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OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
22nd session
Agenda item 3

92FUND/EXC.22/7
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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 July 2000 session the Executive Committee decided that the *Slops* should not be considered 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.

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. At its July 2002 session the Executive Committee decided that the companies had not provided any information which would modify its position that the *Slops* should not be considered a 'ship' and instructed the Director to oppose the action.

The Court of first instance rendered its judgement on 13 December 2002, holding that the *Slops* fell within the definition of 'ship'. The 1992 Fund has appealed against the judgement, as decided by the Executive Committee.

Action to be taken:

Information to be noted.

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 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 July 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 Executive Committee recalled that the 1992 Fund Assembly had 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 are carrying oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operated (document 92FUND/A.4/32, paragraph 24.3). The Committee noted that this decision had been taken on the basis of the conclusion of the Second Intersessional Working Group which had been set up by the Assembly to study this issue.
- 2.4 The Committee also noted that although the Working Group had mainly considered the applicability of the 1992 Conventions in respect of craft in the offshore oil industry, there was in the Director's view 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.1 of the 1992 Civil Liability Convention.
- 2.6 The Committee decided, for the reasons set out in paragraph 2.5, that the *Slops* should not be considered 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 Legal actions

Proceedings before the court of first instance

- 3.1 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 €1 536 528 (£1 083 000) and €786 329 (£554 400) (plus interest), respectively. The claimants served the writ on the 1992 Fund in January 2002.

- 3.2 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 had informed the Greek Ministry of Merchant Marine on a daily basis of the operations which had been 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.
- 3.3 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.
- 3.4 Notification of the 1992 Fund of legal actions against the registered owner is governed by Article 7.6 of the 1992 Fund Convention. Such notification 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.
- 3.5 In February 2002 these companies took separate legal actions 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 those referred to in paragraph 3.1 above. The 1992 Fund was informed of these actions in June 2002.
- 3.6 In their pleadings the companies 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 also maintained that even when the *Slops* operated as an oil separation unit (a slops handling unit), it floated at sea and that its only purpose was to carry oil in its hull. They mentioned that the *Slops* did not have any liability insurance under the 1992 Civil Liability Convention.
- 3.7 The companies stated that the registered owner had no assets apart from the *Slops* which had been destroyed by fire and did not even have scrap value. They argued that they had taken all reasonable measures against the owner of the *Slops*, namely legal action against the owner, investigation into the owner's financial situation, requesting the court to arrest the assets belonging to the owner and that the owner should be declared bankrupt. They maintained that, since the owner was manifestly incapable of satisfying their claims, they were entitled to compensation for their costs from the 1992 Fund.
- 3.8 At its 17th session, held in July 2002, the Executive Committee endorsed the Director's view that the companies had not provided any information in their pleadings which would modify the Committee's position that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Fund Convention and instructed the Director to oppose the actions accordingly (document 92FUND/EXC.17/10, paragraph 3.5.10).
- 3.9 The 1992 Fund submitted pleadings opposing the actions in accordance with the Executive Committee's decision.
- 3.10 Both sets of actions were dealt with by the Court at a hearing held on 8 October 2002. The Court rendered its judgements on 13 December 2002.
- 3.11 As regards the actions against the registered owner of the *Slops* who did not appear at the court hearing, the Court rendered a default judgement against him for the amounts claimed plus interest.

- 3.12 As regards the actions against the 1992 Fund, the Court held in its judgement that the *Slops* fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. In the Court's opinion, any type of floating unit originally constructed as a seagoing vessel for the purpose of carrying oil is and remains a ship, although it may subsequently be converted into another type of floating unit, such as a floating oil waste receiving and processing facility, and notwithstanding that it may be stationary or that the engine may have been temporarily removed or the propeller sealed.
- 3.13 The Court held that the 1992 Fund should pay the companies €1 536 528 (£1 083 000) and €786 832 (£554 400) respectively, ie the amounts claimed, plus legal interest from the date of service of the writ (12 February 2002) to the date of payment and costs of €93 000 (£65 000).

