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Agenda item 3

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## APPLICABILITY OF THE 1992 CONVENTIONS TO OFFSHORE CRAFT

Submitted by the United Kingdom delegation

***Summary:***

The United Kingdom proposes that the Working Group take its previous paper on the application of the 1992 Civil Liability and Fund Conventions to FPSOs, FSUs and other offshore craft as one of the base documents for its discussion. This paper provides information on subsequent developments and makes a recommendation.

***Action to be taken:***

See document 92FUND/A.3/18.

### **1 Introduction**

1.1 The United Kingdom delegation submitted a paper to the 3rd session of the 1992 Fund Assembly. That paper discussed the applicability of the 1992 Civil Liability and Fund Conventions to floating storage units (FSUs), floating production storage offloading facilities (FPSOs), and other offshore craft. The Assembly decided to establish an intersessional working group to progress discussion on the issue.

1.2 We propose that the working group take that earlier paper as one of the base documents for its discussion. This paper supplements that paper. It provides information on developments since the Assembly meeting and makes a recommendation.

### **2 Previous United Kingdom paper**

2.1 The United Kingdom delegation's previous paper did not make any recommendation. It contained a discussion of the definitions of "ship" and "oil" in Articles 1.1 and 1.5 of the 1992 Civil Liability

Convention. It concluded that the interpretation of the phrase "carried as cargo" in those definitions determined the scope of application of the Convention.

2.2 The paper set out three scenarios in which "oil" could be considered to be "carried as cargo":

scenario 1: only oil carried on voyages to and from a port or terminal is "carried as cargo";

scenario 2: oil carried on any voyage between two distinct points is "carried as cargo"; or

scenario 3: oil carried on any movement whatsoever is "carried as cargo".

2.3 The normal operations of tankers and shuttle tankers are examples of scenario 1. Voyages of grazing tankers and extended well test vessels to and from port are also examples of scenario 1. If, however, a grazing tanker or an extended well test vessel travels between two different wells without an intermediate port call, this is an example of scenario 2. If an FPSO or FSU leaves its site of operation because of bad weather and then returns when calmer weather returns, without loading or unloading oil in the interim, this is an example of scenario 3.

### 3 Debate at the 3rd session of the 1992 Fund Assembly

During the debate at the 3rd session of the 1992 Fund Assembly, a number of delegations expressed the view that the 1992 Civil Liability and Fund Conventions should cover the movements envisaged in scenario 1. A number of delegations, including the United Kingdom delegation, argued that the Conventions should also cover the movements envisaged in scenario 2. A number of other delegations considered that the Conventions should not cover the movements envisaged in scenario 3. The circumstances of scenario 3 were envisaged by some to be related more to production operations of the offshore facility than carriage of oil.

### 4 Developments since the 3rd session of the 1992 Fund Assembly

4.1 The United Kingdom and some other States are covered for certain risks from offshore oil and gas exploration and production. This is an industry based scheme known as the Offshore Pollution Liability Agreement (OPOL).

4.2 Delegates may wish to note that OPOL held an Extraordinary General Meeting (EGM) in January 1999. At the EGM, a special resolution was carried that amends the definition of "Offshore Facility" in OPOL. The Annex to this paper contains information on OPOL and the full text of the revised definition of "Offshore Facility".

4.3 The amendment to the definition makes clear that OPOL provides cover in respect of offshore facilities:

- (a) while they are engaged in oil exploration and exploitation activities; *and*
- (b) when temporarily removed from their operational site.

4.4 The revised definition does this by providing that offshore facilities include:

*"any installation of any kind, fixed or mobile, intended for the purpose of exploring for, producing, treating or storing oil from the seabed or its subsoil where such installation has been temporarily removed from its operational site for whatever reason".*

4.5 This would, for example, include installations that have to be moved in heavy weather. By making this amendment, the offshore industry would appear to have recognised that such movements are an operational matter.

## **5 Recommendation**

5.1 The United Kingdom proposes that the working group recommend to the Assembly that it agree that the scenarios 1 and 2 above are entirely consistent with the scope and purpose of the CLC/Fund regime. The 1992 Fund should therefore cover such movements.

5.2 The United Kingdom accepts that scenario 3 will in some circumstances constitute "carriage of oil", but determining whether this is the case may be problematic. However, we would propose that in general where the movement is primarily due to safety or operational considerations, rather than the carriage of oil with the intention of discharge at a specific point it would normally be beyond the scope of the Conventions.

5.3 The key outcome of the Working Group's discussion for the United Kingdom delegation, however, is to achieve clarity. This will enable States with an offshore industry to take steps to fill any "gap" (for example, by requiring operators to participate in arrangements akin to OPOL).

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**Annex**  
**Offshore Pollution Liability Agreement (OPOL)**

Parties to OPOL

The parties to OPOL are operators of offshore oil and gas facilities.

Amount of cover

The parties to OPOL accept strict liability for pollution damage and preventive measures up to a maximum amount per incident. The parties review this amount periodically to take account of changes in risk and inflation. Since July 1996, the amount has been \$120 million per incident.

The parties agree to contribute to the payment of compensation due from any party that fails to meet its obligations to claimants.

Geographical scope

Membership of OPOL is open to companies operating offshore facilities within the jurisdiction of a member State of the European Union, Norway or the Isle of Man. Participating companies can extend the scheme to apply to offshore facilities within the jurisdiction of any other State.

Legal status

Participation in OPOL is voluntary. In the United Kingdom, however, the Government requires operators of offshore oil and gas installations to be parties to OPOL or to have other arrangements in place that provide cover similar to OPOL.

Definition of offshore facility

Before the adoption of the amendment, clause I(10) of OPOL defined "offshore facility" as follows:

*"Offshore Facility" means:*

*A. any well and any installation or pipeline or portion thereof of any kind, fixed or mobile, being used for the purpose of exploring for, producing, treating, storing or transporting Oil from the seabed or its subsoil; and*

*B. any well used for the purpose of exploring for or recovering gas or natural gas liquids from the seabed or its subsoil during the period that any such well is being drilled (including completion), recompleted or worked upon (except for normal work-over operations);*

*which is located within the jurisdiction of a Designated State to the extent that it and, in the case of any well, any installation from which it is drilled, are both to seaward of the low-water line along the coast as marked on large scale charts officially recognized by the Government of such Designated State;*

*provided however that none of the following shall be considered an Offshore Facility:*

*(i) any abandoned well, installation or pipeline or*

*(ii) any ship, barge or other craft not being used for the storage of Oil, commencing at the loading manifold thereof.*

Following the adoption of the amendment, the definition now provides that:

*"Offshore Facility" means:*

*A. any well and any installation or pipeline or portion thereof of any kind, fixed or mobile, being used for the purpose of exploring for, producing, treating, storing or transporting Oil from the seabed or its subsoil;*

*B. any well used for the purpose of exploring for or recovering gas or natural gas liquids from the seabed or its subsoil during the period that any such well is being drilled (including completion), recompleted or worked upon (except for normal work-over operations); and*

*C. any installation of any kind, fixed or mobile, intended for the purpose of exploring for, producing, treating or storing oil from the seabed or its subsoil where such installation has been temporarily removed from its operational site for whatever reason;*

*which is located within the jurisdiction of a Designated State to the extent that it and, in the case of any well, any installation from which it is drilled, are both to seaward of the low-water line along the coast as marked on large scale charts officially recognized by the Government of such Designated State;*

*provided however that none of the following shall be considered an Offshore Facility:*

*(i) any abandoned well, installation or pipeline or*

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