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APPLICABILITY OF THE 1992 CONVENTIONS TO OFFSHORE CRAFT

Note by the International Group of P & I Clubs

Summary:	This document contains information concerning offshore craft insured by P & I Clubs in the International Group, and the scope of cover on such craft which the Clubs provide. It sets out the Group's view on the applicability of the 1992 Conventions including relevant issues of certification.
Action to be taken:	See conclusions in paragraph 7.

1 Introduction

1.1 P & I Clubs in the International Group provide cover against pollution liability risks not only to conventional ships but also to various types of offshore craft, including both floating storage units (FSUs) and floating production storage and offloading units (FPSOs).

1.2 The Clubs would welcome clarification of the circumstances in which the 1992 Civil Liability Convention applies to offshore craft. The issue is relevant not only to the liability of the Club and its member in the event of an incident, but also to the circumstances in which an offshore craft should be issued with a CLC certificate.

1.3 Risks associated with certain specialist operations, including exploration and production, are excluded from the mutual reinsurance arrangements established by the International Group for pooling of claims. Clubs may nevertheless provide cover for craft engaged in such operations, with the support of independent reinsurance arrangements, and a number of them do so.

2 Types of Offshore Craft

2.1 It appears that there are various types of unit in common use, and that there are various functions which they may be able to perform other than carriage. As implied by the descriptions FSU and FPSO, these other functions are in some cases confined to storage, whilst in others they include production operations.

2.2 FPSOs normally receive oil directly from the producing well and so provide an alternative to a production platform. Such units are typically fitted with production equipment, particularly to separate gas from oil on board. They are also often fitted with a flare stack. These are relatively sophisticated craft which normally remain in position on a permanent or semi-permanent basis. It would be abnormal for an FPSO to be used to carry oil, save possibly in instances when it comes off station for maintenance purposes. This would be a rare occurrence in the life of an FPSO.

2.3 FSUs are typically converted tankers which normally do not engage in production or receive oil directly from the producing well. Instead they normally receive it via a production platform or other producing facilities. In the absence of any production operations on board, the function of an FSU on station is simply to provide a storage facility from which the oil may be off-loaded onto shuttle tankers. Some FSUs remain fully able to carry oil in bulk as cargo, though normally this would be unlikely in the absence of some other reason for coming off station, such as maintenance. In the case of an FSU this would be a less rare occurrence than in the case of an FPSO.

2.4 Whilst most units appear to fall into one or other of these categories, there are some specially built multi-purpose craft which may be used more routinely in the transport of oil. One Club insures some small units which are used sometimes as shuttle tankers, sometimes as dry cargo supply vessels, and sometimes as production units – alternating between these functions on a frequent basis. There are also specially built units designed for "grazing" marginal fields, which may involve transporting oil to refineries ashore, and possibly also between fields.

3 Legal Framework

The Clubs agree with the view that the question whether CLC 92 applies to any particular incident depends on two factors: firstly, whether the unit is a "ship", and secondly whether the incident involves "oil" as defined by the Convention. If the unit is not a "ship" then the second question does not arise. If it is considered a "ship", the second question may depend on the operation in which it is engaged at the time of the incident – in particular, whether it is engaged in the carriage of oil.

4 Definition of "Ship"

4.1 The definition of "ship" in CLC 92 involves a different approach from that in CLC 69. As the 1969 Convention requires the vessel to be "actually carrying oil in bulk as cargo", the issue depends on the use being made of the vessel at the time of the incident. Under CLC 92 there is no similar requirement, and the issue depends on the use or uses for which the vessel is constructed or adapted. The actual use of the craft at the time of an incident may be relevant in applying the definition of "oil", but under CLC 92 it should not affect the question whether the craft is a "ship".

4.2 It follows that under CLC 92 a craft is in principle either always a "ship" or never a "ship". The only exceptions to this principle are vessels constructed or adapted for the carriage of oil and other cargoes, as set out in the proviso to the definition. This proviso is generally irrelevant to offshore craft since persistent oil is normally the only cargo which they are constructed or adapted to have on board.

4.3 The question whether any particular craft is to be considered a ship can be a difficult one when such craft are constructed or adapted for more than one purpose. The Clubs would favour an interpretation which offers a reasonable degree of certainty whilst leaving scope to consider individual cases on their particular merits.

