



International Oil Pollution
Compensation Funds

Agenda Item 4	IOPC/NOV24/4/3	
Date	11 October 2024	
Original	English	
1992 Fund Assembly	92A29	●
1992 Fund Executive Committee	92EC83	
Supplementary Fund Assembly	SA21	●

RISK OF UNINSURED AND UNSAFE SHIPS

Note by the Director

Summary:

Following their discussions at the April 2024 sessions on the risk of uninsured and unsafe ships and a related discussion on the potential impact of sanctions on the international liability and compensation regime, the governing bodies were invited to comment on and consider, what, if anything, could be done to address the concerns raised within the forum of the IOPC Funds (see document [IOPC/APR24/9/1](#)).

Several delegations reiterated their strong concerns relating to the increasing number of cases involving the transportation of oil by uninsured and unsafe ships and emphasised the impact such incidents could have on the IOPC Funds and the wider international liability and compensation regime.

The governing bodies instructed the Director to prepare draft Resolutions for the 1992 Fund and the Supplementary Fund on the issue of uninsured and unsafe ships, as presented in document [IOPC/APR24/4/WP.1](#), which they considered later in the April 2024 sessions.

The vast majority of delegations present at the meeting contributed to the debate on this subject and all agreed that a Resolution for each Fund, clarifying the concerns of Member States and setting out measures to address the key issues resulting from incidents involving uninsured and unsafe ships, should be adopted. However, delegations requested more time to consider the text of the Resolutions, to conduct consultations and discuss specific amendments to the text.

The governing bodies instructed the Director to re-issue the draft 1992 Fund and Supplementary Fund Resolutions for consideration at the November 2024 sessions of the governing bodies. States were encouraged to submit to the Secretariat any comments and suggestions for revisions to the Resolutions.

This document sets out the feedback received from delegations since the April 2024 sessions (Annex I), the Director's considerations on the suggestions made (section 4) and revised draft texts for the consideration of the governing bodies (Annexes II and III).

Action to be taken: 1992 Fund Assembly

Taking into account :

- (i) the information contained in document IOPC/NOV24/4/3/1 relating to the internal procedure to be followed by the Secretariat in the event of an incident;
- (ii) the draft guidance contained in that document; and
- (iii) the feedback submitted by delegations,

decide whether to adopt the revised draft 1992 Fund Resolution on raising awareness of the risk of uninsured and unsafe ships, as set out at Annex II.

Supplementary Fund Assembly

Taking into account:

- (i) the information contained in document IOPC/NOV24/4/3/1 relating to the internal procedure to be followed by the Secretariat in the event of an incident;
- (ii) the draft guidance contained in that document; and
- (iii) the feedback submitted by delegations,

decide whether to adopt the revised draft Supplementary Fund Resolution on raising awareness of the risk of uninsured and unsafe ships, as set out at Annex III.

1 Introduction

- 1.1 At its 82nd session in April 2024, the 1992 Fund Executive Committee noted that incidents such as the *Gulfstream* in Trinidad and Tobago raised serious concerns and undermined the integrity of the international liability and compensation regime (document [IOPC/APR24/9/1](#), paragraphs 3.6.35 to 3.6.40). Several delegations supported further discussion of the wider issues related to the risk of uninsured and unsafe ships and the subject was raised within the discussions of the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, the same week.
- 1.2 Taking into account the Executive Committee's concerns and the related discussion by the 1992 Fund Administrative Council and Supplementary Fund Assembly on the potential impact of sanctions on the international liability and compensation regime, the governing bodies were invited to comment on the issue and consider, what, if anything, could be done to address the concerns raised within the forum of the IOPC Funds (see document [IOPC/APR24/9/1](#), section 4.1).
- 1.3 Several delegations reiterated their strong concerns relating to the increasing number of cases involving the transportation of oil by uninsured and unsafe ships, and emphasised the impact such incidents could have on the IOPC Funds and the wider international liability and compensation regime.
- 1.4 Following the suggestion of one delegation, the governing bodies instructed the Director to prepare draft Resolutions for the 1992 Fund and the Supplementary Fund on the issue of uninsured and unsafe ships, for consideration later in the session.
- 1.5 The draft Resolutions for the 1992 Fund and Supplementary Fund were presented in document [IOPC/APR24/4/WP.1](#) and discussed at the April 2024 sessions.
- 1.6 The vast majority of delegations present at the meeting contributed to the debate on this subject and all agreed that the risk of uninsured and unsafe ships was an important issue. Those delegations also

all agreed that a Resolution for each Fund, clarifying the concerns of Member States and setting out measures to address the key issues resulting from incidents involving such ships, should be adopted.

