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COMPENSATION
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SECOND INTERSESSIONAL
WORKING GROUP
Agenda item 2

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DEFINITION OF 'SHIP' IN THE 1992 CONVENTIONS

Note by the Director

Summary:	The Director has undertaken a further analysis of the definition of 'ship' in Article I.5 of the 1992 Civil Liability Convention, with particular emphasis on the ramifications of the proposal by Australia, Canada, the Netherlands and the United Kingdom contained in document 92FUND/A.4/21/1.
Action to be taken:	Make such recommendations as it may deem appropriate to the Assembly.

1 Introduction

- 1.1 At its 3rd session the Assembly set up an Intersessional Working Group to study the following issues relating to the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention (document 92FUND/A.3/27, paragraphs 20.11 and 20.16).
 - (i) the circumstances in which an unladen tanker would fall within the definition of 'ship'; and
 - (ii) whether, and if so to what extent, the 1992 Conventions apply to offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs).
- 1.2 The Working Group met in April 1999 under the Chairmanship of Mr John Wren (United Kingdom). The Working Group Report is contained in document 92FUND/A.4/21.

2 Offshore craft

At its 4th session the Assembly considered the Working Group Report. The Assembly endorsed the conclusions of the Working Group as regards the applicability of the 1992 Conventions to offshore craft (document 92FUND/A.4/32, paragraphs 2.4.3 and 2.4.10).

3 Unladen tankers

3.1 The Working Group drew the following conclusions as regards the circumstances in which an unladen taker would fall within the definition of 'ship':

- (i) the word 'oil' in the proviso in Article I.2 of the 1992 Civil Liability Convention means persistent hydrocarbon mineral oil, as defined in Article I.5 of the Convention;
- (ii) the expression 'other cargoes' in the proviso should be interpreted to mean non-persistent oils as well as bulk solid cargoes;
- (iii) as a consequence the proviso in Article I.2 should apply to all tankers and not only to ore/bulk/oil ships (OBOs);
- (iv) the expression 'any voyage' should be interpreted literally and not be restricted to the first ballast voyage after the carriage of a cargo of persistent oil;
- (v) a tanker which had carried a cargo of persistent oil would fall outside the definition if it was proven that it had no residues of such carriage on board; and
- (vi) the burden of proof that there were no residues of a previous carriage of a persistent oil cargo should normally fall on the shipowner.

3.2 The Assembly also took note of a document on this issue submitted by Australia, Canada, the Netherlands and the United Kingdom (document 92FUND/A.4/21/1). The Assembly noted the views expressed in the document that:

- (i) a dedicated oil tanker (ie a tanker capable of carrying persistent oil and non-persistent oil) is always a 'ship' for the purposes of the 1992 Civil Liability Convention; and
- (ii) the proviso in the definition of 'ship' applies only to vessels and craft capable of carrying oil, including non-persistent oil, and other cargoes.

3.3 The two different interpretations described above and the practical implications are summarised in the Annex.

Discussion at the 1992 Assembly's 4th session

3.4 In considering the conclusions of the Group, several delegations stated that they supported the interpretation proposed by the Working Group. Some delegations expressed the opinion that they did not agree with the conclusions of the Working Group but supported the views set out in the document presented by the four delegations.

3.5 One delegation stated that the overriding issue was the definition of 'oil' in the Convention, which was restricted to 'persistent oil', and that it would not be legally possible to widen the interpretation of the definition of 'ship' beyond that proposed by the Working Group.

3.6 Other delegations considered that it was premature for the Assembly to take a decision, particularly in view of the limited time which had been available to study the new document, and that the matter should be examined further.

3.7 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 and 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.

