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REPORT ON THE THIRD MEETING OF THE SEVENTH INTERSESSIONAL WORKING GROUP

CONSIDERATION OF THE DEFINITION OF ‘SHIP’

Note by the Secretariat

Summary:

This document sets out the discussions and conclusions of the third meeting of the 1992 Fund seventh intersessional Working Group held in May 2014. At its second meeting in April 2013, several key issues were identified for further discussion. These issues were considered in detail in October 2013 by the Consultation Group which was established by the Chairman at the Working Group’s second meeting. The Consultation Group also considered a number of documents submitted by the Chairman and by the delegations of Spain, Japan, the International Group of P&I Associations, the Republic of Korea and the International Chamber of Shipping.

At its May 2014 meeting, the Working Group considered document [IOPC/MAY14/8/1](#) submitted by the Chairman, which summarised the discussions of the Consultation Group. It also considered document [IOPC/MAY14/8/2](#) submitted by Australia, and focussed in particular on the proposal to consider criteria to be applied by Member States when considering an issue involving the definition of ‘ship’ under Article I.1 of the 1992 Civil Liability Convention.

Additionally, the question of whether oil discharged into ‘permanently or semi-permanently’ anchored vessels engaged in ship-to-ship oil transfer operations should qualify as contributing oil for the purposes of Article 10.1 of the 1992 Fund Convention was discussed in detail by the Working Group.

Action to be taken:

1992 Fund Assembly

Consider revising the terms of reference of the Working Group to enable the Group to continue its work and hold further meetings as required.

1992 Fund seventh intersessional Working Group

Information to be noted.

1 Introduction

- 1.1 In October 2011 the Director presented document [IOPC/OCT11/4/4](#), containing the legal analysis conducted by Professor Vaughan Lowe QC of the interpretation of the definition of ‘ship’ under the 1992 Civil Liability Convention (1992 CLC). The discussion of this document led to the

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A revised version of this document has been issued as in the original document paragraphs 7.3.2 and 9.9 did not fully reflect the statement by the delegation of Australia.

establishment by the 1992 Fund Assembly of the seventh intersessional Working Group to further consider the issues relating to the definition of ‘ship’. The terms of reference of the Working Group are defined in document [IOPC/OCT11/11/1](#), Annex III. At its first meeting held in April 2012, the Chairman of the Working Group presented document [IOPC/APR12/11/1](#) which identified five key issues which had been raised by Professor Vaughan Lowe QC and which were used to focus the Working Group’s discussions in subsequent meetings.

- 1.2 At the Working Group’s second meeting held in April 2013, document [IOPC/APR13/7/1/Rev.1](#) submitted by the Netherlands, documents [IOPC/APR13/7/2](#) and [IOPC/APR13/7/3](#) submitted by Australia and document [IOPC/APR13/7/4](#) submitted by the International Chamber of Shipping (ICS) and the International Group of P&I Associations (International Group) were presented for discussion by the Working Group. As a result of the discussions of those documents, the Chairman proposed the establishment of a Consultation Group consisting of the delegations of Australia, Japan, Netherlands, Norway, the International Group, ICS and any other delegations who wished to contribute, with the aim of presenting more solid proposals to the Working Group’s next meeting, possibly in the form of a guidance document or criteria that the IOPC Funds and Member States could follow.
- 1.3 In preparation for the meeting of the Consultation Group on 28 October 2013, and prior to the third meeting of the Working Group in May 2014, the Consultation Group was invited to consider and discuss the possibility of agreeing criteria to be used to assist the 1992 Fund Assembly in respect of future incidents where consideration of the definition of ‘ship’ might be an issue, as defined in sections 3 and 4 of document [IOPC/OCT13/4/3/1](#).
- 1.4 In addition, the Consultation Group was invited to consider the documents prepared by the delegations of Spain (document [IOPC/OCT13/4/3/2](#)), Japan (document [IOPC/OCT13/4/3/3](#)), the International Group (document [IOPC/OCT13/4/3/4](#)), the Republic of Korea (document [IOPC/OCT13/4/3/5](#)) and the International Group and ICS (document [IOPC/OCT13/4/3/6](#)).
- 1.5 At the Working Group’s third meeting held in May 2014, the Chairman submitted document [IOPC/MAY14/8/1](#) which summarised the discussions of the Consultation Group and invited the Working Group to consider two possible approaches to the definition of ‘ship’ and to further consider contribution issues in relation to ship-to-ship (STS) transfer operations. In addition, the Australian delegation submitted document [IOPC/MAY14/8/2](#) for discussion.

