



PREPARATIONS FOR THE ENTRY INTO FORCE OF THE SUPPLEMENTARY FUND PROTOCOL

SECRETARIAT AND HEADQUARTERS MATTERS

Note by the Director

Summary:	This document deals with issues relating to Secretariat and Headquarters matters which will have to be considered in connection with the setting up of the Supplementary Fund.
Action to be taken:	Give the Director instructions in respect of the preparations for the entry into force of the Supplementary Fund Protocol in relation to the Secretariat and Headquarters matters dealt with in this document.

1 Introduction

Article 16.2 of the Supplementary Fund Protocol provides that Articles 17 to 20 and 28 to 33 of the 1992 Fund Convention, which relate to the Fund Organisation and the administration thereof, shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.

2 Headquarters State, Secretariat and Director

- 2.1 The Assembly of the Supplementary Fund will have to decide, at its 1st session, where the Supplementary Fund's headquarters should be located. In the Resolution annexed to document 92FUND/A/ES.8/2, the International Conference which adopted the Supplementary Fund Protocol expressed its preference for the 1992 Fund and the Supplementary Fund to share a single Secretariat headed, if appropriate, by the same Director. An arrangement under which the Supplementary Fund and the 1992 Fund share a Secretariat headed by the same Director has, in the Director's view, great practical and financial advantages, as already demonstrated by the 1971 Fund and 1992 Fund joint Secretariat.
- 2.2 At its 8th session in October 2003, the Assembly instructed the Director to base the 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 (document 92FUND/A.8/30, paragraph 7.8).
- 2.3 Article 17.2 of the Supplementary Fund Protocol provides that if the Secretariat and the Director of the 1992 Fund also perform the function of the Secretariat and Director of the Supplementary Fund, the Supplementary Fund shall be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly.

- 2.4 Since it is highly likely that the 1992 Fund will have a wider membership and will be involved in significantly more incidents than the Supplementary Fund, the Director considers that the most practical solution would be for the 1992 Fund Secretariat to administer also the Supplementary Fund. If this solution were chosen, the Supplementary Fund Assembly should make a request to this effect to the 1992 Fund Assembly and the 1971 Fund Administrative Council.
- 2.5 As regards the appointment of the Director of the Supplementary Fund, it will be recalled that in connection with the transfer of the Secretariat function from the 1971 Fund to the 1992 Fund, the 1971 Fund Assembly decided, at its 4th extraordinary session held in April/May 1998, that the Director of the 1971 Fund should *ex officio* be the person who held the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agreed thereto and that the Director of the 1992 Fund agreed to carry out the functions of the Director for the 1971 Fund also (document 71FUND/A/ES.4/16; paragraph 15.1.27). It is proposed that the corresponding arrangement should be made in respect of the Supplementary Fund, ie that the Director of the Supplementary Fund should *ex officio* be the person holding the post of Director of the 1992 Fund.
- 2.6 If this arrangement were to be chosen, the Supplementary Fund Assembly should make a request to this effect to the 1992 Fund Assembly and the 1971 Fund Administrative Council.

3 Adoption of Staff Regulations and Rules

If the Director and Secretariat of the 1992 Fund also perform the functions of the Director and Secretariat of the Supplementary Fund, the Director and other staff members would be employed only by the 1992 Fund and there would therefore not be any need for a separate set of Staff Regulations and Staff Rules for the Supplementary Fund. However, certain provisions of the Staff Regulations and Staff Rules of the 1992 Fund will require amendment to allow staff to act also for the Supplementary Fund. These amendments will be prepared in due course.

4 Sharing of Joint Administrative Costs between the Supplementary Fund and the 1992 Fund

- 4.1 At its 8th session in October 2003, the Assembly noted the Director's view that, if the 1992 Fund and the Supplementary Fund were to have a joint Secretariat, agreement would need to be reached between the Organisations on a formula for sharing the costs of running the Secretariat. It was noted that, in the Director's view, it was important to find a simple formula for this purpose and that the arrangements for sharing of such costs between the 1992 Fund and the 1971 Fund on a percentage basis could be considered in this context. One delegation suggested that the costs should be shared in proportion to the amount of compensation paid by the respective Funds (document 92FUND/A.8/30, paragraph 7.9).
- 4.2 For the financial years 1996 (part) to 2003 the distribution of costs between the 1971 Fund and the 1992 Fund was made in such a way that, in principle, each appropriation was split on a percentage basis both in the budget and in the accounts. However, in October 2003 the governing bodies of the two Organisations approved the Director's proposal that the 1971 Fund should instead pay a flat management fee for the costs of running the joint Secretariat which for 2004 was set approximately at 10% of the joint administrative expenses in addition to the fee charged by the External Auditor in respect of the audit of the 1971 Fund (documents 92FUND/A.8/20 and 92FUND/A.8/30, section 24, and 71FUND/AC.12/17 and 71FUND/AC.12/22, section 19).
- 4.3 The Director is of the view that a similar arrangement would be the most appropriate for the Supplementary Fund, at least until it becomes involved in any incidents, and that the arrangement should be reviewed yearly to reflect the workload on the Secretariat resulting from the respective activities of the three Organisations. The level of the flat management fee could be decided by the governing bodies of these Organisations at their October 2004 sessions.

