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OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
21st session
Agenda item 6

71FUND/A.21/4
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WINDING UP OF THE 1971 FUND

Note by the Director

Summary:	Consideration is given to whether procedures could be established which would make it possible to wind up the 1971 Fund speedily.
Action to be taken:	Consider whether Article 42 of the 1971 Fund Convention could be used to accelerate the denunciation of the 1971 Fund Convention and whether procedures could be established to enable the 1971 Fund to be wound up more speedily.

1 Introduction

1.1 At its 4th extraordinary session, the Chairman drew the Assembly's attention to the possible consequences of the 1971 Fund Assembly not achieving a quorum after 16 May 1998, on which date 24 of the 76 States Parties to the 1971 Fund Convention at that time would cease to be Members of the 1971 Fund (as outlined in document 71FUND/A/ES.4/14). It was recalled that Article 20 of the 1971 Fund Convention provided that a majority of the Members of the Assembly constituted a quorum for its meetings. The Assembly's consideration of this issue is summarised in the Record of Decisions of the session (document 71FUND/A/ES.4/16, paragraphs 15.1.1 - 15.1.36).

1.2 As a result of its consideration of the issues involved the Assembly adopted Resolution N°13 on the operation of the 1971 Fund from 16 May 1998.

1.3 The Assembly considered also the issue of the winding up of the 1971 Fund. The discussion is summarised in the Record of Decisions as follows (document 71FUND/A/ES.4/16):

15.1.31 A number of delegations emphasised the considerably increased financial burden which might fall on those contributors in States which remained Members of the 1971 Fund after other States had denounced the 1971 Fund Convention. It was

recalled that Article 43 of the 1971 Fund Convention provided that the Convention would cease to be in force on the date when the number of Contracting States fell below three. It was stressed that it would not be possible for the 1971 Fund to fulfil its objective of paying compensation to victims of oil pollution damage in Member States if there were no persons in the remaining 1971 Fund Member States who were liable to pay contributions.

15.1.32 In view of these problems, the Assembly emphasised the need to examine, as a matter of priority, the possibility of winding up the 1971 Fund speedily. It was emphasised by some delegations that, if the 1971 Fund should find itself paralysed and unable to pay compensation to victims, there would be little time to consider how the 1971 Fund should be wound up, and that therefore consideration of this question should commence immediately. It was stated by some delegations that consideration should be given as to whether Article 42 of the 1971 Fund Convention might provide a mechanism of accelerating denunciation of the Convention.

1.4 The Assembly adopted a Resolution (Resolution N°14), to the effect that urgent consideration should be given to exploring whether procedures could be established to enable the 1971 Fund to be wound up speedily. This resolution is reproduced at the Annex to this document.

2 Status of the 1971 Fund Convention

As set out in document 71FUND/A.21/3, a further six States have recently denounced the 1971 Fund Convention. When these denunciations come into effect, the 1971 Fund will have 46 members. Two other States have acceded to the 1992 Fund Convention but have not denounced the 1971 Fund Convention. It is expected however, that these States will soon submit their instruments of denunciation. It is also expected that a number of other States will soon accede to the 1992 Fund Convention and denounce the 1971 Fund Convention.

3 Relevant provisions of the 1971 Fund Convention

Articles 42 - 44 are relevant to the winding up of the 1971 Fund. These Articles read:

Article 42

1 Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

2 The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions for the remaining Contracting States.

3 If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which that denunciation takes effect, denounce this Convention with effect from the same date.

Article 43

1 This Convention shall cease to be in force on the date when the number of Contracting States falls below three.

2 Contracting States which are bound by this Convention on the date before the day it ceases to be in force shall enable the Fund to exercise its functions as described under Article 44 and shall, for that purpose only, remain bound by this Convention.

Article 44

1 If this Convention ceases to be in force, the Fund shall nevertheless

- (a) meet its obligations in respect of any incident occurring before the Convention ceased to be in force;
- (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.

2 The Assembly shall take all appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.

3 For the purposes of this Article the Fund shall remain a legal person.

4 Director's consideration

4.1 Acceleration of the denunciation of the 1971 Fund Convention

4.1.1 It is expected that the number of 1971 Fund Member States will decrease considerably in the coming 18 months. However, it may take many years before the number of Member States falls below three, resulting in the 1971 Fund Convention ceasing to be in force and the winding up of the 1971 Fund.

4.1.2 Under Article 41.3 of the 1971 Fund Convention, a denunciation takes effect one year after it is deposited with the Secretary-General of the International Maritime Organization (IMO). This period of one year may be reduced by implementation of the procedure laid down in Article 42.

4.1.3 This procedure would assist those States which did in fact submit instruments of denunciation by reducing the time it would take before the denunciation took effect. There is a significant risk, however, that a number of States would not use this possibility. The main problem appears to be how to convince Governments of the urgent need for denunciation of the 1971 Fund Convention.

