INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

SECOND INTERSESSIONAL
WORKING GROUP
Agenda item 2

92FUND/WGR.2/6/1
10 January 2000
Original: ENGLISH

DEFINITION OF 'SHIP' IN THE 1992 CONVENTIONS

Submitted by Oil Companies International Marine Forum (OCIMF)

Summary:	To allow delegations to consider the matter before the Working Group re-convenes in April 2000, and to assist the Working Group's discussions, this document sets out OCIMF's views on the proper interpretation of the definition of 'ship' in the 1992 Civil Liability Convention.
Action to be taken:	Agree that the definition of 'oil' should be used in a consistent manner throughout the Conventions and that the definition of 'ship' and its proviso are conditional on this usage.

1 Background

1.1 A Working Group met in April 1999 to consider the proper interpretation of the definition of 'ship' in the 1992 Civil Liability Convention. The Working Group's recommendations were discussed by the Assembly at its 4th session in October 1999 together with a paper submitted jointly by four delegations in which it was proposed that the Assembly reconsider the Working Group's recommendation on the proper interpretation of the definition of 'ship'.

1.2 Having been unable to reach agreement within the time available, the Assembly instructed the Director to reconvene the Working Group for a one-day meeting during the week of the session of the 1992 Fund Executive Committee in April 2000. The Assembly also urged all interested delegations to submit documents well in advance of that meeting in order to allow delegations to consider the matter in detail before the meeting. Many OCIMF Members are significant contributors to the Fund and therefore have a direct interest in the outcome of this discussion. OCIMF welcomes the invitation to contribute to the development of workable definitions of 'ship' and 'oil' in the reconvened Working Group on this subject.

2 Issues

The issue is the relationship between the use of the word 'oil' in Article 1-1 and 'oil' as defined in Article 1-5 and used in other Articles of the 1992 Civil Liability Convention and the proper interpretation of the expression 'other cargoes' in the proviso in the definition of 'ship' in Article 1-1. OCIMF believes that hitherto there has been consistent interpretation of the definitions used by 1992 CLC and 1992 Fund Convention and can see no reason why 'oil' should now have the meaning of persistent oil, as defined in Article 1-5 of the Convention, in all Articles of the Conventions except Article 1-1. In summary, OCIMF believes that the definition of 'oil' in Article 1-5, which is clearly stated as 'persistent hydrocarbon mineral oil', and hence excludes non-persistent oils, is paramount and binding wherever the word 'oil' is used in the Conventions, to the exclusion of all other interpretations.

3 Discussion

3.1 The discussion centres on the intent of CLC 1992 and in particular the interpretation of the words 'ship', 'other cargoes', 'oil' and 'combination carrier' in Article 1-1 of the Convention and in the papers 92FUND/WGR2/3, 2/3/1, 2/3/2, 2/3/3, A.4/21 A.4/21/1 and A.4/WP.1 Add.1. OCIMF submits that there are no uncertainties and ambiguities in the definitions. The word 'oil' has been used consistently throughout all articles of the Conventions as meaning 'persistent hydrocarbon mineral oil' and no other kinds of oil and the definition of 'ship'; 'combination carrier' and 'other cargoes' must be interpreted accordingly. OCIMF further submits that it is inappropriate to consider these issues only in the context of whether the 1992 Fund should apply to unladen tankers. If the arguments put forward in paper 92FUND/A.4/21/1 were to be accepted, it would result in all vessels (not just tankers), laden or unladen, which carry non-persistent oil or chemicals and which have never carried persistent oils, falling within the scope of the Fund Convention. OCIMF believes that there is no basis in the wording of the Conventions for this conclusion. Similar issues arise in the context of which vessels are required to carry CLC Certificates.

3.2 OCIMF accepts the emerging interpretations of 1992 Civil Liability Convention (CLC) that its provisions should apply to every vessel which is actually carrying persistent oil in bulk as cargo and during any voyage following such carriage, unless the shipowner or Fund can prove that it has no residues of such carriage of oil in bulk on board.