- 1.7 However, despite the agreed urgency of the matter, given the importance of the subject, a sizeable majority of delegations requested more time to consider the text of the Resolution, to conduct consultations and discuss specific amendments to the text. A number of specific points were briefly referred to during the discussions, including:
- (iv) the importance of ensuring certain points made within the Resolution were balanced and aligned with the International Maritime Organization (IMO), particularly with regards to the references to the 1992 Civil Liability Convention (CLC), of the reference to IMO Resolution A.1192(33) and to the issue of fraudulent registration of ships;
 - (v) the need for careful consideration of references to criminal investigations and other areas that might fall under the jurisdiction of Member States; and
 - (vi) the consistency and clarity of certain terms used in the document, such as 'unsafe' and 'insufficiently insured'.
- 1.8 The governing bodies instructed the Director to re-issue the draft 1992 Fund and Supplementary Fund Resolutions on the risk of uninsured and unsafe ships for consideration at the November 2024 sessions of the governing bodies.
- 1.9 The Director was also instructed to circulate comments and suggestions from delegations on the proposed text of the Resolutions to enable States to consider the proposals and facilitate discussion in November 2024 with a view to adopting a final text of the Resolutions at that meeting. States were encouraged to submit any comments and suggestions to the Secretariat for revisions to the Resolutions promptly and no later than 13 September 2024.
- 1.10 A large number of delegations confirmed their support for the proposed instruction within the Resolutions to the Director to develop, in consultation with the Audit Body, an internal procedure to be followed by the IOPC Funds' Secretariat in order to gather necessary information to determine the applicability of the 1992 CLC, the 1992 Fund Convention and the Supplementary Fund Protocol to an incident and the parties involved. The governing bodies instructed the Director to begin to develop such internal procedure and report on its development at the November 2024 sessions.
- 1.11 The governing bodies also supported the proposed instruction to the Director within the Resolutions to develop, in consultation with the Audit Body, 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. The Director was instructed to report on the development of the procedure at the November 2024 sessions.
- 1.12 The Director clarified that information on the internal procedure would be presented for information rather than for the approval of the governing bodies, and that the guidance would be designed to assist States in the event of an incident involving irregular practices, rather than being specific rules or procedures to be adopted that might contradict national policies.
- 1.13 Information on the development of both the internal procedure and the draft text of the guidance for Member States is set out in document [IOPC/NOV24/4/3/1](#).

2 Feedback from delegations

- 2.1 By the deadline of 13 September 2024, feedback on the draft Resolutions as presented at the April 2024 sessions of the governing bodies was received from the following Member States: India, the Marshall Islands, the Netherlands, Russian Federation, Singapore and United Arab Emirates. The observer delegations of the International Chamber of Shipping (ICS) and the International Group of P&I Associations (International Group) also submitted feedback.
- 2.2 The feedback has been provided in various formats, with some delegations offering specific amendments to the Resolutions directly, others providing a summary of their suggestions in writing and others providing both. All feedback received is set out in Annex I. For ease of reading and to avoid unnecessary repetition, where the amendments are identical to both the 1992 Fund and the Supplementary Fund Resolutions, only the 1992 Fund Resolution has been provided.

3 Liaison with IMO

- 3.1 During the discussions on this subject at the IOPC Funds' April 2024 sessions, the observer delegation of IMO expressed its appreciation to the governing bodies for drawing attention to the issue of uninsured and unsafe ships. It responded to the proposals by a number of delegations that the IOPC Funds should liaise closely with IMO on the content of the Resolutions and confirmed its willingness to provide assistance and further information as appropriate.
- 3.2 The Director shared the feedback received from delegations on the draft Resolutions with the IMO Secretariat, together with a proposed revised text and reasons for the revisions made. The IMO Secretariat provided valuable comments on the revised texts which have been incorporated where appropriate in the new versions of the Resolutions, contained at Annexes II and III.

