



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
2nd session
Agenda item 18

92FUND/A.2/16
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ESTABLISHMENT OF A CLAIMS SUBSIDIARY BODY

Note by the Director

1 Previous consideration by the Assembly

1.1 At its 1st session, the Assembly decided that the 1992 Fund should have a subsidiary body to deal with claims for compensation. It was generally agreed that this body should consider new issues of principle and general policy questions as they arose (and not in the abstract) and take decisions on claims referred to it by the Director. The Assembly decided that the composition and structure of the claims subsidiary body should correspond largely to the composition and structure of the Executive Committee of the 1971 Fund. It was agreed that the body should be established at the first session of the Assembly after the number of 1992 Fund Member States reached 25. The Director was instructed to study the composition, mandate and Rules of Procedure of the claims subsidiary body (document 92FUND/A.1/34, paragraphs 18.3 and 18.6).

1.2 At the Assembly's 1st extraordinary session, the Assembly took note of the Director's proposals for the composition, mandate and Rules of Procedure of the claims subsidiary body, as set out in document 92FUND/A/ES.1/7. It was noted that, under the Director's proposal, the subsidiary body should comprise 15 Member States, seven of which would be elected from among the eleven Member States in the territory of which the largest quantities of oil to be taken into account under Article 10 of the 1992 Fund Convention were received during the preceding calendar year, and eight members would be elected from among the other Member States, whilst securing an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Member States particularly exposed to the risks of oil pollution and of Member States having large tanker fleets. It was further noted that under the Director's proposal, election to the subsidiary body was for one year and that no State could serve on the subsidiary body for more than two consecutive terms. Many delegations supported the Director's proposals or stated that the proposal was in general acceptable (document 92FUND/A/ES.1/22, paragraphs 8.2 and 8.3).

1.3 As regards the proposed composition of the claims subsidiary body, some delegations suggested, however, that the criteria for election should be more flexible so as to accommodate situations where a State which had been elected to the Committee does not attend its sessions (document 92FUND/A/ES.1/22, paragraph 8.4).

1.4 The Japanese delegation questioned the proposed rule that no State should serve on the subsidiary body for more than two consecutive terms, since Japan, whose oil industry was the major contributor to the 1992 Fund, wished to be able to be a permanent member of that body. Other delegations stated that it would be difficult to accept permanent membership for any State. It was pointed out that all Member States of the 1992 Fund would be able to participate in the sessions of the subsidiary body as observers and that the experience of the 1971 Fund Executive Committee had shown that the observers could exercise a considerable influence on the Committee's decisions (document 92FUND/A/ES.1/22, paragraphs 8.5).

1.5 The Assembly decided that the claims subsidiary body should be known as the Executive Committee. It was also decided that the Committee should be composed of 15 members elected for one year and that no State should serve on the Committee for more than two consecutive terms (document 92FUND/A/ES.1/22, paragraph 8.7).

1.6 The Assembly instructed the Director to study further the composition and mandate of the Executive Committee, in the light of the discussion reflected in paragraph 1.3 above, and to report to the Assembly at its 2nd session (document 92FUND/A/ES.1/22, paragraph 8.7).

2 Relevant provision of the 1992 Fund Convention

The composition of the Claims Committee should fulfil the requirements of Article 18.9 of the 1992 Fund Convention which reads:

The functions of the Assembly shall be:

.....

9 to 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 the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

.....

3 Further consideration by the Director

3.1 Formal establishment of the Executive Committee

3.1.1 Article 33 of the 1992 Fund Convention provides that the establishment of subsidiary bodies under Article 18.9 of the Convention, and matters relating to such establishment, shall require a two-thirds majority. As indicated by the Director at the 1st extraordinary session of the Assembly, he considers that, in view of the important role to be played by the Executive Committee, it should be established by an Assembly Resolution (document 92FUND/A/ES.1/7, paragraph 3.4.2).

