



International Oil Pollution
Compensation Funds

Agenda Item 7	IOPC/APR19/7/1	
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1992 Fund Assembly	92AES23	●
1992 Fund Executive Committee	92EC72	
Supplementary Fund Assembly	SAES7	

QUORUM REQUIREMENT FOR THE 1992 FUND ADMINISTRATIVE COUNCIL

Note by the Secretariat

Summary:

In October 2018, the Supplementary Fund Assembly decided to adopt Resolution N°4 establishing a Supplementary Fund Administrative Council with a quorum requirement of one-third of Member States.

Under 1992 Fund Resolution N°7, the 1992 Fund Administrative Council has a quorum requirement of 25 Member States. For consistency, and in order to take into consideration both the increase in membership since the adoption of the Resolution and also the potential increase in the number of Member States in the future, the Director proposes amending the quorum requirement for the 1992 Fund Administrative Council to one-third of Member States. Accordingly, this document contains draft amendments to the text of the 1992 Fund Resolution N°7 for the consideration of the 1992 Fund Assembly.

Action to be taken:

1992 Fund Assembly

Decide whether to:

- (a) amend the current quorum requirement for the 1992 Fund Administrative Council to one-third of Member States; and if so
- (b) amend 1992 Fund Resolution N°7 accordingly (see proposed amendments in paragraph 3.4 and at the Annex).

1 Background information

- 1.1 In October 2018, at its 15th session, the Supplementary Fund Assembly decided to adopt a Resolution establishing a Supplementary Fund Administrative Council. When considering the text of the draft Resolution as presented at that session, regarding the quorum requirement in paragraph 5(b) of the Resolution, a number of delegations suggested that it would be better to amend the proposal for a requirement of 10 Member States to one-third of Member States, to take into consideration the potential increase in the number of Member States in the future. The Assembly approved that suggestion and adopted corresponding text in the new Resolution accordingly.
- 1.2 Following the discussion of the Supplementary Fund Assembly, one delegation referred to Resolution N°7 of the 1992 Fund which stipulated 25 Member States as the quorum requirement for

the 1992 Fund Administrative Council and suggested that this Resolution should also be reviewed for consistency. This suggestion was supported by several delegations.

- 1.3 The Director stated that he would consult with the Chairman of the 1992 Fund Administrative Council^{<1>} on the matter and would come back with a proposal at a future session.

2 Current quorum requirement for the 1992 Fund Administrative Council

- 2.1 The 1992 Fund Administrative Council was established in 2002 under Resolution N°7 of the 1992 Fund. At that time, the number of Member States was increasing rapidly, with 71 Member States, 11 further States having deposited instruments of ratification or accession and a number of other States expected to become Member States within the near future. Taking this into account, it was considered that there was a considerable risk that the Assembly would not achieve its quorum requirement of a majority of Member States present (see Article 20 of the 1992 Fund Convention).
- 2.2 When the draft Resolution was discussed at the 7th session of the 1992 Fund Assembly, different views were expressed as to the quorum requirement, with proposals ranging from requiring at least 25 to 30 Member States present or having one-fourth to one-third of Member States present to achieve a quorum. Based on a compromise proposal, the Assembly agreed on a quorum requirement of 25 Member States and adopted the text of the Resolution accordingly. The 1st session of the 1992 Fund Administrative Council was held in May 2003.
- 2.3 The number of Member States present at the time of the opening of recent sessions of the Administrative Council, after failing to achieve the quorum for the Assembly, is set out in the table below.

	2015 April	2015 October	2016 April	2017 April	2018 April	2018 October
Attendance for the Administrative Council (Quorum requirement: 25)	50	53	47	56	49	57
The number of one-third of 1992 Fund Member States (for reference)	38	38	38	38	38	39

3 Director's considerations

- 3.1 When Resolution N°7 was adopted in 2002, the number of Member States was 71. Now the number of Member States has increased to 115. This growth in membership increases the risk that the 1992 Fund Assembly will not achieve a quorum (i.e. a majority) and therefore the likelihood that the 1992 Fund Administrative Council will be required to convene. However, with today's figure of 115 Member States of the 1992 Fund, it could be considered that the membership would be underrepresented in the event that the Administrative Council were held with the minimum attendance of Member States (i.e. 25 Member States).
- 3.2 In order to guarantee the continuous operation of the 1992 Fund, the Administrative Council should continue to be convened on those occasions when the Assembly fails to achieve a quorum, it should, however, represent the Assembly fairly, with sufficient Member States in attendance. Since the

^{<1>} At its first session in May 2003, the 1992 Fund Administrative Council had decided that the Chairman of the 1992 Fund Assembly should *ex officio* be the Chairman of the Administrative Council (document [92FUND/AC.1/A/ES.7/7](#), paragraph 2).

current quorum requirement (25 Member States) only represents 21.8% of all Member States, this requirement should now be reviewed.