4 Director's considerations

- 4.1 The Director is grateful for the support and feedback that was given by Member States and observer delegations at the time of the initial discussion of the draft Resolutions at the April 2024 sessions. He also would like to express his appreciation to those delegations who have submitted feedback on the draft Resolutions since the April 2024 sessions. He further thanks the IMO Secretariat for providing valuable input and guidance since the April 2024 discussions. Taking into account the comments provided at each of those stages, the Director would like to make a number of observations.
- 4.2 The Director has noted comments made by a number of delegations with regards to the inclusion of references to Article VII of the 1992 CLC, to IMO Assembly Resolution A.1192(33) and to IMO Circular LEG.1/Circ.16. He considers that these references do strengthen and help to clarify certain key messages within the Resolutions and, as such, has included these references in the revised draft texts.
- 4.3 The Director has also noted concerns expressed by some delegations that some terms within the Resolutions are not clearly defined. In several cases those comments have been taken into account in the revised draft and alternative text has been inserted. However, he would like to clarify that the draft Resolutions and the terminology used within them have been prepared on the understanding that these are read in the context of the issues faced by the IOPC Funds, and recalling their common usage during discussions specifically within the forum of the IOPC Funds' governing bodies. This includes the phrase 'unsafe' which is used in the title of the Resolution and has been used in the context of the discussions over the several sessions of the governing bodies, which led to the drafting of the Resolutions. It also includes 'Member State' and 'shared liability', which are phrases that appear frequently across IOPC Funds' documents and materials and are commonly understood.

- 4.4 Furthermore, the Director would like to highlight that, in order to maximise the readability and effectiveness of the Resolutions, efforts have been made to deliberately keep the text concise and clear, only repeating existing text and definitions from the relevant Conventions where necessary and where it strengthens the message rather than diluting it.
- 4.5 The Director notes that some comments were received which relate specifically to the issue of international sanctions, to the fraudulent registration of ships, and to other areas which fall outside the remit of the IOPC Funds and do not strictly fit with the aim of these Resolutions. Therefore, proposed amendments to the Resolutions relating to such topics have not been included in the revised draft texts.
- 4.6 In reference to operative paragraph 3 of the original draft text, some feedback received explained that urging States involved in an oil pollution incident to 'assist' each other in investigations could be interpreted as imposing obligations on the State. The Director notes that concern and has removed the word accordingly. The Director also notes that some delegations expressed concern over the reference to criminal investigations in the same paragraph, with some commenting that the sensitive and sometimes confidential nature of such investigations could hinder the cooperation encouraged in the Resolutions between States. The Director remains of the view, however, that the sharing of developments in criminal investigations could be highly beneficial to the determination of key factors in an incident, which could help determine the applicability of the Conventions and the possibility of recourse actions. Noting the concerns, an amendment has been proposed to the relevant text which still encourages cooperation between States in respect of criminal investigations but emphasises that this can only be done in accordance with national legislation.
- 4.7 It was suggested by one delegation that the five largest contributing Member States should be consulted in respect of the development of the internal procedure described in operative paragraph 4 of the original draft Resolutions. Another delegation suggested that IMO should also be consulted. In the Director's view, since the procedure document is for internal purposes only, has been in existence and been followed successfully for many years covering a wide range of related claims and incident handling procedures, is reviewed and updated regularly by the experienced and expert staff of the Secretariat, and since its development falls well within the responsibility and capability of the Secretariat and within his own authority, he does not consider it necessary nor appropriate for the Secretariat to consult widely on the additions that are being made. This could set a precedent that would be difficult to manage practically and might hinder the work of the Secretariat rather than benefit it. For transparency, however, as agreed at the April 2024 sessions, the Director is happy to share details of the latest updates with all Member States, as set out in document [IOPC/NOV24/4/3/1](#).
- 4.8 Given that the internal procedure referred to in operative paragraph 4 of the original draft Resolution has now already been updated following the discussions in April 2024, the Director would like to suggest that perhaps it is no longer necessary to include the paragraph of text instructing him to update the procedure.
- 4.9 The suggestions to consult with the five largest contributing Member States and with IMO were also made in respect of the development of the guidance document for Member States, as described in operative paragraph 5 of the original draft Resolutions. For transparency and in the interest of equal treatment, the guidance document is shared for comments with all 1992 Fund Member States, and is set out in document [IOPC/NOV24/4/3/1](#). The Director has also already consulted with IMO on the text of the draft guidance (see document [IOPC/NOV24/4/3/1](#)). Furthermore, since the text of the guidance for Member States has also already been prepared following the discussions in April 2024, the Director would like to suggest that the paragraph of text instructing him to develop the guidance (operative paragraph 5) be amended to instead encourage States affected by an incident to refer to that guidance.

