, the Persian Gulf sail at low speed south of Africa not knowing their final destination until at a much later stage when they have reached, for example, Europe and the oil on board has a new/concrete 'buyer'. These tankers function in reality as 'sailing floating storage'.

4.7 Further, some tankers, as an alternative to sailing slowly, remain anchored for a period of time (days, weeks or months) waiting for order before proceeding to their destination. A large number of ships are used as 'floating storage' around the world. In 2009 the figure might, according to some sources, have been as high as 150, including many VLCCs and Suezmaxes.

4.8 No time period is connected to the definition of a voyage, nor a requirement for knowing the end destination when commencing a voyage. Thus, in the situations described in paragraphs 4.6 and 4.7 the ships are 'on a voyage' as they are on their way from place A to, eventually, place B, transporting oil as cargo, regardless of whether they know place B (their destination) when they leave place A or even when they are at anchor. It has never been questioned that oil spills from such tankers would be covered by the 1992 Conventions.

4.9 Accordingly, the 'first scenario' referred to in paragraph 3.2 where the vessel is expected to remain at the same position for three months, would be covered by the IOPC Funds regime.

4.10 However, it could be asked what difference the time period makes, ie what the difference is between remaining at anchor at the same position for three months, six months or 12 months.

- 4.11 The tankers do not stay in the same position indefinitely. One year at the same position does not seem improbable and oil spills from such tankers should still be covered by the 1992 Conventions. However, in the highly unlikely event that a ship would be anchored for a very long time, eg five years, it would seem reasonable to question whether such a vessel is in fact on a voyage and therefore not covered by the 1992 Conventions.
- 4.12 If the 1992 Fund Assembly were to decide that a tanker in the situations described in paragraph 3.2 would not be covered, it would need to decide where to draw the line, ie for how long a vessel should be accepted to remain at anchor at the same position before continuing its voyage. As these situations take place worldwide today, it would leave enormous uncertainty as to what is covered. It would need to be addressed before an incident takes place rather than after.
- 4.13 Other situations need to be taken into account as well. Instead of arriving fully loaded to a position and staying there for three months before proceeding, a tanker arrives half loaded. Then the tanker/mother vessel is topped up through STS operations which take place over a few days and subsequently the ship remains at the position for three months before it continues its voyage.
- 4.14 It is difficult to see the legal basis for this situation being treated differently from the situation where a fully loaded tanker remains at anchor for a period of time during a voyage. The isolated STS operations would be covered by the 1992 Conventions as stated above, and so would oil spills caused by the 'first half' of the oil. If the 1992 Fund Assembly were to decide that damage from a spill caused by the 'second half' of the oil would not be covered, how would it, in practice, be determined which half of the oil (in the same tank) had caused the damage? Would it make a difference if the STS operations had taken place over three months or longer, instead of over a few days (the 'third scenario')?
- 4.15 If a tanker arrives empty at a position where it is then loaded through STS operations which take place over a few days and the ship remains at that position for three months before it proceeds (the 'second scenario'), should that be treated differently as regards the coverage of the damages by the 1992 Fund in case of a pollution incident? The tanker might have oil residues on board which would make it impossible to decide which oil had caused a spill. Would it make a difference if the STS operations took place over three months or longer, instead of over a few days?
- 4.16 Not much distinguishes the situations described above and it would seem difficult to legally justify them being treated differently.
- 4.17 How to handle the 'fourth scenario' might seem somewhat more complicated.
- 4.18 A vessel, which has been loaded via a pipeline from a shore-based installation, transports oil to another location, discharges half of it in a port, continues its voyage with the other half, is then topped up via a shore-based pipeline and continues its voyage. Pollution damage, caused by oil spills from the vessel, is undoubtedly covered by the 1992 Fund.
- 4.19 It should not make a difference in the coverage by the 1992 Fund if the ship is being loaded and unloaded two or more times at sea through STS operations and not via a pipeline from a shore-based installation. It does not make a difference if the STS operations take place over three months or longer instead of over a few days.
- 4.20 Having considered all the specific facts of these operations, Denmark therefore takes the view that the vessels in the situations described in paragraphs 3.2 to 3.5 fall within the definition of 'ship' under the 1992 CLC and 1992 Fund Convention.

