



International Oil Pollution
Compensation Funds

Agenda Item 4	IOPC/NOV24/4/WP.1	
Date	6 November 2024	
Original	English	
1992 Fund Administrative Council	92A29	●
1992 Fund Executive Committee	92EC83	
Supplementary Fund Assembly	SA21	●

RISK OF UNINSURED AND UNSAFE SHIPS

Note by the Director

Summary:	As instructed by the 1992 Fund Assembly and the Supplementary Fund Assembly and, taking note of the discussions by delegations on this matter, the Director has prepared revised 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 Assembly</u></p> <p>Decide whether to adopt the revised 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 revised 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 Following discussions relating to the draft Resolutions for the 1992 Fund and the Supplementary Fund on the issue of uninsured and unsafe ships earlier in the session, the Director has prepared revised draft texts for these Resolutions for the consideration of the governing bodies. A revised draft 1992 Fund Resolution is set out at Annex I. A revised draft Supplementary Fund Resolution is set out at Annex II. New text is indicated using underline and deletions are indicated using strike through.

2 Action to be taken

1992 Fund Assembly

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

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ANNEX I

DRAFT 1992 FUND ASSEMBLY RESOLUTION

Raising awareness of the risk of uninsured and unsafe ships

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund)

RECALLING that, under the 1992 Civil Liability Convention (1992 CLC), 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 ALSO that failure to meet these treaty obligations may result in State liability,

RECOGNISING that whilst the vast majority of shipowners that are engaged in transportation of oil by sea do so in a responsible manner and in accordance with relevant IMO requirements, including those relating to the insurance and financial security requirements of the 1992 CLC, an increasing number of ships which are in breach of international standards are transporting oil,

NOTING with regret and great concern the increasing transportation of oil now being conducted by unsafe and uninsured ships or those with insurance not in compliance with Article VII of the 1992 CLC, effectively undermining the safety and environmental standards developed by the International Maritime Organization (IMO), ~~which is, to some extent, addressed in IMO Assembly Resolution A.1192(33)~~, as well as the international liability and compensation regime based on the 1992 CLC, the 1992 Fund Convention and the Supplementary Fund Protocol,

NOTING ALSO that recently there have been oil spill incidents that fall within the scope of the 1992 CLC, 1992 Fund Convention and potentially the Supplementary Fund Protocol, in which the spill sources are unclear, the responsible shipowner is not identified, or the ship is not insured, or does not have insurance in compliance with Article VII of the 1992 CLC,

NOTING WITH CONCERN that under Article 4 of 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 responsibility 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 to some extent addressed in IMO Assembly Resolution A.1192(33), some oil transportation continues to be conducted using unsafe and uninsured ships or those with insurance not in compliance with Article VII of the 1992 CLC,

RECOGNISING the need to raise awareness of the current situation and for States and all parties concerned to fulfil their obligations to prevent any future transportation of oil by uninsured ships or those with insurance not in compliance with Article VII of the 1992 CLC or ships that are in significant 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 instruments and to enforce the insurance requirements applicable under Article VII of the 1992 CLC 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 under the applicable instruments to pursue the legal remedies available to them against the owner liable for the damage under the 1992 CLC,
- 3 **ENCOURAGES** all States Parties to the 1992 CLC to follow the recommendations contained in the Guidelines for Accepting Insurance Certificates and Insurance Companies, Financial Security Providers and Protection & Indemnity Clubs (P&I Clubs) as contained in IMO Circular LEG.1/Circ.16,
- 4 **ENCOURAGES ALSO** all States Parties to the 1992 CLC to follow the consultation process contained in Article VII (7) of the Convention, should there be any concern that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by the Convention,
- 5 **URGES ALSO** those States involved in an oil pollution incident caused by a ship that is uninsured or with insurance not in compliance with Article VII of the 1992 CLC or a ship significantly breaching the safety and environmental standards contained in the relevant IMO Conventions to cooperate with each other in investigations ~~(including criminal investigations in accordance with national legislation)~~ into the causes of such incidents and 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,
- 6 **ENCOURAGES** those States affected by such an incident to refer to the guidance document developed by the Director for Member States on 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,
- 7 **INSTRUCTS** the Director to continue to protect the interests of the IOPC Funds and the interests of the Member States and to promote the use of insurers which provide coverage fully comply in full compliance with their obligations the requirements under Article VII of the 1992 CLC, to ensure that the international liability and compensation regime is able to function as intended,
- 8 **ALSO INSTRUCTS** the Director 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 CLC.

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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 (1992 CLC), 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 ALSO 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,

RECOGNISING that whilst the vast majority of shipowners that are engaged in transportation of oil by sea do so in a responsible manner and in accordance with relevant IMO requirements, including those relating to the insurance and financial security requirements of the 1992 CLC, an increasing number of ships which are in breach of international standards are transporting oil

NOTING with regret and great concern the increasing transportation of oil now being conducted by unsafe and uninsured ships or those with insurance not in compliance with Article VII of the 1992 CLC, effectively undermining the safety and environmental standards developed by the International Maritime Organization (IMO), ~~which is, to some extent, addressed in IMO Assembly Resolution A.1192(33)~~, as well as the international liability and compensation regime based on the 1992 CLC, the 1992 Fund Convention and the Supplementary Fund Protocol,

NOTING ALSO that recently there have been oil spill incidents that fall within the scope of the 1992 CLC, 1992 Fund Convention and potentially the Supplementary Fund Protocol, in which the spill sources are unclear, the responsible shipowner is not identified, or the ship is not insured, or does not have insurance in compliance with Article VII of the 1992 CLC,

NOTING WITH CONCERN that under Article 4 of the 1992 Fund Convention and the 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 responsibility 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 to some extent addressed in IMO Assembly Resolution A.1192(33), some oil transportation continues to be conducted using unsafe and uninsured ships, or those with insurance not in compliance with Article VII of the 1992 CLC,

RECOGNISING the need to raise awareness of the current situation and for States and all parties concerned to fulfil their obligations to prevent any future transportation of oil by uninsured ships or those with insurance not in compliance with Article VII of the 1992 CLC or ships that are in significant 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 instruments and to enforce the insurance requirements applicable under Article VII of the 1992 CLC 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 under the applicable instruments to pursue the legal remedies available to them against the owner liable for the damage under the 1992 CLC,
- 3 **ENCOURAGES** all States Parties to the 1992 CLC to follow the recommendations contained in the Guidelines for Accepting Insurance Certificates and Insurance Companies, Financial Security Providers and Protection & Indemnity Clubs (P&I Clubs) as contained in IMO Circular LEG.1/Circ.16,
- 4 **ENCOURAGES ALSO** all States Parties to the 1992 CLC to follow the consultation process contained in Article VII (7) of the Convention, should there be any concern that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by the Convention,
- 5 **URGES ALSO** those States involved in an oil pollution incident caused by a ship that is uninsured or with insurance not in compliance with Article VII of the 1992 CLC or a ship significantly breaching the safety and environmental standards contained in the relevant IMO Conventions, to cooperate with each other in investigations ~~(including criminal investigations in accordance with national legislation)~~ into the causes of such incidents and 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,
- 6 **ENCOURAGES** those States affected by such an incident to refer to the guidance document developed by the Director for Member States on 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,
- 7 **INSTRUCTS** the Director to continue to protect the interests of the IOPC Funds and the interests of the Member States and to promote the use of insurers which provide coverage fully comply in full compliance with their obligations the requirements under Article VII of the 1992 CLC, to ensure that the international liability and compensation regime is able to function as intended,

- 8 **ALSO INSTRUCTS** the Director 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 CLC.
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