



International Oil Pollution
Compensation Funds

Fonds internationaux
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures

Fondos internacionales
de indemnización de daños
debidos a contaminación por
hidrocarburos

SUPPLEMENTARY FUND RESOLUTIONS

SUPPLEMENTARY FUND RESOLUTIONS

- 2 -

CONTENTS

Resolution N°1	Joint Secretariat	March 2005	3
Resolution N°2	Measures in respect of Contributions	October 2009	4
Resolution N°3	Measures in respect of outstanding contributions	April 2016	6
Resolution N°4	Creation of Administrative Council	October 2018	8
Resolution N°5	Authorisation for the Director to issue invoices to contributors based on estimated oil receipts, including retrospectively, where no reports have been submitted	November 2023	10

SUPPLEMENTARY FUND RESOLUTIONS

- 3 -

Resolution N°1—Joint Secretariat (March 2005)

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund),
THE ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1971 (1971 Fund), and
THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003 (Supplementary
Fund)

NOTING that the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 entered into force on 3 March 2005, thereby establishing the Supplementary Fund,

AWARE that since the establishment of the 1992 Fund in 1996, the 1971 Fund and the 1992 Fund have been administered by a joint Secretariat headed by a single Director,

RECALLING that from 1996 to 1998 the Secretariat of the 1971 Fund administered the 1992 Fund, whereas since 1998 the Secretariat of the 1992 Fund has served as Secretariat of the 1971 Fund also,

RECOGNISING the benefits of the present arrangement,

BELIEVING that a similar arrangement in respect of the Supplementary Fund would be beneficial,

CONSIDERING that the 1992 Fund, the 1971 Fund and the Supplementary Fund should be administered by one Secretariat headed by a single Director,

TAKING THE VIEW that the most appropriate arrangement would be for the Secretariat of the 1992 Fund to function as the Secretariat not only of the 1971 Fund but also of the Supplementary Fund and that the Director of the 1992 Fund, in addition to being *ex officio* Director of the 1971 Fund, should also be *ex officio* Director of the Supplementary Fund.

DECIDE

- 1 The Secretariat of the 1992 Fund shall as hitherto administer the 1971 Fund and shall also administer the Supplementary Fund.
- 2 The Director of the 1992 Fund shall continue *ex officio* to be Director of the 1971 Fund and shall also *ex officio* be Director of the Supplementary Fund.

SUPPLEMENTARY FUND RESOLUTIONS

- 4 -

Resolution N°2—Measures in respect of Contributions (October 2009)

THE ADMINISTRATIVE COUNCIL ACTING ON BEHALF OF THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund), and

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003 (Supplementary Fund),

NOTING that the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 and the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 were established to pay adequate compensation and to this end contributions are required to fund payment of claims,

RECOGNISING that States Parties in accepting the Conventions have agreed to ensure that contributors fulfil their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol,

RECOGNISING ALSO that the Funds cannot operate effectively and equitably unless oil reports and contributions are received in a timely manner,

- 1 **ENDORSE** current measures employed by the Director and Secretariat for following up arrears of contributions,
- 2 **CALL ON** all receivers of contributing oil to comply with their obligations under the Conventions,
- 3 **URGE** associations representing receivers of contributing oil to engage proactively in ensuring that obligations by industry members are met and to report to the Director/Secretariat on the measures taken,
- 4 **FURTHER URGE** States Parties to ensure that they have taken all necessary measures to implement effectively their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol, whilst reminding them of the option to make use of Article 14, paragraph 1 of the 1992 Fund Convention and Article 12, paragraph 2 of the 2003 Supplementary Fund Protocol,
- 5 **REQUEST** States Parties to report to the Director the means by which they have implemented their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol, so that, based on the information submitted, the Secretariat, with the assistance of the Audit Body, may summarise such means and report such information to the 1992 Fund Assembly and Supplementary Fund Assembly,
- 6 **CALL SPECIFICALLY ON** States Parties with contributors who are in arrears to report to the Director the means by which they have implemented their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol and on any steps they have taken to ensure payment of the outstanding contributions,

SUPPLEMENTARY FUND RESOLUTIONS

- 5 -

- 7 **ALSO REQUEST** that the Director, in consultation with the State(s) Parties concerned, should consider options for providing, as part of regular reports on outstanding contributions, a list of non-contributing 'persons' (entities) and that such a list be made prominent in reports of the operations of the Funds, subject to any applicable laws,
- 8 **DIRECT** the Audit Body to:
 - (a) monitor the effectiveness of the above actions in respect of outstanding contributions;
 - (b) monitor the effectiveness of the new 1992 Fund Policy on Outstanding Oil Reports and Deferment of Compensation Payments, adopted by the 1992 Fund Assembly at its October 2008 session; and
 - (c) report to the 1992 Fund Assembly and Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted.