2 Participation

- 2.1 All States, intergovernmental and non-governmental organisations having the right to participate in the 1992 Fund Assembly were invited to participate in the Working Group. Representatives from the industry, ie shipowners, oil importers, insurance companies and classification societies were encouraged to participate.

2.2 The following Member States were represented at the Working Group's third meeting:

Algeria	Grenada	Papua New Guinea
Angola	Ireland	Philippines
Argentina	Islamic Republic of Iran	Poland
Australia	Italy	Portugal
Bahamas	Japan	Qatar
Belgium	Kenya	Republic of Korea
Cameroon	Liberia	Russian Federation
Canada	Malaysia	Singapore
China ^{<1>}	Marshall Islands	South Africa
Colombia	Mexico	Spain
Cyprus	Monaco	Sweden
Denmark	Morocco	Tunisia
Ecuador	Namibia	Turkey
Estonia	Netherlands	United Arab Emirates
Finland	New Zealand	United Kingdom
France	Nigeria	Uruguay
Germany	Norway	Vanuatu
Ghana	Oman	Venezuela (Bolivarian Republic of)
Greece	Panama	

2.3 Five non-Member States, Côte d'Ivoire, Indonesia, Peru, Saudi Arabia and Thailand, were represented as observers at the meeting.

2.4 The following intergovernmental and international non-governmental organisations participated in the Working Group's meeting as observers:

Intergovernmental organisations:

International Maritime Organization (IMO)

International non-governmental organisations:

BIMCO

Comité Maritime International (CMI)

International Association of Classification Societies Ltd (IACS)

International Chamber of Shipping (ICS)

International Group of P&I Associations

International Spill Control Organization (ISCO)

International Tanker Owners Pollution Federation Limited (ITOPF)

Oil Companies International Marine Forum (OCIMF)

World Liquid Petroleum Gas Association (WLPGA)

3 **Terms of reference**

3.1 The revised terms of reference of the Working Group, as determined by the 1992 Fund Administrative Council at its 11th session in October 2013, acting on behalf of the 1992 Fund Assembly, cover the following themes:

(a) the need to find solutions without changing the current Conventions;

(b) the need to analyse the consequences that different interpretations outlined in document [IOPC/OCT11/4/4](#) and other related documents might or could have on the coverage and contributions of the international compensation regimes;

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The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

- (c) a request to recommend to the Assembly a uniform approach to the interpretation of the definition of ‘ship’ under Article I.1 of the 1992 CLC and Article 10 of the 1992 Fund Convention;
- (d) the need to establish a Consultation Group consisting of the delegations of Australia, Netherlands, Japan, Norway, the International Group of P&I Associations, the International Chamber of Shipping and any other delegations that wished to contribute; and
- (e) to report its findings and/or recommendations to each session of the 1992 Fund Assembly, with a view to terminating its work and presenting a final report to the October 2014 session of the 1992 Fund Assembly.

3.2 The terms of reference also state, as decided by the 1992 Fund Assembly, that the Working Group shall have as its Chairman Mrs Birgit Sølling Olsen (Denmark).

4 Documents considered by the Working Group

The following documents were considered by the Working Group:

[IOPC/MAY14/8/1](#) Consideration of the definition of ‘ship’ – Note by the Chairman of the Consultation Group established to assist the 1992 Fund seventh intersessional Working Group

[IOPC/MAY14/8/2](#) Consideration of the definition of ‘ship’, Comments on the note by the Chairman of the Consultation Group – submitted by Australia

5 Document IOPC/MAY14/8/1 – submitted by the Chairman

5.1 Before introducing document [IOPC/MAY14/8/1](#), the Chairman reminded the Working Group that Professor Lowe’s legal analysis (document [IOPC/OCT11/4/4](#), paragraph 3.10) had continued to form the ‘base document’ for its work, and that, following the Working Group’s second meeting, it appeared that there was broad agreement that the following three scenarios fell within the definition of ‘ship’:

- (a) Barges being towed on sea voyages (or temporarily at anchor for purposes incidental to ordinary navigation or force majeure or distress);
- (b) Purpose-built FSOs that have their own independent motive power and steering equipment for sea-going navigation so as to be employed either as storage units or carriage of oil in bulk as cargo; and
- (c) Craft originally constructed or adapted (or capable of being operated) as vessels for transportation of oil, but later converted to FSOs, with capacity to navigate at sea under their own power and steering retained.

