



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971 AND
1992

ASSEMBLY
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Agenda item 7

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71FUND/AC.16/3

JOINT SECRETARIAT WITH THE SUPPLEMENTARY FUND

Note by the Director

Summary:	The Supplementary Fund Assembly will consider a proposal that the 1992 Fund Secretariat should administer also the Supplementary Fund and that the 1992 Fund Director should also be Director of the Supplementary Fund. If the Supplementary Fund Assembly were to agree with this proposal, it is expected to make a request to the governing bodies of the 1992 Fund and the 1971 Fund to that effect. The issue of conflict of interests between the 1992 Fund and the Supplementary Fund is addressed.
Action to be taken:	In the event that such a request were to be made, to endorse the request made by the Supplementary Fund Assembly and to consider how conflicts of interests between the 1992 Fund and the Supplementary Fund should be dealt with.

1 The issue

- 1.1 During the consideration in May 2004 by the 1992 Fund Assembly of the preparations for the entry into force of the Supplementary Fund Protocol, the Director expressed the view that an arrangement under which the Supplementary Fund and the 1992 Fund shared a Secretariat headed by the same Director had great practical and financial advantages, as already demonstrated by the 1971 Fund and 1992 Fund joint Secretariat. The 1992 Fund Assembly agreed that since it was highly likely that the 1992 Fund would have a wider membership and would be involved in significantly more incidents than the Supplementary Fund, the most practical solution would be for the 1992 Fund Secretariat to administer also the Supplementary Fund (document 92FUND/A/ES.8/4, paragraph 3.4.4).
- 1.2 At its 1st session in March 2005 the Supplementary Fund Assembly will consider the Secretariat functions of the Supplementary Fund. In accordance with the position taken by the 1992 Fund Assembly, the Director has proposed that the Supplementary Fund should share a joint Secretariat with the 1992 Fund and the 1971 Fund in that the 1992 Fund Secretariat should administer, in addition to the 1971 Fund, also the Supplementary Fund and that the Director of the 1992 Fund should *ex officio* be Director of the Supplementary Fund (in addition to being Director of the 1971

Fund). If the Supplementary Fund Assembly were to agree with this proposal, it is expected to make a request to this effect to the governing bodies of the 1992 Fund and the 1971 Fund.

- 1.3 At the May 2004 session of the 1992 Fund Assembly, the delegation of Japan stated that whilst it supported in principle the Director's proposals, it considered that further clarification was needed as regards cases of conflict of interests between the 1992 Fund and the Supplementary Fund, in addition to the provision in Article 17.2 of the Supplementary Fund Protocol. 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. The Director undertook to examine the matter further and to report to the Assembly at a later session.
- 1.4 The issue raised by the delegation of Japan has also existed as regards the relationship between the 1971 Fund and the 1992 Fund, which have a joint Secretariat headed by the same Director. Conflict of interests between the 1971 Fund and the 1992 Fund is dealt with in Article 36quater(b) of the 1992 Fund Convention, which provides that the 1992 Fund should in such cases be represented by the Chairman of its Assembly. Since the 1992 Fund was established in 1996, the 1971 Fund and the 1992 Fund have been jointly involved in three pollution incidents, namely the *Nakhodka* (Japan, 1997), *Al Jaziah 1* (United Arab Emirates, 2000) and *Zeinab* (United Arab Emirate, 2001) in which potential conflicts of interest were resolved. In the case of the *Nakhodka* incident the question arose as to the basis on which the financial benefits of the global settlement with the shipowner/insurer should be shared between the 1992 Fund and the 1971 Fund. As regards the *Al Jaziah 1* and *Zeinab* incidents questions arose as to the applicability of the 1971 and 1992 Fund Conventions and the distribution of liabilities between those Funds. In all three cases the issues were decided by the respective governing bodies of the two Funds. In the Director's view, the solution provided in the Supplementary Fund Protocol is adequate. If there were to be a real conflict of interests between the 1992 Fund and the Supplementary Fund, each of them could be represented by the respective Assembly Chairman. If a major conflict of interest were to arise, the matter should, in the Director's view, be referred to the respective governing bodies for decision on how the conflict should be solved.

2 Action to be taken by the governing bodies

The governing bodies are invited:

- (a) in the event that a request were to be made by the Supplementary Fund Assembly that the Secretariat and Director of the 1992 Fund should function as the Secretariat and Director of the Supplementary Fund to endorse that request; and
 - (b) if the Supplementary Fund and the 1992 Fund were to have a joint Secretariat, to consider how conflicts of interests between the two Funds should be dealt with.
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