- 4.10 Taking all the feedback into account and bearing in mind the points raised in paragraphs 4.2 to 4.9, the Director has drafted revised Resolutions for the consideration of the governing bodies. The revised draft Resolutions are set out at Annexes II and III.

5 Action to be taken

1992 Fund Assembly

5.1 Taking into account:

- (i) the information contained in document [IOPC/NOV24/4/3/1](#) relating to the internal procedure to be followed by the Secretariat in the event of an incident;
- (ii) the draft guidance contained in that document; and
- (iii) the feedback submitted by delegations,

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 II.

Supplementary Fund Assembly

5.2 Taking into account:

- (i) the information contained in document [IOPC/NOV24/4/3/1](#) relating to the internal procedure to be followed by the Secretariat in the event of an incident;
- (ii) the draft guidance contained in that document; and
- (iii) the feedback submitted by delegations,

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 III.

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ANNEX I

FEEDBACK RECEIVED ON THE DRAFT RESOLUTIONS SINCE THE APRIL 2024 SESSIONS OF THE GOVERNING BODIES

Comments received from India (original English)

(Proposed deletions are indicated by strikethrough of the text. Proposed new text is underlined.)

1. **Ambiguous Definitions** – the following terms have not been defined in the Civil Liability Convention, 1992 ('CLC'):
 - (a) **'unsafe ships'** – the word 'unsafe' has not been defined in the Draft Resolution, leading to the ambiguity regarding which ships would be considered as 'unsafe' and the standard by which ships would be considered safe.
 - (b) **'ships that are in serious breach of the safety and environmental standards'** – The CLC prescribes liability for the IOPC Fund in the event that the compensation amount to be paid by a shipowner is inadequate on account of insufficient insurance or a complete lack of insurance. The CLC or the Fund Agreement, 1992 does not contain any provision for designating additional criteria for limiting the liability of the IOPC Fund. Thus, adding *'ships that are in serious breach of the safety and environmental standards'* as an additional criteria is not supported by the text of the Conventions.
 - (c) **'significantly breaching of the safety and environmental standards'** – the Draft Resolution urges States to mutually cooperate and assist in oil incident investigations of a *'ship significantly breaching the safety and environmental standards'*. This term requires further definition.
 - (d) **'Reliable insurers'** – the Draft Resolution instructs the IOPC Fund Director to *'promote the use of reliable insurers'*. This, again, is an undefined term. The IOPC Fund will thus need to adequately define and delineate criteria for determining 'reliable insurers', before making any compensation amount contingent on such a requirement.
 - (e) **'utmost to prevent any future trading of oil' (Page 1)** – the Draft Resolution urges States 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'*. The term 'utmost' is undefined in the CLC or the Fund Convention, and thus the scope of this obligation is overly broad, vague and unclear.
2. **Shared Liability between the Shipping and Oil Industry** – The Draft Resolution provides that the shipping and oil industries must incur 'shared liability' with respect to the functioning of the international compensation and liability regime set up by the CLC. The IOPC Fund does not adequately define and determine what this 'shared liability' entails, its extent, and its apportionment.
3. **Qualifier on IOPC Liability** – The Draft Resolution states that *'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'*. However, there is no clarification or explanation as to what constitutes taking '**all reasonable steps**' when it comes to pursuing such legal remedies. Further, it is unclear whose jurisdiction would prevail in the pursuance of such remedies. The IOPC Fund needs to establish such reasonable steps or firmer criteria for establishing such reasonable steps which are required to be taken.