5.2 In summarising document [IOPC/MAY14/8/1](#), the Chairman informed the Working Group that 22 States, of which two were observers, had participated in the Consultation Group meeting in October 2013. The Chairman pointed out that at that meeting the Consultation Group had not revisited any of the discussions of the Working Group where decisions had already been made, as referred to in paragraph 5.1 above, but had rather focussed on moving forward with those elements where consensus had not yet been reached. The Chairman pointed out that the Consultation Group had divided its discussions between the definition of ‘ship’ and the contributions aspect.

- 5.3 Chairman's summary of the Consultation Group discussions regarding the issue of definition of 'ship'
- 5.3.1 The Chairman pointed out that during the Consultation Group's discussions, the majority of the delegations that had taken the floor had spoken in general support of the document submitted by Spain (document [IOPC/OCT13/4/3/2](#)), which had proposed that any stage of containment or storage which took place during the maritime transport chain should be included within the Conventions. The Chairman noted, however, that there was not a consensus amongst all Member States, as a number of Member States did not agree with the proposal, stating that the concept needed adjustment and that the concept of both domestic and international transport needed to be considered.
- 5.3.2 The Chairman also noted that there was a need to consider whether certain scenarios should be excluded as indicated in paragraph 2.5 of document [IOPC/OCT13/4/3/2](#) submitted by Spain, and that during the Consultation Group meeting, there had been a good discussion regarding whether or not there was a need to develop a list of vessel types or scenarios which were obviously within the Conventions or conversely, clearly outside the Conventions. The Chairman recalled that the majority of delegations that had spoken expressed concerns that such a list might not be exhaustive, and thus might not provide a definitive answer. Similarly, the Chairman recalled that the majority of delegations that had previously taken the floor were not in favour of developing interpretive criteria to apply to vessels, as it was not clear whether such criteria would be exhaustive, or how many criteria needed to be complied with, before there would be coverage under the Conventions.
- 5.3.3 The Chairman highlighted that in relation to the issue of the definition of 'ship', the Working Group was invited to consider the two approaches that had been debated within the Consultation Group as specified in paragraphs 9.1(a) (i) and (ii) of the Chairman's document:
- (i) Any situation where a vessel carries or stores oil on board and which can be considered as being part of the maritime transport chain should be included in the scope of the Convention, subject to the clarification of what constituted maritime carriage of oil and its limits; and
 - (ii) To develop a list of vessel types or scenarios which are clearly within or outside the Convention's definition in order to have a set of interpretive criteria aimed at assisting the governing bodies of the 1992 Fund to decide on a case-by-case basis, whether the vessel in question was a 'ship' under Article I.1 of the 1992 CLC.
- 5.3.4 The Working Group was invited to decide which approach should be adopted, subject to further development, and which should be presented to the 1992 Fund Assembly for approval at a future session.
- 5.4 Chairman's summary of the Consultation Group discussions regarding the issue of contributing oil
- 5.4.1 The Chairman noted that during the Consultation Group's meeting in October 2013 there were a number of comments made in relation to the point of principle, namely that if oil was received in a Member State's territory, it should be considered as contributing oil, and it was simply a matter of ensuring that a Member State's legislation and administration was in place. Conversely, a number of Member States commented on the difficulties Member States would face in reporting and attempting to collect contributions in respect of oil transferred during ship-to-ship (STS) transfer operations, both of a legal and a practical nature, as more specifically described in sections 6 and 7 of document [IOPC/OCT13/4/3/1](#). The Chairman also noted that some delegations were of the opinion that such operations were not covered under Article 10 of the 1992 Fund Convention.
- 5.4.2 The Chairman further noted that the Consultation Group had been divided on the question of whether oil discharged into 'permanently or semi-permanently' anchored vessels engaged in STS transfer operations should qualify as contributing oil for the purposes of Article 10.1 of the 1992 Fund Convention.

