



ASSEMBLY
13th session
Agenda item 5

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4th session
Agenda item 5

SUPPFUND/A.4/3

STATUS OF THE 1992 FUND CONVENTION AND THE SUPPLEMENTARY FUND PROTOCOL

Note by the Director

Summary:

One hundred and two States have ratified the 1992 Fund Convention. Twenty-one States have ratified the Supplementary Fund Protocol. The Member States of the IOPC Funds are set out at the annex to this document.

This document also sets out any developments since the Assembly's 12th session regarding whether the 1992 Civil Liability and Fund Conventions had been fully implemented into the national law of Member States and considers whether it might be useful for the 1992 Conventions and the Supplementary Fund Protocol to be included in the IMO Voluntary Audit Scheme or for the Funds to introduce their own similar scheme.

Action to be taken:

1992 Fund Assembly: Consider the issue of possibly including the implementation of the 1992 Conventions in the IMO Voluntary Audit Scheme.

Supplementary Fund Assembly: Information to be noted.

1 1992 Fund Convention

- 1.1 When the 1992 Fund Convention entered into force on 30 May 1996, nine States were Parties to the Convention and therefore Members of the 1992 Fund. At the opening of the 13th session of the Assembly in October 2008, 101 States will be Members of the 1992 Fund. In addition, there is one State which has ratified the 1992 Fund Convention and in respect of which the Convention will enter into force during the coming months. This will bring the number of 1992 Fund Member States to 102 by 11 December 2008, as set out in the Annex.
- 1.2 The United Kingdom has extended the application of the 1992 Fund Convention to the Isle of Man with effect from 15 September 2008.
- 1.3 The 1971 Fund Convention ceased to be in force on 24 May 2002. A number of States which were Members of the 1971 Fund on that date have ratified the 1992 Fund Convention. However, there are still eight former 1971 Fund Member States which have not yet ratified the 1992 Fund Convention,

namely Benin, Côte d'Ivoire, Gambia, Guyana, Indonesia, Kuwait, Mauritania and Syrian Arab Republic.

2 Supplementary Fund Protocol

When the Supplementary Fund Protocol entered into force on 3 March 2005, eight States were Parties to the Protocol and therefore Members of the Supplementary Fund. At the opening of the 4th session of the Supplementary Fund Assembly, 21 States will be Members of the Supplementary Fund, as set out in the Annex.

3 Implementation of the 1992 Conventions into national law

- 3.1 In October 2004 the Assembly instructed the Director to write to all Member States to enquire whether the 1992 Conventions had been fully implemented into their national law (document 92FUND/A.9/31, paragraph 33.4.2).
- 3.2 At the time of the October 2006 session the Director had contacted all 98 States which had ratified the 1992 Fund Convention at that time, of which 54 had confirmed that the Conventions had been fully implemented whereas 14 had stated that the Conventions had not been implemented into national legislation. The Director had written to those States which had not implemented the Conventions into their national legislation and offered assistance in the preparation of the necessary legislation (document 92FUND/A.11/35, paragraph 6.2).
- 3.3 The Assembly noted at that session that, despite having been contacted repeatedly both in writing and by telephone since April 2005, 30 of the 98 Member States had still not stated whether or not the 1992 Conventions had been fully implemented into their national law. The Assembly instructed the Director not to continue to make efforts to obtain responses from those States which had still not responded to his enquiries but to focus future efforts on those States which in their responses had informed him that the 1992 Conventions had not been fully implemented into their national law. The Director was also instructed to report to the Assembly at each regular session on the situation in this regard.
- 3.4 Since the October 2007 session of the Assembly the Director has continued to draw the attention of States which ratify the 1992 Fund Convention to the importance of the implementation of the 1992 Conventions into national law and to offer assistance preparing the necessary legislation. As at 29 September 2008 the Director had not received any further responses to the original enquiries other than those referred to in paragraphs 3.2 and 3.3 above nor has he been informed that any new Member State has not fully implemented the Conventions into national law.

