



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
8th extraordinary session
Agenda item 3

92FUND/A/ES.8/2
22 April 2004
Original: ENGLISH

PREPARATIONS FOR THE ENTRY INTO FORCE OF THE SUPPLEMENTARY FUND PROTOCOL

Note by the Director

Summary:

An International Conference, held in May 2003, adopted the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. This Protocol establishes a Supplementary Fund which will pay additional compensation to victims of oil pollution when the compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention is insufficient to provide full compensation to them. It is likely that the Protocol will enter into force during the autumn of 2004. The first Assembly of the Supplementary Fund must be held within 30 days of the entry into force of the Protocol.

As instructed by the Assembly, the Director has studied a number of issues relating to the entry into force of the Supplementary Fund Protocol. The results of these studies are set out in the present document and in various other documents.

Action to be taken:

Give the Director instructions in respect of the further preparations for the entry into force of the Supplementary Fund Protocol.

1 Introduction

- 1.1 An International Conference, held in May 2003 under the auspices of the International Maritime Organization (IMO), adopted a Protocol to the 1992 Fund Convention which will create a Supplementary Fund providing additional compensation for pollution damage in States Parties to the Protocol if the amount available under the 1992 Civil Liability Convention and the 1992 Fund Convention is insufficient for victims to receive full compensation (Supplementary Fund Protocol). The Conference also adopted a Resolution on the Establishment of the International Oil Pollution Compensation Supplementary Fund which requests the 1992 Fund Assembly to authorise and instruct the Director to carry out certain tasks necessary for the setting up of the Supplementary Fund. The Resolution is reproduced at Annex I.
- 1.2 At its 8th session held in October 2003 the Assembly considered a document prepared by the Director (document 92FUND/A.8/4/1) which dealt with a number of issues concerning the preparations for the setting up of the Supplementary Fund, eg location of the Supplementary Fund's Headquarters, Secretariat functions, handling of claims for compensation, levying of contributions and various other financial matters. The Director was instructed to base his

preparatory work on the assumption that the Supplementary Fund would have its Headquarters in London and that the 1992 Fund and the Supplementary Fund would be administered by a joint Secretariat headed by a single Director. The Director was also instructed to study the other issues dealt with in that document and submit draft texts for examination at a future session of the Assembly.

1.3 As instructed by the Assembly, the Director has studied a number of issues relating to the entry into force of the Supplementary Fund Protocol. The results of these studies are set out below in the present document and in various other documents.

1.4 It should be emphasised that any positions taken by the 1992 Fund Assembly in respect of the structure or operation of the Supplementary Fund would be only proposals. Any decisions on these issues will have to be taken by the Assembly of the Supplementary Fund.

2 Entry into force of the Supplementary Fund Protocol

2.1 The 2003 Supplementary Fund Protocol shall under Article 21 enter into force three months following the date on which the following requirements are fulfilled:

- (i) at least eight States have signed the Protocol without reservation as to ratification, acceptance or approval, or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General; and
- (ii) the Secretary-General of IMO has received information from the Director of the 1992 Fund that those persons who would be liable to contribute pursuant to Article 10 have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil, including the quantities referred to in Article 14, paragraph 1.

2.2 Under Article 22 of the Supplementary Fund Protocol, the Secretary-General of IMO should convene the first session of the Assembly. This session should take place as soon as possible after the entry into force of the Protocol and, in any case, not more than 30 days after such entry into force.

2.3 As at 22 April 2004 two States (Denmark and Norway) had ratified the Protocol.

2.4 In view of the indications given at the 24th session of the 1992 Fund Executive Committee in February 2004 by some States as regards the timetable for ratification of the Supplementary Fund Protocol, in the Director's view it is likely that the Protocol will enter into force during the autumn of 2004 and that the first session of the Supplementary Fund Assembly might therefore have to be held later this year.

3 Provisional Agenda of the 1st session of the Supplementary Fund Assembly

3.1 The Director has prepared a draft provisional agenda for the 1st session of the Supplementary Fund Assembly. This draft is reproduced in Annex II to the present document.