Vessels semi-permanently anchored engaged in STS oil transfer operations

- 4.21 At the 11th session of the 1992 Fund Assembly in October 2006, the Assembly decided that permanently and semi-permanently anchored vessels engaged in STS oil transfer operations should be regarded as 'ships' only when they carried oil as cargo on a voyage to or from a port or terminal outside the location in which they normally operate, but that in any event the decision as to whether

such a vessel fell within the definition should be decided in the light of the particular circumstances of the case (document 92FUND/A.11/35, paragraph 32.12).

- 4.22 One of the arguments was that when such vessels were engaged in STS operations whilst at anchor, they functioned in much the same way as floating storage units (FSUs).
- 4.23 It could be argued that there is no difference in the situations described in paragraphs 3.3 to 3.5, ie between a tanker remaining in the same position for a number of weeks or months and the situation where this is combined with STS operations. They are not operated as FSUs, but as conventional tankers and function as such.
- 4.24 Also in this respect it should be noted that all the vessels concerned are registered as tankers for the carriage of crude oil and products. They are manned and ready to sail at any time and they are insured for pollution liabilities and equipped with CLC certificates. No processing or modification of the oil takes place on board. The vessels are constructed for and operating as regular oil tankers engaged in the carriage of oil at sea.
- 4.25 It is therefore Denmark's conclusion that the mother vessels described should not be considered semi-permanently at anchor.
- 4.26 Even if the 1992 Fund Assembly were to decide that the mother vessels were semi-permanently anchored, they should, as described above, be considered as 'ships' on voyage and therefore still be covered by the 1992 Fund.
- 4.27 It would be very problematic if the vessels were not deemed to be ships and, consequently, were not covered by the 1992 Fund. A great concern in this respect is that the activities would move outside territorial waters where they cannot be regulated by a State.

5 Contribution oil (carried on board the mother vessel)

- 5.1 The question arises as to whether oil carried by the mother vessel should be considered as received for the purpose of Article 10.1(a) of the 1992 Fund Convention and therefore taken into account for the levying of contributions.
- 5.2 In accordance with the decisions made by the 1992 Fund Assembly at their October 2006 session, the question of how the situations described in paragraphs 3.3 to 3.5 are handled as regards oil contributions therefore depends on whether a mother vessel is considered to be semi-permanently anchored or not.
- 5.3 As stated in section 4, it is the assessment of the Danish Government that the mother vessels would not be considered semi-permanently anchored. Consequently, oil carried on board those vessels should not be taken into account for the levying of contributions.

6 Conclusion

- 6.1 If the 1992 Fund Assembly agrees with the considerations above, the conclusion would be to decide that the vessels in the scenarios described in paragraphs 3.2 - 3.5 fall within the definition of 'ship' under the 1992 CLC and 1992 Fund Convention and that, consequently, oil spills from such tankers would be covered by the 1992 Conventions.
- 6.2 Further, if the 1992 Fund Assembly agrees with the conclusion that the vessels fall within the definition of 'ship', oil carried on board those vessels should not be considered 'received' at the mother vessel for the purpose of Article 10.1(a) of the 1992 Fund Convention and therefore not be taken into account for the levying of contributions.

7 **Action to be taken**

1992 Fund Assembly and Supplementary Fund Assembly

7.1 The 1992 Fund Assembly is invited:

- (a) to take note of the information contained in this document; and
- (b) to decide whether vessels involved in the scenarios described in paragraphs 3.2, 3.3, 3.4 and 3.5 fall within the definition of 'ship' under the 1992 CLC and 1992 Fund Convention; and if not, to decide on the application of Article 10.1(a) of the 1992 Fund Convention.

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