

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES
DUS A LA POLLUTION PAR LES HYDROCARBURES

ASSEMBLY -
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CONSIDERATION OF HEADQUARTERS AGREEMENT BETWEEN THE
FUND AND THE UNITED KINGDOM GOVERNMENT

Note by the Director

Annexed hereto is the draft Headquarters Agreement negotiated by the Intersessional Working Group with the United Kingdom Government. The Group's comments on the draft Agreement are contained in document FUND/A.2/3.

The Assembly is invited to consider this draft Agreement for approval.

ANNEX

DRAFT HEADQUARTERS AGREEMENT BETWEEN THE GOVERNMENT OF
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND THE INTERNATIONAL OIL POLLUTION
COMPENSATION FUND

The Government of the United Kingdom of Great Britain and
Northern Ireland and the International Oil Pollution Compensation
Fund;

Desiring to define the status, privileges and immunities of
the Fund and persons connected with it;

Have agreed as follows:

ARTICLE 1

Use of terms

For the purpose of this Agreement:

- (a) "Convention" means the International Convention on the
Establishment of an International Fund for Compensation
for Oil Pollution Damage signed at Brussels on
18 December 1971;
- (b) "Fund" means the International Oil Pollution
Compensation Fund;
- (c) "Government" means the Government of the United
Kingdom of Great Britain and Northern Ireland;
- (d) "representatives" means representatives of Contracting
States to the Convention, and in each case means heads
of delegations, alternates and advisers;
- (e) "premises of the Fund" means the buildings or parts of
buildings and the land ancillary thereto used for the
official purposes of the Fund;
- (f) "official activities of the Fund" includes its
administrative activities and other activities
undertaken pursuant to the Convention; and

- (g) "staff member" means the Director and all persons appointed or recruited for full-time employment with the Fund and subject to its staff regulations, other than persons in the domestic service of the Fund and persons recruited locally and assigned to hourly rates of pay.

ARTICLE 2

Interpretation

This Agreement shall be interpreted in the light of the primary objective of enabling the Fund at its Headquarters in the United Kingdom fully and efficiently to discharge its responsibilities and fulfil its purposes and functions.

ARTICLE 3

Legal personality

The Fund shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property and to be a party in legal proceedings.

ARTICLE 4

Premises

- (1) The Government shall take all appropriate steps to protect the premises of the Fund against any intrusion or damage and to prevent any disturbance of the peace of the Fund or impairment of its dignity.
- (2) The Government undertake to assist the Fund in the acquisition of premises by gift, purchase or lease or in the hire of premises at such time as they may be needed.
- (3) The Government shall do their utmost to ensure that the premises shall be supplied with necessary public services including electricity, water, sewerage, gas, post, telephone,

telegraph, drainage, collection of refuse and fire protection and that such public services be supplied on reasonable terms. In case of interruption or threatened interruption of any such services, the Government shall take all reasonable steps to ensure that the Fund is not prejudiced.

ARTICLE 5

Immunity

- (1) Within the scope of its official activities the Fund shall have immunity from jurisdiction and execution except:
- (a) to the extent that the Fund waives such immunity from jurisdiction or immunity from execution in a particular case;
 - (b) in respect of actions brought against the Fund in accordance with the provisions of the Convention;
 - (c) in respect of any contract for the supply of goods and services, and any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation;
 - (d) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Fund or in respect of a motor traffic offence involving such a vehicle;
 - (e) in respect of a civil action relating to death or personal injury caused by an act or omission in the United Kingdom;
 - (f) in the event of the attachment, pursuant to the final order of a court of law, of the salaries, wages or other emoluments owed by the Fund to a staff member of the Fund;

- (g) in respect of the enforcement of an arbitration award made under Article 23 of this Agreement; and
- (h) in respect of a counter-claim directly connected with proceedings initiated by the Fund.

(2) The Fund's property and assets wherever situated shall be immune from any form of administrative or provisional judicial constraint, such as requisition, confiscation, expropriation or attachment, except insofar as may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to, or operated on behalf of, the Fund.

ARTICLE 6

Archives

The archives of the Fund shall be inviolable. The term archives includes all records, correspondence, documents, manuscripts, photographs, films and recordings belonging to or held by the Fund.

ARTICLE 7

Flag and emblem

The Fund shall be entitled to display its flag and emblem on the premises and means of transport of the Fund and of the Director.

ARTICLE 8

Exemption from taxes

(1) Within the scope of its official activities, the Fund, its property and assets, and its income including contributions made to the Fund under the Convention, shall be exempt from all direct taxes including income tax, capital gains tax and corporation tax. The Fund shall be granted relief from municipal rates levied

on its official premises with the exception of the proportion which, as in the case of diplomatic missions, merely constitutes payment for specific services rendered. Municipal rates shall in the first instance be paid by the Government and the proportion which represents payments for specific services rendered shall be recovered by them from the Fund.

