

GENERAL ASSEMBLY
14th session



3 June 2023
Rio de Janeiro
Brazil

7– Consideration of proposals received from members

The Disaster Recovery Fund

Note by the Secretariat

1. BACKGROUND

Unlike some other international organizations IALA has until December 2022 never formally established a disaster recovery fund to assist Coastal States in times of disaster with regard to the aims of IALA and specifically Marine Aids to Navigation.

A disaster recovery fund is established to provide financial and/or material aid and/or expertise in a fast and efficient way in order to help a national organization or authority to replace or repair its national system of Marine Aids to Navigation being affected by national or man-made disaster. The main purpose in such a critical situation is to ensure the safety of navigation and the protection of the environment in the area in order to avoid more negative consequences than the original cause that led to the disaster.

IALA has issued help and support to members in the past in a more informal way, but the situation in Ukraine encouraged the Secretariat to follow the path of establishing a permanent disaster recovery fund placed under the responsibility of the WWA.

Decision-making process

As a result, at the 75th Council meeting in Copenhagen the Secretariat proposed the idea to the Council (see C75-17.2.1) inviting the Council to:

- Consider deciding that the IALA World-Wide Academy shall establish the “World-Wide Academy disaster Recovery Fund” (WWA DRF), with the objective of assisting coastal States, who are struck by disaster, to re-establish and strengthen further their ability to ensure safety of navigation in their area of responsibility. The WWA DRF shall be independently funded by sponsorships.
- Consider encouraging IALA members to provide sponsorships to the WWA DRF.

The Council discussed the proposal and followed the proposal of the Secretary-General to develop Terms of Reference for future use. In the meantime, urgent aid should be provided to Ukraine with the resources available, specifically with the resources made available by Australia.

As a consequence, the proposal to implement the disaster recovery fund was approved by Council 75, with the following Council meeting to further discuss the Terms of Reference as prepared by the Secretariat.

As a follow up to Council 75 Secretariat in close cooperation with the WWA Board prepared draft Terms of Reference. These draft Terms of Reference were provided as an input paper to the Legal Advisory Panel (LAP) 24 in November 2022 (LAP24-15.1) for further consideration and possible comments.

LAP 24 discussed the draft and agreed several small changes to the definition, the procedure and the audit of the draft.

The participants from the Russian Federation made the following proposal to the draft:

“Add an aspect that should be taken into account in the decision-making process:

«the causes (reasons) of a disaster concerning the damage of infrastructure must be completed (eliminated)».

The explanation of our position: restoration of infrastructure before ending of man-made crisis is illogical. »”

There was no support in the LAP to include the proposed changes from the Russian participants, therefore they were not added to the final draft. The proposal from the Russian participants and the final decision of the LAP were however included in the LAP 24 report to note the different points of view.

This report together with the draft Terms of Reference were sent to Council 76 in Rio de Janeiro which took place in December 2022 (C76-10.1.1 for the LAP report and C76-17.2 for the IALA Disaster Recovery Fund).

Council 76 unanimously approved the Terms of Reference for the IALA Disaster Recovery Fund without further changes to the draft.

Input from the national member of the Russian Federation to the General Assembly

On February 2 2023 an input paper from the National member of the Russian Federation for the next General Assembly was received by the IALA Secretariat (See paper A14-7.1 (EN) Russia Proposals for 14 GA)

In this paper two aspects are raised with regard to the Disaster recovery fund:

- The authority of the Council with regard to the approval of the establishment and the Terms of Reference of the Disaster Recovery Fund is questioned.
- Several changes to the text are proposed including the definition of a disaster and that aid in a military conflict may only be provided after both parties of the conflict have agreed to the provision.

Legal implications

Despite the fact that the implementation of a Disaster Recovery Fund is not explicitly mentioned in the Constitution, the General Regulations or any other Basic Documents, the legal assessment on the decision-making process as described above is clear. The Secretary-General had the right to ask Council for the approval of the implementation of the Disaster Recovery Fund and the Council had the authority to take the final decision both with regard to its implementation and the approval of the Terms of Reference. The referral to the General Assembly as claimed by the Russian intervention was not mandatory or necessary.

a. Art. 11 Dedicated Funds of Financial Regulations

According to Art. 11 of the Financial Regulations dedicated funds may be established by the Secretary-General for the execution of specific programs or projects, provided that the purposes are consistent with the aim and objectives of the organization. The purpose and limits of each dedicated fund shall be clearly reported to the Council.

The Secretary-General proposed to Council 75 that “the WWA shall establish the WWA disaster recovery fund” and proposed Terms of Reference which were approved by Council 76 without further changes. Consequently, the Secretary-General over-fulfilled the obligation under Art. 11 of the Financial Regulations “to clearly report the purpose and limits of each dedicated fund” as he did not only report the purpose and limits to the Council but left the final approval to the Council.

b. Relationship between Secretary-General and WWA

According to Article 8.2.2 of the Constitution it is the Council which appoints the Secretary-General. The Secretary-General acts as legal representative and Chief Executive of IALA and will be assisted in his tasks by a permanent Secretariat.

Article 7.5.3 of the General Regulations states clearly that the WWA is an integral part of the Secretariat. Furthermore, the Secretariat under the direction of the Secretary-General and in accordance with the Staff Rules and Secretariat Procedures performs all other work that may be required to support IALA’s endeavours.

As a consequence the Secretary-General assisted in his tasks by a permanent Secretariat of which the WWA is an integral part had the authority to task the WWA with the details of the implementation and operation of the Disaster Recovery Fund as a dedicated Fund according to Art. 11 of the Financial Regulations and in accordance with the decision of Council 75 and 76.

c. The aims of IALA and the Disaster Recovery Fund

The aims of IALA are described in Art. 3 of the Constitution. Among others they include the development of international cooperation by promoting close working relationships and assistance between members and the facilitation of assistance to services or organisations requesting help within the Marine Aids to Navigation and allied fields, whether technical, organizational or training.

The implementation of the Disaster Recovery Fund as defined in its Terms of Reference meets all requirements of the aims of IALA stressing the fact that close working relationships and assistance between members and the facilitation of assistance are even more important in times of disaster.

d. The Council and the General Assembly

According to Article 8.2.3 of the Constitution the Council among other things implements the overall policy of IALA as defined by its aims or by the General Assembly, determines the General and Financial Regulations and approves the annual budget and accounts.

As described above, the Disaster Recovery Fund fulfils the aims of IALA and consequently, the Council had the authority to approve the implementation and the Terms of Reference as part of the overall policy of IALA.

In addition, the Council did not have the obligation to refer this decision to the General Assembly as the Russian proposal demands.

According to Art. 4.1.2 of the General Regulations in the period between two General Assemblies and if no appropriate provision has been made in the Constitution or these General Regulations, the Council shall make any administrative or technical decision which may be necessary, but shall refer such a decision to the next General Assembly for confirmation.

Art. 11 of the Financial Regulations deals with the implementation of dedicated funds. As described above, the Disaster Recovery Fund fulfils the definition of such a fund. Therefore appropriate provision has been made in the Basic Documents of IALA. As a consequence, Art. 4.1.2 must be interpreted in the sense that no provision within the Basic Documents has been made. This is further supported by Art. 8.2.3 as solely the Council determines the General Regulations and the Financial Regulations and not the General Assembly. Furthermore the Financial Regulations shall be executed in accordance with the Constitution and the General Regulations and are part of the Basic Documents of IALA.

As a consequence, the Council had no obligation to seek confirmation of the decision to implement the Disaster Recovery Fund and approve the Terms of Reference. According to the Basic Documents this decision is solely the responsibility of the Council.

2. CONCLUSION AND FURTHER RECOMMENDATION

According to the different functions of the organs of IALA as clearly included in the Basic Documents, the Secretary-General had the right to ask the Council as its supervising organ for approval of the decision to establish a Disaster Recovery Fund as a dedicated fund to be implemented and operated by the WWA. Furthermore the Council had the authority to approve the Terms of Reference of the Disaster Recovery fund without seeking confirmation of this decision by the General Assembly.

With regard to the proposal of the Russian Federation of changing the wording in several parts in the Terms of Reference of the Disaster Recovery Fund, there is no obligation for the General Assembly to discuss these. It is however recommended as a measure of good cooperation to discuss these at the first meeting of the newly elected Council directly after the General Assembly.

3. ACTION REQUESTED OF THE GENERAL ASSEMBLY

The General Assembly is invited to **note** the information in this document and to **decide** to direct the Council to consider the proposals from the Russian Federation at their meeting on 3 June 2023.