



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

EXECUTIVE COMMITTEE  
11th session  
Agenda item 4

92FUND/EXC.11/5  
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## ANY OTHER BUSINESS

### SLOPS INCIDENT

#### Note by the Director

**Summary:**

The *Slops* suffered a fire and explosion whilst at anchor in the port of Piraeus (Greece). At its 8th session the Executive Committee decided that the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and that these Conventions did not apply to this incident. A claimant who has been unable to obtain compensation from the owner of the *Slops* has maintained that the vessel falls within the definition of 'ship' and has requested that his claim be submitted to binding arbitration in accordance with Internal Regulation 7.3 of the 1992 Fund.

**Action to be taken:** Decide whether to agree to submit the claim to binding arbitration.

### 1 **The incident**

- 1.1 On 15 June 2000 the Greek-registered waste oil reception facility *Slops* (10 815 GT) laden with some 5 000 m<sup>3</sup> of oily water, of which 1 000 – 2 000 m<sup>3</sup> 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.
- 1.2 It appears that the *Slops* had no liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.
- 1.3 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, including the north coast of Egina island, some 11 nautical miles south of the port. A local contractor was engaged by the owner of the *Slops* to undertake clean-up operations at sea in conjunction with the Hellenic

Coastguard. The same contractor undertook shoreline clean-up operations, focusing on sensitive tourist areas.

## **2 Applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention**

- 2.1 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 has been 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 the conversion the *Slops* appears to have remained permanently at anchor at its present location and has been used exclusively as a waste oil storage and processing unit. The local Port Authority has confirmed that the *Slops* has been permanently at anchor since May 1995 without propulsive equipment. It is understood that the oil residues recovered from the processed slops were sold as low-grade fuel oil.
- 2.2 At its 8th session the Executive Committee considered whether the craft fell within the definition of 'ship' under the 1992 Civil Liability Convention and the 1992 Fund Convention.
- 2.3 The 1992 Fund instructed a Greek lawyer to advise it on the status of the *Slops* under Greek law. He has expressed the view that as result of the conversion of the *Slops* it ceased to be a 'ship' under Greek law, which requires *inter alia* that in order to be considered a 'ship' the unit must have a propulsion capability.
- 2.4 The definition of 'ship' in Article I.1 of the 1992 Civil Liability Convention 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.
- 2.5 The Executive Committee recalled that the 1992 Fund Assembly decided at its 4th session that offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs), should be regarded as ships only when they carry oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate (document 92FUND/A.4/32, paragraph 24.3). The Committee noted that this decision was taken on the basis of the conclusion of the Second Intersessional Working Group that had been set up by the Assembly to study this issue. The Committee also noted that although the Working Group 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).
- 2.6 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.I of the 1992 Civil Liability Convention.

- 2.7 The Committee decided that, for the reasons set out in paragraphs 2.5 and 2.6, the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and that therefore these Conventions did not apply to this incident (document 92FUND/EXC.8/8, paragraph 4.3.8).

### **3 Recent developments**

#### *Claim by a Greek clean-up contractor*

- 3.1 In October 2000 London-based lawyers acting for the clean-up contractor that had performed clean-up operations contacted the 1992 Fund requesting the Executive Committee to reverse its previous decision and accept that the *Slops* was a 'ship' for the purpose of the 1992 Civil Liability Convention. In support of the claimant's contention the lawyers placed emphasis on the first part of the definition of 'ship', ie 'any seagoing vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo'. They further argued that the proviso in the definition requiring a ship to be 'actually carrying oil in bulk as cargo' related to combination carriers, ie OBOs, and therefore had no relevance to the present situation.
- 3.2 In his discussion with the claimant and his lawyers the Director referred to the Records of Decisions of the 4th session of the 1992 Fund Assembly and the 8th session of the 1992 Fund Executive Committee regarding the applicability of the 1992 Civil Liability Convention to offshore craft in general and to the *Slops* incident respectively (cf paragraphs 2.5 - 2.7 above). As regards the proviso in the definition of 'ship' in Article 1.1 of the 1992 Civil Liability Convention the Director drew their attention to the conclusions of the Intersessional Working Group when it reconvened in April 2000 and in particular to the conclusion that the proviso in Article 1.1 should apply to all tankers and not only to ore/bulk/oil ships (OBOs).
- 3.3 The Director informed the claimant that he was not prepared to submit the claim to the Executive Committee for further consideration.

#### *Request to submit the claim to arbitration*

- 3.4 The lawyers acting for the claimant have indicated that the claimant remained of the view that the *Slops* fell within the definition of 'ship' in the 1992 Civil Liability Convention. They have since requested the 1992 Fund to submit the claim to binding arbitration as provided in Internal Regulation 7.3 of the 1992 Fund.
- 3.5 The claimant has argued that the question of whether the *Slops* falls within the definition of 'ship' in the 1992 Conventions is one of interpretation of the wording of the definition. As regards the conclusions of the Intersessional Working Group, the claimant has made the point that the issue of whether floating storage units falls within the scope of application of the 1992 Conventions was never considered when the Conventions were drafted. In his opinion the deliberations by the Second Intersessional Working Group represent a later attempt to define what is covered by the Conventions. He has also pointed out that it was recognised by the Assembly that the final decision regarding the applicability of the 1992 Conventions to offshore craft was a matter for national courts. The claimant has expressed the view that the dispute could be settled more cheaply and speedily by arbitration.

#### *The Director's considerations*

- 3.6 It should be recalled that the question of whether alternative settlement procedures could be used within the international compensation system established by the 1992 Conventions was considered by the First Intersessional Working Group and that the report of the Working Group (document 92FUND/A.2/18) was considered by the Assembly at its 2nd session. It will also be recalled that one of the options considered was that of arbitration. During the discussions in the Assembly it was recognised that the scope for the 1992 Fund to submit claims to arbitration

would be limited, since a claim was admissible only if it fell within the definitions of 'pollution damage' and 'preventive measures' laid down in the 1992 Conventions as interpreted by the IOPC Funds' governing bodies (document 92FUND/A.2/29, paragraph 20.10).

- 3.7 In the Director's view it would be appropriate to submit individual claims to arbitration for example if the dispute relates to the quantum of the claim. In the case under consideration, the 1992 Fund's governing bodies, composed of representatives of Governments of Fund Member States, have taken decisions on the interpretation of a definition in the 1992 Conventions, ie the definition of 'ship'. The Director therefore takes the view that it would not be appropriate to submit to arbitration the question of whether the governing bodies' interpretation of the definition is correct. The Director considers that if the claimant does not accept the Executive Committee's position in this regard, he should follow the procedure for solving disputes laid down in the 1992 Conventions, ie to take legal action against the shipowner and the 1992 Fund through the competent national court.

**4 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 consider whether the 1992 Fund should agree to submit the claim in question to binding arbitration.
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