(2) The Fund shall be accorded a refund of car tax and value added tax paid on the purchase of new motor cars of United Kingdom manufacture and, where it is readily identifiable, value added tax paid on the supply of goods or services of substantial value, necessary for the official activities of the Fund. In this connection it is envisaged that claims for refund will be made only in respect of goods or services supplied on a recurring basis or involving considerable quantities of goods or services or involving considerable expenditure. No refund shall be made in respect of any claim for goods or services where the value of the goods or services does not amount in the aggregate to £100 sterling or more.

ARTICLE 9

Exemption from customs and excise duties

(1) Goods whose import or export by or on behalf of the Fund is necessary for the exercise of its official activities shall be exempt from all customs and excise duties and other charges (except mere payments for services) and from all prohibitions and restrictions on import or export.

(2) The Fund shall be accorded a refund of the customs and excise duties and value added tax paid on the importation of hydrocarbon oils purchased by it and necessary for the exercise of its official activities.

ARTICLE 10

Exemption from taxes and duties

Exemption in respect of taxes or duties under Article 8 or Article 9 of this Agreement shall not be granted in respect of goods or services which may be purchased or imported for the personal benefit of a staff member of the Fund.

ARTICLE 11

Re-sale

Goods which have been acquired under Article 8 or imported under Article 9 of this Agreement shall not be given away, sold, hired out or otherwise disposed of unless the appropriate authorities have been notified in advance and any necessary duties and taxes paid.

ARTICLE 12

Funds, currency and securities

Without prejudice to Article 34(7) of the Convention, the Fund may receive , acquire, hold and dispose of freely any kind of funds, currencies or securities.

ARTICLE 13

Communications

(1) The Government shall permit and protect unrestricted communication on the part of the Fund for all official purposes. The Fund may employ all appropriate means of communication, including messages in code or cypher. However, the Fund may install and use a wireless transmitter only with the consent of the appropriate authorities. The Director shall permit the inspection of wireless transmitting apparatus at all reasonable times by the appropriate authorities.

(2) No censorship will be applied to official communications of the Fund by whatever means of communication.

ARTICLE 14

Circulation of publications

The circulation of publications and other information material sent by or to the Fund within the scope of its official activities shall not be restricted in any way.

ARTICLE 15

Representatives

(1) Representatives shall enjoy, while exercising their functions and in the course of their journeys to and from the place of meeting, the following privileges and immunities:

- (a) immunity from arrest and detention and from seizure of their personal luggage, except when found committing, attempting to commit, or just having committed an offence;
- (b) immunity from jurisdiction (even after the termination of their mission) in respect of acts, including words written or spoken, done by them in the exercise of their functions; this immunity shall not however apply in the case of a motor traffic offence committed by a representative nor in the case of damage caused by a motor vehicle belonging to or driven by him;
- (c) inviolability for all their official papers and documents;
- (d) exemption for themselves and their spouses from all measures restricting entry, from charges for visas and from registration formalities for the purpose of immigration control;
- (e) unless they are residents of the United Kingdom, for the purpose of exchange control, the same exchange control treatment as is accorded to diplomatic agents; and

- (f) the same facilities as regards their personal luggage as are accorded to officials of foreign Governments on temporary official missions.
- (2) The provisions of the preceding paragraph shall be applicable irrespective of the relations existing between the Governments which the persons referred to represent and the Government of the United Kingdom and are without prejudice to any special immunities to which such persons may be entitled.
- (3) The privileges and immunities described in paragraph (1) of this Article shall not be accorded to any representative of the Government or to any citizen of the United Kingdom and Colonies.
- (4) Privileges and immunities are accorded to representatives in order to ensure complete independence in the exercise of their function in connection with the Fund. It is expected that a Member State will waive the immunity of its representative where the immunity would impede the course of justice and where it can be waived without prejudicing the purposes for which it was accorded.
- (5) In order to assist the Government to implement the provisions of this Article, the Fund shall as far as possible inform the Government of the names of representatives in advance of their arrival in the United Kingdom.

ARTICLE 16

Director

In addition to the privileges and immunities provided for in Article 17 of this Agreement, the Director, unless he is a citizen of the United Kingdom and Colonies or a permanent resident of the United Kingdom, shall enjoy the privileges and immunities (other than priority for telecommunications) to which a diplomatic agent in the United Kingdom is entitled.

ARTICLE 17

Staff members

Staff members of the Fund:

- (a) shall have (even after they have left the service of the Fund) immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken; this immunity shall not however apply in the case of a motor traffic offence committed by a staff member nor in the case of damage caused by a motor vehicle belonging to or driven by him;
- (b) shall, together with members of their families forming part of their households, be exempt from any obligations in respect of military service, provided that this exemption shall not apply to any person who is a citizen of the United Kingdom and Colonies;
- (c) shall enjoy inviolability for all their official papers and documents;
- (d) shall enjoy exemption from all measures restricting immigration, from charges for visas and from registration formalities for the purpose of immigration control; and members of their families forming part of their households shall enjoy the same facilities;
- (e) unless they are citizens of the United Kingdom and Colonies or permanently resident in the United Kingdom shall be accorded the treatment in matters of exchange control which is accorded to a diplomatic agent in the United Kingdom; and
- (f) unless they are citizens of the United Kingdom and Colonies or permanently resident in the United Kingdom, shall, at the time of the first taking up of their post in the United Kingdom, be exempt from customs and excise duties and other such charges

(except mere payments for services) in respect of import of their furniture and personal effects (including one motor car each) in their ownership or possession or already ordered by them and intended for their personal use or for their establishment. Such goods shall normally be imported within three months of their first entry into the United Kingdom, but in exceptional circumstances an extension of this period may be granted. The privilege shall be subject to the conditions governing the disposal of goods imported into the United Kingdom free of duty and to the general restrictions applied in the United Kingdom to all imports.