3.1.2 It should be noted that the number of 1992 Member States will reach 25 on 7 July 1998, the date on which the 1992 Fund Convention enters into force for the Philippines. In accordance with the Assembly's decision at its 1st session, the Executive Committee will therefore be established at the Assembly's first session after that date.

3.1.3 A draft Resolution is set out in Annex I for consideration by the Assembly. This draft Resolution addresses both the mandate and the composition of the Executive Committee.

3.2 Mandate

3.2.1 The proposed mandate reflects the position taken by the Assembly at its 1st session, viz that the 1992 Fund should have a claims subsidiary body to deal with claims for compensation, that this body should consider new issues of principle and general policy questions as they arose (and not in the abstract) and take decisions on claims referred to it by the Director, and that the claims subsidiary body would be able to extend the Director's general authority in respect of a given incident and make recommendations to the Assembly, for example on questions of principle of great importance (document 92FUND/A.1/34, paragraph 18.3).

3.2.2 It should be noted that the Assembly of the 1971 Fund delegated additional tasks to the 1971 Fund Executive Committee, mainly of administrative or financial character (document FUND/A.3/15, paragraph 13). The Director does not consider that there is a need for such further delegation in respect of the 1992 Fund, at least not for the time being.

3.3 Composition

3.3.1 Following the Assembly's decision that the composition and structure of the Executive Committee should correspond largely to the composition and structure of the Executive Committee of the 1971 Fund, the Director proposes that its composition should be governed by the same criteria as those that apply to the 1971 Fund's Executive Committee. This would mean that seven of the fifteen Committee members would be elected from among the eleven Member States in the territory of which the largest reported quantities of oil to be taken into account under Article 10 of the 1992 Fund Convention were received during the preceding calendar year, and that eight members would be elected from among the other Member States, whilst securing an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Member States particularly exposed to the risks of oil pollution and of Member States having large tanker fleets. The Assembly also decided that the Members of the Committee should be elected for one year and that no State should serve on the Executive Committee for more than two consecutive terms. The Director considers that, as provided in Article 23.2 of the 1971 Fund Convention in respect of the 1971 Fund Executive Committee, it is necessary to allow a State to serve for more than two consecutive terms on the 1992 Fund Executive Committee, to the extent necessary to comply with the eligibility requirements in respect of the group of States with the largest oil receipts.

3.3.2 It was suggested at the 1st session of the Assembly that substitute members could be elected to the Executive Committee to take the place of a member of the Committee when decisions needed to be taken in respect of an incident which had occurred in the territory of that Committee member, although the interested Committee member would not be excluded from the discussions of that particular incident. It should be noted that, based on the Rules of Procedure of the 1971 Fund's Executive Committee, the proposed Rules of Procedure for the Executive Committee (cf section 3.4 below) include a provision to the effect that a member of the Committee would not have the right to vote when its claim, or that of a public authority of that State, is being considered by the Committee. Furthermore, the Director considers that, since in recent years, there has seldom been any problem in establishing a quorum for the Executive Committee of the 1971 Fund, there would be little advantage in electing substitute members of the Executive Committee for this purpose.

3.3.3 As mentioned above, some delegations suggested at the Assembly's 1st extraordinary session that the criteria for election should be more flexible so as to accommodate situations where a State which has been elected to the Committee does not attend its session.

3.3.4 The Director considers that, in view of the importance of the decisions to be taken by the 1992 Fund Executive Committee, it is crucial that all States which are elected to serve on the Committee do in fact attend all its sessions. In the Director's view, it is impossible to foresee, at the time of the election, which States considered for election might not attend one or more of the Committee's sessions. If a State which was being considered for election were to believe that it might be prevented from attending, such a State might wish to inform other delegations so as to enable the Assembly to elect another State. This would not cause any problem in respect of the election of States, except for the seven with the largest oil receipts. If one of the eleven States with the largest

oil receipts were to declare before the election that it would not be able to attend, however, the eligibility provisions in the 1971 Fund Convention would not normally make it possible to elect another State in that group. The Assembly might wish to consider whether the provisions on eligibility to the 1992 Fund Executive Committee should be given a certain flexibility on this point. The draft Resolution includes, as an alternative, a provision to this effect.

