



INCIDENTS INVOLVING THE 1992 FUND

SLOPS

Note by the Director

Summary:

The *Slops* suffered a fire and explosion whilst at anchor in the port of Piraeus (Greece). At its June 2000 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 had been unable to obtain compensation from the owner of the *Slops* maintained that the vessel fell within the definition of 'ship' and requested that his claim be submitted to binding arbitration in accordance with Internal Regulation 7.3 of the 1992 Fund. This request was rejected by the Executive Committee at its January 2001 session.

Two companies which carried out clean-up operations have taken legal action against the 1992 Fund, arguing that since the shipowner is manifestly incapable of satisfying their claims for compensation and they have taken all reasonable measures against him, they are entitled to compensation from the Fund.

Action to be taken:

To give the Director such instructions in respect of the legal actions against the 1992 Fund as it may deem appropriate.

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 m³ of oily water, of which 1 000 – 2 000 m³ 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 was 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* appeared to have remained permanently at anchor at its present location and had been used exclusively as a waste oil storage and processing unit. The local Port Authority confirmed that the *Slops* had been permanently at anchor since May 1995 without propulsive equipment. It was understood that the oil residues recovered from the processed slops were sold as low-grade fuel oil.
- 2.2 At its 8th session, held in June 2000, 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 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.

- 2.4 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).
- 2.5 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.

- 2.6 The Committee decided that, for the reasons set out in paragraphs 2.4 and 2.5, 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 Consideration by the Executive Committee of claim by 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 æaborne 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 The Director informed the claimant that he was not prepared to submit the claim to the Executive Committee for further consideration.
- 3.3 The lawyers acting for the claimant indicated that the claimant remained of the view that the *Slops* fell within the definition of 'ship' in the 1992 Civil Liability Convention. They requested the 1992 Fund to submit the claim to binding arbitration as provided in Internal Regulation 7.3 of the 1992 Fund.
- 3.4 The claimant argued that the question of whether the *Slops* fell within the definition of 'ship' in the 1992 Conventions was one of interpretation of the wording of the definition. As regards the conclusions of the Intersessional Working Group, the claimant made the point that the issue of whether floating storage units fell 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 represented a later attempt to define what was 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 expressed the view that the dispute could be settled more cheaply and speedily by arbitration.
- 3.5 The Committee endorsed the Director's view that it would not be appropriate to submit to arbitration the question of whether the governing bodies' interpretation of the definition was correct (document 92FUND/EXC.11/6, paragraph 4.3.13).
- 3.6 The Committee expressed the view that if the claimant did 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 Legal actions

- 4.1 In October 2001 two Greek companies took legal action in the Court of first instance in Piraeus (Greece) against the registered owner of the *Slops* claiming compensation for costs of clean-up operations and preventive measures for US\$1 677 432 (£1 143 500) and US\$858 987 (£585 500) (plus interest), respectively. The claimants served the writ on the 1992 Fund in January 2002.
- 4.2 The companies alleged that they had been instructed by the owner of the *Slops* to carry out clean-up operations and to take preventive measures in response to the oil spill. They also stated that they informed the Greek Ministry of Merchant Marine on a daily basis of the operations which were carried out during a period of 37 days. They mentioned that the operations were monitored

by an expert engaged by the 1992 Fund. The companies stated that they had requested the owner of the *Slops* to pay the above-mentioned costs but that he had failed to do so.

- 4.3 The companies did not in their court action refer to the 1992 Civil Liability Convention. It appeared that the action was based on the owner of the *Slops* not having fulfilled his contractual obligations to pay the cost of the operations.
- 4.4 Notification of the 1992 Fund of legal actions against the registered owner is governed by Article 7.6 of the 1992 Fund Convention which reads:

Without prejudice to the provisions of paragraph 4, where an action under the 1992 Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the Fund in the sense that the facts and findings in that judgement may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

- 4.5 Notification of the 1992 Fund under Article 7.6 of the 1992 Fund Convention of an action against the registered owner can be made only if that action is based on the 1992 Civil Liability Convention. This action was not based on that Convention. In addition, the provisions of the Greek Civil Procedural Code on notification of actions had not been complied with. The Director decided therefore that the 1992 Fund should not intervene in the proceedings. The action will be heard by the Court on 8 October 2002.
- 4.6 In February 2002 these companies took legal action against the 1992 Fund in the Court of first instance in Piraeus claiming compensation for the cost of clean-up operations and preventive measures for the same amounts as in their action against the owner, ie for US\$1 677 432 (£1 143 500) and US\$858 987 (£585 500) (plus interest), respectively. The 1992 Fund was only informed of these actions in June 2002.
- 4.7 In their pleading the companies have stated that the *Slops* was constructed exclusively to carry oil by sea (ie was constructed as a tanker), that it had a nationality certificate as a vessel and that it was still registered as a tanker with the Piraeus Ship's Registry. They have also maintained that even when the *Slops* operated as a separation area (a slops handling unit), it floated at sea and that its only purpose was to carry oil in its hull. They have mentioned that the *Slops* did not have any liability insurance under the 1992 Civil Liability Convention.
- 4.8 The companies have stated that the registered owner has no assets apart from the *Slops* which had been destroyed by fire, did not even have scrap value and did not have any insurance as required under the 1992 Civil Liability Convention. They have argued that they have taken all reasonable measures against the owner of the *Slops*, namely legal action against the owner, investigation into the owner's financial situation, request in court for arrest of assets belonging to the owner and request for declaring the owner bankrupt. They have maintained that, since the owner is manifestly incapable of satisfying their claims, they are entitled to compensation for their costs as specified in paragraph 4.6 above.
- 4.9 The Director has engaged Greek lawyers to represent the 1992 Fund in the court proceedings.
- 4.10 At a hearing on 11 June 2002, the Court decided to postpone its consideration of the case to 8 October 2002.

- 4.11 The Director considers that the companies have not provided any information in their pleading which would modify the Executive Committee's position referred to in paragraph 2.6 that the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Fund Convention. Subject to any instructions which the Executive Committee may give him, he intends therefore to oppose the action accordingly.

5 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 give the Director such instructions in respect of the legal actions as it may deem appropriate.
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