Audit Scheme

- 3.5 In the context set out above, at the 1992 Fund Assembly's October 2007 session a brief debate took place, during which a number of delegations expressed an interest in an audit scheme. One delegation suggested that it might be useful for the issue of the implementation of the 1992 Conventions to be included in the Voluntary IMO Member State Audit Scheme, since IMO was the depositary for these Conventions.
- 3.6 The Assembly instructed the Director to have informal discussions of an exploratory nature with the IMO Secretariat on this issue, taking into account the discussion at this session, and to report back to the Assembly with his conclusions as to whether such an audit scheme might be useful and, if so, what the financial implications might be.
- 3.7 In September 2008 the Director met with the IMO Secretariat to discuss in an informal and exploratory manner the possibilities of including the 1992 Conventions into the Voluntary IMO Member State Audit Scheme.

- 3.8 The Voluntary IMO Member State Audit Scheme has been operative since the first audits started in September 2006. Its goal is to provide an independent and objective assessment of the performance of a Member State in meeting its obligations and responsibilities contained in the relevant mandatory IMO instruments to which it is a Party. It is in some respects modelled after the Universal Safety Oversight Audit Programme (USOAP) of the International Civil Aviation Organisation (ICAO), an audit instrument which came into existence in 1999 and which is mandatory for all Contracting States to the Convention on International Civil Aviation (Chicago Convention).
- 3.9 It was pointed out by the IMO Secretariat that in the context of ascertaining the extent to which a State Party to certain conventions had adequately implemented such conventions and was meeting its obligations and responsibilities under such conventions, the voluntary character of the Audit Scheme was a weakness. Only 45 IMO Member States had so far volunteered to be audited and so far only 22 had actually been audited. It was also pointed out that, as part of the introduction of the Scheme and in order to build a sufficient trust in the Scheme, reports on individual States were anonymous. Furthermore it was pointed out that the initial enthusiasm of IMO Member States to be audited seemed to have faded away somewhat, resulting in only nine IMO Member States volunteering to be audited this year.
- 3.10 For these reasons the IMO Secretariat believed that the Audit Scheme should be institutionalised as part of the accepted and established international regulatory framework within the many safety and environment-related treaties developed by IMO. This could for instance be done by making the code for the implementation of mandatory IMO instruments mandatory within the body of relevant IMO instruments, which should be done in a step-by-step approach following a realistic timeframe. Although this would be a challenging exercise in view of the multiplicity of mandatory IMO instruments for which various bodies of the Organisation had the responsibility of developing and adopting amendments, and although it would require, *inter alia*, the availability of a sufficient number of trained auditors and adequate resources for the IMO Secretariat, the benefits to be derived from the Scheme from a safety and environmental perspective were such that the IMO Secretariat saw this as the only way forward for the Scheme.
- 3.11 Council document C 101/6/1, to be discussed at the IMO Council's 101st session to be held from 10-14 November 2008, gives an overview of the present situation in respect of the Audit Scheme and presents the views of the Secretary-General of IMO regarding its further development, as set out above. It illustrates very clearly that the Scheme is still in a state of development. This is also clear from the fact that the Scheme at present only covers ten mandatory IMO instruments, mainly of a technical nature, and that therefore many other important IMO instruments are not yet covered by the Scheme. For the reasons set out above the IMO Secretariat was of the opinion that at present it would not be desirable to incorporate in the Audit Scheme instruments like the 1992 Conventions, which are of a legal nature and therefore require expertise and experience significantly different from that which is currently used to operate the Scheme. It was also pointed out, however, that in the future, once the Audit Scheme had reached its final form and once it had been institutionalised and developed into a mandatory instrument, there were likely to be possibilities for incorporating the 1992 Conventions into the Scheme.

Analysis by the Director

- 3.12 The Director is of the opinion that the analysis of the IMO Secretariat, as set out above, is understandable. Although it would of course be for Member States to express themselves on this issue, he also considers that it is not very likely that IMO Member States would be willing to incorporate the 1992 Conventions in the IMO Audit Scheme at this stage. First of all, the Scheme is still in a phase of development, in which unnecessary complications are normally to be avoided. Secondly, the 1992 Conventions are legal instruments, the auditing of which requires expertise and experience of a nature significantly different from that which is currently provided by the auditors. Thirdly, the Audit Scheme at present only covers a limited number of technical IMO Conventions

and it would therefore seem more logical for IMO to give priority to extending the scope of the Audit Scheme to other (technical) IMO Conventions not covered by the Scheme at present.

