



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971**

ASSEMBLY
19th session
Agenda item 11

71FUND/A.19/9
25 July 1996

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SECRETARIAT FUNCTIONS AFTER THE TRANSITIONAL PERIOD

Note by the Director

1 Consideration at the Assembly's 2nd extraordinary session and by the Assembly of the 1992 Fund

1.1 At its 2nd extraordinary session, the Assembly agreed that the 1971 Fund and the 1992 Fund should have a joint Secretariat and authorised the Secretariat of the 1971 Fund to administer also the 1992 Fund, as requested by the Assembly of the 1992 Fund (document 71FUND/A/ES.2/22, paragraph 6.3).

1.2 The Assembly also considered, at that session, the question of when there should be a transition from the 1992 Fund being administered by the 1971 Fund Secretariat to a situation when the 1992 Fund would have its own Secretariat (documents 71FUND/A/ES.2/6 and 71FUND/A/ES.2/22, paragraphs 6.4 and 6.5). It was noted that the situation of the two Organisations would change when the States with the major oil receipts ceased to be Parties to the 1971 Fund Convention by denouncing it, pursuant to Article 31 of the 1992 Protocol to that Convention. The Assembly recalled that, at its 18th session, it had taken the view that this question should be considered at a later stage, for example at the end of the transitional period (ie when the compulsory denunciations had taken effect and the Member States of the 1992 Fund were no longer Members of the 1971 Fund). Some delegations expressed the view that consideration of this question should not be delayed.

1.3 The Assembly instructed the Director to study the question of Secretariat functions after the expiry of the transitional period, and to report to the Assembly at its 19th session.

2 Further consideration by the Director

2.1 Timing of the establishment of a 1992 Fund Secretariat

2.1.1 The question arises for the 1992 Fund of 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.

2.1.2 The decisions of the Assemblies of the 1971 Fund and the 1992 Fund concerning the joint Secretariat, as set out in section 1 above, provide 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.

2.1.3 The situation will change 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 71FUND/A.19/24, it is expected that the requirements for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention will be fulfilled during the autumn of 1996, and the denunciations would then take effect within 18 months, ie during the spring of 1998.

2.1.4 The total quantity of contributing oil in the 70 States currently Parties to the 1971 Fund Convention is approximately 1 150 million tonnes. After denunciation of the 1971 Fund Convention by the States representing 750 million tonnes of oil, the quantity of contributing oil received in the remaining Members of the 1971 Fund would be reduced to about 400 million tonnes. When the denunciations take effect, the 1992 Fund would therefore become the more important of the two Funds, in terms of receipts of contributing oil. In addition, there would no longer be any States which were Members of both Organisations.

2.1.5 In a document submitted to the 1992 Fund Assembly (document 92FUND/A/ES.1/5), the Director has expressed the opinion that, in view of the considerations set out above, the 1992 Fund should establish its own Secretariat from the date on which the denunciations take effect.

2.2 Administration of the 1971 Fund by the 1992 Fund Secretariat

2.2.1 The Director considers that once the 1992 Fund has established its own Secretariat, that Secretariat should to administer also the 1971 Fund, since it would be impractical for two separate Secretariats to operate concurrently.

2.2.2 It should be pointed out, however, that although it is provided in the 1992 Fund Convention that the 1971 Fund Secretariat may also function as the Secretariat of the 1992 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.

2.2.3 The Director therefore proposes that the Assembly may wish to consider requesting the Assembly of the 1992 Fund to allow the 1992 Fund Secretariat, once it is established, to administer also the 1971 Fund. The Assembly may also wish to consider adopting a Resolution to the effect that the 1971 Fund should be administered by the 1992 Fund Secretariat, authorising the functions which are entrusted to the Secretariat of the 1971 Fund, under the 1971 Fund Convention, to be performed by the Secretariat of the 1992 Fund. A draft Resolution to this effect is attached at the Annex.

3 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in the present document; and
- (b) to consider whether the 1992 Fund Secretariat, once established, should administer also the 1971 Fund.

ANNEX

DRAFT

Resolution N°1] - Administration of the 1971 Fund by the 1992 Fund Secretariat

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

RECALLING that the 1971 Fund and 1992 Fund are at present administered by a joint Secretariat,

NOTING that the Assembly of the 1992 Fund has decided to establish its own Secretariat from the date on which the compulsory denunciations of the 1969 Civil Liability Convention and 1971 Fund Convention take effect,

RECOGNISING that, after the compulsory denunciations take effect, the 1992 Fund will become the more important of the two Organisations in terms of receipts of contributing oil,

ACKNOWLEDGING that it would be impractical for two separate Secretariats to operate concurrently,

RECALLING ALSO the Resolution adopted by the Assembly of the 1992 Fund (Resolution N°1 of the 1992 Fund, as contained in Annex I to document 92FUND/A.1/34) on the position of members of the 1971 Fund Secretariat whereby, 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 in such a case 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 their employer,

RESOLVES that, from the date of the establishment of the 1992 Fund Secretariat, the 1971 Fund should be administered by the 1992 Fund Secretariat,

AND DECLARES that the functions which, under the 1971 Fund Convention, are entrusted to the Secretariat shall be performed by the Secretariat of the 1992 Fund.
