



International Oil Pollution
Compensation Funds

Agenda Item 4	IOPC/APR24/4/WP.1	
Date	30 April 2024	
Original	English	
1992 Fund Administrative Council	92AC24/92AES28	●
1992 Fund Executive Committee	92EC82	
Supplementary Fund Assembly	SAES12	●

RISK OF UNINSURED AND UNSAFE SHIPS

Note by the Director

Summary:	As instructed by the 1992 Fund Administrative Council and the Supplementary Fund Assembly and, taking note of the discussions by delegations on this matter, the Director has prepared draft Resolutions for the 1992 Fund and the Supplementary Fund on the risk of uninsured and unsafe ships for the consideration of the governing bodies.
Action to be taken:	<p><u>1992 Fund Administrative Council</u></p> <p>Decide whether to adopt the draft 1992 Fund Resolution on raising awareness of the risk of uninsured and unsafe ships, at as set out in Annex I.</p> <p><u>Supplementary Fund Assembly</u></p> <p>Decide whether to adopt the draft Supplementary Fund Resolution on raising awareness of the risk of uninsured and unsafe ships, at as set out in Annex II.</p>

1 Introduction

- 1.1 On the opening day of the April 2024 sessions of the governing bodies, during discussions relating to the increasing risk of uninsured and unsafe ships, the 1992 Fund Administrative Council and Supplementary Fund Assembly instructed the Director to prepare a draft Resolution addressing this issue.
- 1.2 Accordingly, the Director has prepared draft texts for these Resolutions for the consideration of the governing bodies. A draft 1992 Fund Resolution is set out at Annex I. A draft Supplementary Fund Resolution is set out at Annex II.

2 Action to be taken

1992 Fund Administrative Council

- 2.1 Decide whether to adopt the draft 1992 Fund Resolution on raising awareness of the risk of uninsured and unsafe ships, at as set out in Annex I.

Supplementary Fund Assembly

- 2.2 Decide whether to adopt the draft Supplementary Fund Resolution on raising awareness of the risk of uninsured and unsafe ships, at as set out in Annex II.

ANNEX I

DRAFT 1992 FUND ASSEMBLY RESOLUTION

Raising awareness of the risk of uninsured and unsafe ships

THE ADMINISTRATIVE COUNCIL ACTING ON BEHALF OF THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund)

RECALLING that, under both the 1992 Civil Liability Convention and the 1992 Fund Convention, there are fundamental obligations for a State Party to ensure that a ship trading under its flag or entering or leaving a port in its territory has the required insurance or other financial security,

RECALLING FURTHER that failure to meet these treaty obligations may result in State liability,

NOTING with regret and great concern the increasing trade of oil now being conducted by unsafe and uninsured or insufficiently insured ships, effectively undermining the safety and environmental standards developed by the International Maritime Organization (IMO) as well as the international liability and compensation regime based on the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol,

NOTING FURTHER that recently there have been oil spill incidents in which the spill sources are unclear, the responsible shipowner is not identified, or the ship is not sufficiently insured,

NOTING WITH CONCERN that under the 1992 Fund Convention, the 1992 Fund may have to pay compensation to victims of oil pollution in the affected Member State without any contribution from the shipowner or its insurer,

RECOGNISING that the shared liability between the shipping and the oil industries is crucial for the effective and efficient functioning of the international liability and compensation regime,

CONSCIOUS that this situation could continue in the future if no action is taken to prevent it,

NOTING WITH REGRET that, even though this issue has been discussed by the 1992 Fund Assembly and in the IMO Legal Committee on several occasions and is addressed in IMO Assembly Resolution A.1192(33), some oil trading continues to be conducted using unsafe and uninsured or insufficiently insured ships,

RECOGNISING the need to raise awareness of the current situation and for States and all parties concerned to do their utmost to prevent any future trading of oil by uninsured or insufficiently insured ships or ships that are in serious breach of the safety and environmental standards contained in the relevant IMO Conventions,

- 1 **URGES** all states to take the necessary steps to enforce the safety and environmental standards contained in the relevant IMO Conventions and to enforce the insurance requirements applicable under the 1992 Civil Liability and the 1992 Fund Conventions to the ships under their flags and those ships entering or leaving a port in their territories,
- 2 **REMINDS** each State affected by a spill that the IOPC Funds may not be liable to pay compensation if the person, including a State, suffering the damage has not taken all reasonable steps to pursue the legal remedies available to them,
- 3 **URGES FURTHER** those States involved in an oil pollution incident caused by an uninsured or insufficiently insured ship or a ship significantly breaching the safety and environmental standards contained in the relevant IMO Conventions to cooperate and assist each other

in investigations (including criminal investigations) into the causes of such incidents and on the persons involved (including the identity of the shipowner) as well as into the reasons why ships were operating without sufficient insurance coverage or without complying with safety and environmental standards,