- 3.13 The Director also considers, however, that this issue should remain part of the Secretariat's ongoing communication with IMO, with a view to exploring at regular intervals whether and at what point in the future the 1992 Conventions could usefully be incorporated in the IMO Audit Scheme. The Director is also of the view that the implementation of the 1992 Conventions by Member States should continue to be monitored by the Secretariat as set out in paragraph 3.3 and that the existing mechanisms to assist Member States in this respect, such as the participation of the 1992 Fund, where appropriate, in IMO's Technical Co-operation Programme, the holding of workshops and lectures and the support that the Secretariat provides to individual (or regional groups of) Member States in connection with their implementation of the 1992 Conventions, should be continued. This approach would in his view, at least until the feasibility of incorporating the 1992 Conventions in the IMO Audit Scheme has become clear, be preferable to the Fund setting up its own audit scheme, which would probably need considerable resources and would in any event not benefit from economies of scale like the IMO Audit Scheme, which is designed to look at the implementation of a multitude of conventions.

4 Action to be taken by the Assemblies

The 1992 Fund Assembly is invited:

- (a) to take note of the information contained in this document; and
- (b) to consider the issue of possibly including the implementation of the 1992 Conventions in the IMO Voluntary Audit Scheme.

The Supplementary Fund Assembly is invited to take note of the information contained in this document.

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ANNEX

**States Parties to both the
1992 Civil Liability Convention and the
1992 Fund Convention**
as at 29 September 2008
(and therefore Members of the 1992 Fund)

<i>101 States for which 1992 Fund Convention is in force</i>		
Albania	Germany	Panama
Algeria	Ghana	Papua New Guinea
Angola	Greece	Philippines
Antigua and Barbuda	Grenada	Poland
Argentina	Guinea	Portugal
Australia	Hungary	Qatar
Bahamas	Iceland	Republic of Korea
Bahrain	India	Russian Federation
Barbados	Ireland	Saint Kitts and Nevis
Belgium	Israel	Saint Lucia
Belize	Italy	Saint Vincent and the Grenadines
Brunei Darussalam	Jamaica	Samoa
Bulgaria	Japan	Seychelles
Cambodia	Kenya	Sierra Leone
Cameroon	Kiribati	Singapore
Canada	Latvia	Slovenia
Cape Verde	Liberia	South Africa
China (Hong Kong Special Administrative Region)	Lithuania	Spain
Colombia	Luxembourg	Sri Lanka
Comoros	Madagascar	Sweden
Congo	Malaysia	Switzerland
Cook Islands	Maldives	Tonga
Croatia	Malta	Trinidad and Tobago
Cyprus	Marshall Islands	Tunisia
Denmark	Mauritius	Turkey
Djibouti	Mexico	Tuvalu
Dominica	Monaco	United Arab Emirates
Dominican Republic	Morocco	United Kingdom
Estonia	Mozambique	United Republic of Tanzania
Fiji	Namibia	Uruguay
Finland	Netherlands	Vanuatu
France	New Zealand	Venezuela
Gabon	Nigeria	
Georgia	Norway	
	Oman	
<i>1 State which has deposited an instrument of accession, but for which the 1992 Fund Convention does not enter into force until date indicated</i>		
Ecuador		11 December 2008

ANNEX

States Parties to the Supplementary Fund Protocol
as at 29 September 2008
(and therefore Members of the Supplementary Fund)

<i>21 States Parties to the 2003 Supplementary Fund Protocol</i>		
Barbados	Greece	Netherlands
Belgium	Hungary	Norway
Croatia	Ireland	Portugal
Denmark	Italy	Slovenia
Finland	Japan	Spain
France	Latvia	Sweden
Germany	Lithuania	United Kingdom