4.4 A "primary purpose" test would offer a high degree of certainty, since in practice it would probably exclude virtually all offshore craft from the ambit of the Conventions. However this would seem an unduly inflexible approach. The proviso to the definition, dealing with ships designed to carry oil and other cargoes, contains no requirement that the carriage of oil should be the primary employment for which the vessel is designed. The Conventions will clearly apply to an oil spill from such a vessel when carrying a cargo of persistent oil, even if this is the only oil-carrying voyage which it ever performs. Some might therefore consider it strange if an offshore craft, constructed or adapted to carry oil when required to do so, were to fall outside the Conventions in similar circumstances.

4.5 In reconciling the competing arguments, it seems reasonable to distinguish between the different purposes for which offshore craft may be constructed or adapted, apart from conventional carriage. Where production operations are involved, a reasonably clear distinction can be drawn between maritime transportation on the one hand, and oil production on the other. A typical FPSO differs to a relatively great extent from the conventional tanker, not only in design and construction, but also in its ordinary intended use.

4.6 These distinctions are by no means so clear in the case of storage. In some market conditions it has not been uncommon for a normal cargo carrying voyage to be interrupted by a significant period of storage, during which the cargo owner awaits developments before providing discharge orders to the ship. It is also not uncommon for ocean tankers to tranship their cargoes into shuttle tankers: if a collision between the two craft were to result in a collision from the tanker, the issue would in principle seem very similar to those where the craft involved is an FSU. Clubs in the International Group do not exclude storage operations from the ambit of their mutual reinsurance arrangements without some additional element in the nature of production activities, namely transfer of oil directly from the producing well and/or the operation of equipment to separate oil from gas.

4.7 For these reasons it is suggested that the most workable interpretation of CLC 92 would generally exclude FPSOs, but at the same time recognise that FSUs can be regarded as "ships". There should be sufficient flexibility to deal with exceptional cases, but this should be the normal rule.

5 Definition of "Oil"

5.1 An incident will be governed by CLC 92 if it involves a spill (or threatened spill) of "oil" as defined by the Convention. It is recognised that the term is confined to oil carried on board the ship as cargo or bunkers, and that carriage involves the notion of transport.

5.2 It would therefore appear that the Convention cannot apply to an actual or threatened spill from a unit if at the time of the incident she is engaged in storage rather than in some form of transport.

5.3 If a unit comes off station and discharges the oil on board at some other location, such as a shore side refinery, it is suggested that this would constitute carriage for the purposes of CLC 92, and that the Convention would apply to any incident occurring during the course of such carriage.

5.4 If a craft is employed to "graze" offshore fields, and moves oil between two or more fields prior to discharge at some other location, all such movements should be regarded as carriage of oil.

5.5 A different approach would appear appropriate in cases where a craft leaves its station for temporary reasons, such as adverse weather, and thereafter returns without having discharged cargo at any other location. Any such movements should be regarded as part of the unit's storage operations rather than as carriage of oil.

6 Certification

6.1 Given the present uncertainty as to the types of craft which fall within the definition of "ship", no clear practice appears to exist as to the circumstances in which certificates should be issued to such craft under CLC 92. The owners of such craft are naturally reluctant to run any risk of operational difficulties resulting from disputes over the sufficiency or otherwise of their documentation. For reasons such as these there are instances in which Clubs have provided Blue Cards, and where CLC certificates have been issued, despite reservations as to whether the unit constituted a "ship" . In particular, certificates have been issued to some FPSOs when, in the view of the owners or insurers concerned, this should not have been necessary.

6.2 As the number of offshore craft remains limited, it is not suggested that their certification creates any problems of administrative burden. There is however concern that the issue of a certificate may be interpreted as acknowledgement that the craft concerned is a "ship", and that this may complicate the legal position in the event of an incident.

6.3 When a CLC certificate is issued to such craft, it should be possible for any party concerned – e.g. the owner, the insurer or the issuing authority – to call for the certificate to be endorsed with a note to the effect that it does not constitute an admission by any party that the craft concerned is a "ship" within the meaning of the Convention.

7 Conclusions

7.1 In conclusion it is suggested that:

(a) craft constructed or adapted for production operations should not normally be considered "ships" within the meaning of CLC 92;

(b) craft should not fall outside the scope of the definition on the mere ground that they are constructed or adapted for storage; an FSU should be capable of being considered a ship;

(c) CLC 92 should not apply to incidents involving oil held in storage, but where the craft is a "ship" the Convention should apply to movements of oil leading to discharge at another location.

7.2 The practice relating to certification of offshore units should be reviewed, with the aim of avoiding legal complications or prejudice to any party arising from the issue of a CLC certificate.
