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## REPORT OF THE SECOND INTERSESSIONAL WORKING GROUP

### 1992 CIVIL LIABILITY CONVENTION: DEFINITION OF "SHIP"

Submitted by Australia, Canada, the Netherlands and the United Kingdom

**Summary:**

A working group met in April 1999 to consider the proper interpretation of the definition of "ship" in the 1992 Civil Liability Convention. This document sets out the sponsoring delegations' views on the working group's recommendations.

**Action to be taken:**

Paragraph 14 & 15

#### *Issue*

1. The sponsoring delegations propose that the Assembly reconsider the working group's recommendation on the application of the proviso in the definition of "ship". The records of the 1984 diplomatic conference that originally adopted the definition of "ship" clearly show that its intention was that a dedicated oil tanker should *always* be a "ship". This is not the effect of the interpretation resulting from the working group's recommendation.

#### *Discussions within the working group*

2. When it met in April, the working group discussed the application of the 1992 Civil Liability Convention (CLC) and the 1992 Fund Convention to unladen tankers. The aim of the working group's discussions was to agree on the proper interpretation of the definition of "ship" in Article 1(1) of the 1992 CLC.
3. This definition provides that:  
  
"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.

4. The working group considered four questions:
  - a) Does the proviso in the definition apply only to combination carriers?
  - b) What does "combination carrier" mean?
  - c) In the proviso, does any voyage really mean *any* voyage?
  - d) Who has to prove the absence of residues for the proviso to apply?
5. The sponsoring delegations support the working group's recommendations on questions (a), (c) and (d). However, we believe that the Assembly should consider question (b) further before determining the Fund's policy.

***Outstanding issue***

6. The outstanding issue is the meaning of the term "combination carrier". This determines the scope of the proviso. The proviso restricts the scope of the definition of "ship". Therefore, the wider the scope of the proviso, the narrower the scope of the definition.
7. The paper submitted to the working group by the UK proposed a restricted meaning for the term "combination carrier". It argued that the proviso should apply only to vessels or craft capable of carrying liquid and solid cargo. With the benefit of hindsight, we acknowledge that this proposal may have helped to add to the confusion.
8. The sponsoring delegations now accept the working group's conclusion that the proviso should apply more widely than only to vessels or craft capable of carrying both liquid and solid cargo. In our view, however, the working group went too far by recommending that the proviso should also apply to vessels or craft capable of carrying both persistent and non-persistent oils.
9. A grey area remains: vessels and craft capable of carrying oil and other liquid cargo. The papers submitted to the working group did not focus on such vessels and craft. Nor did the debate within the working group. This is another reason why the Assembly ought to readdress this issue.

***Need to reconsider the meaning of "combination carrier"***

10. The table below sets out the options for the meaning of the term "combination carrier". On reflection, the co-sponsors believe that the term includes – and the proviso in the definition of "ship" therefore applies to – vessels or craft capable of carrying the cargoes described under (A) and (B). We do not believe that vessels or craft capable of carrying only the cargoes described under (C) (that is, dedicated tankers) are "combination carriers".

(A)	(B)	(C)
Liquid cargoes (including oil) and solid cargoes	oil and other liquid cargoes	Persistent and non- persistent oils

11. In our view, therefore, the interpretation that correctly reflects the intention of the diplomatic conference is to consider only vessels or craft capable of carrying the cargoes described under (A) and (B) in the table above as combination carriers. A vessel or craft capable of carrying only the cargoes described under (C) is a dedicated oil tanker and therefore always a "ship".
12. Had the 1984 diplomatic conference intended the term "ship" to have the meaning recommended by the working group, it could have defined it as follows:

*"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 when 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.*

13. The conference did not adopt this or similar wording. It included a proviso for ships “capable of carrying oil and other cargoes”. Clearly, the conference intended these words to have some purpose. If, however, the interpretation recommended by the working group is correct, they are superfluous.

***Recommendation***

14. For the reasons set out above, the co-sponsors recommend that the Assembly review the recommendation of the working group on the scope of application of the proviso in the definition of “ship”.
15. We recommend that the Assembly agree that:
- a dedicated oil tanker is always a “ship” for the purposes of the 1992 CLC; and
  - that the proviso in the definition of “ship” applies only to vessels and craft capable of carrying oil, including non-persistent oil, and other cargoes.
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