SUPPLEMENTARY FUND RESOLUTIONS

- 6 -

Resolution N°3—Measures in respect of outstanding contributions (April 2016)

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003 (Supplementary Fund),

RECALLING that the International Oil Pollution Compensation Supplementary Fund, 2003 (the Supplementary Fund) was established by the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the Supplementary Fund Protocol) in order to ensure that victims of oil pollution damage are compensated in full for their loss or damage in cases where there is a risk that the amount of compensation available under the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992 (the 1992 Fund Convention) will be insufficient,

MINDFUL, in order to secure full compensation, of the need to ensure payment of annual contributions to the Supplementary Fund as required by Article 10 of the Supplementary Fund Protocol,

NOTING the duty of States Parties pursuant to Article 12.1 of the Supplementary Fund Protocol to ensure that any obligation to contribute to the Supplementary Fund arising under the Protocol in respect of oil received within the territory of those States is fulfilled and to this end to take appropriate measures under their law,

AWARE that, where States Parties are in breach of their obligations under Article 12.1 of the Supplementary Fund Protocol, then those States Parties bear a responsibility to the Supplementary Fund under public international law,

BEARING IN MIND that the Supplementary Fund cannot carry out its mandate nor operate effectively unless contributions are received in a timely manner,

RECALLING Supplementary Fund Resolution N°2—Measures in respect of Contributions (October 2009),

RECALLING FURTHER 1992 Fund Resolution N°11—Measures in respect of Contributions (October 2009) ^{<1>},

- 1 **ENDORSES** the current efforts of the Director of the Supplementary Fund (the Director) to follow up on arrears of contributions;
- 2 **CALLS ON** all receivers of contributing oil to discharge their obligations under the Supplementary Fund Protocol in a timely manner;
- 3 **URGES** associations representing receivers of contributing oil to engage proactively in ensuring that industry members meet their obligations and to report to the Director on the measures taken in this regard;
- 4 **FURTHER URGES** all States Parties to fulfil their obligations under Article 12.1 of the Supplementary Fund Protocol, in particular, to ensure payment of contributions;

SUPPLEMENTARY FUND RESOLUTIONS

- 7 -

- 5 **REMINDS** States Parties of the option contained in Article 12.2 of the Supplementary Fund Protocol whereby a State Party may at any time declare that it assumes the obligation to make contributions to the Supplementary Fund that are otherwise incumbent on persons pursuant to Article 10.1 of the Protocol;
- 6 **REQUESTS** those State Parties which have contributors that are in arrears with their payments to report to the Director on any steps they have taken to redress the situation;
- 7 **INSTRUCTS** the Director:
 - (a) in consultation with the Audit Body, to examine the reports referred to in paragraph 6 above and to present any recommendations to the Supplementary Fund Assembly;
 - (b) to report at each regular session of the Supplementary Fund Assembly the names of those States which have not taken steps to ensure the timely payment of contributions; and
 - (c) to include in such reports an account of what actions, if any, have been taken by the States referred to in sub-paragraph (b) in the previous 12 month period in response to any request made by the Director to rectify the situation;
- 8 **DECIDES** that it shall make a determination as to those States that are found to be in breach of their obligations under Article 12.1 of the Supplementary Fund Protocol for two or more years, in which event any claim submitted by the Administration of those States or public authority working directly on the response or recovery for the pollution incident on behalf of those States will be assessed for admissibility, but actual payment will be deferred pending rectification of the breach;
- 9 **INSTRUCTS** the Director to develop guidelines in relation to implementation by States Parties of their obligations under Article 12.1 of the Supplementary Fund Protocol;
- 10 **DIRECTS** the Audit Body to:
 - (a) monitor the effectiveness of the above actions in respect of outstanding contributions; and
 - (b) report to the Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted;
- 11 **REVOKES** Supplementary Fund Resolution N°2 and 1992 Fund Resolution N°11 (October 2009) to the extent that these Resolutions affect the Supplementary Fund.

<1>

It is necessary in this Resolution of the Supplementary Fund Assembly to make reference to Resolution N°11 because, as is apparent from a reading of the Record of Decisions of the governing bodies (October 2009), only Resolution N°11 was actually considered and adopted, respectively, by the governing body of each Fund.

Resolution N°11 was, after the event, and for the purposes of listing separately as a Resolution of the Supplementary Fund Assembly, renumbered and reproduced as Resolution N°2 of the Supplementary Fund Assembly.

Similar considerations apply to operative paragraph 11 below.