ARTICLE 18

Experts

In the exercise of their functions in connection with the Fund or in carrying out missions for the Fund, experts, other than staff members, shall enjoy the following to the extent necessary for the carrying out of their functions, including during journeys made in carrying out their functions and in the course of such missions:

- (a) even after they have ceased to be employed by the Fund immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken, except in the case of a motor traffic offence committed by an expert or in the case of damage caused by a motor vehicle belonging to or driven by him;
- (b) inviolability for all their official papers and documents; and
- (c) unless they are citizens of the United Kingdom and Colonies or permanently resident in the United Kingdom, the treatment in matters of exchange control which is accorded to a diplomatic agent in the United Kingdom.

ARTICLE 19

Income tax

- (1) From the date on which a tax is imposed by the Fund for its benefit on salaries and emoluments paid by the Fund, such salaries and emoluments shall be exempt from United Kingdom income tax; the Government shall retain the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.
- (2) In the event that the Fund operates a system for the payment of pensions and annuities to its former staff members, the provisions of paragraph (1) of this Article shall not apply to such pensions and annuities.

ARTICLE 20

Social security

When the Fund has established its own social security scheme or has joined that of another international organization under conditions laid down in the staff regulations of the Fund, those staff members of the Fund who are not citizens of the United Kingdom and Colonies or permanently resident in the United Kingdom, shall with respect to services rendered for the Fund be exempt from the provisions of any social security scheme established by the law of the United Kingdom.

ARTICLE 21

Object of privileges and immunities

Waiver

- (1) The privileges and immunities accorded in this Agreement to staff members and experts are provided solely to ensure in all circumstances the unimpeded functioning of the Fund and the complete independence of the persons to whom they are accorded.

(2) The Director has the right and the duty to waive such immunities (other than his own) when he considers that such immunities are preventing the carrying out of justice and when it is possible to dispense with them without prejudicing the interests of the Fund. In respect of the Director, the Assembly or the Executive Committee may waive his immunities.

ARTICLE 22

Co-operation

The Fund shall co-operate at all times with the appropriate authorities in order to prevent any abuse of the privileges and immunities and facilities provided for in this Agreement. The right of the Government to take all precautionary measures in the interests of its security shall not be prejudiced by any provision in this Agreement.

ARTICLE 23

Arbitration

The Fund shall, at the instance of the Government, submit to an arbitration tribunal any dispute, other than one between the Fund and a staff member:

- (a) arising out of damage caused by the Fund or involving any other non-contractual responsibility of the Fund, in respect of which the Fund can claim immunity from jurisdiction under this Agreement and that immunity has not been waived; or
- (b) involving a staff member or expert of the Fund, in which the person concerned can claim immunity from jurisdiction under this Agreement and that immunity has not been waived.

ARTICLE 24

Notification of appointment. Cards

(1) The Fund shall inform the Government when a staff member or expert takes up or relinquishes his post. Furthermore the Fund shall from time to time send to the Government a list of all staff members and experts. In each case the Fund shall indicate whether a staff member is a citizen of the United Kingdom and Colonies or permanently resident in the United Kingdom.

(2) The Government shall issue to all staff members and experts on notification of their appointment, a card bearing the photograph of the holder and identifying him as a staff member. This card shall be accepted by the appropriate authorities as evidence of identity and appointment. The Fund shall return the card to the Government when the holder relinquishes his duties.

ARTICLE 25

Modification

At the request either of the Government or of the Fund consultations shall take place respecting the implementation, modification or extension of this Agreement. Any understanding, modification or extension may be given effect by an Exchange of Letters between a representative of the Government and the Director (after approval by the Assembly).

ARTICLE 26

Disputes

Any dispute between the Government and the Fund concerning the interpretation or application of this Agreement or any question affecting the relations between the Government and the Fund which is not settled by negotiation or by some other agreed method shall be referred for final decision to a panel of three arbitrators. One of those arbitrators shall be chosen by Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, one shall be chosen by the Director and

the third, who shall be the Chairman of the Tribunal, shall be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within one year of their own appointment, the third arbitrator, at the request of the Government or of the Fund, shall be chosen by the President of the International Court of Justice.

ARTICLE 27

Entry into force and termination

- (1) This Agreement shall enter into force on signature.
- (2) This Agreement may be terminated by agreement between the Government and the Fund. In the event of the Headquarters of the Fund being moved from the territory of the United Kingdom, this Agreement shall, after the period reasonably required for such transfer and the disposal of the property of the Fund in the United Kingdom, cease to be in force.

In witness whereof the respective representatives have signed this Agreement.

Done in duplicate at London this day of 1979.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

For the International Oil Pollution Compensation Fund:
