



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
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Agenda item 5

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DENUNCIATIONS OF THE 1971 FUND CONVENTION

**Principles of co-operation between the
1971 Fund and its former Member States
during the winding up of the 1971 Fund**

Submission by the German delegation

1 Introduction

The final clauses of the 1971 Fund Convention do not foresee a situation in which, as a result of a revision of the liability and compensation regime for oil pollution damage established by the 1969 Civil Liability Convention and the 1971 Fund Convention, most States Parties leave the 1971 Fund to join a new Organisation, and where the 1971 Fund is left with only a restricted membership and without its major contributors. Articles 41 to 44 of the 1971 Fund Convention contain, therefore, only a few basic rules concerning the rights and obligations of the denouncing States Parties, of the remaining States Parties, and of the 1971 Fund itself.

2 Principles of co-operation

2.1 The principles laid down in Articles 40–44 can be summarised as follows.

2.2 The 1971 Fund shall meet its obligations in full and pay compensation in respect of any incident which occurs while the 1971 Fund Convention is in force and in a State Party at that time, regardless of whether the Convention has ceased to be in force after the incident occurred or whether the denunciation of the Convention by one or more State Parties has taken effect.

2.3 To meet its obligations, the 1971 Fund may levy contributions from persons who are liable to pay contributions under Articles 10 and 12 of the 1971 Fund Convention, as they received contributing oil in a State which was a Member of the 1971 Fund at the time the incident in question occurred.

2.4 The working capital of the 1971 Fund was built up by contributions previously levied from persons liable to pay contributions to the 1971 Fund. The contributions building up the working capital in effect constituted an advance levy which enabled the Fund to make prompt payments in respect of later major incidents, but which did not release these persons from their obligation to pay contributions under Articles 10 and 12 of the 1971 Fund Convention in respect of the incidents in question.

2.5 When denunciations take effect in respect of States in which are located persons who have made significant contributions to the working capital of the 1971 Fund, these contributors should be entitled to a proportionate reimbursement of their share of the working capital after the claims in respect of which these persons are under an obligation to contribute have been settled and paid.

2.6 Since it is the established practice of the 1971 Fund that States Parties are entitled, in the competent bodies of the Fund, to present arguments in respect of incidents affecting them, it has to be recognised that former States Parties should continue to have this right after their denunciations of the 1971 Fund Convention have taken effect. In the same way, former States Parties where there are contributors who are obliged to make contributions after the denunciations of the Convention by these States have taken effect should be entitled to participate in an appropriate way in the decision-making process of the 1971 Fund concerning incidents which occurred while they were still States Parties.

3 Conclusions

3.1 It seems desirable to confirm the principles set out above in a formal resolution which would lay down clearly this common understanding of all present Member States of the 1971 Fund, and which could act as a basis for co-operation between the 1971 Fund and its former Member States in respect of the winding up of pending cases. A draft Resolution is attached for consideration.

3.2 It might be appropriate to amend the Internal Regulations by inserting a new provision, Regulation 7.13, as follows:

7.13 In respect of the settlement of claims arising from incidents to which persons in States Parties which have denounced the 1971 Fund Convention have to make contributions in accordance with Article 41.5 of the 1971 Fund Convention, no decisions on matters of principle with regard to the admissibility of claims shall be made without those former States Parties having been heard in the Assembly or the Executive Committee.

4 Action to be taken by the Assembly

The Assembly is invited to consider:

- (a) the draft Resolution reproduced in the Annex; and
- (b) the proposed new Internal Regulation 7.13, as set out in paragraph 3.2 above.

ANNEX

Draft Resolution N°[]

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 Fund),

AWARE that, following the entry into force of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention, the settlement of and payment of compensation in accordance with the 1971 Fund Convention for claims arising from certain major incidents which occurred in recent years will not be finalised before the compulsory denunciations of the 1969 and 1971 Conventions become effective for a significant number of States Parties to these Conventions,

NOTING that the provisions of the 1971 Fund Convention relating to the obligations to make contributions to such incidents continue to apply also in respect of States which have denounced that Convention,

RECALLING its Resolution N°9 on the admissibility of claims for compensation and the need for consistency between the decisions of the 1971 Fund and those of the 1992 Fund,

MINDFUL of the principles and aims of the 1971 Fund's previous decisions,

NOTING that further decisions may need to be taken in respect of claims arising out of pending cases,

RECOGNISING that former States Parties which have been affected by incidents covered by the 1971 Fund Convention but in respect of which settlements have not yet been finalised, should be entitled to present their views on pending cases in the competent bodies of the 1971 Fund,

DECIDES that, to the extent that the provisions of the 1971 Fund Convention relating to the obligations to make contributions under Articles 10 and 12 with respect to incidents which occurred before denunciation of the Convention has taken effect continue to apply, such States Parties shall be heard before further decisions concerning the admissibility of claims arising out of such incidents are taken,

RESOLVES that earlier decisions in pending cases shall not be overruled without the consent of those States which were Parties to the 1971 Fund Convention when those earlier decisions were taken,

AND AFFIRMS that persons in former States Parties who have contributed to the 1971 Fund shall be entitled to participate in an equitable manner in the distribution of the assets which remain when the winding up of the 1971 Fund has been completed.