- 3.8 The Director was invited to carry out a further study, with particular emphasis on the ramifications of the proposal by Australia, Canada, the Netherlands and the United Kingdom. It was suggested that the study should take into account the fact that the 1971 Fund Convention was concluded after the 1969 Civil Liability Convention, whereas the 1992 Civil Liability Convention and the 1992 Fund Convention were adopted at the same time. It was also suggested that the study should focus on three main issues, namely: the relationship between 'oil' as described in Article I.1 and 'oil' as defined in Article I.5 of the 1992 Civil Liability Convention, the potential economic burden on contributors of including within the scope of the 1992 Fund Convention vessels which carried only 'non-persistent' oils, and the consequences of such vessels not being required to have insurance cover. The point was made that the study should take into account the practical consequences, in light of the proposed Bunker Convention^{<1>}, of dedicated tankers requiring different insurance arrangements for different voyages.

- 3.9 The Director's study is set out below.

Director's study

- 3.10 The definitions of 'ship' and 'oil' read as follows:

Article I.1

'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.

Article I.5

'Oil' means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

- 3.11 The definition of oil in Article I.5 restricts the applicability of the Conventions as regards pollution damage to 'persistent' oil. It is therefore logical to conclude that the word 'oil' wherever used in the Conventions means persistent oil.
- 3.12 The question is, however, whether the intention of the drafters of the proviso in Article I.1 was to use the word oil in that context in the restrictive sense, or whether it was intended in that proviso as a more general term. The preparatory works do not give any guidance on this point.
- 3.13 It is in any event clear that, whatever the interpretation given to the word oil in the proviso in Article I.1, the Convention will apply only to spills of persistent oil.
- 3.14 When the voluntary compensation schemes were in existence all tankers capable of carrying persistent oil cargoes were eligible for participation in the Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP). Consequently, the P & I Clubs entered most product tankers and a large number of chemical tankers in TOVALOP, primarily to cover pollution liabilities in respect of bunker spills. When these tankers were in ballast or carrying chemicals/non-persistent oils they were covered by the TOVALOP Standing Agreement (similar in scope to the 1969 Civil Liability Convention), but not the TOVALOP Supplement (similar in scope to the 1992 Civil Liability Convention) since the Supplement applied only to ships carrying persistent oil cargoes owned by oil companies which were parties to the Contract Regarding Supplement to Tanker Liability for Oil Pollution (CRISTAL). For the same reason, CRISTAL

<1> Draft International Convention on Civil Liability for Bunker Oil Pollution Damage (IMO document LEG79/11).

did not provide compensation for bunker spills from unladen tankers. In the 28 years that the voluntary schemes were in existence there were very few incidents involving bunker spills from tankers that were either in ballast or carrying non-persistent oils/chemicals. Notwithstanding the fact that spills of bunker fuel can cause widespread damage and can be very costly, it is believed therefore that the economic consequences for the 1992 Fund, and therefore for the contributors to that Fund, of an application of the 1992 Conventions also of spills from bunkers of tankers in ballast or carrying only non-persistent oil would be fairly limited.

- 3.15 As for the ramifications of the proposal by Australia, Canada, the Netherlands and the United Kingdom, it will be recalled (cf document 92FUND/A.4/21/1, paragraph 10) that the following three types of vessels or craft were considered according to the different cargoes carried:

(A)	(B)	(C)
Liquid cargoes (including oil) and solid cargoes	Oil and other liquid cargoes	Persistent and non-persistent oils