3.2 The draft provisional agenda will have to be developed in the light of the decisions taken at the 8th extraordinary session of the 1992 Fund Assembly and the Director's further studies of the issues involved.

3.3 It will be for the Secretary-General of the IMO to circulate the provisional agenda and any other documents prepared by the Director or presented by the Governments concerned to the States and Organisations invited to participate in the 1st session of the Supplementary Fund Assembly.

4 Documents to be prepared by the Director

The Director will prepare the following documents relating to various aspects of the preparations for the entry into force of the 2003 Protocol to the 1992 Fund Convention for consideration by the 1992 Fund Assembly:

Document	Subject
92FUND/A/ES.8/2/1	Procedural matters
92FUND/A/ES.8/2/2	Treaty matters
92FUND/A/ES.8/2/3	Secretariat and headquarters matters
92FUND/A/ES.8/2/4	Contribution matters
92FUND/A/ES.8/2/5	Compensation matters
92FUND/A/ES.8/2/6	Operational matters
92FUND/A/ES.8/2/7	Financial matters
92FUND/A/ES.8/2/8	General administrative matters

5 Procedure for the further preparations for the entry into force of the Supplementary Fund Protocol

- 5.1 The present document and the related documents set out in paragraph 4 above are submitted for consideration by the 1992 Fund Assembly at its 8th extraordinary session. The Assembly may wish to instruct the Director to prepare revised documents in the light of the discussions at that session.
- 5.2 Any document prepared by the Director for submission to the 1st session of the Supplementary Fund Assembly will be presented by him to the Secretary-General of IMO, inviting the Secretary-General to circulate the documents to the States concerned.

6 Proposed extraordinary session of the 1992 Fund Assembly

In view of the very close link which will exist between the 1992 Fund and the Supplementary Fund, the 1992 Fund Assembly will be called upon to take certain decisions in the light of the decisions taken by the Supplementary Fund Assembly at its 1st session. For this reason, the 1992 Fund Assembly may wish to hold an extraordinary session during the same week as the 1st session of the Supplementary Fund Assembly.

7 Action to be taken by the Assembly

The Assembly is invited to

- (a) take note of the information contained in the present document and in the documents related thereto;
- (b) give the Director such instructions in respect of the further preparations for the entry into force of the Supplementary Fund Protocol as it may deem appropriate;

- (c) instruct the Director to prepare documents on the various issues involved;
- (d) instruct the Director to invite the Secretary-General of IMO to circulate these documents to the States and Organisations invited to participate at the 1st session of the Supplementary Fund Assembly; and
- (e) decide whether the 1992 Fund Assembly should hold an extraordinary session during the week of the 1st session of the Supplementary Fund Assembly.

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ANNEX I

RESOLUTION ON ESTABLISHMENT OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND

THE CONFERENCE,

HAVING ADOPTED the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as “the Protocol”),

CONSIDERING that there is a need, before the Protocol enters into force and for some time thereafter, to prepare certain administrative and organizational measures in order to ensure that the International Oil Pollution Compensation Supplementary Fund (hereinafter referred to as “the Supplementary Fund”) established under the Protocol can operate properly as from the date of its entry into force,

1. REQUESTS the Assembly of the International Oil Pollution Compensation Fund, 1992 (hereinafter referred to as “the 1992 Fund”), established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as “the 1992 Fund Convention”), to authorise and instruct the Director of the 1992 Fund, on the basis that all costs and expenses that may be incurred will be reimbursed, with interest in due course, by the Supplementary Fund:

- (a) to perform, in addition to the Director’s functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the Supplementary Fund in accordance with the provisions of the Protocol, provided that the interests of Contracting States to the 1992 Fund Convention are not unduly affected;
- (b) to provide all necessary assistance for the setting up of the Supplementary Fund;
- (c) to make the necessary preparations for the first session of the Assembly of the Supplementary Fund, which is to be convened by the Secretary-General of the International Maritime Organization (hereinafter referred to as “IMO”), in accordance with Article 21 of the Protocol;
- (d) to enter into negotiations with IMO with a view to enabling the Supplementary Fund to reach agreements, as soon as possible, regarding appropriate administrative arrangements;
- (e) to enter into negotiations with the Supplementary Fund at the appropriate time with a view to reaching a mutually advantageous arrangement enabling the 1992 Fund and the Supplementary Fund to share a single Secretariat, headed, if appropriate, by the same Director;

