



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

ASSEMBLY  
18th session  
Agenda item 16

FUND/A.18/13  
25 July 1995

Original: ENGLISH

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

Note by the Director

### **1 Introduction**

1.1 In November 1992 a Diplomatic Conference adopted two Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention. The Conference also adopted a Resolution which invited the Assembly of the 1971 Fund to instruct the Director of that Fund to perform duties under the 1992 Fund Convention (in addition to his functions under the 1971 Fund Convention), to encourage the early entry into force of the 1992 Protocol to the Fund Convention, and to make the necessary preparations for the first session of the Assembly of the organisation which would be established under that Protocol (the 1992 Fund). The Resolution also requests that the Director should enter into negotiations with the 1992 Fund with a view to reaching a mutually advantageous arrangement enabling both Funds to share a single Secretariat, headed by the Director. This Resolution is reproduced in Annex I to the present document.<sup><1></sup>

1.2 At its 17th session, the Assembly examined a document presented by the Director concerning the preparations for the entry into force of the 1992 Protocol amending the 1971 Fund Convention (document FUND/A.17/12). The Assembly drew a number of preliminary conclusions as set out in its Record of Decisions (document FUND/A.17/35, paragraphs 15.2-15.13). The Assembly instructed the Director to study the various issues set out in document FUND/A.17/12 on the basis of the deliberations of the Assembly and, after informal consultations where appropriate, elaborate the necessary proposals for consideration by the Assembly at its 18th session.

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<1> In the present document, the following terminology has been used:

1971 Fund - the Organisation (IOPC Fund) established under the 1971 Fund Convention

1992 Fund Convention - the 1971 Fund Convention as amended by the 1992 Protocol thereto

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1.3 The Assembly decided that, after having examined at its 18th session the various issues relating to the entry into force of the 1992 Protocol to the Fund Convention, it would submit appropriate proposals for consideration by the 1st session of the Assembly of the 1992 Fund. It was noted that it would be for the 1992 Fund Assembly to take decisions on these issues (document FUND/A.17/35, paragraph 15.16).

1.4 As set out in document FUND/A.18/12, the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention will enter into force on 30 May 1996. Under Article 36 of the 1992 Fund Convention, the Secretary-General of IMO shall convene the first session of the 1992 Fund Assembly. This session shall be held as soon as possible after the entry into force of the 1992 Protocol to the Fund Convention and, in any case, not more than 30 days after the entry into force. The Director has been informed that the Secretary-General of IMO has tentatively scheduled the 1st session of the 1992 Fund Assembly for the week commencing 24 June 1996.

1.5 As instructed by the Assembly, the Director has studied a number of issues relating to the entry into force of the 1992 Protocol to the Fund Convention. The results of these studies are set out below in the present document and in various other documents, which have been prepared in consultation with the Secretary-General of IMO.

1.6 It should be emphasised that any positions taken by the 1971 Fund Assembly in respect of the structure or operation of the 1992 Fund would be only proposals. Any decisions on these issues will have to be taken by the Assembly of the 1992 Fund.

## **2 Basic assumptions of the Director's study**

2.1 In accordance with the decisions taken by the Assembly at its 17th session, the Director has based his study and the resulting proposals on the following assumptions:

- (a) The 1992 Fund's Headquarters will be located in the United Kingdom.
- (b) 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.
- (c) In view of the very close link that will exist between the 1971 Fund and the 1992 Fund, it is important that close co-ordination is ensured between the decisions of the 1971 Fund Assembly (and of the Executive Committee of the 1971 Fund in respect of functions allocated to it under the 1971 Fund Convention or by the 1971 Fund Assembly) and those of the 1992 Fund Assembly.
- (d) It would be an advantage if, to the extent possible, the same Internal Regulations and Financial Regulations were to apply in respect of the 1971 Fund and the 1992 Fund.
- (e) It will be necessary to co-ordinate the decisions of the Executive Committee of the 1971 Fund and the body of the 1992 Fund handling claims for compensation, since claims arising out of a particular incident might have to be dealt with by both Organisations.
- (f) As regards the payment of contributions to the 1971 Fund and the 1992 Fund, procedures should be developed which do not put an unnecessary administrative burden on the contributors.
- (g) A simple formula should be found for sharing the running costs of the joint Secretariat between the 1971 Fund and the 1992 Fund.
- (h) The two Organisations should, if possible, have the same External Auditor.