4. **Requirement for ‘States involved’ to cooperate and assist investigations ‘into the reasons why ships were operating without sufficient insurance coverage’** – The Draft Resolution places an obligation on ‘States involved’ to cooperate and assist with investigations ‘into the reasons why ships were operating without sufficient insurance coverage’. While this obligation may make sense for a flag State whose ship caused such a lapse, it is unfair to place the same obligation on a State injured by the conduct of another flag State’s ship. In the event of an oil spill occurring in the EEZ of a country by the ship of another country, there is no reason that the injured State should be required to ‘inquire into the reasons’ why ‘ships were operating without sufficient insurance’; that onus should fall only upon the State whose ship has caused such damage. The extent of the injured State’s obligation should be limited to determining only whether damage has occurred, and if it has occurred within the limits of its territorial jurisdiction.

5. **Conflicting definitions between a ‘serious breach of the safety and environmental standards’ and ‘a ship significantly breaching the safety and environmental standards’** – The Draft Resolution uses the terms ‘serious breach of the safety and environmental standards’ and ‘ship significantly breaching the safety and environmental standards’ interchangeably. However, the terms ‘significant’ and ‘serious’ may have different meanings in practice, and therefore require clearer definitions.

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Specific proposed amendments by India:

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 [fulfill their obligations] ~~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 [Joint] Audit Body and [top five contributing Member States to the Fund Convention], 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 [Joint] Audit Body and [top five contributing Member States to the Fund Convention], 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, [in consultation with top five contributing Member States to the Fund Convention] 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.

Comments received from the Marshall Islands (original English)

1. Definition of Uninsured or Insufficiently Insured Ships

The third, fourth and eighth preambular paragraphs mention 'uninsured' and/or 'insufficiently Insured' ships. When the drafts were being discussed in plenary in May, some delegations suggested these terms may require further definition, we respectfully disagree. In our view, these terms are self-explanatory and do not require additional language or clarification at this stage.

2. Mentions of 'Unsafe Operations'

The third and eighth preambular paragraphs also refer to 'unsafe' operations, and the ninth preambular paragraph attempts to define this term by referencing IMO Assembly Resolution A.1192 on unsafe and dark operations. We believe that for consistency and clarity, Resolution A.1192 should be referenced in all paragraphs that mention 'unsafe' operations within the draft Resolution.

3. Cooperation Between States in Investigations

The third operative paragraph of the Resolution encourages cooperation between States during investigations, including criminal investigations. Some delegations raised concerns during the Spring sessions that criminal investigations should not be included, and we share this view. Criminal investigations often involve sensitive or confidential procedures, sealed proceedings, or other circumstances that could limit the sharing of information. Therefore, we suggest excluding criminal investigations from this aspect of the Resolution, while encouraging cooperation in other types of investigations.

4. Consultation with IMO

The fourth operative paragraph instructs the IOPC Funds 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.' We believe this procedure should explicitly include consultation with the International Maritime Organization (IMO), for the following reasons:

- (a) IMO serves as the parent organization of the 1992 Civil Liability Convention (1992 CLC) and the IOPC Funds Conventions.
- (b) Not all 1992 CLC Member States are parties to one or both of the IOPC Funds Conventions. Consultation with the IMO would ensure that the development of these procedures aligns with the broader framework and obligations under the IMO Conventions.

5. Reference to fraudulent registrations of ships

We also believe a new operative paragraph is required, to request Member States vigilance to eliminate or at least reduce the threat that fraudulent registrations of ships pose to the environment and the Compensation Regime.

Comments received from the Netherlands (original English)

(Proposed deletions are indicated by strikethrough of the text. Proposed new text is underlined.)

In reference to the 2nd paragraph of the preamble of the draft Resolutions presented in April, the Netherlands made the following comment:

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

Comment:

Article VII of the CLC states that ships need to have an insurance and that contracting states should enforce this, with a certificate attesting that insurance or other financial security is in force. However, there is stated no consequence when a ship does not have an insurance but does fly the flag of the contracting state and/or leaves its port(s). As long as this sentence is stated with the word 'may', we could agree with this.

In reference to operative paragraph 2 of the draft Resolutions, the Netherlands made the following comment and proposal:

Comment:

We suggest this change/addition to this paragraph in order to remain closer to the texts of the Convention. Reason for this is that based on the Convention firstly there should be looked at if the owner can meet his obligations financially and exhaust all legal remedies for this. We thought this was described too broadly in the text and therefore make this suggestion.