- 5.4.3 In the absence of consensus within the Consultation Group, the Chairman had therefore recommended in document [IOPC/MAY14/8/1](#), section 9, that Member States should consider the issue further in preparation of the third meeting of the Working Group, with the view to reaching an agreement on the issue.

6 Document IOPC/OCT13/4/3/2 – submitted by Spain

- 6.1 The delegation of Spain introduced its document for the benefit of those members of the Working Group that had not been present at the Consultation Group meeting in October 2013.
- 6.2 The Spanish delegation stated that in relation to the definition of ‘ship’ issue, in its view the definition of ‘ship’ in the 1992 CLC centred on the capacity to carry oil in the maritime transport chain, and that this included those maritime transport activities which involved a risk of pollution damage from persistent mineral oil. Explaining further, the delegation stated that the maritime transport chain or activity began when oil was moved beyond the production, processing or treatment unit, whether it be on land or sea, and that the maritime transport chain concluded when the oil was delivered at the terminal, but bearing in mind that the Conventions only applied to the seaborne leg of the transport chain. Consequently, that delegation explained, the ‘carriage’ or ‘containment’ or ‘storage’ of oil were further stages in the activity of maritime transport and were not exempt from risks, because there was always relative movement between ships and vessels whether they were underway or at anchor. Furthermore, that delegation also stated that stopping and anchoring were incidental to ordinary navigation and were therefore encompassed within the scope of the Conventions. That delegation commented that this approach was more realistic and pragmatic than trying to define the scope of the Conventions through a ‘case-by-case’ analysis of what constituted a ‘ship’.
- 6.3 That delegation also stated that in its opinion, any containment or storage which took place during the transport chain should be included within the scope of the Conventions, not only because it was clearly part of the maritime transport, but because oil was not stored at sea unless it had a final commercial destination.

6.4 Analysis of contributing oil – comments by the Spanish delegation

The Spanish delegation raised concerns in paragraphs 3.3 and 3.4 of document [IOPC/OCT13/4/3/2](#), regarding the applicability of the Conventions to oil residues generated by ships’ engines and the transportation of such residues by barges designed for such transport. That delegation stated that there was a danger that because such oils were not contributing oils, it might be argued that the 1992 Fund should not compensate for damages caused by the escape of such oils.

7 Document IOPC/MAY14/8/2 – submitted by Australia

- 7.1 The delegation of Australia introduced document [IOPC/MAY14/8/2](#), which sought to build on the Spanish delegation’s proposal and which it considered to contain proposals which were in harmony with the Spanish delegation’s proposals. In relation to the two approaches which were highlighted in paragraph 9.1 of the Chairman’s document, the Australian delegation stated that it preferred the approach expressed in paragraph 9.1(a) (i), because in its view this approach allowed for unexpected situations and a range of variables. That delegation also stated that provided that limits were placed on the maritime transport chain, this proposal allowed a framework against which the particular circumstances of an incident could be assessed in a consistent way. That delegation explained that its suggestions sought to draw a clear line between production and transport, and a clear line between transport and receipt.

7.2 Analysis of definition of ‘ship’ – comments by the Australian delegation

7.2.1 The Australian delegation proposed a functional approach where the limits of the maritime transport chain were expressed in Convention terms to minimise the risk of distorting the Conventions. That delegation proposed that:

- (a) A ‘ship’ was engaged in the carriage of oil in bulk as cargo in the maritime transport chain;
- (b) In the case of oil produced offshore, the maritime transport chain began when oil was loaded into a vessel other than the one which received the oil directly from a subsea well to which it was connected. The end of the maritime transport chain corresponded to the point where oil was discharged into a port or terminal installation, in the territory of a State;
- (c) In the case of either oil produced on land, or oil having been discharged or delivered previously into a port or terminal installation, the maritime chain began when oil was loaded as bulk cargo into a seagoing or seaborne craft. The maritime transport chain ended when the oil cargo was discharged to a port or terminal installation in the territory of a State.

7.2.2 The Australian delegation stated that it had attempted to clearly separate production from transport as production was traditionally regulated by coastal States. It therefore intended to ensure that vessels involved in production operations were not subject to the Conventions. Furthermore, in relation to the issue of coastal movements, the Australian delegation explained that, in its view, where oil was received in one port in a country and then loaded onto another tanker for transport to another port within the same country, this constituted two separate maritime transport chains.