3.4 Rules of Procedure

3.4.1 Article 18.9 of the 1992 Fund Convention provides that the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of a subsidiary body established by the Assembly in accordance with that Article. Rule 24 of the Rules of Procedure of the Assembly provides that subsidiary bodies shall follow those Rules of Procedure so far as they are applicable.

3.4.2 The Director is of the view that the Rules of Procedure of the 1992 Fund Executive Committee should correspond largely to those of the Executive Committee of the 1971 Fund, rather than to those of the Assembly. It might therefore be appropriate to amend Rule 24 of the Assembly's Rules of Procedure to read:

Rule 24

The Assembly may establish, in accordance with Article 18.9 of the 1992 Fund Convention, such temporary or permanent subsidiary bodies as it considers necessary. Such subsidiary bodies shall follow the present Rules of Procedure so far as they are applicable, unless the Assembly decides otherwise.

3.4.3 Since the Executive Committee is a subsidiary body of the Assembly, it appears that the Committee's Rules of Procedure should be adopted by the Assembly. The Director has prepared draft Rules of Procedure for the Executive Committee, as set out in Annex II, for consideration by the Assembly.

3.4.4 At its 1st session the Assembly decided that credentials should be required for representatives of Executive Committee members, since the Committee would take decisions of great importance for claimants and these decisions would also have consequences for the level of contributions required (document 92FUND/A.1/34, paragraph 18.7). This has been reflected in the draft Rules of Procedure.

4 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in the present document;
- (b) to consider the draft Resolution on the establishment of an Executive Committee (Annex I);
- (c) to consider the proposed amendment to the Rules of Procedure for the Assembly (paragraph 3.4.2 above); and
- (d) to consider the draft Rules of Procedure for the Executive Committee (Annex II).

ANNEX I*DRAFT***Resolution N° [] - Establishment of the Executive Committee**

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 Fund),

NOTING that the Assembly may, in accordance with Article 18.9 of the 1992 Fund Convention, establish any temporary or permanent subsidiary body it considers to be necessary, define its terms of reference and give it the authority needed to perform the functions entrusted to it,

NOTING FURTHER that, in accordance with that Article, the Assembly shall, when appointing the members of such a subsidiary body, endeavour to secure an equitable geographical distribution of members and to ensure that the Member States, in respect of which the largest quantities of contributing oil are received, are appropriately represented,

RECALLING the decision of the Assembly at its 1st session that the 1992 Fund should have a claims subsidiary body to deal with claims for compensation and the decision by the Assembly at its 1st extraordinary session that this body should be known as the Executive Committee,

HEREBY CREATES an Executive Committee which shall be established at the first session of the Assembly after the number of 1992 Fund Member States has reached 25,

DECIDES that the Executive Committee shall be composed of 15 Member States elected by the Assembly to hold office until the end of the next regular session of the Assembly, and that a member may not serve on the Executive Committee for more than two consecutive terms, except to the extent necessary to comply with the eligibility requirements,

FURTHER DECIDES that the election of the Executive Committee should be governed in the following provisions:

- (a) Seven Executive Committee members shall first be elected from among the eleven Member States in the territory of which the largest reported quantities of oil to be taken into account under Article 10 of the 1992 Fund Convention were received during the preceding calendar year.
- (b) Eight members shall then be elected from among the other Member States.
- (c) The Assembly shall, when electing the members of the Committee, secure an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Member States particularly exposed to the risks of oil pollution and of Member States having large tanker fleets.
- (d) Members of the Executive Committee shall hold office until the end of the next regular session of the Assembly.
- (e) Except to the extent that may be necessary to comply with the requirement set out under (a) above, no State may serve on the Executive Committee for more than two consecutive terms. [However, if a State eligible under (a) declares before the election that it might not be able to attend the Committee's sessions, the Assembly may elect in its place another State from among the eleven States eligible under (a), even if the latter State has served for two consecutive terms.]

