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DEFINITION OF 'SHIP' IN THE 1992 CONVENTIONS

Submitted by the French delegation

Summary:	This document sets out the French delegation's interpretation of the definition of "ship" contained in the 1992 Civil Liability Convention.
Action to be taken:	The Group is invited to take note of the information contained in this document.

Introduction

1 In considering the *Santa Anna* incident, the Executive Committee of the 1992 Fund discussed the interpretation of the definition of "ship" contained in Article I.1 of the 1992 Civil Liability Convention.

This definition reads in its English version as follows:

"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.

Like all delegations, the French delegation sets store by an interpretation of the Conventions which ensures maximum protection for victims. Nevertheless, it is aware that the decisions concerning both the levy of contributions and compensation are taken by the bodies of the Fund under the control of the courts. It therefore attaches great importance to a method of interpretation based first on the meaning of the words used in the Convention and, secondly, on the use of the preparatory works.

2 If there is unanimity within the Committee that a ship engaged exclusively in the carriage of oil by sea is covered by the provisions of the Conventions whether it is laden or in ballast and that damage is the result of contamination from its cargo or its bunkers, some delegations have expressed the view that the same should apply to combination carriers as long as residues of oil from a previous voyage are still on board. In the spirit of such an interpretation, the only test is whether there are residues on board.

3 Other delegations consider that ships engaged in combination carriage can be accorded the benefits of the Convention only in connection with the voyage immediately after the carriage of oil within the meaning of the Convention.

4 Position of the French delegation

The French delegation considers that the regime of the Conventions should be applied to ships engaged in combination carriage only in respect of the voyage following the carriage of oil in bulk by the ship in question. The arguments for this position are as follows:

4.1 From a drafting point of view, if the authors had wished to maintain as a criterion the permanence of oil residues in order for the Conventions to apply to ships engaged in combination carriage, Article I.1 would have been drafted as follows:

"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 as long as it has residues from such carriage of oil in bulk still on board.

In other words, in such a hypothesis the reference to "any voyage" ("tout voyage") is unnecessary, the test being that of the adapted construction and, in the case of a combination carrier, the presence of residue from the carriage of oil.

4.2 The interpretation of a text must start from the premise that all parts of a sentence are important to the meaning of the overall text.

Consequently, it must be concluded that the only logical reason for the part of the sentence:

"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",

is to establish a restriction to the rule which would otherwise have been expressed in its generality in accordance with the formulation proposed in paragraph 4.1.

4.3 Furthermore, reference to the preparatory works lends support to such an interpretation. In fact, during discussion of this point, the United Kingdom delegation proposed a definition worded as follows:

"Ship" means any seagoing vessel and sea-borne 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 and during any voyage following such carriage until it has been transferred to the carriage of other cargoes. (LEG/CONF.6/C.2/WP.15).

In the presentation of its proposal (CONF.6/C.2/SR, page 331), the United Kingdom delegation raised the point that the reference to the term "voyage" lacked precision in the sense that it was unspecific as to whether

it referred to the whole voyage, including the return of the vessel, or simply to the transit to the next port of call. It therefore preferred to refer to the vessel's transfer to the carriage of another type of cargo.

To accept the interpretation according to which a combination carrier is assumed to remain within the scope of application of the Conventions as long as it has residues from a previous carriage of oil on board would once again, in certain cases, go beyond the proposal put forward and ultimately ruled out at the Conference.

Lastly, during the course of this same discussion, the representative of France spoke in support of the draft containing the term "during any voyage" ("pendant tout voyage") in preference to the draft containing the expression "during the voyage" ("pendant le voyage"), since in his view, before transferring such a ship to another type of carriage, a responsible shipowner should perforce set about cleaning the units of his ship. He concluded that the issue in this case was simply one of drafting, the effect of such a provision being confined, in practice, to the one voyage following such carriage.

The status of combination carriers must therefore be assessed in regard to two situations:

- either they are engaged in the carriage of oil in bulk as cargo, in which case they fall within the scope of the Convention,
- or, after engaging in the carriage of oil, they return unladen or are transferred to the carriage of other types of cargo, in which case the presence of residues from the previous carriage should be established so that the protection of the Conventions applies during the voyage which follows such carriage.

5 Definition of "voyage"

Some difficulty may arise, however, in determining how far the concept of voyage extends, particularly when the ship makes several calls.

In the case of combination carriers, the concept of a return voyage would appear to be unacceptable on most of the occasions involving the carriage of oil, as it would imply traffic of the "liner" type which is not the case for the majority of traffic.

Nonetheless, it should be possible to determine the true practical meaning of the term "voyage" based on a number of considerations:

- On the one hand, for reasons of safety and possible listing of the ship, it is unusual for a combination carrier to carry two very different categories of cargoes during the same voyage. It can therefore be taken that no loading of such a ship will take place during the course of a voyage.
- On the other hand, the main advantage of this type of ship lies in its potential for carrying an entirely different cargo, generally cereals, as from the following voyage.
- Lastly, whatever the cargo, it is the subject of a bill of lading which gives details of the voyage by stating the name of the port of loading and the name of the last port of offloading.

It is clearly the bill of lading which gives the timescale of the term "voyage" in each particular case.