Consideration by the Executive Committee of whether the 1992 Fund should appeal

- 3.14 The Director submitted the question of whether the 1992 Fund should appeal against the judgement to the Executive Committee at its 20th session, held in February 2003. The Director drew attention to the fact that in its decision, the Committee had set out clearly the reasons why the *Slops* did not fall within the definition of 'ship'. He expressed the view that since the issue involved raised an important question of interpretation of one of the basic definitions in the 1992 Conventions, the 1992 Fund should appeal against the judgement.
- 3.15 The Greek delegation took the view that no appeal should be lodged against the judgement of the Court of first instance since the reasoning behind the Court's judgement was convincing. That delegation pointed out that the changes made to the *Slops* to enable it to be used as an oil reception facility did not affect its ability to carry oil as cargo and that the sealing of the engine and the removal of the propeller were temporary operational measures. The delegation further stated that the proviso in the definition of 'ship' in the 1992 Civil Liability Convention did not apply to vessels constructed as tankers, but only to combination carriers, and that a different interpretation made the distinction of two categories of ship meaningless. The Greek delegation referred to the conclusions of the 1992 Fund Working Group on the interpretation of the definition of 'ship' in the 1992 Conventions, and in particular to document 92FUND/WGR.2/3 presented by the Director regarding the preparatory works in connection with the amendment of the 1969 Civil Liability Convention, which supported this view. Finally, the Greek delegation drew attention to the general obligation of States to protect the marine environment laid down in Article 192 of the Law of the Sea Convention, which called for the interpretation of other Conventions in a manner compatible with this general obligation, ie in a manner as broad as possible to the extent that this contributed to the protection of the marine environment.
- 3.16 A number of delegations expressed sympathy with the views expressed by the Greek delegation but pointed out that the decision by the Executive Committee that the *Slops* should not be considered a 'ship' for the purposes of the 1992 Conventions was based on a policy decision by the 1992 Fund Assembly regarding the conditions under which floating storage units should be considered a 'ship' for the purpose of the Conventions, namely only when they were carrying oil in bulk, which implied that they were on a voyage. Those delegations referred to the preamble to the Conventions, which specifically referred to the transportation of oil.
- 3.17 Other delegations, which had previously expressed reservations about the 1992 Fund's policy in this regard, agreed that unless the policy was changed, the Fund had no option but to appeal against the decision of the Court of first instance.
- 3.18 One delegation, whilst recognising that it was difficult for the 1992 Fund to change its policy regarding the scope of coverage of floating storage units under the 1992 Conventions, questioned the need to appeal against the judgement of the Court of first instance, bearing in mind that the Court of appeal was likely to uphold that decision.

- 3.19 The Executive Committee decided that the 1992 Fund should appeal against the decision of the first instance Court (document 92FUND/EXC.20/7, paragraph 3.5.15).

The Fund's appeal

- 3.20 The 1992 Fund has appealed against the judgement requesting the Court of Appeal to reject the claims and put forward the following main arguments:

The Court of first instance erroneously considered that the *Slops* was at the time of the incident carrying oil, regarding the mere existence on board of oil residues as 'carriage', ie transportation. The Court also considered that the 2 000 m³ of oil on board was carried in the sense that it was intended to be transported to the oil refineries, but there was no evidence that this would be the case. A document issued by the Ministry of Merchant Marine proved beyond doubt that the *Slops*, which constituted a floating industrial unit for the processing of oil residues and separating them from water, operated continuously as such a unit from 2 May 1995 and was permanently anchored since that date without any propulsion equipment. Consequently the *Slops* was not intended to carry oil residues by sea to oil refineries and never carried out such operations during the time it served as a floating oil residue processing facility. Such carriage was performed by the use of barges owned by third parties, which went alongside the *Slops* to receive the oil residues and transported them to the refineries for further processing. In view of these facts, the *Slops* cannot be considered to fall within the definition of 'ship' in the 1992 Conventions.

The *Slops* did not have the liability insurance required under Article VII.1 of the 1992 Civil Liability Convention. This requirement had never been imposed by the Greek authorities upon the *Slops*. The Greek authorities are obliged under Article VII.10 not to permit a vessel flying the Greek flag to carry out commercial activities without a certificate of such insurance.

- 3.21 The companies have not yet submitted any pleadings to the Court of Appeal. In accordance with the Greek Civil Procedure Rules, the companies may submit written pleadings by the date of the hearing on 6 November 2003.

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) give the Director such instructions in respect of the appeal proceedings as it may deem appropriate.
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