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DEFINITION OF 'SHIP' IN THE 1992 CONVENTIONS

Note by the International Group of P & I Clubs

Summary:

This document sets out the view of the International Group of P & I Clubs on the circumstances in which a tanker constructed or adapted for the purpose of carrying both persistent and non-persistent oil is to be considered a "ship" within the meaning of the 1992 Conventions.

Action to be taken:

See conclusions in paragraph 9.

1 The International Group of P & I Clubs has examined the issues discussed in the paper submitted by the United Kingdom delegation, and prompted originally by the *Santa Anna* incident in the United Kingdom in January 1998. Notwithstanding the arguments that were available to the owners and the insurers in the case, it is understood that the resulting claim has been settled and that further debate is concerned with questions of principle which may arise in future.

2 As foreseen in the paper submitted by the United Kingdom delegation, the issue most likely to have practical implications is the question whether the proviso in the definition of "ship" applies only to combination carriers. The Clubs take the view that the proviso should not be restricted to such vessels. They consider that such a restriction is not supported by the text of the Convention, and that it would create undesirable complications and uncertainties in relation to clean product tankers.

3 Over the years there have been many issues which have been resolved only through due regard being paid to the definitions of terms used in the Conventions. The current debate on the application of the

Conventions to offshore craft is but one example of the importance of the definitions - in that case particularly the definition of "oil".

4 Likewise in the present context it cannot be overlooked that the term "oil", which appears repeatedly in the proviso to the definition of "ship", is a term of art with a defined meaning. Fundamental principles of interpretation require it to be construed as referring to persistent oil, and not to non-persistent oil. The words "oil and other cargoes" should be regarded as a single phrase in which the scope of "other cargoes" is governed by the scope of the term "oil". It must follow that the phrase "other cargoes" refers to cargoes other than persistent oil, including non-persistent oil. The proposed implication of the word "solid" therefore runs counter to the natural interpretation of the proviso.

5 If the scope of the phrase "other cargoes" is altered by implying the extraneous notion of solid goods, the practical result is the same as if the term "oil" were construed as covering both persistent and non-persistent oils. Clearly this would not be permissible.

6 It is appreciated that the participants in the 1984 Conference may have had combination carriers primarily in mind when drawing up the proviso. However this does not mean that they would have excluded clean product tankers from the scope of the proviso if the application of the Conventions to such ships had been explicitly considered. In principle there is no obvious reason why they should be treated differently from combination carriers.

7 A practical advantage of the proviso is that it has a more certain effect than the preceding words which it qualifies. If clean product tankers were to be taken outside the scope of the proviso, the question whether they are "ships" would depend on whether they are regarded as being constructed or adapted for the carriage of persistent oil as cargo. This could give rise to frequent debate, depending on the design, construction and intended employment of any particular tanker. As recognised in the paper submitted by the United Kingdom delegation, this approach could result in CLC 92 applying to some tankers that never carry persistent oil as cargo. It could also unnecessarily increase the scope of CLC certification.

8 The position is much clearer if clean product tankers are governed by the proviso. If such a tanker is actually carrying persistent oil in bulk as cargo at the time of the incident, there is no doubt that the tanker is then a "ship" and that the Convention applies. It is also clear that it may apply if persistent oil in bulk has been carried on an earlier voyage, subject to the right of the owner to prove that there were no residues of persistent oil remaining on board.

9 For these reasons it is submitted that the proviso to the definition of "ship" in CLC 92 should be given its ordinary and natural meaning, with the result that tankers constructed or adapted for the carriage of both persistent and non-persistent oils are governed by the proviso and are considered "ships" in the circumstances set out therein.