7.3 Analysis of contributing oil – comments by the Australian delegation

7.3.1 In relation to the issue of contributing oil, the Australian delegation stated that, in its view, oil was received at the end of the maritime transport chain, which corresponded to the time when oil was discharged into a port or terminal installation in the territory of a Contracting State.

7.3.2 In relation to offshore storage within territorial waters, the Australian delegation emphasised the need to assess this against the definition of ‘terminal installation’, a term which it did not consider the Working Group should investigate. That delegation further noted that the Working Group had not been asked to consider the definition at that time.

7.3.3 With regard to the alternative approach proposed at paragraph 9.1(a) (ii) of the Chairman’s document, the Australian delegation stated that the discussions of the Working Group had shown that it was very difficult to frame theoretical examples or criteria which always held true, but that if the 1992 Fund Assembly were to decide that examples or criteria should be developed, they could accept these if they were considered only to be illustrative and not exhaustive or definitive. In concluding its intervention, the Australian delegation stated that in its view, fundamentally the definition of ‘ship’ remained as stated in Article I.1 of the 1992 CLC and the concept of the maritime transport chain only provided assistance in interpretation and a framework to consistently evaluate unusual situations.

8 Consideration of the definition of ‘ship’

8.1 One delegation stated that it was not sure whether the concept of the maritime transport chain assisted in resolving the issue of when a vessel storing oil was no longer part of the transport chain. Noting that the issue had been discussed previously by the Working Group with reference to a one-year time limit, that delegation questioned whether any consideration would be given to applying a time limit to vessels storing oil and thus no longer being included within the maritime transport chain.

8.2 Another delegation stated that in its view, the concept of extending the application to the maritime transport chain did not provide a clear scope of the coverage under the Convention and was too vague when considering whether structures or installations would be covered. That delegation was in favour

of drawing up lists to provide categories of installations and scenarios despite the possibility of not covering every type of entity. That delegation also questioned the application of an international convention to purely national situations, specifically stationary barges moored in territorial waters, and suggested it could best be dealt with by domestic legislation rather than by international conventions.

- 8.3 Another delegation stated that when it had intervened during the discussion of the Consultation Group, it had understood the definition of ‘ship’ as having no cargo requirement and also no voyage requirement, but rather, that there was a general definition covering ‘any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo’, and then a proviso requiring ‘carriage of oil’ for oil bulk ore carriers (OBOs). That delegation also stated that during the earlier discussions of the Consultation Group, it had preferred the Spanish delegation’s proposal because it had introduced a definition that centred on the ‘capacity to carry oil’ in the maritime transport chain, and that this addressed both the ‘no cargo’ and the ‘no voyage’ requirements. That delegation also stated that the Spanish delegation’s proposal also recognised that the maritime transport chain consisted of more than simply transporting oil from point A to point B, but instead recognised that during the transportation of oil there were various stages, including periods when the vessel was not moving and being used for storage. That delegation stated that it was, however, important to recognise that the approach excluded certain elements such as the production and processing of oil, as indicated at paragraph 2.5 of document [IOPC/OCT13/4/3/2](#) submitted by Spain. In its view, it was also important that the ‘no cargo’ requirement was emphasised.
- 8.4 Commenting on document [IOPC/MAY14/8/2](#), submitted by Australia, one delegation stated that it was concerned that paragraphs 3.2 (a) to (c) of the Australian document implied a ‘cargo requirement’, which was not in line with that delegation’s view. Furthermore, that delegation stated that, whilst it agreed that there was a need to make a delineation against production, it would need to consider its own national legislation before making further comments on paragraph 3.2 (b) of the Australian document.
- 8.5 Another delegation stated that it had long held the view that for the purposes of the compensation conventions, a ‘ship’ was tied to the concept of navigation and oil being transported from one place to another, that this was clearly the intention when both the 1969 and 1992 Conventions were drafted, and that this was reflected in the text of the Conventions. Furthermore, that delegation stated that this view was recently confirmed by the legal opinion of Professor Lowe. However, that delegation had also closely monitored the debate at the Consultation Group in October 2013, and was concerned that the original proposal by the Spanish delegation was too vague and open-ended and broadened the scope of application of the Conventions. For those reasons, that delegation welcomed the refinements proposed by the Australian delegation, and supported the concept of the revised transportation chain as a tool to assist in determining what should be considered a ‘ship’ for the purposes of the Convention, provided that each case was confirmed on the basis of its particular facts.
- 8.6 That delegation also proposed adopting a ‘hybrid’ approach in order to conclude the work of the Working Group by proposing that Member States list those situations where there was consensus on whether a vessel was a ‘ship’ within Article I.1 of the 1992 CLC, as summarised in paragraph 8.2 of the Chairman’s document, and then use the concept of the maritime transport chain, as refined within the Australian document, as an interpretative tool to address other situations. That delegation concluded by stating that this ‘hybrid’ approach would allow the Working Group to show good progress on this difficult subject. A large number of other delegations stated that they found the proposed ‘hybrid’ solution to be of interest to them.
- 8.7 Another delegation stated that it preferred the approach in paragraph 9.1(a)(i) of the Chairman’s document, which was based on the proposals it had made at the first meeting of the Working Group, but was also impressed with the Spanish and Australian documents, the latter of which, could be examined in more detail, if other delegations agreed.

