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DEFINITION OF "OIL" IN ARTICLE 1.5 OF THE CIVIL LIABILITY CONVENTION AND OF "CONTRIBUTING OIL" IN ARTICLE 1.3 OF THE FUND CONVENTION

Note by the Director

Introduction

1 A new oil product, known as *orimulsion*, has been developed within the oil industry. For this reason, the question has arisen as to whether this product should be considered as "persistent oil" for the purpose of Article 1.5 of the Civil Liability Convention, and if so, whether it should also be considered as falling within the definition of "contributing oil" set out in Article 1.3 of the Fund Convention.

The Product

2 The major component of *orimulsion* is a bituminous hydrocarbon material which is found in the Orinoco Belt of Eastern Venezuela. In its natural state this material has a very high viscosity which, until recently, had made it impossible to recover and handle the material economically. Recently developed technology has made it possible, however, to produce a stable bituminous emulsion of this material by the addition of water together with an emulsion stabiliser, the normal water content being approximately 30%. The resultant product, known in the oil industry as *orimulsion*, is an excellent boiler fuel, particularly in large installations such as power stations and major industrial complexes. *Orimulsion* can be handled in the same way as conventional liquid fuel oil. It is transported by ordinary oil tankers or combination carriers. So far, only limited quantities of *orimulsion* have been carried by sea. However, it is expected that these quantities will increase in the near future.

Definition of "Oil" In the Civil Liability Convention

3 The Civil Liability Convention and the Fund Convention only apply to spills of "persistent oil". However, the Conventions do not contain any definition of "persistent oil". Article 1.5 of the Civil Liability Convention provides that "oil" means "... any persistent oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil, whether carried on board a ship as cargo or in the bunkers of such a ship". In 1981, the IOPC Fund elaborated "A Non-technical Guide to the Nature and Definition of Persistent Oil" (documents FUND/A.4/11 and FUND/A.4/16, paragraph 14). It was agreed by the Assembly that this non-technical guide should serve as a guideline for the Director when dealing with claims against the IOPC Fund. This guide has proved very useful. Obviously the guide does not make any reference to *orimulsion*.

4 Under Article 1.2 of the Fund Convention, the notion of "oil" has the same meaning in the Fund Convention as in Article 1.5 of the Civil Liability Convention, provided however that for the purpose of the Fund Convention "oil" shall be confined to "persistent hydrocarbon mineral oils".

5 In colour and viscosity, *orimulsion* is indistinguishable from heavy fuel oil. Its specification points are within the range of those for heavy fuel oil. In the Director's view, *orimulsion* should therefore be considered as "persistent oil" for the purpose of Article 1.5 of the Civil Liability Convention.

Definition of "Contributing Oil" In the Fund Convention

6 The IOPC Fund is financed by levies on "contributing oil" as defined in Article 1.3 of the Fund Convention. This definition reads:

"Contributing Oil" means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:

- (a) 'Crude Oil' means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as 'topped crudes') or to which certain distillate fractions have been added (sometimes referred to as 'spiked' or 'reconstituted' crudes).
- (b) 'Fuel Oil' means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the 'American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69), or heavier."

7 The definition of "contributing oil" was elaborated at the 1971 Diplomatic Conference on the basis of a text presented by the organisations representing the oil industry. The intentions behind the text were, inter alia, the following:

- (a) to cover all crude oil carried by sea and to prevent a situation arising where a simple treatment or steaming of crude oil, or the addition of an extra component, would enable an operator to claim that the material was not crude oil but something different and that he was therefore not liable to contribute for this material;
- (b) to define fuel oil so as to exclude lubricating oil and blendstocks therefor, bitumen and process stocks which were not intended to be burned as fuel.

8 Fuel oil was defined by reference to the American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69)^{<1>} in an endeavour to provide a criterion which was easily understandable to the oil industry for the purpose of establishing whether or not any material should be considered as "contributing oil".

9 *Orimulsion* could be considered as falling within either of the categories referred to in Article 1.3 of the Fund Convention. It could be considered as "crude oil" since its major constituent is a "... liquid hydrocarbon mixture occurring naturally in the earth" which has been "... treated to render it suitable for transportation". It could also be considered as "fuel oil", which is defined as "... residues from crude oil intended for use as a fuel for the production of heat or power"; so far, it has been used exclusively for this purpose. The major component of *orimulsion* (viz the bituminous hydrocarbon material) is not suitable for refining as a normal crude oil and is only used for the production of heat and power. *Orimulsion* is heavier than Number Four Fuel Oil (Designation D396-69). For this reason, the Director is of the opinion that *orimulsion* should be considered as "fuel oil" for the purpose of the definition of "contributing oil".

10 The question has also arisen as to whether the total quantity of *orimulsion* received should be liable for contribution or whether some allowance should be made for the water content. Since *orimulsion* is a stable emulsion, in the event of a spill the total quantity spilled would have the potential to cause pollution damage. The contribution system established by the Fund Convention was based on the principle that each tonne of contributing oil carried by sea should pay the same amount of contribution. The amount of contribution would therefore be independent of any other factors, such as different pollution potential, length of journey and difficulty in clean-up. For this reason, it is the Director's view that it would be logical to take into account the total quantity of *orimulsion* received without any deduction for its water content. In addition, if such a deduction were to be allowed, it would complicate the system for reporting receipts of contributing oil.

11 The Director has recently been informed that the Board of Directors of Cristal Limited decided in May 1990 that *orimulsion* should be regarded for the purpose of the CRISTAL Contract (the oil industry's voluntary compensation agreement) as contributing oil and that no deduction should be made for its water content. If the Assembly were to approve the proposals set out in paragraphs 9 and 10 above, the position of the IOPC Fund as regards *orimulsion* would be consistent with that adopted by Cristal Limited, which would be of benefit to the contributors to both organisations.

12 It will be recalled that in 1988 the IOPC Fund Secretariat had prepared a list in which various materials were classified under the headings "contributing oil" and "non-contributing oil", respectively. It was stressed by the Assembly that this list should not be considered as exhaustive but that it was intended to serve as a guideline for the Director when dealing with reports on receipts of contributing oil (documents FUND/A.12/14 and FUND/A.12/19, paragraphs 17.1 and 17.2). If the Assembly were to decide that *orimulsion* should be considered as "contributing oil" for the purpose of Article 1.3 of the Fund Convention, *orimulsion* would be inserted in this list under the heading "contributing oil".

13 In the view of the Director, the decision taken by the Assembly as to whether or not *orimulsion* should be considered as "contributing oil" should not lead to any adjustment of reported quantities of contributing oil received during 1991 or previous years.

<1> Designation D396-69 has been updated, most recently by designation D396-90A; however, the definition of Number Four Fuel Oil has not been changed.

Action to be Taken by the Assembly

- 14 The Assembly is invited to decide:
- (a) whether *orimulsion* should be considered as "persistent oil" for the purpose of Article I.5 of the Civil Liability Convention (paragraph 5 above);
 - (b) whether *orimulsion* should be considered as falling within the definition of "contributing oil" laid down in Article 1.3 of the Fund Convention (paragraph 9 above);
 - (c) whether, in the assessment of contributions on the quantities of *orimulsion* received, any allowance should be made for its water content (paragraph 10 above); and
 - (d) whether the inclusion of *orimulsion* should lead to any adjustment of the reported quantities of contributing oil received during 1991 or previous years (paragraph 13 above).
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