### 3 Agenda of the 1st session of the 1992 Fund Assembly

3.1 Having studied the various issues involved and having noted the agenda of the 1st session of the 1971 Fund Assembly, the Director has prepared a draft provisional agenda for the 1st session of the 1992 Fund Assembly. This draft is reproduced in Annex II to the present document.

3.2 The draft provisional agenda for the 1st session of the 1992 Fund Assembly will have to be developed in the light of the decisions taken by the 18th session of the 1971 Fund Assembly and the Director's further studies of the issues involved.

3.3 It will be for the Secretary-General of the IMO to circulate the provisional agenda and any other documents prepared by the Director or presented by the Governments concerned to the States and Organisations invited to participate in the 1st session of the 1992 Fund Assembly.

### 4 Documents prepared by the Director

4.1 The Director has prepared the following documents relating to various aspects of the preparations for the entry into force of the 1992 Protocol to the Fund Convention:

Document	Subject
FUND/A.18/13/1	Rules of Procedure of the Assembly
FUND/A.18/13/2	Internal Regulations
FUND/A.18/13/3	Financial Regulations
FUND/A.18/13/4	Staff Regulations
FUND/A.18/13/5	Capping of contributions
FUND/A.18/13/6	Levying of contributions
FUND/A.18/13/7	Handling of claims for compensation: consequences of the abolition of the Executive Committee
FUND/A.18/13/8	Criteria for the admissibility of claims for compensation
FUND/A.18/13/9	Application of the 1992 Fund Convention to the EEZ
FUND/A.18/13/10	Grant of observer status by the 1992 Fund
FUND/A.18/13/11	Accounts, budget and audit
FUND/A.18/13/12	Secretariat
FUND/A.18/13/13	Headquarters Agreement
FUND/A.18/13/14	Agreements with the International Maritime Organization
FUND/A.18/13/15	Publication of basic documents
FUND/A.18/13/16	Decisions to be taken by the 1971 Fund Assembly

4.2 The documents listed in paragraph 4.1 above give rise to the following general observations.

4.2.1 **Rules of Procedure for the 1992 Fund Assembly** should be adopted in accordance with Article 18.2 of the 1992 Fund Convention. Any subsidiary body established by the 1992 Fund Assembly will also require rules of procedure.

4.2.2 **Internal Regulations** should be adopted in accordance with Article 18.3 of the 1992 Fund Convention.

- 4.2.3 **Financial Regulations** should also be adopted.
- 4.2.4 Since the 1971 Fund and 1992 Fund will share a joint Secretariat, the **Staff Regulations** of the 1971 Fund should be modified so as to permit staff to act for both Organisations.
- 4.2.5 The 1992 Fund Assembly should decide on the application of the provisions on the **capping of contributions**.
- 4.2.6 The 1992 Fund Assembly should decide the timing of the first **levy of contributions** and the arrangements for the payment of contributions.
- 4.2.7 As a **consequence of the abolition of the Executive Committee**, the 1992 Fund Assembly will need to decide on the structure for the **handling of claims for compensation** within the 1992 Fund, including whether to establish a subsidiary body for handling claims in accordance with Article 18.9 of the 1992 Fund Convention.
- 4.2.8 The 1992 Fund Assembly may wish to take certain decisions as regards the 1992 Fund's policy on the **admissibility of claims for compensation** and may also wish that the 1992 Fund should publish a Claims Manual jointly with the 1971 Fund.
- 4.2.9 The 1992 Fund Assembly may wish to consider certain questions relating to the application of the 1992 Fund Convention to the **EEZ** established under the United Nations Law of the Sea Convention.
- 4.2.10 The 1992 Fund Assembly will need to determine criteria for **granting observer status** to non-Member States and to intergovernmental and international non-governmental organisations, in accordance with Article 18.10 of the 1992 Fund Convention. The Assembly may also wish to adopt guidelines on the relations between the 1992 Fund and such organisations.
- 4.2.11 The 1992 Fund Assembly will need to decide how the **accounts and budget** should be established, and on the appointment of an External **Auditor** in accordance with Article 18.6 of the 1992 Fund Convention.
- 4.2.12 The Assembly of the 1992 Fund will be invited to consider certain matters relating to the **Secretariat**, viz:
- (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.
- 4.2.13 The 1992 Fund will need to conclude a **Headquarters Agreement** with the United Kingdom Government.
- 4.2.14 The **Agreements** between the 1971 Fund and IMO on the subject of general co-operation and concerning the lease of office space in the IMO building will have to be modified so as to cover also the 1992 Fund and its activities.
- 4.2.15 The **1971 Fund Assembly** should be invited to take certain **decisions** in the light of proposed steps to be taken by the 1992 Fund Assembly.