- 8.8 One delegation stated that it had made its position clear on a number of occasions and it fully supported, endorsed and maintained the views contained within Professor Lowe's report. However it was also attracted by the Australian delegation's proposal which, it stated, elaborated on and refined the Spanish delegation's concept, and established a framework of interpretation when there was ambiguity. That delegation also stated that it favoured the 'hybrid' approach comprising lists which could be easily agreed, together with the framework of interpretation as proposed by the Australian delegation, but that if the concept was interpreted in different ways it was hesitant to support such an approach.
- 8.9 Another delegation suggested that the Working Group should ask itself what purpose the Conventions were to fulfil today and from there, try to extract an interpretation in line with the wording of the Conventions. That delegation also favoured a 'broad' rather than 'restrictive' interpretation regarding compensation from pollution damage from the escape of oil from ships in general, and therefore supported paragraph 9.1(a) of the Chairman's document and the concept proposed in the Spanish delegation's document.
- 8.10 One delegation referred to the fact that at the establishment of the seventh intersessional Working Group, there were five issues to consider. These included whether or not floating storage and offloading units (FSOs) or floating storage units (FSUs) would fall within the definition of 'ship' within Article I.1 of the 1992 CLC. That delegation stated that that question had been clearly answered by Professor Lowe's legal opinion which had been submitted at the October 2011 meeting of the Assembly. It explained that, according to Professor Lowe, the two key elements, namely carriage of oil in bulk as cargo and a sea voyage, both needed to be present for an FSO or FSU to be considered a 'ship' under Article I.1 of the 1992 CLC. Additionally, the terms 'carriage' and 'cargo' in Article I.1 of the 1992 CLC clearly implied a movement of oil cargo from one place to another, from which it followed that floating storage or an off-loading unit could not be considered as falling within the definition of 'ship' within Article I.1 of the 1992 CLC. That delegation stated that if lists, scenarios or vessel types could be developed that could identify a 'ship' under the Conventions, then that delegation considered that the approach within paragraph 9.1(a) (ii) was more in line with the Conventions.
- 8.11 The observer delegation of the International Group of P&I Associations stated that in its view it would be very difficult to apply the Civil Liability and Fund Conventions if the Working Group were to reach a conclusion that allowed Member States discretion to apply criteria to a certain vessel, either to the vessel itself or the activity it was performing. The International Group stated that it opposed that sort of flexibility and discretion in the system. In relation to the discussion on the maritime chain of transport, that delegation stated it appeared to be agreed that most delegations did not want to include production operations under the scope of liability of the compensation regime, and that it could offer a view, in terms of a written guideline or policy, as to what a production operation looked like, if so requested.
- 8.12 The observer delegation of the International Chamber of Shipping (ICS) stated that it did not support a narrow interpretation of the Convention and wished to associate itself with the Spanish and Australian delegations' proposals, with additional comments made during the discussion that day. However, it also wished for further time to consider the Australian delegation's proposals in more detail, but stated that overall it believed that the proposal would give greater clarity than at present on whether certain vessels were included within the compensation regime. That delegation also stated that oil production activities needed to be excluded, whereas the transportation of oil should be included within the compensation regime.
- 8.13 In response to the comments made by other delegations, the Spanish delegation stated that if the delegations were agreed that the concept of the maritime chain of transport should be used to interpret the definition of 'ship' within Article I.1 of the 1992 CLC, the next stage was to define the origin and end points. That delegation suggested that this would define where the concept of production stopped, the concept of the maritime chain of transport began, and where that transport chain terminated. It

confirmed that the examples contained in the Australian delegation's document provided a formula to assist.