Proposed revision:

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 him against the owner liable for the damage under the 1992 Liability Convention,

In reference to operative paragraph 2 of the draft Resolutions, the Netherlands made the following comment:

Current text:

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 the ships and persons involved, including, but not limited to, shipowners and their insurers,

Comment:

We wonder whether this would add anything to the process currently in place, since regarding oil incidents it is often already stated to 'give the Director such instructions in respect of the handling of this incident as it may deem appropriate'. With this, member states already are able to instruct the Director to investigate persons and company that are liable in an incident. In addition to that, states also have national protocols and procedures that are used in the event of oil spills. However, if this is maintained in the Resolution text, we could agree with this.

Comments received from the Russian Federation (original English)

(Proposed deletions are indicated by strikethrough of the text. Proposed new text is underlined.)

The Russian side in general supports the idea of addressing the issue. At the same time the IOPC Funds' governing bodies' task, in its view, is to make sure that the final document is properly balanced and fully complies with the IOPC Funds' founding treaties. One of the major additions provided in the text refers to the inadmissibility of illegal unilateral discriminatory measures which disrupt the cohesiveness of the international legal order and create substantial risks for the international shipping and marine environment.

Specific proposed amendments to the operative paragraphs of the draft Resolutions:

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 under applicable instruments to pursue the legal remedies available to them,

3 **URGES** all States to refrain from imposing illegal unilateral discriminatory measures against other states, shipping companies and ships, leading to fragmentation of international liability and compensation regime and increasing of risks to maritime safety and marine environment,

4 **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,

5 **INSTRUCTS** the Director, ~~in consultation with the Audit Body,~~ to develop an internal procedure, accessible to Member States, 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,

6 **INSTRUCTS** the Director to pursue measures in order to assist States and persons under their jurisdiction, affected by illegal unilateral discriminatory measures imposed to them by other States, to fulfill properly their obligations under applicable instruments, as well as to ensure proper implementation of the IOPC Funds functions towards those affected States and persons,

7 **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,

8 **ALSO INSTRUCTS** the Director to continue to protect the interests of the IOPC Funds and interests of the Member States, ~~to promote the use of reliable insurers~~ 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.

Comments received from Singapore (original English)

(Proposed deletions are indicated by strikethrough of the text. Proposed new text is underlined.)

In reference to paragraph 8 of the preamble of the draft Resolutions, Singapore made the following comment:

Singapore notes the preference of some member States to include reference to the IMO Assembly Resolution A.1192(33), given that there are some overlaps between inadequate liability insurance/financial security and 'dark' or 'shadow' fleet activity. Nevertheless, the focus of the draft Resolution should be on the issue of uninsured and unsafe ships.

Proposed revision:

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

In reference to operative paragraph 3 of the draft Resolutions, Singapore made the following comments:

As 'assistance' in investigations could imply a 'hard' obligation by the State Party, and may also involve prescribed process or mutual legal assistance, Singapore proposes to omit 'and assist'.

For Singapore's proposal to have cooperation, the phrase would then be 'cooperate with'.

Singapore views that '(including criminal investigations)' should be omitted as criminal investigations fall under a member State's domestic jurisdiction. As such, it would not be appropriate to expect third party member States to get involved in criminal investigations of another State.

Singapore views that this section is not necessary, as the phrase 'investigations into the causes ... and the persons involved (including the identity of the shipowner)' is sufficient. While understanding the adequacy or sufficiency of insurance coverage is in the interest of the Fund, non-compliance with international standards would fall under the purview of maritime administrations, and do not necessarily fall within the IOPC's mandate.

Proposed revision:

- 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[with] ~~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,~~

Comments from the United Arab Emirates (original English)

(Proposed deletions are indicated by strikethrough of the text. Proposed new text is underlined.)