4.2 Amendment of Article 43.1 of the 1971 Fund Convention

4.2.1 One option which the Assembly might wish to consider would be for IMO to convene a Diplomatic Conference, in accordance with Article 45 of the 1971 Fund Convention, for the purpose of amending Article 43.1 of the Convention. The conditions for the entry into force of such an amendment would have to be laid down in the instrument containing this amendment (cf Article 24.1 of the 1969 Vienna Convention on the Law of Treaties). Normally, the entry into force of a treaty instrument would require ratification by a specified number of States. It might be difficult to obtain ratification of an instrument amending Article 43.1 of the 1971 Fund Convention by even a very limited number of States within a reasonable period of time. In addition, the revised version of Article 43.1 would bind only those States which had ratified it.

4.2.2 For these reasons it might be appropriate to consider whether such an amendment could immediately be applied provisionally, pursuant to Article 25 of the Vienna Convention which reads:

Article 25

Provisional application

1 A treaty or a part of a treaty is applied provisionally pending its entry into force if:

- (a) the treaty itself so provides; or
- (b) the negotiating States have in some manner so agreed.

2 Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

4.3 Encouraging Member States to denounce the 1971 Fund Convention

4.3.1 Immediately after the 4th extraordinary session of the 1971 Fund Assembly the Director sent letters to the Ambassadors or High Commissioners of all Member States which had not already denounced the 1971 Fund Convention, to the effect that, in view of the significant problems which continuing membership of the 1971 Fund would cause, their respective Government's attention was drawn to the great urgency of acceding to the 1992 Protocols and of denouncing the 1969 Civil Liability Convention and 1971 Fund Convention.

4.3.2 At the Assembly's 4th extraordinary session, representatives of the Comité Maritime International (CMI) and the Oil Companies International Marine Forum (OCIMF) offered to assist in disseminating information on the importance for the remaining 1971 Fund Member States of denouncing the 1971 Fund Convention. The Director is in discussion with the representatives of CMI and OCIMF on how these organisations can best assist in this regard.

4.3.3 The Director intends to invite the Secretary-General of IMO to consider whether it would be appropriate to submit a document to the session of the IMO Council to be held in November 1998, drawing the attention of the delegations to the importance of States' denouncing the 1971 Fund Convention.

4.3.4 The Director intends to increase the Secretariat's participation in seminars and workshops so as to enable it to draw the attention of representatives of Governments and interested circles to the importance of prompt denunciation of the 1971 Fund Convention.

4.3.5 It might be helpful if Member States which have denounced the 1971 Fund Convention were to use their contacts in neighbouring States to stress the importance of the issue.

5 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document;
- (b) to consider whether the procedure laid down in Article 42 of the 1971 Fund Convention could be used to accelerate the denunciation of the Convention; and
- (c) to consider whether procedures could be established to enable the 1971 Fund to be wound up more speedily.

ANNEX**Resolution N°14:**
Winding up of the 1971 Fund**THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 FUND),**

AWARE that 24 of the present 76 States Parties to the 1971 Fund Convention will cease to be Members of the 1971 Fund from 16 May 1998 and that a number of other States will in the near future also cease to be Members of the 1971 Fund,

NOTING that the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention (1992 Protocols) were intended to replace the Conventions in their original versions,

RECOGNISING the difficulties which may be encountered in the operation of the 1971 Fund as a consequence of not achieving a quorum in the Assembly and Executive Committee after 16 May 1998,

RECALLING the procedures laid down in Resolution N°13 to address these difficulties,

BUT ACKNOWLEDGING that the 1971 Fund may nevertheless be unable to operate in a normal way in a few years' time,

CONSCIOUS that the majority of the present contributors to the 1971 Fund are located in States which have denounced the 1971 Fund Convention or which are expected to do so in the near future,

AND AWARE of the considerably increased financial burden which may fall on those contributors in States which remain Members of the 1971 Fund after other States have denounced the 1971 Fund Convention,

RECALLING that it is the task of the Assembly, under Article 18.14 of the 1971 Fund Convention, to perform such functions as are necessary for the proper operation of the 1971 Fund,

NOTING that Article 43 of the 1971 Fund Convention provides that the Convention shall cease to be in force on the date when the number of Contracting States falls below three,

AWARE that, under Article 44.2 of the 1971 Fund Convention, the Assembly should take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund,

RECOGNISING that, before the winding up could take place, the 1971 Fund would have to meet its obligations in respect of all incidents which occurred before the Convention ceased to be in force,

BUT MINDFUL that it will not be possible for the 1971 Fund to fulfil its objective of paying compensation to victims of oil pollution damage in Member States if there are no persons in the remaining Member States who are liable to pay contributions,

CONSCIOUS that Article 42 of the 1971 Fund Convention may provide a means of accelerating denunciation of the 1971 Fund Convention,

RESOLVES that urgent consideration should be given to exploring whether procedures could be established to enable the 1971 Fund to be wound up speedily.