2. RECOMMENDS that regular sessions of the Assemblies of the 1992 Fund under Article 19, paragraph 1 of the 1992 Fund Convention and of the Supplementary Fund under Article 16, paragraph 2 of the Protocol be held, as far as practicable, during the same period and at the same place;

3. FURTHER RECOMMENDS that the Director of the 1992 Fund should enter into negotiations with the host Government so that the question of the privileges, immunities and facilities to be accorded to the Supplementary Fund can be considered with a view to its being settled in a mutually satisfactory manner.

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ANNEX II

ASSEMBLY
1st session
Agenda item 1

SUPFUND/A.1/1
xx xxx 2004
Original: ENGLISH

DRAFT

PROVISIONAL ANNOTATED AGENDA OF THE FIRST SESSION OF THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND

to be held at the Headquarters of the
International Maritime Organization, 4 Albert Embankment,
London SE1, from [Monday xx xxx 2004], 10.00 am,
to [Friday xx xxx 2004]

Opening of the Session

Procedural matters

- 1 Adoption of the Agenda
- 2 Election of the Chairman and two Vice-Chairmen

In accordance with Article 16.2 of the Supplementary Fund Protocol and Article 18.1 of the 1992 Fund Convention, the Assembly will be invited to elect a Chairman and two Vice-Chairmen who shall hold office until the next regular session (document SUPFUND/A.1/2).

- 3 Non-contracting States to be invited as observers

In accordance with Article 16.2 of the Supplementary Fund Protocol and Article 18.10 of the 1992 Fund Convention, the Assembly shall determine which non-Contracting States shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies. The Assembly will be invited to take a decision on this matter (document SUPFUND/A.1/3).

Note In the present document, the following terminology has been used:
1992 Fund Convention - the 1971 Fund Convention as amended by the 1992 Protocol thereto
1992 Fund - the Organisation established under the 1971 Fund Convention as amended by the 1992 Protocol thereto
Supplementary Fund Protocol - the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
Supplementary Fund - the Organisation established under the Supplementary Fund Protocol

The Secretary-General of the International Maritime Organization (IMO) is issuing invitations to send observers to the first session of the Assembly to all Contracting States to the 1992 Fund Convention in respect of which the Supplementary Fund Protocol will not have entered into force at that time. These invitations are subject to formal approval by the Assembly.

4 Intergovernmental and international non-governmental organisations to be invited as observers

In accordance with Article 16.2 of the Supplementary Fund Protocol and Article 18.10 of the 1992 Fund Convention, the Assembly shall determine which intergovernmental and international non-governmental organisations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies. The Assembly will be invited to take a decision on this matter (document SUPFUND/A.1/4).

The Secretary-General of IMO is inviting the intergovernmental and international non-governmental organisations which have been granted observer status with the 1992 Fund to send observers to the first session of the Assembly. These invitations are subject to formal approval by the Assembly.

5 Adoption of Rules of Procedure

In accordance with Article 16.2 of the Supplementary Fund Protocol and Article 18.2 of the 1992 Fund Convention, the Assembly will be invited to determine its Rules of Procedure. Draft Rules of Procedure have been elaborated by the Director of the 1992 Fund (document SUPFUND/A.1/5).

Secretariat and Headquarters matters

6 Headquarters State

The Assembly will be invited to take a decision on the question of the location of the headquarters of the Supplementary Fund (document SUPFUND/A.1/6).

7 Secretariat of the Supplementary Fund

Two possible solutions as to Secretariat functions may be considered. One solution would be for the Supplementary Fund to have a Secretariat totally separate from that of the 1992 Fund. The other option would be for a joint Secretariat to administer both the 1992 Fund and the Supplementary Fund, and for the Director of the 1992 Fund to be also the Director of the Supplementary Fund. The Supplementary Fund Protocol contains a provision (Article 17.1) to the effect that the Secretariat and Director of the 1992 Fund may function also as the Secretariat and Director of the Supplementary Fund. The Director of the 1992 Fund will submit a document dealing with this issue (document SUPFUND/A.1/7).