- 4 **INSTRUCTS** the Director, in consultation with the Audit Body, to develop an internal procedure to be followed by the IOPC Funds' Secretariat in order to gather necessary information to determine the applicability of the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol and the parties involved,
- 5 **FURTHER INSTRUCTS** the Director, in consultation with the Audit Body, to develop guidance for Member States for investigating the circumstances surrounding an oil pollution incident, in order to identify ships and persons involved, including, but not limited to, shipowners and their insurers,
- 6 **ALSO INSTRUCTS** the Director to continue to protect the interests of the IOPC Funds, to promote the use of reliable insurers to ensure that the international liability and compensation regime is able to function as intended and to pursue recourse action in the event of incidents occurring involving the IOPC Funds in which the owner/insurer of the ship does not fulfil its obligations under the 1992 Civil Liability Convention.

* * *

ANNEX II

DRAFT SUPPLEMENTARY FUND ASSEMBLY RESOLUTION

Raising awareness of the risk of uninsured and unsafe ships

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003 (Supplementary Fund)

RECALLING that, under the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol, there are fundamental obligations for a State Party to ensure that a ship trading under its flag or entering or leaving a port in its territory has the required insurance or other financial security,

RECALLING FURTHER that failure to meet these treaty obligations may result in State liability,

BEARING IN MIND that, pursuant to Article 6(2) of the Supplementary Fund Protocol, a claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund,

NOTING with regret and great concern the increasing trade of oil now being conducted by unsafe and uninsured or insufficiently insured ships, effectively undermining the safety and environmental standards developed by the International Maritime Organization (IMO) as well as the international liability and compensation regime based on the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol,

NOTING FURTHER that recently there have been oil spill incidents in which the spill sources are unclear, the responsible shipowner is not identified, or the ship is not sufficiently insured,

NOTING WITH CONCERN that under the 1992 Fund Convention and the 2003 Supplementary Fund Protocol, the 1992 Fund and the Supplementary Fund may have to pay compensation to victims of oil pollution in the affected Member State without any contribution from the shipowner or its insurer,

RECOGNISING that the shared liability between the shipping and the oil industries is crucial for the effective and efficient functioning of the international liability and compensation regime,

CONSCIOUS that this situation could continue in the future if no action is taken to prevent it,

NOTING WITH REGRET that, even though this issue has been discussed by the 1992 and Supplementary Fund Assemblies and in the IMO Legal Committee on several occasions and is addressed in IMO Assembly Resolution A.1192(33), some oil trading continues to be conducted using unsafe and uninsured or insufficiently insured ships,

RECOGNISING the need to raise awareness of the current situation and for States and all parties concerned to do their utmost to prevent any future trading of oil by uninsured or insufficiently insured ships or ships that are in serious breach of the safety and environmental standards contained in the relevant IMO Conventions,

- 1 **URGES** all States to take the necessary steps to enforce the safety and environmental standards contained in the relevant IMO Conventions and to enforce the insurance requirements applicable under the 1992 Civil Liability, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol to the ships under their flags and those ships entering or leaving a port in their territories,

- 2 **REMINDS** each State affected by a spill that the IOPC Funds may not be liable to pay compensation if the person, including a State, suffering the damage has not taken all reasonable steps to pursue the legal remedies available to them,
 - 3 **URGES FURTHER** those States involved in an oil pollution incident caused by an uninsured or insufficiently insured ship or a ship significantly breaching the safety and environmental standards contained in the relevant IMO Conventions to cooperate and assist each other in investigations (including criminal investigations) into the causes of such incidents and on the persons involved (including the identity of the shipowner) as well as into the reasons why ships were operating without sufficient insurance coverage or without complying with safety and environmental standards,
 - 4 **INSTRUCTS** the Director, in consultation with the Audit Body, to develop an internal procedure to be followed by the IOPC Funds' Secretariat in order to gather necessary information to determine the applicability of the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol and the parties involved,
 - 5 **FURTHER INSTRUCTS** the Director, in consultation with the Audit Body, to develop guidance for Member States for investigating the circumstances surrounding an oil pollution incident, in order to identify ships and persons involved, including, but not limited to, shipowners and their insurers,
 - 6 **ALSO INSTRUCTS** the Director to continue to protect the interests of the IOPC Funds, to promote the use of reliable insurers to ensure that the international liability and compensation regime is able to function as intended and to pursue recourse action in the event of incidents occurring involving the IOPC Funds in which the owner/insurer of the ship does not fulfil its obligations under the 1992 Civil Liability Convention.
-