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APPLICABILITY OF THE 1992 CIVIL LIABILITY CONVENTION
AND THE 1992 FUND CONVENTION TO FLOATING STORAGE
UNITS (FSUs) AND FLOATING PRODUCTION, STORAGE AND
OFFLOADING UNITS (FPSOs)

Note by the Director

Summary:	An analysis is made of the applicability of the 1992 Conventions to FSUs and FPSOs.
Action to be taken:	Decide whether FSUs and FPSOs should be considered as falling within the scope of application of the 1992 Civil Liability Convention and the 1992 Fund Convention.

1 Introduction

The 1992 Fund has received a number of questions as to whether spills from Floating Storage Units (FSUs) and Floating Production, Storage and Offloading Units (FPSOs) fall within the scope of application of the 1992 Civil Liability Convention and the 1992 Fund Convention. This issue is examined in the present document.

2 General background

2.1 In the last twenty years there has been an increased use of floating systems for the storage of oil. These facilities are no longer confined to marginal oilfields but are widely used in most oil-producing regions. FSUs are generally vessels that are used to store crude oil that is produced from an offshore or onshore exploration and production facility, prior to its sea transport by shuttle tankers. Some FSUs are fully functional tankers with operational engines, whereas others are tankers which have had their engines removed, barges that were never self-propelled or parts of tankers converted to storage units after accidents.

2.2 Some FPSOs are used to produce and store crude oil from offshore wells which may not be sufficiently economically viable to warrant the installation of a fixed platform. The FPSOs have complex anchoring systems to keep them on location, but they can be moved from one offshore well system to another. Other FPSOs are purpose-built to remain in one location for the whole of the unit's expected life. For example, currently under construction is an FPSO designed for a minimum of 25 years service life and a storage capacity of 130 000 tonnes, which is to remain on station in water up to 450 metres deep some 160 kilometres west of Shetland (United Kingdom), with inspection and maintenance being carried out offshore. The first Canadian FPSO will be located 350 kilometres southeast of St John's, Newfoundland, in around 90 metres of water. This structure has a storage capacity of approximately 135 000 tonnes and an intended service life of 25 years. No dry docking is envisaged during that period. This FPSOs structure is likely to be subject to very harsh weather conditions.

2.3 Oil produced at an offshore well is stored in the FPSO until it is discharged into shuttle tankers. FPSOs are operating around the world. It is expected that 100 FPSOs will be in operation by the year 2000. Their storage capacity varies considerably from unit to unit but in many cases it is well in excess of 100 000 tonnes. They are unlikely to have a full oil cargo on board when they move from one field to another, but they would be likely to have crude residues on board at that time. It has been suggested that FPSOs may sometimes hold significant quantities of oil when moving from one field to another. In addition, some FSUs and FPSOs move offstation to avoid severe weather, such as ice or typhoons.

2.4 The early FSUs and FPSOs were converted tankers. The oil industry has, over the years, introduced larger, purpose-built, ship-shaped structures and deployed them in more demanding conditions for longer periods. The FSUs and FPSOs now being put into service are purpose-built, and many have most of the characteristics of a conventional tanker.

3 National liability regimes

3.1 The Director is not aware of any State which has adopted a special liability regime for FSUs and FPSOs.

3.2 It appears that if there is no special liability regime, the liability of the operator of an FSU or FPSO is unlimited. This would not be the case, however, if these structures were regarded as ships, since in that case the right of limitation would be governed by the legislation applicable to ships.

4 Current insurance arrangements

4.1 Neither FPSOs nor FSUs are insured by P&I Clubs in the same way as oil tankers. There is not a sufficient number of these facilities to be considered by the P&I Clubs as a mutual risk, and special insurance is therefore arranged for each facility. The liabilities insured depend on the terms of the contract for the operation of the facility.

4.2 It is understood that the P&I Clubs generally treat FPSOs as ships only when they are not connected to the exploitation and production facility. They are therefore not covered by P&I insurance from the moment they are connected to the offshore well-head until they disconnect therefrom. During that period, they are treated as an offshore oil installation and are separately insured. It is also understood that for the period when they are connected, FPSOs are no longer considered as flying the flag of the State in which the vessel is registered.

5 Voluntary liability scheme

There is a voluntary liability scheme, the Offshore Pollution Liability Agreement (OPOL), which is funded by oil companies which operate offshore facilities in northern and western Europe. OPOL has a wide definition of facilities, which includes fixed or mobile installations used for treating, storing or transporting crude oil from the seabed. The parties to the OPOL Agreement undertake to bear strict liability

in the first instance to third parties for any claims for pollution damage caused by any offshore facility operated by them on behalf of all the parties involved.

6 Applicability of the 1992 Conventions

6.1 The question of whether the 1992 Civil Liability Convention and the 1992 Fund Convention apply to oil spills from FSUs and FPSOs depends on whether these structures fall within the definition of "ship" laid down in Article I.1 of the 1992 Civil Liability Convention, which reads:

"Ship" means any sea-going vessels 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.