**5      Procedure for the further preparations for the entry into force of the 1992 Protocol to the Fund Convention**

5.1      The present document and the related documents set out in paragraph 4.1 above are submitted for consideration by the Assembly at its 18th session. The Assembly may wish to instruct the Director to prepare revised documents in the light of the discussions at that session.

5.2      Alternatively, the Assembly may wish to set up an intersessional working group with the mandate to finalise the various documents. The Director considers, however, that most of the issues are of a technical nature and that, for this reason, the documents could be finalised by him.

5.3      There are some questions relating to the operation of the joint Secretariat and the relationship between the 1971 Fund and the 1992 Fund which have not yet been examined.

5.4      Any document prepared by the Director for submission to the 1st session of the 1992 Fund Assembly will be presented by the Director to the Secretary-General of IMO, inviting the Secretary-General to circulate the documents to the States concerned.

**6      Proposed extraordinary session of 1971 Fund Assembly**

6.1      In view of the very close link which will exist between the 1971 Fund and the 1992 Fund, in particular during the period when the two Funds will operate concurrently, the 1971 Fund Assembly will be called upon to take certain decisions in the light of the decisions taken by the 1992 Fund Assembly at its 1st session. For this reason, the 1971 Fund Assembly may wish to hold an extraordinary session during the same week as the 1st session of the 1992 Fund Assembly, viz the week commencing 24 June 1996.

6.2      In document FUND/A.18/13/16, the Director has set out certain issues which, in his view, may require decisions by the 1971 Fund Assembly.

**7      Action to be taken by the Assembly**

The Assembly is invited to:

- (a)      take note of the information contained in the present document and in the documents related thereto;
- (b)      give the Director such instructions in respect of the further preparations for the entry into force for the 1992 Protocol to the Fund Convention as it may deem appropriate;
- (c)      instruct the Director to prepare documents on the various issues involved;
- (d)      instruct the Director to request that the Secretary-General of IMO circulate these documents to the States and Organisations invited to participate at the 1st session of the 1992 Fund Assembly; and
- (e)      decide whether the 1971 Fund Assembly should hold an extraordinary session during the same week as the 1st session of the 1992 Fund Assembly.

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**ANNEX I**

**Resolution 2 of the 1992 Conference**

**RESOLUTION ON THE ESTABLISHMENT OF THE  
INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992**

**THE CONFERENCE,**

**HAVING ADOPTED** the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971,

**CONSIDERING** that there is a need, before the Protocol enters into force and for some time thereafter, to prepare certain administrative and organizational measures in order to ensure that the International Oil Pollution Compensation Fund (hereinafter referred to as "the Fund") to be established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as "the Fund Convention"), can operate properly as from the date of entry into force of the said Protocol,

**CONSIDERING** that there is a need to provide for a smooth transition of administrative and organizational measures to the regime under the 1992 Fund Convention,

**1 REQUESTS** the Assembly of the International Oil Pollution Compensation Fund, 1971 (hereinafter referred to as "the 1971 Fund"), established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 ("hereinafter referred to as "the 1971 Fund Convention"), to authorize and instruct its Director, on the basis that all expenses that may be incurred would be reimbursed by the Fund:

- (a) to perform, in addition to his functions under the 1971 Fund Convention, duties under the Fund Convention, provided that the interests of Parties to the 1971 Fund Convention are not unduly affected;
- (b) to make all possible efforts, in co-operation with other international organizations concerned such as the International Maritime Organization (IMO), to encourage early entry into force of the said Protocol;
- (c) to provide all necessary assistance for the setting up of the Fund;
- (d) to make the necessary preparations for the first session of the Assembly of the Fund, which is to be convened by the Secretary-General of IMO, in accordance with Article 36 of the Fund Convention;
- (e) to enter into negotiations with IMO with a view to enabling the Fund to reach agreements, as soon as possible, regarding accommodation and supporting services, as appropriate;
- (f) to enter into negotiations with the Fund at the appropriate time with a view to reaching a mutually advantageous arrangement enabling both Funds to share a single Secretariat, headed by the Director;

**2 RECOMMENDS** that regular sessions of the Assemblies, under Article 19, paragraph 1, of the Fund Convention and the 1971 Fund Convention, be held, as far as practicable, during the same period and at the same place;

**3 FURTHER RECOMMENDS** that the Fund should:

- (a) 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;
- (b) enter into negotiations with the host Government so that the question of the privileges, immunities and facilities to be accorded to the Fund can be considered with a view to its being settled in a mutually satisfactory manner, having regard to the privileges, immunities and facilities accorded at present to the 1971 Fund.

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**ANNEX II**

***DRAFT***

ASSEMBLY  
1st session  
Agenda item 1

92FUND/A.1/1  
..... 1996

Original: ENGLISH

***DRAFT***

**PROVISIONAL ANNOTATED AGENDA OF THE  
FIRST REGULAR SESSION OF THE ASSEMBLY**

to be held at the Headquarters of the  
International Maritime Organization, 4 Albert Embankment,  
London SE1, from Monday 24 June 1996, 10.00 am,  
to Friday 28 June 1996

Opening of the Session

- 1 **Adoption of the Agenda**
- 2 **Election of the Chairman and two Vice-Chairmen**

In accordance with Article 18.1 of the 1992 Fund Convention, the Assembly will be invited to elect a Chairman and two Vice-Chairmen who shall hold office until the next regular session.

- 3 **Adoption of Rules of Procedure**

In accordance with Article 18.2 of the 1992 Fund Convention, the Assembly will be invited to determine its Rules of Procedure. Draft Rules of Procedure have been elaborated by the Director of the 1971 Fund (document 92FUND/A.1/.....).



**4      Non-contracting States to be invited as observers**

In accordance with Article 18.10 of the 1992 Fund Convention, the Assembly shall determine which non-Contracting States shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies. The Assembly will be invited to take a decision on this matter at its first session.

The Secretary-General of the International Maritime Organization is issuing invitations to send observers to the first session of the Assembly to all Governments which signed the 1992 Fund Convention but which are not yet Contracting States and to all States Parties to the 1971 Fund Convention. This is on the understanding that these invitations are subject to formal approval by the Assembly.

A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**5      Intergovernmental and international non-governmental organisations to be invited as observers**

In accordance with Article 18.10 of the 1992 Fund Convention, the Assembly shall determine which intergovernmental and international non-governmental organisations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies. The Assembly will be invited to take a decision on this matter at its first session.

Meanwhile, to ensure that invitations to such observers to attend the first session are circulated well before the opening of the meeting of the first session, the Secretary-General of the International Maritime Organization is inviting the intergovernmental and international non-governmental organisations which have been granted observer status with the 1971 Fund to send observers to the first session of the Assembly. These invitations are subject to formal approval by the Assembly.

A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**6      Headquarters State**

The Assembly will be invited to take a decision on the question of the location of the headquarters of the Fund. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**7      Secretariat of the 1992 Fund**

In Resolution 2, the 1992 International Conference requested that the Assembly of the 1971 Fund should authorise and instruct its Director to perform, in addition to his functions under the 1971 Fund Convention, duties under the 1992 Fund Convention, provided that the interests of the Parties to the 1971 Fund Convention were not unduly affected.

Two possible solutions as to Secretariat functions may be considered. One solution would be for the 1992 Fund to have a Secretariat totally separate from that of the 1971 Fund. The other option would be for a joint Secretariat to administer both the 1971 Fund and the 1992 Fund, and for the

Director of the 1971 Fund to be also the Director of the 1992 Fund. It should be noted that the 1992 Fund Convention contains a provision to the effect that, during the period when both the 1971 Fund Convention and the 1992 Fund Convention are in force, the Secretariat and Director of the 1971 Fund may function also as the Secretariat and Director of the 1992 Fund (Article 36 ter (a)).