8 Appointment of Director

In accordance with Article 16.2 of the Supplementary Fund Protocol and Article 18.4 of the 1992 Fund Convention, and in the light of any decision taken concerning the establishment of the Secretariat (cf agenda item 7 above), the Assembly shall appoint a Director of the Supplementary Fund (document SUPFUND/A.1/8).

9 Adoption of Staff Regulations

In the light of the decision taken in respect of Secretariat functions (cf agenda item 7 above), the Assembly may wish to consider the requirement for Staff Regulations (document SUPFUND/A.1/9).

10 Sharing of joint administrative costs with the 1971 Fund

If it were decided that the Supplementary Fund and the 1992 Fund should have a joint Secretariat (cf agenda item 7 above), the Assembly would be invited to consider how to apportion joint administrative costs between the two Organisations (document SUPFUND/A.1/10).

11 Headquarters Agreement

The Assembly will be invited to consider concluding a Headquarters Agreement with the Host State, following the decisions taken in respect of the Headquarters State and Secretariat functions (cf agenda items 6 and 7 above), relating *inter alia* to the privileges and immunities of the Supplementary Fund, representatives of Member States and staff of the Supplementary Fund Secretariat (document SUPFUND/A.1/11).

12 Co-operation agreement with the International Maritime Organization

In the light of the decision taken in respect of Secretariat functions (cf agenda item 7 above), the Assembly may wish to consider concluding an agreement with IMO concerning co-operating arrangements between the Supplementary Fund and IMO (document SUPFUND/A.1/12).

13 Lease agreement in respect of the premises for the Supplementary Fund Secretariat

The Assembly will be invited to consider the question of the lease of office space to be used by the Supplementary Fund Secretariat. If it were decided that the Supplementary Fund and the 1992 Fund should have a joint Secretariat (cf agenda item 7 above), this question will relate to the 1992 Fund premises at Portland House (document SUPFUND/A.1/13).

Contribution matters

14 Submission of oil reports

The reports on the quantities of contributing oil received in Member States are vital for the functioning of the Supplementary Fund. A document dealing with the submission of these reports will be submitted by the Director of the 1992 Fund (document SUPFUND/A.1/14).

15 Denying compensation due to non-submission of oil reports

The Assembly will be invited to consider the circumstances under which compensation shall be denied, pursuant to Article 15.1 and 15.2 of the Supplementary Fund Protocol, due to a Contracting State not having fulfilled its obligations to submit oil reports (document SUPFUND/A.1/15).

16 Levying of contributions

The Assembly will be invited to consider certain questions relating to arrangements for levying contributions to the Supplementary Fund (document SUPFUND/A.1/16).

17 Capping of contributions

The Assembly will be invited to consider the application of the provisions in the Supplementary Fund Protocol (Article 18) on the capping of contributions (document SUPFUND/A.1/17).

Compensation matters

18 Establishment of subsidiary bodies

In accordance with Article 16.2 of the Supplementary Fund Protocol and Article 18.9 of the 1992 Fund Convention, the Assembly may establish any temporary or permanent subsidiary body it

may consider to be necessary. The Assembly will be invited to consider whether any such bodies should be established (document SUPFUND/A.1/18).

19 The Supplementary Fund's involvement in the claims handling process and the payment of claims

The Assembly will be invited to consider the Supplementary Fund's involvement in the claims handling process and the payment of claims (document SUPFUND/A.1/19).

20 Claims Manual

The Assembly will be invited to consider whether the Supplementary Fund should publish a Claims Manual jointly with the 1992 Fund (document SUPFUND/A.1/20).

21 Sharing of joint costs in respect of incidents involving both the 1992 Fund and the Supplementary Fund

In the light of the decision taken in respect of Secretariat functions (cf agenda item 7 above), the Assembly will be invited to consider how to apportion joint costs in respect of incidents involving both the 1992 Fund and the Supplementary Fund (document SUPFUND/A.1/21).

