INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

92FUND/WGR.3/14/11
16 January 2003
Original: ENGLISH

REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

PROPOSAL FOR THE REVISION OF THE DEFINITION OF 'SHIP' UNDER ARTICLE I OF THE 1992 CONVENTIONS

Submitted by the United Kingdom of Great Britain and Northern Ireland

Summary:	The 2nd intersessional Working Group considered issues regarding the interpretation of the definition of 'ship' under the 1992 conventions. The Assembly subsequently agreed the current policy on the applicability to unladen tankers and off-shore craft. The paper explains the scope for unequal treatment of claimants without amendment to the conventions.
Action to be taken:	The paper offers an amendment to CLC to remove the current ambiguity on the interpretation of the definition of 'ship' and to clarify the application of the Conventions to FSUs and FPSOs. See Paragraphs 9 to 13.
Related documents:	92FUND/A.3/27; 92FUND/A.4/21/1: 92FUND/A.5/28

1 The UK requests that the 3rd intersessional Working Group considers the benefits of the proposed amendments to the 1992 Conventions as set out in this document to take account of the deliberations of the 2nd intersesional Working Group. In doing so the UK does not intend that the present Working Group should reopen the whole debate at the 2nd intersessional Working Group, which was set up to study two issues relating to the definition of 'ship' laid down in the 1992 CLC and Fund Conventions, (document 92FUND/A.3/27, paragraph 20.11 and 20.14). That Working Group considered:

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).

2 The Working Group concluded that:

- an unladen tanker fell within the definition of 'ship' under Article 1.5 of the 1992 CLC Protocol during any voyage after the carriage of a cargo of persistent oil but fell outside the definition if it was proved that it had no residues of such cargo on board; and

- that offshore craft (ie FPSOs and FSUs) fell within the 1992 Conventions only when they carried oil as cargo on a voyage to or from a port or terminal outside the oil field where they normally operated.

3 The Working Group met over two sessions between April 1999 and April 2000. The conclusions agreed at that Working Group were finally adopted by the IOPC Fund Assembly at its 5th session in October 2000 (see document 92FUND/A.5/28).

4 Details of the Assembly decision relating to applicability to unladen tankers is set out in Annex A. The full text of the current text of the definition of 'ship' in the 1992 conventions is at Annex B.

Offshore craft

5 At its 4th session the Assembly endorsed the conclusions of the Working Group as regards the applicability of the 1992 Conventions to offshore craft (see paragraph 7.5 of 92FUND/A.4/21), that is:

The 1992 conventions apply as follows:

- Offshore craft should be regarded as 'ships' under the 1992 Conventions only when they carry oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate.

- Offshore craft would fall outside the scope of the 1992 Conventions when they leave an offshore oil field for operational reasons or simply to avoid bad weather.

6 During the discussions on the issue of unladen tankers at the 2nd intersessional Working Group it was acknowledged that the final decision regarding the interpretation of the conventions rested with the national courts in contracting states. For that reason some delegations had favoured a restrictive interpretation of the Conventions. In view of this point and the fact that such detailed debate on the interpretation of the Conventions has been necessary within the Fund Organization, the UK believes it should be recognised that there remains room for doubt as to whether the policy decisions will suffice in all circumstances.

7 Indeed, the record of the decisions of the 5th session of the Assembly notes that the "any remaining ambiguity in the definition of 'ship' in the 1992 Conventions could be considered by the 3rd intersessional Working Group on the adequacy of the international compensation system."

8 The agreed policy decisions on definition of 'ship' may have to be applied in the future. Under the current conventions courts are not obliged to have regard to the decisions, practices or policies of the Fund. The UK believes that there must be a real risk that in one case the current policy may well be accepted but in another it may not - with the possibility that the local Court may take a different view on the interpretation of the Conventions. This would, therefore, carry the risk of unequal treatment of claimants in different contracting states which is, of course, against the intention of the Conventions.

Proposal

Unladen tankers :

9 The UK, therefore, recommends that the Working Group considers the possibility of suitably amending the Conventions, particularly the CLC definition. In the UK's view there is an inherent ambiguity in the current definition in respect of tankers and that there is clearly scope for differing interpretations and unequal treatment of claimants. There is, therefore, a case for amending the Conventions to remove this ambiguity.