- 3.16 In the view of those delegations, the interpretation that correctly reflects the intention of the diplomatic conference would be to consider only vessels or craft capable of carrying the cargoes described under (A) and (B) in the table above as combination carriers, ie ships capable of carrying oil and other cargoes. A vessel or craft capable of carrying only the cargoes described under (C) is in their view a dedicated tanker and therefore always a 'ship'.
- 3.17 It should be noted that chemical tankers which carry cargoes described under (B), and product tankers which carry cargoes described under (C) sometimes carry a mixture of cargoes which may include persistent oil and non-persistent oil.
- 3.18 According to Lloyds World Fleet Statistics 1998, the following tankers exceeding 100 GT existed: 1 760 dedicated crude oil tankers representing a total of 125.6 million GT, 5 200 oil product tankers (ie capable of carrying persistent and/or non-persistent oil) totalling 25.4 million GT, 2 363 chemical tankers (ie ships capable of carrying oil and other liquid cargoes) totalling 15.0 million GT, and 224 ore/bulk/oil carriers totalling 10.0 million GT.
- 3.19 As regards the consequences from an insurance point of view, it appears that ships which carry non-persistent oils do have P & I insurance and that the financial consequences of whether or not they are covered by the 1992 Civil Liability Convention would therefore be very limited. However, it should be noted that if such ships were to fall within the scope of the 1992 Civil Liability Convention, they would have to carry insurance certificates issued under that Convention when they were carrying more than 2 000 tonnes of persistent oil as cargo.
- 3.20 It will be recalled that when the Intersessional Working Group met in April 1999 reference was made to the proposed Bunker Convention, the draft text of which had been largely agreed by the Legal Committee of the IMO at its 79th session (cf document 92/FUND/WGR.2/4, paragraph 7.3.9). It was suggested that if the 1992 Civil Liability Convention always applied to tankers other than combination carriers, owners of such tankers would know that the proposed Bunker Convention would never apply to their ships and that they would face no additional obligations regarding insurance cover. It was noted that if the proviso were to apply to all tankers, their owners would have to comply with the insurance requirements in the 1992 Civil Liability Convention on some voyages and with the insurance requirements in the proposed Bunker Convention on others. The point was made that it might not always be immediately clear which regime applied at any particular time, which would be unhelpful for the industry, for States and for claimants. It was stated that it was important to clarify the relationship between the proposed Bunker Convention and the 1992 Conventions.
- 3.21 It is the Director's view that this should not pose any difficulties *vis-à-vis* insurance cover which routinely has to provide for different liability scenarios.

- 3.22 During the discussions in the Assembly it was suggested that the Director's study should take into account the fact that the 1971 Fund Convention was concluded after the 1969 Civil Liability Convention whereas the 1992 Civil Liability Convention and the 1992 Fund Convention were adopted at the same time. The Director has not been able to draw any conclusions in this regard.

4 **Action to be taken by the Working Group**

The Working Group is invited:

- (a) to take note of the information contained in this document: and
- (b) to make such recommendations as it may deem appropriate to the Assembly in respect of the circumstances in which an unladen tanker would fall within the definition of 'ship' in the 1992 Conventions.

* * *

ANNEX

Unladen Tankers and the Definition of 'Ship'

Cargo capability		Liquid cargoes (including oil) and solid cargoes					Persistent and non-persistent oil and other liquid cargoes					Persistent and non-persistent oils				Crude oil		
Commonly known as		OBOs					Chemical tankers					Oil product tankers				Crude oil tankers		
Number of ships > 100 GT		224					2 363					5 200				1 760		
Total GT of ships > 100 GT (millions)		10.0					15.0					25.4				125.6		
Actual cargo, if any		Persistent oil	Non-persistent oil	Other cargoes	Unladen - with residues	Unladen - no residues	Persistent oil	Non-persistent oil	Other cargoes	Unladen - with residues	Unladen - no residues	Persistent oil	Non-persistent oil	Unladen - with residues	Unladen - no residues	Persistent oil	Unladen - with residues	Unladen - no residues
Working Group's conclusion	Is it a 92 CLC 'ship'?	Yes	No	No	Yes	No	Yes	No	No	Yes	No	Yes	No	Yes	No	Yes	Yes	No
	Is 1992 CLC certificate required?	Yes	No	No	Yes	No	Yes	No	No	Yes	No	Yes	No	Yes	No	Yes	Yes	No*
	Does Bunker Convention apply?	No	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	No	Yes	No	Yes	No	No	Yes
Australia/UK/Canada/Netherlands proposal	Is it a 92 CLC 'ship'?	Yes	No	No	Yes	No	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Is 1992 CLC certificate required?	Yes	No	No	Yes	No	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Does Bunker Convention apply?	No	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	No	No	No	No	No	No	No

Highlighted sections indicate differences between the two interpretations

* In practice crude oil tankers would always carry a CLC certificate on board