- 3.3 Based on this observation and following the suggestion made at the last Supplementary Fund Assembly session, the Director has consulted with the Chairman of the 1992 Fund Assembly^{<1>} and proposes to amend the current quorum requirement of the 1992 Administrative Council to one-third of Member States present. The proposed quorum will set a higher level of quorum requirement, but, based on recent attendance levels (see paragraph 2.3), it should nevertheless still be safely achieved.
- 3.4 In accordance with this proposal the following amendments are proposed to paragraph 5(b) of 1992 Fund Resolution N°7. The full text of the draft Resolution with the proposed amendments is attached at the Annex.

Current text	New text (proposal)
5 FURTHER DECIDES: (b) that at least <u>25</u> Member States shall constitute a quorum for the meetings of the Administrative Council;	5 FURTHER DECIDES: (b) that at least <u>one-third of</u> Member States shall constitute a quorum for the meetings of the Administrative Council;

4 **Action to be taken**

1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) take note of the information contained in this document;
- (b) amend the current quorum requirement for the 1992 Fund Administrative Council to one-third of Member States; and if so
- (c) amend 1992 Fund Resolution N°7 accordingly (see proposed amendments at the Annex).

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ANNEX

DRAFT

Resolution N°7 – Creation of Administrative Council (October 2002)
as amended by the [1992 Fund Assembly] in April 2019^{<1>}

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

NOTING that there are 71 States Parties to the 1992 Fund Convention, that 11 States have deposited instruments of ratification or accession and that a number of other States are expected to become Parties within the near future,

RECOGNISING that, as a result of the great increase in the number of 1992 Fund Member States, there is a risk that the Assembly of the Organisation will in the near future no longer be able to achieve a quorum,

ACKNOWLEDGING that this would result in the 1992 Fund's being unable to operate in a normal way,

MINDFUL that the 1992 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, under Article 18.14 of the 1992 Fund Convention, to perform such functions as are necessary for the proper operation of the 1992 Fund,

AWARE that under Article 18.9 of the 1992 Fund Convention the Assembly may establish any temporary or permanent subsidiary body it may consider 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 1992 Fund to operate even if the Assembly does not achieve a quorum at one or more of its sessions,

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1992 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 1992 Fund once every calendar year, as provided in Article 19, paragraph 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 Administrative Council, which shall have the following mandate:
 - (a) to perform such functions as are allocated to the Assembly under the 1992 Fund Convention or which are otherwise necessary for the proper operation of the 1992 Fund;
 - (b) to elect members of the Executive Committee in accordance with 1992 Fund Resolution N°5;
 - (c) to give instructions to the Director concerning the administration of the 1992 Fund;
 - (d) to supervise the proper execution of the Convention and of its own decisions;

^{<1>} Operative paragraph 5(b) of the Resolution was amended by the [1992 Fund Assembly at its 23rd extraordinary session] held in April 2019, to read with effect from 2 April 2019.

- 3 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly 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 Administrative Council:
- (a) 1992 Fund Member States;
 - (b) other States which would be invited to attend sessions of the Assembly as observers; and
 - (c) (intergovernmental organisations and international non-governmental organisations which have observer status with the 1992 Fund; and
- 5 **FURTHER DECIDES:**
- (a) that decisions of the Administrative Council shall be taken by majority vote of those 1992 Fund Member States present and voting, provided that decisions which under Article 33 of the 1992 Fund Convention require two-thirds majority shall be taken by two-thirds majority of the 1992 Fund Member States present;
 - (b) that at least one-third of Member States shall constitute a quorum for the meetings of the Administrative Council;
 - (c) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
 - (d) that credentials are required for delegations in accordance with Rule 9 of the Rules of Procedure of the Assembly; and
 - (e) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise.
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