10 The UK believes **there are two workable options**:

10.1 **Option 1**:

- to suitably amend the conventions on the basis of the views expressed in document 92FUND/A.4/21/1 presented to the 4th session of the Assembly by Australia, Canada, the Netherlands and the United Kingdom. In the view of the UK that document showed very clearly the scope for confusion in the future on the current text of the Conventions; it recommended 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) that the proviso in the definition of 'ship' applies only to vessels and craft capable of carrying oil, including non-persistent oil, and other cargoes.

10.2 **Option 2**:

- to remove the existing ambiguity by amending the Conventions to apply the current policy more effectively. In which case the following wording would then seem to be most appropriate:

Article I of 1992 CLC:

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~~ actually carrying oil ~~and other cargoes shall be regarded 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 cargo of oil in bulk aboard.

This would remove all of the text agreed at the 1992 Diplomatic Conference to deal with the issue of combination carriers and effectively recognise that that negotiated text is superfluous. The proposed text is therefore a mixture of the old 1969 definition of 'ship' with the text relating to coverage for oil cargo residues agreed in 1992. This would seem to fully reflect the current policy agreed at the 5th session of the Assembly.

11 Both of these options would also remove any need for future discussions by the Fund Organization over coverage for vessels 'constructed or adapted' for the carriage of oil.

FSUs and FPSOs:

12 In addition, the UK would suggest that, when the Conventions are amended, the opportunity should also be taken to amend the Conventions to reflect the wording of the policy decision in the indented text of paragraph 5 above in respect of FSUs and FPSOs.

Conclusion

13 The Working Group is invited to consider these proposed amendments to the Conventions. This is entirely consistent with paragraphs 4.1 and 4.2 of the report of the outcome of the deliberations of the 2nd intersessional Working Group (document 92FUND/A.5/19) to the 5th session of the Assembly.

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ANNEX A

OUTCOME OF DISCUSSIONS AT 2ND INTERSESSIONAL WORKING GROUP AS AGREED AT THE 5TH SESSION OF THE ASSEMBLY IN OCTOBER 2001

At its 5th session the Assembly noted that the second meeting of the Working Group reached the following decision (see document 92FUND/A.5/28) as regards the circumstances in which an unladen tanker would fall within the definition of 'ship':

"23. Report of the second meeting of the 2nd intersessional Working Group

23.1 It was recalled that the intersessional Working Group had been set up by the Assembly at its 3rd session to study two 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 20.14):

(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).

23.2 It was further recalled that the report of the Working Group had been considered by the Assembly, at its 4th session, and that the Working Group had drawn the following conclusions as regards the circumstances in which an unladen tanker 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.

23.3 It was also recalled that during the discussion at the Assembly's 4th session different views had been expressed as to the issue under consideration. It was noted that the Assembly had instructed the Director to reconvene the Working Group for a one-day meeting in April 2000.

23.4 The Chairman of the Working Group, Mr John Wren (United Kingdom), introduced the report of the Working Group on its April 2000 meeting (documents 92FUND/A.5/19 and 92FUND/A.5/19/Corr.1).

23.5 The Assembly noted that at the April 2000 meeting, the Working Group had confirmed the conclusions drawn at its first meeting as regards the circumstances in which an unladen tanker would fall within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention, set out in paragraph 23.2 above. The Assembly also noted that the Working Group had considered that it had concluded its discussions and that any remaining ambiguity in the definition of 'ship' in the 1992 Conventions could be considered by the 3rd intersessional Working Group on the adequacy of the international compensation system.

23.6 The Assembly endorsed the Working Group's conclusions."

ANNEX B

CURRENT PROVISIONS OF THE 1992 CONVENTIONS

1. The definition of 'ship' is laid down in Article I.1 of the 1992 Civil Liability Convention which reads:

   '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 cargo of oil in bulk aboard.

2. Article 1.2 of the 1992 Fund Convention incorporates the definition set out in the above paragraph.