SUPPLEMENTARY FUND RESOLUTIONS

- 8 -

Resolution N°4—Creation of Administrative Council (October 2018)

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003 (SUPPLEMENTARY FUND),

NOTING that there are 32 States Parties to the 2003 Supplementary Fund Protocol and that other States are expected to become Parties in the future,

RECOGNISING that, as a result of the steady increase in the number of Supplementary Fund Member States, there is a risk that the Assembly of the Supplementary Fund will in the future no longer be able to achieve a quorum,

ACKNOWLEDGING that this would result in the Supplementary Fund being unable to operate in a normal way,

MINDFUL that the Supplementary Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

RECALLING that it is the task of the Assembly of the Supplementary Fund, pursuant to Article 16.2 of the Supplementary Fund Protocol, as applied in conjunction with Article 18.14 of the 1992 Fund Convention, to perform such functions as are necessary for the proper operation of the Supplementary Fund,

AWARE that, pursuant to Article 16.2 of the Supplementary Fund Protocol, as applied in conjunction with Article 18.9 of the 1992 Fund Convention, the Assembly of the Supplementary Fund may establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform its functions,

CONSCIOUS of the need to establish a structure which will permit the Supplementary Fund to operate even if the Assembly of the Supplementary Fund does not achieve a quorum at one or more of its sessions,

RECOGNISING that it is the general responsibility of the Assembly of the Supplementary Fund to ensure the proper operation of the Supplementary Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the Supplementary Fund once every calendar year, as provided in Article 16.2 of the Supplementary Fund Protocol, as applied in conjunction with Article 19.1 of the 1992 Fund Convention; and in the invitations to urge States to make every effort to be represented at the session, and to draw attention to the consequences of a quorum not being achieved;
- 2 **HEREBY CREATES** a body to be known as the Supplementary Fund Administrative Council, which shall have the following mandate:
 - (a) to perform such functions as are allocated to the Assembly of the Supplementary Fund under the Supplementary Fund Protocol;
 - (b) to give instructions to the Director concerning the administration of the Supplementary Fund;
 - (c) to supervise the proper execution of the Supplementary Fund Protocol and of its own decisions; and

SUPPLEMENTARY FUND RESOLUTIONS

- 9 -

(d) to perform such other functions as are necessary for the proper operation of the Supplementary Fund;

3 **FURTHER RESOLVES** that the Supplementary Fund Administrative Council shall assume its functions whenever the Assembly of the Supplementary Fund fails to achieve a quorum, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;

4 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Supplementary Fund Administrative Council:

(a) Supplementary Fund Member States;

(b) other States which are invited to attend sessions of the Assembly as observers; and

(c) intergovernmental organisations and international non-governmental organisations which have observer status with the Supplementary Fund; and

5 **FURTHER DECIDES:**

(a) that decisions of the Supplementary Fund Administrative Council shall be taken by majority vote of those Supplementary Fund Member States present and voting, provided that decisions which, under Article 16.2 of the Supplementary Fund Protocol, as applied in conjunction with Article 33 of the 1992 Fund Convention, require a two-thirds majority^{<2>} shall be taken by a two-thirds majority of the Supplementary Fund Member States present;

(b) that at least one-third of Member States shall constitute a quorum for the meetings of the Supplementary Fund Administrative Council;

(c) that the Rules of Procedure of the Supplementary Fund Administrative Council shall be those of the Assembly of the Supplementary Fund, to the extent applicable;

(d) that credentials are required for delegations in accordance with Rule 9 of the Rules of Procedure of the Supplementary Fund Assembly; and

(e) that the sessions of the Supplementary Fund Administrative Council shall be held in public, unless the Council decides otherwise.

Resolution N°5 — Authorisation for the Director to issue invoices to contributors based on estimated oil receipts, including retrospectively, where no reports have been submitted (November 2023)

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003 (Supplementary Fund)

RECALLING that the International Oil Pollution Compensation Supplementary Fund, 2003 (the Supplementary Fund) was established by the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the Supplementary Fund Protocol) in order to ensure that victims of oil pollution damage from ships are compensated in full for their loss or damage in cases where there is a risk that the amount of compensation available under the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992 (the 1992 Fund Convention) will be insufficient,

NOTING the obligation of States Parties under Article 13.1 of the Supplementary Fund Protocol to communicate to the Director of the Supplementary Fund (the Director) information on oil receipts, provided, however, that communications made to the Director of the 1992 Fund under Article 15.2 of the 1992 Fund Convention (on oil receipts) shall be deemed to have been made also under Article 13.1 of the Supplementary Fund Protocol,

MINDFUL that the IOPC Funds' governing bodies have expressed significant concern that a number of States Parties have not complied with this specific obligation to submit oil reports and that this has been a long-standing issue despite considerable efforts on the part of the Secretariat to engage the States Parties concerned,

REITERATING the duty of States Parties pursuant to Article 12.1 of the Supplementary Fund Protocol to ensure that any obligation to contribute to the Supplementary Fund arising under the Protocol in respect of oil received within the territory of those States is fulfilled and to this end to take appropriate measures under their law,