6.2 It should be noted that the definition of "ship" in the 1992 Civil Liability Convention is identical to that in the 1984 Protocol to the 1969 Civil Liability Convention. When the definition of "ship" was considered at the 1984 International Conference on Liability and Compensation for Damage in Connexion with the Carriage of Certain Substances by Sea, the Chairman of the Committee of the Whole made the following introductory statement^{<1>}:

The Chairman stated that the first task now was to decide whether the CLC Convention, in its revised form, should apply to unladen tankers. The next point to decide was whether that extension would include combination carriers. Finally, a decision would have to be taken on whom, in the case of unladen tankers and combination-carriers, lay the burden of proof that there was no oil residue on board. There was also the question whether any extension of the scope of application of the CLC Convention should also apply to the Fund Convention.

6.3 It appears from the preparatory works that the issue of the applicability of the 1984 Protocols to FSUs and FPSOs was not discussed at the 1984 Conference and that the considerations of the Conference were focused on unladen tankers and combination carriers. For this reason, it is not possible to make any assumption as to whether the authors of what became the 1992 Protocols intended the definition of "ship" to cover FSUs and FPSOs. In this situation it is necessary to interpret the wording of that definition.

6.4 It may be appropriate to examine first the expression in the definition "constructed or adapted for the carriage of oil in bulk as cargo". This expression may give rise to different interpretations. One issue is whether the expression should be read so as to include a structure only when it is constructed or adapted *for the purpose* of carrying oil in bulk as cargo, or whether the text should be read to include a structure which is constructed or adapted in such a way that it is *capable* of carrying oil in bulk as cargo (although it may never have been intended for such carriage). In any case, the question is whether it can be considered that FSUs and FPSOs carry oil in bulk *as cargo*, notwithstanding the fact that some of them have the capacity to store large quantities of oil.

6.5 It should be noted that the definition of ship in the 1992 Conventions also covers structures which may not normally be classified as ships, since the definition refers to "any sea-going vessel and any seaborne craft of any type whatsoever".

6.6 In support of the position that the 1992 Conventions apply to FSUs and FPSOs on station and in transit, provided that these units are capable of carrying oil in bulk as cargo, even if never so engaged,

<1> Official Records of the International Conference on Liability and Compensation for Damage in Connexion with the Carriage of Certain Substances by Sea, 1984, and the International Conference on the Revision of the 1969 Civil Liability Convention and the 1971 Fund Convention, 1992; Volume 2, page 330

reference has been made to the view expressed by Mr. D. Abecassis in respect of the interpretation of the definition of "ship" in the 1992 Civil Liability Convention^{<2>} :

"The new definition appears more capable of covering the converted tankers which store oil at certain offshore installations or elsewhere, for the test now is not whether they are carrying oil in bulk as cargo, but whether they are constructed or adapted to do so, irrespective of their actual use at the time of the incident."

6.7 In the Director's view, it is questionable, however, whether Abecassis' statement should be interpreted as supporting such a wide interpretation of the definition, since his statement only relates to converted tankers.

6.8 As mentioned above, there is a variety of different types of FSUs and FPSOs. For this reason, it may not be appropriate to treat all of them in the same way for the purpose of determining whether or not such structures fall within the scope of application of the 1992 Conventions. Some types of FSUs and FPSOs may therefore, at least in certain circumstances, fall within the scope of application whereas others may not.

6.9 One possible approach would be to consider that FSUs and FPSOs fall within the definition of "ship" only when they are disconnected from exploitation and production facilities. Another approach could be to consider these structures as falling within that definition when they move off station with significant quantities of oil on board.

6.10 If FSUs and FPSOs contain oil, they do in fact constitute a risk of oil pollution. Against the background of the purpose of the 1992 Conventions, i.e. to provide compensation to victims of oil pollution, it could be argued that there are reasons to include them within the scope of the Conventions. However, it should be recalled that the 1992 Conventions were drafted with a view to covering maritime carriage of oil (cf. the preamble to the 1969 Civil Liability Convention). This again raises the question of whether, and if so to what extent, FSUs and FPSOs actually "carry oil" within the meaning of this expression in the 1992 Conventions.

6.11 In the light of the considerations set out above, the Director takes the view that it is very doubtful whether FSUs and FPSOs could be regarded as falling within the definition of "ship" laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. He considers that at least in most cases, FSUs and FPSOs would not be covered by that definition. However, in view of the great variety of types of FSUs and FPSOs which exist, the Director believes that it is not possible to take a definite position on this point in the abstract but that the issue would have to be addressed by the competent bodies of the 1992 Fund when a particular case arises, in the light of the circumstances of that case.

7 **Action to be taken by the Assembly**

The Assembly is invited:

- (a) to take note of the information contained in this document; and
- (b) to decide whether, and if so in what circumstances, FSUs and FPSOs should be considered as falling within the scope of application of the 1992 Civil Liability Convention and the 1992 Fund Convention.