Treaty matters

22 Application of the Supplementary Fund Protocol to the EEZ or an area designated under Article 3(a)(ii)

The Assembly will be invited to consider the application of Article 3(a)(ii) of the Supplementary Fund Protocol concerning the establishment by Contracting States of an exclusive economic zone or the designation of an area under Article 3(a)(ii) of the Supplementary Fund Protocol (document SUPFUND/A.1/22).

Operational matters

23 Adoption of Internal Regulations

In accordance with Article 16.2 of the Supplementary Fund Protocol and Article 18.3 of the 1992 Fund Convention, the Assembly shall adopt Internal Regulations necessary for the proper functioning of the Supplementary Fund. Draft Internal Regulations have been elaborated by the Director of the 1992 Fund (document SUPFUND/A.1/23).

24 Adoption of Financial Regulations

The Assembly will be invited to adopt Financial Regulations. Draft Financial Regulations have been elaborated by the Director of the 1992 Fund (document SUPFUND/A.1/24).

25 Appointment of auditors

In accordance with Article 16.2 of the Supplementary Fund Protocol and Article 18.6 of the 1992 Fund Convention, the Assembly shall appoint auditors (document SUPFUND/A.1/25).

26 Establishment of Audit Body

The Assembly will be invited to consider whether the Supplementary Fund should have an Audit Body and, if so, determine its mandate and appoint its members (document SUPFUND/A.1/26).

27 Establishment of Investment Advisory Body

The Assembly will be invited to consider whether the Supplementary Fund should have an Investment Advisory Body and, if so, determine its mandate and appoint its members (document SUPFUND/A.1/27).

Financial matters

28 Repayment to the 1992 Fund of the amount paid by it to IMO for convening and holding the 2003 Diplomatic Conference

The funding of the 2003 Diplomatic Conference which adopted the Supplementary Fund Protocol was made available by the 1992 Fund on the understanding that the amount paid to IMO for convening and holding the Conference would be reimbursed, with interest, by the Supplementary Fund to the 1992 Fund. The Assembly will be invited to consider when this reimbursement should take place (document SUPFUND/A.1/28).

29 Budget for [2005]

The Assembly is required to prepare a budget for the period [xx 2004 to 31 December 2005], in accordance with Article 11 of the Supplementary Fund Protocol (document SUPFUND/A.1/29).

30 Working capital

The Assembly will be invited to determine the level of the working capital of the Supplementary Fund (document SUPFUND/A.1/30).

31 Assessment of annual contributions

In the light of the decision taken in respect of the budget for [2005], the Assembly will be invited to decide on the levy of contributions, in accordance with Article 11 of the Supplementary Fund Protocol (document SUPFUND/A.1/31).

General administrative matters

32 Annual Reports

The Assembly will be invited to consider whether the Annual Report of the Supplementary Fund, to be prepared in accordance with Article 16.2 of the Supplementary Fund Protocol and Article 29.2(g) of the 1992 Fund Convention, should be published in conjunction with the Annual Report of the 1992 Fund (document SUPFUND/A.1/32).

33 Other administrative matters

Other matters of a general administrative nature will be submitted to the Assembly for consideration (document SUPFUND/A.1/33).

Other matters

34 Date of next session

In accordance with Article 16.2 of the Supplementary Fund Protocol and Article 19.1 of the 1992 Fund Convention, the Assembly shall hold regular sessions once every calendar year. Article 16.2 of the Supplementary Fund Protocol and Article 19.2 of the 1992 Fund Convention provide for extraordinary sessions to be held.

[The Assembly will be invited to consider holding an extraordinary session during the week of [xx to xx], when the Assembly of the 1992 Fund will be holding its [xxth] session. The

Assembly may also wish to decide the date for its regular session in 2005 (document SUPFUND/A.1/34).]

35 Any other business

The Assembly will be invited to consider other matters which may be proposed by Member States, by the Secretary-General of IMO or by the Director of the 1992 Fund.

36 Adoption of the Record of Decisions

Rule 27 of the Draft Rules of Procedure of the Supplementary Fund provides that the Secretariat shall prepare a Record of Decisions of the session. The Assembly will be invited to adopt this Record of Decisions.