Specific proposed amendments to the operative paragraphs of the draft Resolutions:

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~~ ALSO 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~~ ALSO that recently there have been oil spill incidents in which the spill sources are ~~unclear~~ unknown, the responsible shipowner is not identified, or the ship is not insured or 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 Contracting~~ 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, to some extent, in IMO Assembly Resolution A.1192(33) URGING MEMBER STATES AND ALL RELEVANT STAKEHOLDERS TO PROMOTE ACTIONS TO PREVENT ILLEGAL OPERATIONS IN THE MARITIME SECTOR BY THE 'DARK FLEET' OR 'SHADOW FLEET', 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 Contracting 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 and instruments,

- 1 **URGES** all ~~Member Contracting~~ 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 **3 REMINDS** each Contracting 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 **2 URGES FURTHER ALSO** 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 with~~ each other, consistence with their domestic laws and procedures, 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:
- 1 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; and
- ~~5 FURTHER INSTRUCTS~~ the Director, in consultation with the Audit Body, to:
- 2 to develop guidance for ~~Member~~ Contracting 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,
- 5 **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.
- 6 ALSO Request the Director to:
- 1 inform IMO of the issues discussed and the concern raised, so that, it may also take action for the matters under its remit: and
- 2 report on the implementation of this Resolution.

**Comments received from the International Chamber of Shipping (ICS)
and the International Group of P&I Associations (International Group) (original English)**

(Proposed deletions are indicated by strikethrough of the text. Proposed new text is underlined.)

1) ICS and the International Group do not object, nor do we oppose, appropriately worded Resolutions that focus on the specific concern of State party obligations to ensure that shipowners maintain the necessary financial security as required by Article VII of the 1992 CLC and to highlight the fact that a limited number of 1992 Fund cases have occurred in recent years where ship sourced pollution damage has arisen from ships without sufficient financial security;

2) However, mindful of the concerns expressed by a number of delegations in April with regard to the need for effective Flag State oversight, we feel that perhaps a greater focus of the draft Resolutions should be on the responsibilities of State parties to the CLC 1992, including the title wording. We also suggest that referencing the IMO Guidelines for Accepting Insurance Certificates and Insurance Companies, Financial Security Providers and Protection and Indemnity Clubs (P&I Clubs) that were recently updated by LEG 111 would be helpful;

3) ICS and the IG suggest that the draft Resolutions include an acknowledgement (similar to that contained in IMO Assembly Resolution A.1192(33)) that the vast majority of shipowners that are engaged in the transportation of oil by sea do so in a responsible manner and in accordance with the insurance and financial security requirement of the 1992 CLC;

4) We do not believe that a lack of sufficient financial security as required by the 1992 CLC automatically means that a ship should be considered 'unsafe' and we've sought to reflect this viewpoint in the attached, and likewise our view that we also believe that safety matters, and pronouncements on such matters, are within the purview of the IMO rather than the IOPC Funds,

5) We think that it is more appropriate to refer to the 'transportation' of oil rather than 'trade' or 'trading', and

6) We are concerned with the reference to 'reliable insurers' in any Resolution. We believe that this could be quite difficult and complicated territory for the IOPC Funds. We are not aware that 'reliable insurers' is an agreed or an accepted term, nor is it clear how any decision as to which insurers are deemed 'reliable' and which insurers are not would be made. As such we are of the view that the Resolutions should not contain any such reference. Instead, and as suggested in point 2 above, we believe that it would be more appropriate to include a reference to the updated IMO Guidelines for Accepting Insurance Certificates and Insurance Companies, Financial Security Providers and Protection and Indemnity Clubs (P&I Clubs) as agreed by IMO LEG 111.

Specific proposed amendments to the draft Resolution:

Raising awareness of the risk of uninsured and unsafe ships Raising awareness of the need for effective compliance with State Party obligations under Article VII of the 1992 Civil Liability Convention in order to mitigate the risk of uninsured or insufficiently insured ships

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

RECOGNISING that the vast majority of shipowners that are engaged in transportation of oil by sea do so in a responsible manner and in accordance with the insurance and financial security requirements of the 1992 Civil Liability Convention

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 that the increasing trade transportation of oil by sea now being conducted by unsafe and uninsured or insufficiently insured ships, effectively undermines the liability and compensation regime of 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 that fall within the scope of the 1992 Civil Liability Convention, 1992 Fund Convention and 2003 Supplementary Fund Protocol 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 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 liability between the shipping and the oil industries is crucial for the effective and efficient functioning of the international liability and compensation regime 1992 Civil Liability Convention and 1992 Fund Convention,

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 transportation of oil by sea trading is 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 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 the insurance requirements applicable under Article VII of 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~~ if the State suffering the damage has not taken all reasonable steps to pursue the legal remedies available to them,