5 Headquarters Agreement

- 5.1 The relationship between the Host State and the 1992 Fund is governed by a Headquarters Agreement concluded in 1996 between the United Kingdom Government and the 1992 Fund. This Agreement, which sets out the privileges and immunities of the 1992 Fund, of delegates to Fund meetings and of staff members, is based on the Headquarters Agreement applicable to the 1971 Fund concluded in 1979 which was to some extent based on the Headquarters Agreement between the United Kingdom Government and the International Maritime Organization (IMO) as worded at that time.
- 5.2 As instructed by the Assembly at its 8th session in October 2003, the Director has entered into consultations with the United Kingdom Government on the preparations of a Headquarters Agreement governing the relationship between the Host State and the Supplementary Fund. He is at the same time considering with the Government whether the 1992 Fund's Headquarters Agreement should be revised in the light of developments.
- 5.3 At its 1st session, the Supplementary Fund Assembly will be invited to consider the text of a Headquarters Agreement between the Supplementary Fund and the Government of the Host State. If it is considered appropriate to revise the 1992 Fund's Headquarters Agreement, the 1992 Fund Assembly will be invited to examine the revised text.

6 Lease Agreement in respect of the premises for the Supplementary Fund Secretariat

The lease agreement for the Portland House premises was entered into on behalf of the 1992 Fund only, as the 1992 Fund Secretariat operates the 1992 Fund and the 1971 Fund (documents 92FUND/A.4/15, section 6 and 71FUND/A.22/15, section 6). However, the lease allows use of the premises for the operations of other intergovernmental organisations which carry out similar functions to that of the 1992 Fund. Assuming that the 1992 Fund and Supplementary Fund will have a joint Secretariat, there will therefore be no need to amend the lease agreement or to enter into a separate agreement on behalf of the Supplementary Fund.

7 Co-operation Agreement with IMO

- 7.1 In 1979, an Agreement for Co-operation between the 1971 Fund and IMO, at that time known as the Inter-governmental Maritime Consultative Organization (IMCO), was concluded. This Agreement was concluded in the light of the close relationship between the responsibilities and activities of the two Organisations in the field of the prevention and control of marine pollution by oil and of remedying damage caused by such pollution, and with a view to facilitating the attainment of their common objectives in this field through the maximum possible co-ordination of their efforts. In 1997, a similar agreement was concluded between the 1992 Fund and IMO.
- 7.2 On the assumption that the 1992 Fund and Supplementary Fund will have a joint Secretariat, the Director is of the opinion that it would be appropriate if an agreement on co-operation were concluded between the Supplementary Fund and IMO, based on the corresponding Agreement between the 1992 Fund and IMO. Subject to any instructions given to him by the Assembly, he intends to enter into discussions with IMO to this effect.
- 7.3 At its 1st session, the Supplementary Fund Assembly would be invited to approve such an agreement. The agreement would then have to be considered by the IMO Council and approved by the IMO Assembly before being signed by the Secretary-General of IMO and the Director of the Supplementary Fund.

8 Agreements with IMO on administrative arrangements

- 8.1 Under the Resolution on Establishment of the Supplementary Fund adopted by the 2003 Conference the Director should enter into negotiations with IMO to enable the Supplementary Fund to reach agreements regarding appropriate administrative arrangements.
- 8.2 The IOPC Funds have agreements with IMO in respect of the meetings and offices of the IOPC Funds in the IMO Headquarters. On the assumption that the 1992 Fund and the Supplementary Fund would be administered by the 1992 Fund Secretariat, the agreements would have to be amended in order to cover also the activities of the Supplementary Fund. As instructed by the Assembly at its 8th session in October 2003, the Director has entered into negotiations with IMO in this regard.

9 Action to be taken by the Assembly

The Assembly is invited to:

- (a) take note of the information contained in this document; and
 - (b) give the Director such instructions in respect of the preparations for the entry into force of the Supplementary Fund Protocol as it may deem appropriate in relation to Secretariat and Headquarters matters, in particular as regards:
 - (i) Headquarters State, Secretariat and Director;
 - (ii) Staff Regulations and Rules;
 - (iii) sharing of joint administrative costs between the Supplementary Fund and the 1992 Fund;
 - (iv) Headquarters Agreement;
 - (v) Lease Agreement in respect of the premises for the Supplementary Fund Secretariat;
 - (vi) Co-operation Agreement with IMO; and
 - (vii) agreements with IMO on certain administrative arrangements.
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