



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
18th session
Agenda item 16

FUND/A.18/13/12
25 July 1995

Original: ENGLISH

PREPARATIONS FOR THE ENTRY INTO FORCE OF THE 1992 PROTOCOL AMENDING THE 1971 FUND CONVENTION

SECRETARIAT

Note by the Director

1 Introduction

1.1 It is provided in Article 36 quater of the 1992 Fund Convention that, during the period in which both the 1971 Fund Convention and the 1992 Fund Convention are in force, the Secretariat of the 1971 Fund, headed by the Director of the 1971 Fund, may also function as the Secretariat and the Director of the 1992 Fund.

1.2 As set out in paragraph 2.1(b) of document FUND/A.18/13, the Director has based his proposals on the assumption that the 1971 Fund and the 1992 Fund will be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil remain Parties to the 1971 Fund Convention. The administration of the two Organisations by a joint Secretariat gives rise to a number of questions dealt with below.

2 Sharing of joint administrative costs between 1971 Fund and 1992 Fund

2.1 While there is a joint Secretariat administering both the 1971 Fund and the 1992 Fund, the costs of running that Secretariat should be apportioned between the two Organisations. It is proposed that a simple formula should be found for this. This formula should be reviewed yearly to reflect the balance between the two Organisations.

2.2 A number of approaches have been considered, in consultation with the External Auditor of the 1971 Fund:

- (a) A fixed apportionment between the two Organisations (such as $\frac{2}{3}$ for the 1971 Fund and $\frac{1}{3}$ for the 1992 Fund). This would have the distinct advantage of its simplicity.
- (b) Part of the costs (eg rent and rates) to be divided on a fixed percentage basis, the remainder apportioned in accordance with a formula.
- (c) Apportionment entirely on the basis of a formula.

A formula of the type envisaged in (b) and (c) could use one or more factors, such as the relative number of Member States of each Fund, the relative quantities of contributing oil represented by the contributors to each Organisation and the relative levels of compensation payments made by the respective Organisations.

2.3 The Director takes the view that approach (a) would be preferable. It is proposed that for the period 30 May 1996 to 31 December 1996, the costs of running the joint Secretariat should be distributed with $\frac{2}{3}$ to be paid by the 1971 Fund and $\frac{1}{3}$ by the 1992 Fund, and that the distribution for subsequent periods should be decided by the Assemblies of the two Funds in due course.

3 Sharing of joint costs in respect of incidents involving both the 1971 Fund and the 1992 Fund

3.1 It will also be necessary to make provisions for the sharing of the costs incurred in handling incidents involving both the 1971 Fund and the 1992 Fund, eg fees of lawyers, surveyors and other experts.

3.2 One possible approach would be to follow that used normally in sharing joint costs between the 1971 Fund and the shipowner/P & I Club involved in an incident, in accordance with the Memorandum of Understanding signed in 1980 by the 1971 Fund and the International Group of P & I Clubs, ie that the costs are apportioned on the basis of the ultimate liabilities of the two parties in respect of the incident in question. The drawback of this approach, however, would be that it might take a number of years before all claims arising out of an incident are finally settled. An interim apportionment could be made at the end of each financial year, in order to get a more accurate picture of the financial standing of the two Funds, and a reassessment would then have to be made when all claims were finally settled.

3.3 The approach referred to in paragraph 3.2 has the advantage of being relatively simple. The cost of the work carried out by lawyers and experts in many cases, however, would not have any direct relationship with the amounts of compensation paid by the respective Organisations. It is submitted that a certain flexibility should be exercised in the apportionment of joint costs of the type discussed. The Assemblies of the two Organisations may wish to consider whether the Director would be authorised to use a method other than the one set out in paragraph 3.2 in the cases where he deems this more equitable.

4 Appointment of Director

4.1 One of the functions of the Assembly of the 1992 Fund is "to appoint the Director and determine the terms and conditions of service of the Director" (Article 18.4 of the 1992 Fund Convention). This provision has to be read in conjunction with Article 36 quater (a) of the 1992 Fund Convention which provides that the Director of the 1971 Fund may perform the function of Director of the 1992 Fund while the 1971 and 1992 Fund Conventions are both in force.

4.2 As set out above, it is assumed for the purpose of the present document that the 1971 Fund and the 1992 Fund will be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil remain Parties to the 1971 Fund Convention. The question arises whether the 1992 Fund Assembly would need to appoint the individual who was Director of the

1971 Fund at the time to act also as Director of the 1992 Fund, or whether it would suffice to appoint "the Director of the 1971 Fund", whoever he might be, to act as also Director of the 1992 Fund. It might be more appropriate for the 1992 Fund Assembly to appoint a named person as the Director of the 1992 Fund. The position taken by the 1992 Fund Assembly on this point would need to be reflected in the Rules of Procedure of the 1992 Fund Assembly (cf document FUND/A.18/13/1, draft Rule 55).