A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**8      Appointment of Director**

In accordance with Article 18.4 of the 1992 Fund Convention, and in the light of any decision taken concerning the establishment of the Secretariat (cf agenda item 7 above), the Assembly shall appoint a Director of the 1992 Fund. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**9      Adoption of Staff Regulations**

In the light of the decision taken in respect of Secretariat functions (cf agenda item 7 above), the Assembly will be invited to consider the requirement for Staff Regulations. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**10     Headquarters Agreement**

In the light of the decision taken in respect of the Headquarters State and Secretariat functions (cf agenda items 6 and 7 above), the Assembly will be invited to consider concluding a Headquarters Agreement with the Host State, relating *inter alia* to the privileges and immunities of the 1992 Fund, representatives of Member States and staff. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**11     Adoption of Internal Regulations**

In accordance with Article 18.3 of the 1992 Fund Convention, the Assembly shall adopt Internal Regulations necessary for the proper functioning of the Fund. Draft Internal Regulations have been elaborated by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**12     Adoption of Financial Regulations**

The Assembly will be invited to adopt Financial Regulations. Draft Financial Regulations have been elaborated by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**13     Co-operation with the 1971 Fund**

The Assembly may wish to consider co-operation arrangements during the transitional period when both the 1971 Fund Convention and the 1992 Fund Convention are in force. A document dealing

with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**14 Representation at meetings of the 1971 Fund**

The question arises of who should represent the 1992 Fund at meetings of the 1971 Fund Assembly and Executive Committee. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**15 Establishment of subsidiary bodies - Handling of claims for compensation**

In accordance with Article 18.9 of the 1992 Fund Convention, the Assembly may establish any temporary or permanent subsidiary body it may consider to be necessary. The Assembly may wish to consider, in particular, whether a permanent subsidiary body should be established to approve, in the place of the Assembly, settlements of claims for compensation against the 1992 Fund. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**16 Application of the 1992 Fund Convention to the EEZ**

Certain questions have arisen in connection with Article 3(a)(ii) of the 1992 Fund Convention concerning the establishment by Contracting States of an exclusive economic zone or the determination of a special area. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**17 Agreement with the International Maritime Organization**

In the light of the decision taken in respect of Secretariat functions (cf agenda item 7 above), the Assembly may wish to consider an agreement with the International Maritime Organization (IMO) concerning co-operation arrangements between the 1992 Fund and IMO. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**18 Sharing of costs for a joint Secretariat**

If it were decided that the 1992 Fund and the 1971 Fund should have a joint Secretariat, the 1992 Fund would have to agree with the 1971 Fund on the sharing of the joint running costs. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**19 Working capital**

The Assembly may wish to determine the level of the Fund's working capital. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**20     Adoption of budget for 1996**

The Assembly is required to prepare a budget for the period 30 May 1996 to 31 December 1996, in accordance with Article 12 of the 1992 Fund Convention. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**21     Assessment of annual contributions**

In the light of the decision taken in respect of the budget for 1996, the Assembly will be invited to decide on the levy of contributions, in accordance with Article 12 of the 1992 Fund Convention. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**22     Appointment of auditors**

In accordance with Article 18.6 of the 1992 Fund Convention, the Assembly shall appoint auditors. A document dealing with this matter will be submitted by the Director of the 1971 Fund (document 92FUND/A.1/.....).

**23     Date of next session**

In accordance with Article 19.1 of the 1992 Fund Convention, the Assembly shall hold regular sessions once every calendar year. Article 19.2 provides for extraordinary sessions to be held.

The Assembly may wish to consider holding an extraordinary session during the week of [21 to 25 October 1996], when the Assembly of the 1971 Fund will be holding its 19th session. The Assembly may also wish to decide the date for its regular session in 1997.

**24     Any other business**

The Assembly will be invited to consider other matters which may be proposed by Member States, by the Secretary-General of IMO or by the Director of the 1971 Fund.

**25     Adoption of the Record of Decisions of the 1st session**

Rule 27 of the Draft Rules of Procedure provides that the Secretariat shall prepare a Record of Decisions of the session. The Assembly will be invited to adopt this Record of Decisions.

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