8.14 Chairman's summary regarding the issue of the definition of 'ship'

In respect of the two possible approaches suggested in paragraphs 9.1(a) (i) and (ii) of document [IOPC/MAY14/8/1](#), the Chairman noted that there was broad support for the Spanish and Australian proposals and therefore for approach (i) of the Chairman's document. However, a 'hybrid' approach was also supported, in which Member States would rely on agreed definitions where possible, and then use the concept of the maritime transport chain, as refined within the Australian document, as an interpretative tool, to address other situations. The Chairman stated that there remained a need to clarify certain grey areas which had been identified, such as where the maritime transport chain began and where it ended. The Chairman stated that, in any event, it was clear that there was a need to move forward in a uniform manner in order to avoid interpretation at a national law level.

9 Consideration of the issue of contributions under Article 10.1(a) of the 1992 Fund Convention

- 9.1 Having introduced document [IOPC/MAY14/8/2](#) with specific reference to the Spanish delegation's proposal and using the terminology found in the Conventions, the Australian delegation stated that paragraph 4.1 of its document proposed that for the purposes of Article 10.1(a) of the 1992 Fund Convention, oil should be considered received at the end of the maritime transport chain, which corresponded to the point where oil was discharged in a port or terminal installation in the territory of a Contracting State. Noting further that it did not wish to attempt to redefine the words 'terminal installation', that delegation stated that in its view, the maritime transport chain partnered with the terminal installation definition provided a clear framework to draw the line as to which oil should contribute.
- 9.2 One delegation referred to the discussions by the Consultation Group and stated that, in its view, the coverage and contributions aspects were totally separate issues. It stated that one of the current attractions of the contribution system today was its simplicity, and expressed concern that if it were changed to include permanently or semi-permanently anchored vessels, this would make matters more complicated, with a lot more administration for Member States but little gain. That delegation also stated that, contrary to the views expressed by a number of other delegations in the discussions of the Consultation Group, in its view, an attempt to include STS transfers within the issue of contributions was a matter of practicality rather than principle, but there were also legal implications to overcome.
- 9.3 That delegation further stated that during the discussions of the Consultation Group, a number of Member States had commented on the difficulties of identifying the title-holder of the oil at the time of the STS transfer, and the subsequent difficulties in attempting to levy contributions, even if the title holder could be identified, due to jurisdictional issues. That delegation stated that this in turn, could lead to further problems since, under both the 1992 Fund Convention and Supplementary Fund Protocol, if a Member State did not report in accordance with the Convention requirements, then the Member State might be obliged to cover the loss incurred by the 1992 Fund or Supplementary Fund as a result of non-reporting or inaccurate reporting. Similarly, that delegation stated that if an incident occurred in a Supplementary Fund Member State, but the State involved had not fulfilled its reporting obligations as a result of difficulties incurred identifying title-holders of oil involved in STS operations, compensation could be withheld from Member State entities until the reporting obligations were completed, pursuant to Article 15 of the Supplementary Fund Protocol. That delegation stated that in its experience, although there was a risk involved in STS operations, despite the numbers of transfers taking place on a daily basis, to date the incidents had been minor. This implied that the risk was not so large as to require including oil transferred in STS operations within the contribution regime.
- 9.4 That delegation also stated that it did not agree with the interpretation made by the Australian delegation, as it questioned whether the definition of 'terminal installation' within Article 1.8 of the

1992 Fund Convention included references to the types of vessels under discussion in the Working Group. In its view, the reference to ‘terminal installations’ within the 1992 Fund Convention implied facilities of a more permanent nature. A number of other delegations supported these views.