ADOPTS the following mandate for the Executive Committee:

The functions of the Executive Committee shall be:

- 1 to take decisions in place of the Assembly on matters referred to in Article 18.7 of the 1992 Fund Convention, in particular on claims for compensation referred to it by the Director;
- 2 to consider new issues of principle and general policy questions relating to claims for compensation as they arise (and not in the abstract) and procedures for handling incidents involving the 1992 Fund;
- 3 to extend, to the extent it considers appropriate, the Director's authority to make final settlement of claims arising out of a given incident beyond that vested in him in accordance with the Internal Regulations;
- 4 to give the Director such instructions in respect of the handling of claims for compensation as may be required; and
- 5 to make such recommendations to the Assembly, for example on questions of principle of great importance, as the Executive Committee may deem appropriate.

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ANNEX II*DRAFT*Rules of Procedure for the Executive Committee

The Rules of Procedure for the Executive Committee shall be the same as those for the Assembly to the extent that they are relevant to and capable of applying to the proceedings of the Committee, subject to the following modifications:

- (i) Unless the context otherwise requires, and subject to the provisions set out below, references to "the Assembly", "sessions of the Assembly", "Chairman" and "Member" in the Rules of Procedure shall be read as if referring "the Executive Committee", "sessions of the Executive Committee", "Chairman of the Executive Committee" and "member of the Executive Committee".

- (ii) Rule 2 shall be replaced by the following text:

The Executive Committee shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either on his own initiative or at the request of its Chairman or of at least one-third of its members. It shall meet at such places as may be convenient.

- (iii) Rules 4 and 5 shall be replaced by the following text:

The Director shall invite Members of the 1992 Fund who are not Executive Committee members to attend meetings of the Executive Committee as observers.

The Director with the approval of the Chairman shall normally invite those States and organisations which would be invited to attend sessions of the Assembly. However, the Director shall have the discretion, after consultation with the Chairman, not to invite all or any of these States and organisations to be represented at meetings of the Executive Committee which are to be held in private.

- (iv) Rule 12 shall be replaced by the following text:

Sessions of the Executive Committee shall be held in public unless the Committee decides otherwise.

- (v) Rule 14 shall be replaced by the following text:

The provisional agenda of each regular session of the Executive Committee shall include items required to be dealt with by the application of the mandate of the Committee, as adopted by the Assembly, as well as items which have been requested by the Assembly or by a Member of the 1992 Fund.

- (vi) Rule 17 shall be replaced by the following text:

The provisional agenda for each session shall normally be communicated by the Director to the members of the Executive Committee and to other Member States at least 45 days before the session. Supporting documents should be distributed as early as possible, taking into account

the need for Member States to prepare the sessions, the availability of the necessary information and the importance of claims for compensation and other urgent issues to be dealt with promptly.

(vii) Rule 19 shall not apply.

(viii) Rule 20 shall be replaced by the following text:

The Executive Committee shall elect a Chairman and a Vice-Chairman from among the representatives of the Committee members. The Chairman and Vice-Chairman shall hold office at all session of the Executive Committee between two ordinary sessions of the Assembly.

(ix) Rule 21 shall be replace by the following text:

The first session of the Executive Committee after an ordinary session of the Assembly shall be opened by the representative of former Chairman's delegation or, if that delegation is not a Committee member, of the Vice-Chairman's delegation or, if this delegation is not a Committee member either, by the Director.

(x) Rule 24 shall not apply.

(xi) Rule 33 shall apply subject to the following:

If a Committee member or a public authority of a Committee member has a claim against the 1992 Fund, such a member shall have no voting right when that claim is being considered by the Executive Committee.

(xii) Rule 42 shall be replaced by the following text:

At least two-thirds of the members of the Executive Committee shall constitute a quorum for its meetings.

(xiii) Rule 55 shall not apply.

(xiv) Rule 56 shall be replaced by the following:

These Rules of Procedure may be amended by the Assembly.