3) **ENCOURAGES** all States Parties to the 1992 Civil Liability Convention 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 FURTHER** all States Parties to the 1992 Civil Liability Convention 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 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~~

6 **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,

7 **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, involved in an oil pollution incident that falls under the scope of the 1992 Civil Liability Convention and 1992 Fund Convention and whether there was a failure of a State Party to meet its treaty obligations to ensure that the ship had the required insurance or other financial security

8 **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 1992 Civil Liability Convention and 1992 Fund Convention international liability and compensation regime are is able to function in tandem and as intended and to pursue recourse action in the event of incidents occurring involving the IOPC Funds in which the State Party, owner and, or insurer of the ship do not fulfil ~~its~~ their obligations under the 1992 Civil Liability Convention and the ship is operating without, or with insufficient, insurance coverage or without complying with the safety and environmental standards,

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ANNEX II

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 (1992 CLC) ~~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 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 ~~trade-transportation~~ of oil now being conducted by unsafe and uninsured ~~or insufficiently insured~~ ships or those with insurance not in compliance with Article VII of the 1992 CLC—ships, 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 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol,

NOTING FURTHER 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 sufficiently 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 ~~liability~~ 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 ~~trading~~ transportation continues to be conducted using unsafe and uninsured ~~or insufficiently insured~~ 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 ~~do their utmost~~ fulfil their obligations to prevent any future ~~trading~~ transportation of oil by uninsured ships or those with insurance not in compliance with Article VII of the 1992 CLC ~~uninsured or insufficiently insured ships~~ or ships that are in serious significant breach of the safety and environmental standards contained in the relevant IMO Conventions,

- 1 **URGES** ~~all states~~ 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 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 under the applicable instruments to pursue the legal remedies available to them against the owner liable for the damage under the 1992 CLC Civil Liability Convention,
- 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 FURTHER ALSO** those States involved in an oil pollution incident caused by ~~an~~ a ship that is uninsured or ~~insufficiently insured~~ ship 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 and assist each other in investigations (including criminal investigations in accordance with national legislation) 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,
- ~~6 **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,~~
- 7 ~~**FURTHER INSTRUCTS** the Director, in consultation with the Audit Body,~~ **ENCOURAGES** those States affected by such an incident to refer to develop the guidance document developed by the Director for Member States for 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,
- 8 ~~**ALSO 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 reliable insurers which fully comply with their obligations under Article VII of the 1992 CLC, to ensure that the international liability and compensation regime is able to function as intended,

- 9 **ALSO INSTRUCTS** the Director ~~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 CLC Civil Liability Convention.

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ANNEX III

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), ~~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 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 ~~trade~~ transportation of oil now being conducted by unsafe and uninsured ~~or insufficiently insured~~ 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 Civil Liability Convention~~, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol,

NOTING FURTHER 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 ~~sufficiently~~ 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 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~~ 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 ~~trading~~ transportation continues to be conducted using unsafe and uninsured ~~or insufficiently insured~~ 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 ~~do their utmost~~ fulfil their obligations to prevent any future ~~trading~~ transportation of oil by uninsured ships or those with insurance not in compliance with Article VII of the 1992 CLC or ~~insufficiently insured ships or~~ ships that are in serious 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 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 under the applicable instruments to pursue the legal remedies available to them against the owner liable for the damage under the 1992 CLC Civil Liability and the 1992 Fund Conventions,
- 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 FURTHER ALSO** those States involved in an oil pollution incident caused by ~~an a~~ ship that is uninsured or insufficiently insured ship 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 ~~and assist~~ each other in investigations (including criminal investigations in accordance with national legislation) 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,
- ~~6~~ **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,~~
- 7 **FURTHER INSTRUCTS** the Director, in consultation with the Audit Body, ~~to develop~~ **ENCOURAGES** those States affected by such an incident to refer to the guidance document developed by the Director for Member States for 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,

- 8 ~~ALSO 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 reliable insurers which fully comply with their obligations under Article VII of the 1992 CLC, to ensure that the international liability and compensation regime is able to function as intended,
- 9 ALSO INSTRUCTS the Director ~~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 CLC ~~Civil Liability Convention~~.
-