- 9.5 Another delegation stated that it was necessary to investigate further the definition of ‘terminal installation’. That delegation suggested that there were some questions raised as to whether ‘offshore facilities’ were included within the definition of ‘terminal installation’, as the definition within Article 1.8 of the 1992 Fund Convention included facilities situated off-shore and linked to a site for storage of oil in bulk which was capable of receiving oil from waterborne transportation. That delegation emphasised that, in its view, in the absence of a linkage there was no ‘terminal installation’ and there would be no obligation to report or pay contributions.
- 9.6 The Spanish delegation questioned whether pollution damage which was caused by oil which was not contributing, would be covered by the compensation regime. In response to the previous delegation’s comments regarding ‘terminal installations’, the Spanish delegation stated that the definition in Article 1.8 was inclusive, not exclusive. That delegation also raised a query regarding tankers which were afloat for long periods of time conducting STS operations which might not fall within the terminal installation definition.
- 9.7 In response to the queries raised, the Chairman stated that the question of whether oil on board ‘mother ships’ should contribute was raised in document [IOPC/OCT10/4/3/1](#), and that the Working Group had agreed that oil on board ‘mother vessels’ should not be considered as contributing oil for the purposes of Article 10 of the 1992 Fund Convention.
- 9.8 Another delegation stated that in its view, if oil was received in the territory of a Member State, it raised the risk of pollution and was therefore subject to receipt, but that there were problems when attempting to put this into practice. That delegation stated that it was possible to monitor the oil imported from customs receipts, and it was also possible to track coastal transfers of oil (cabotage). However, it considered that an issue arose for STS operations where a permit was not always required, and which could only otherwise be verified by sending surveyors to monitor the operations, which it was not always possible to do. That delegation also stated that there were problems identifying the owner of the cargo at the time of transfer during an STS operation.
- 9.9 In response to earlier comments regarding ‘terminal installations’, the Australian delegation stated that, although there was agreement regarding vessels semi-permanently and permanently at anchor, there was a need to consider whether there were any ‘semi-permanently or permanently at anchor’ vessels which fell inside or outside the definition of ‘terminal installation’.
- 9.10 Two delegations stated that they supported the concept of all oil received in a Member State’s territory being classified as contributing oil, although they both acknowledged the difficulties of attempting to collect contributions due as a result of STS operations. One of the delegations stated that it wished to avoid agreeing too easily and that only oil which was received at land-based terminals should be contributing oil. That delegation stated that there were examples in the Caribbean area whereby large tankers undertook STS operations which were risky, but which were cheap to conduct, and it therefore proposed that all oil received in a Member State’s territory be considered as contributing oil unless it was impossible to monitor or to collect the contributions.
- 9.11 Another delegation stated that before decisions were taken it would be wise to investigate how much of an issue STS transfers were and to consider the administrative burden for the Member State of including these operations within the scheme of contributors.

9.12 Chairman's summary regarding the issue of contributions

The Chairman noted that a number of delegations were of the view that all oil received in a Member State's territory should be considered contributing oil. However, she noted that a large number of delegations recognised that there might be difficulties both practically and legally in attempting to identify and recover contributions as a result of STS transfer operations. There was a clear appetite for further consideration of the definition of 'terminal installation' and a need to identify whether there were any 'semi-permanently or permanently at anchor' vessels which fell inside or outside that definition.

10 Conclusion of the Working Group's third meeting

10.1 Having summarised the discussions of each of the two streams of debate, on the definition of 'ship' and on contributing oil, the Chairman noted that it would be necessary to hold a further meeting of the seventh intersessional Working Group in spring 2015. She pointed out that there were a number of areas which had been discussed where there was clear agreement and that the Working Group could aim to finalise its work at its next meeting. The Chairman proposed that the next step would be for her to produce a document, in cooperation with the Secretariat, for presentation at that meeting, which both detailed the areas of agreement and highlighted the proposals discussed during the third meeting of the Working Group, namely the Spanish and Australian proposals and the 'hybrid' approach, which was supported by a number of delegations.

10.2 The Chairman proposed that the terms of reference of the Working Group be revised to enable it to complete its work in spring 2015 and present a final report to the October 2015 session of the 1992 Fund Assembly.

11 Action to be taken

11.1 1992 Fund Assembly

The 1992 Fund Assembly is invited:

- (a) to take note of the information contained in this document; and
- (b) to consider revising the terms of reference of the Working Group to enable the Group to continue its work and hold further meetings as required.

11.2 1992 Fund seventh intersessional Working Group

The 1992 Fund seventh intersessional Working Group is invited to take note of the information contained in this document.