3.3 However, OCIMF urges the Working Group to reject interpretations of 1992 CLC that would widen its application to include vessels that have no cargoes of persistent oil or residues thereof on board, for example 'clean oil' tankers and chemical carriers which have never carried a cargo of persistent oil, for the following reasons:

- no state which has ratified 1992 CLC has interpreted this Convention to require the carriage of CLC Certificates by oil tankers or chemical carriers which may be capable of carrying cargoes of persistent oil but which do not intend to do so;
- such an interpretation would add significant workload to administration agencies, shipowners and the insurance industry;
- interpreting the definitions in Article 1 of 1992 CLC in one way with respect to the Fund and in another with respect to CLC Certificates is logically insupportable and would create a most unfortunate precedent for the interpretation of other terms used by both Conventions;
- it would be illogical for CLC/Fund to apply to the bunkers of tankers carrying cargoes to which CLC/Fund do not apply, or in ballast after such carriage;
- it would be illogical that compensation for bunker spills from clean oil tankers and chemical carriers which have no persistent oil cargo or residues on board, whether laden or unladen, should be treated any differently from bunker spills from non-tankers;
- it would be inequitable that the Fund should be potentially liable for such spills when the cargo interests do not contribute to the Fund;

- the proposed Bunker Convention offers a more robust solution to the aspiration of some governments that bunker spills from clean oil tankers and chemical carriers be covered by a strict liability regime;
- when the Bunker Convention comes into force, the determining factor as to whether bunker spills are governed by CLC/Fund or the Bunker Convention should be determined by whether the vessel is carrying persistent oil cargo or residues, not by her design; if a shipowner were to opt to trade his vessel in a manner that might require either Convention to apply at different times, then it would be his choice and responsibility to obtain dual certification, and which certificate were relevant would then be determined by the circumstances.

3.4 Even if only some of these considerations are accepted, they make clear that the definition of 'ship' has to be considered in a wider context than simply its relevance to the Fund in the context of unladen product tankers. OCIMF thus believes that by the practice to date of States which have ratified 1992 CLC, and for the continued consistency of interpretation of the definitions used by 1992 CLC and 1992 Fund Convention, the interpretation in Article 1-5 that 'oil' means any persistent hydrocarbon mineral oil, and hence excludes non-persistent oil, must continue to be paramount and binding wherever the word 'oil' is used in the Conventions to the exclusion of all other interpretations and the definition of 'ship' must be interpreted accordingly.

3.5 It would also seem that whatever the intent may have been in 1984 to clarify the interpretation of 'ship' in Article 1-1, there was no intent that the definition of 'oil' in Article 1-5 should be altered in its application to the definition of 'pollution damage' in Article 1-6, or to the requirement for insurance and certification in Article 7. It follows that Articles 1-2 through 1-5 were intended to amplify Article 1-1.

3.6 The clear intent and effect of Article 1-1 is to extend the wording of 1969 CLC so that 1992 CLC covers oil tankers and oil/ore and oil/bulk/ore carriers which carry cargoes of persistent oil or residues of previous such cargoes.

3.7 This paper seeks to make equally clear that there was no intention in the drafting of CLC 92 to extend it to cover all dedicated tankers irrespective of the types of oils or residues they were carrying. Furthermore, to extend the application of 1992 CLC further would raise issues much wider than the application of the Fund to bunker spills from clean oil tankers in ballast. It would also be bureaucratic and inequitable. A much simpler procedure is to continue to restrict the 1992 Civil Liability and Fund Conventions to cargo and bunker spills from vessels which are carrying persistent oil cargoes or residues thereof, and to use the Bunker Convention to cover bunker spills from other vessels.

4 Recommendation

To enable practical and consistent application of both Conventions to pollution damage caused by persistent oil carried as cargo or bunkers released from tankers and ore/oil and oil/bulk/ore carriers carrying persistent oil as cargo, or carrying the residues of such cargoes, but not to oil tankers and chemical carriers which are not carrying such cargoes or residues. OCIMF recommends that the Working Group agree that: -

- The definition of 'oil' should be used in a consistent manner throughout the 1992 CLC and Fund Convention;
- The definition of 'ship' and its proviso are conditional on this usage.