CONSIDERING that the failure or omission by some States Parties, as well as by some contributors, to abide by their obligations to submit oil reports places an unfair burden on those States Parties and contributors which do comply with these obligations,

BEARING IN MIND that the Supplementary Fund cannot carry out its mandate nor operate effectively unless accurate oil reports and contributions are received in a timely manner,

NOTING FURTHER that, whereas in the past it had been decided that it was not practicable to determine the quantities of oil receipts of individual contributors on the basis of available information but that, since then, the quality and reliability of available information from a variety of sources has improved significantly,

RECALLING FURTHER the governing bodies' instruction to the Director at their October 2019 sessions to examine ways to incentivise the submission of oil reports, including the possibility of invoicing contributors on the basis of estimated oil receipts if no oil reports are submitted,

RECALLING ALSO the governing bodies' instruction to the Director at their October 2022 sessions to prepare, in consultation with the Audit Body, a draft Resolution and the relevant draft amendments to the Internal Regulations to enable the Director to issue invoices to contributors based on estimates if no oil reports were submitted,

SUPPLEMENTARY FUND RESOLUTIONS

- 11 -

CONSIDERING FURTHER that, while no specific reference exists, nevertheless there is a clear and firm legal basis pursuant to Article 12 of the Supplementary Fund Protocol read with Articles 12.2 and 13.3 of the 1992 Fund Convention for the Director to issue, and for the Supplementary Fund Assembly to authorise the Director to issue, invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods,

BEING OF THE VIEW that this Resolution would further strengthen the Director's ability to take action against States Parties which have not complied with their legal obligations under the Supplementary Fund Protocol, by issuing invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods, and would provide support for the Director's action in the event that a legal challenge were to be pursued in a national court,

BELIEVING that this Resolution would constitute an important tool to encourage the prompt and accurate reporting of contributing oil,

BELIEVING MOREOVER that this Resolution would be a clear expression by States Parties of the fundamental importance of the reporting obligation to the entire International Oil Pollution Compensation Funds system,

AFFIRMING that the Secretariat would continue its efforts to assist States Parties to fully implement the Protocol including with respect to their reporting obligations,

MINDFUL ALSO of Supplementary Fund Resolution N°3 - Measures in respect of outstanding contributions (April 2016),

- 1 **ENDORSES** the current efforts of the Director to follow-up on arrears of oil reports and contributions;
- 2 **CALLS ON** all receivers of contributing oil to discharge their obligations under the Supplementary Fund Protocol in a timely manner;
- 3 **URGES** associations representing receivers of contributing oil to engage proactively in ensuring that industry members meet their obligations; and to report to the Director on the measures taken in this regard;
- 4 **FURTHER URGES** all States Parties to fulfil their obligations under Article 13.1 of the Supplementary Fund Protocol, in particular, to provide oil reports in a timely manner and to ensure payment of contributions;
- 5 **REMINDS** States Parties of the option expressed in Article 12.2 of the Supplementary Fund Protocol whereby a State Party may assume the obligation to pay contributions to the Supplementary Fund that are otherwise incumbent on persons pursuant to Article 10.1 of the Protocol;
- 6 **REQUESTS** those States Parties which have outstanding oil reports or which have contributors that are in arrears with their payments to report to the Director on any steps they have taken to redress these situations;
- 7 **AUTHORISES** the Director, in the event that no oil reports are submitted by States Parties in breach of their obligations under Article 13.1 of the Supplementary Fund Protocol, to issue invoices on the basis of estimated oil receipts to persons who are liable to contribute to the Supplementary Fund pursuant to Article 10 of the Supplementary Fund Protocol, including retrospectively in relation to past periods;

SUPPLEMENTARY FUND RESOLUTIONS

- 12 -

- 8 **INSTRUCTS** the Director, whenever invoices are issued in accordance with paragraph 7 above, to:
- (a) inform the relevant State Parties of the fact that and the basis on which such invoices have been issued;
 - (b) report fully at each regular session of the Supplementary Fund Assembly on the issue of any such invoices in the previous twelve-month period including the basis on which they have been issued; and
 - (c) include in such reports an account of what actions by way of response, if any, have been taken by those States Parties and/or receivers of contributing oil to whom the invoices have been issued;
- 9 **FURTHER INSTRUCTS** the Director to prepare the relevant draft amendments to the Internal Regulations to enable the Director to issue invoices on the basis of estimated oil receipts including retrospectively in relation to past periods, in the event that the oil reports referred to in paragraphs 4, 6 and 7 above have not been submitted;
- 10 **DIRECTS** the Audit Body to:
- (a) monitor the effectiveness of the above actions in respect of outstanding oil reports and outstanding contributions, and
 - (b) report to the Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted.
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