5 Transition from the 1971 Fund Secretariat to a 1992 Fund Secretariat

5.1 The option set out in the 1992 Fund Convention that the 1971 Fund Secretariat should also administer the 1992 Fund provides a simple and practical solution during the period when the 1971 Fund and the 1992 Fund are operating concurrently, at least so long as the States with the major receipts of contributing oil remain Parties to the 1971 Fund Convention.

5.2 The situation will change, however, when the States with the major oil receipts cease to be Parties to the 1971 Fund Convention by denouncing it, pursuant to Article 31 of the 1992 Protocol to that Convention. As indicated in document FUND/A.18/12/1, the Director expects that the requirements for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention will be fulfilled during the summer of 1996, and the denunciations would then take effect within 18 months, ie approximately by the end of 1997. When the denunciations take effect, the 1992 Fund would become the more important of the two Funds, in terms of membership. In addition, there would no longer be any States which were Members of both Organisations.

5.3 In any case, when the number of Parties to the 1971 Fund Convention falls below three and the 1971 Fund Convention ceases to be in force, pursuant to Article 43.1 of the 1971 Fund Convention, the arrangement recommended by the 1992 Conference would no longer be applicable. After a certain transitional period for the winding up of the 1971 Fund under Article 44, there would be no 1971 Fund which could have a Secretariat.

5.4 The question arises when there should be a transition from the 1992 Fund being administered by the 1971 Fund Secretariat to a situation where a 1992 Fund Secretariat is established. It is suggested that this question be considered at a later stage, for example at the end of the transitional period (ie when the compulsory denunciations take effect).

5.5 It would appear practical, once the 1992 Fund has established its own Secretariat, for that Secretariat to administer also the 1971 Fund. It should be pointed out, however, that although it is provided in the 1992 Fund Convention that the 1992 Fund Secretariat may also function as the Secretariat of the 1971 Fund (cf Article 36 quater (a)), there is no corresponding provision in the 1971 Fund Convention which provides for the 1971 Fund to be administered by another Secretariat. It appears, however, that there is no legal obstacle to the 1971 Fund Assembly deciding that the 1971 Fund should be administered by the 1992 Fund Secretariat.

6 Personnel of the 1971 Fund

6.1 The 1992 International Conference adopted a Resolution recommending that the 1992 Fund should "ensure, in its Staff Rules and Regulations, that personnel employed by the 1971 Fund on the date when the 1971 Fund Convention ceases to be in force will receive treatment no less favourable, as regards the terms and conditions of their service, as a result of the change of legal personality of the organization;" (Resolution 2 of the 1992 Conference, paragraph 3(a), reproduced as Annex I to document FUND/A.18/13).

6.2 When the 1992 Fund establishes its own Secretariat, it would seem appropriate for members of the 1971 Fund Secretariat at that time to be transferred to the 1992 Fund Secretariat, if they so wish. The position of such personnel would need to be protected then, and not only when the 1971 Fund Convention ceases to be in force, as envisaged in Resolution 2.

6.3 It is suggested that the Assembly of the 1992 Fund adopt a Resolution to the effect that, when the 1992 Fund establishes its own Secretariat, the personnel employed by the 1971 Fund would, if they so wish, be entitled to employment with the 1992 Fund Secretariat and that the terms and conditions of their service would be no less favourable than during their employment with the 1971 Fund. A draft Resolution to this effect is attached for consideration by the 1992 Fund Assembly at its 1st session.

7 Matters to be addressed

The Assembly of the 1992 Fund will be invited to consider:

- (a) the apportionment of joint administrative costs between the 1971 Fund and the 1992 Fund;
- (b) the apportionment of joint incident costs between the 1971 Fund and the 1992 Fund;
- (c) the appointment of the Director of the 1992 Fund;
- (d) when the 1992 Fund should establish its own Secretariat; and
- (e) the position of the members of the 1971 Fund Secretariat when the 1992 Fund establishes its own Secretariat.

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ANNEX

DRAFT

Resolution N°[] - Position of members of the 1971 Fund Secretariat

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

NOTING that the 1971 Fund and the 1992 Fund will be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil remain Parties to the 1971 Fund Convention,

RECALLING operative paragraph 3(a) of Resolution 2 of the International Conference which adopted the 1992 Protocol to the 1971 Fund Convention, concerning the position of personnel employed by the 1971 Fund on the date when the 1971 Fund Convention ceases to be in force,

RECOGNISING the need to safeguard the position of the personnel employed by the 1971 Fund when the 1992 Fund establishes its own Secretariat,

DECLARES that, when the 1992 Fund establishes its own Secretariat, the personnel employed by the 1971 Fund will, if they so wish, be transferred to the 1992 Fund Secretariat and that they will in such a case receive treatment no less favourable, as regards the terms and conditions of their service, as a result of the change of legal personality of their employer.
