



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
24th session
Agenda item 6

71FUND/A.24/4
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WINDING UP OF THE 1971 FUND

Note by the Director

Summary:	An examination is made of the developments towards the winding up of the 1971 Fund, in particular as a result of the entry into force of the 2000 Protocol amending Article 43.1 of the 1971 Fund Convention to the effect that the Convention will be terminated when the number of Contracting States falls below 25, which will occur on 24 May 2002.
Action to be taken:	Consider the administration of the 1971 Fund in the future, in particular the position of the joint Secretariat and Director.

1 Introduction

- 1.1 The 1992 Fund and the 1971 Fund have a joint Secretariat and the 1992 Fund Director is *ex officio* Director also of the 1971 Fund.
- 1.2 The 1971 Fund Convention (Article 43.1) in its original version provides that the Convention will remain in force until the date when the number of Contracting States falls below three. Although a number of States had denounced the 1971 Fund Convention after the entry into force of the 1992 Fund Convention, it became clear that it was very unlikely that this would happen in the near future. Concerns were expressed that, as a result of the decrease in the number of Member States and the ensuing reduction in the contribution base, the 1971 Fund would not remain financially viable. Consideration was therefore given to the possibility of accelerating the winding up of the 1971 Fund.
- 1.3 A Diplomatic Conference, which was held from 25 to 27 September 2000 under the auspices of the International Maritime Organization (IMO), adopted a Protocol to amend Article 43.1 of the 1971 Fund Convention. Under the amended text, the 1971 Fund Convention will cease to be in force on the date on which the number of 1971 Fund Member States falls below 25 **or** 12 months following the date on which the Assembly (or any other body acting on its behalf) notes that the total quantity of contributing oil received in the remaining Member States falls below 100 million tonnes, whichever is the earlier. The Protocol would enter into force on 27 June 2001, unless one

third of the remaining Member States had informed the Secretary-General of IMO by 27 March 2001 of their objection to the Protocol.

2 Consideration at the 1971 Fund Administrative Council's October 2000 session

- 2.1 At its October 2000 session, the Administrative Council, acting on behalf of the Assembly, considered various issues relating to the winding up of the 1971 Fund on the basis of a document submitted by the Director (document 71FUND/A.23/4). The Administrative Council considered that as a result of the adoption of the 2000 Protocol, the problems facing the 1971 Fund had been reduced considerably, unless a sufficient number of objections were lodged. It was suggested that the issue would now be how to ensure the operation of the 1971 Fund and its viability in respect of incidents occurring before the date when the Convention ceased to be in force, ie during the latter half of 2001, or the summer of 2002 at the latest.
- 2.2 The Administrative Council authorised the Director to take out insurance covering the 1971 Fund's liabilities (document 71FUND/AC.2/A.23/22, paragraph 6.6). Pursuant to this authorisation, on 25 October 2000 the Director purchased insurance covering any liabilities of the 1971 Fund for compensation and indemnification up to 60 million SDR (£53 million) per incident minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention, as well as legal and other expert fees, in respect of all incidents occurring during the period up to 31 December 2001, with the 1971 Fund itself having to cover a deductible of 250 000 SDR for each incident, and the 1971 Fund having the option to extend the insurance cover up to 31 October 2002.
- 2.3 The Administrative Council decided that it would not be appropriate to appoint a liquidator in the normal sense to deal with the liquidation of the 1971 Fund but that the liquidation should be dealt with by the organs of the 1971 Fund (document 71FUND/AC.2/A.23/22, paragraph 6.13).
- 2.4 The Administrative Council considered a proposal by the Director to the effect that, in order to ensure that the winding up of the 1971 Fund was impartial and equitable, it might be appropriate to consider appointing some eminent person outside the 1971 Fund, but who was nevertheless familiar with the operation of the Organisation, to oversee the winding up. The Administrative Council noted that the Director had proposed that Dr Thomas A Mensah might be a suitable candidate for such an appointment.
- 2.5 The Administrative Council decided that such a person should be appointed, but postponed its consideration of the person to be appointed (document 71FUND/AC.2/A.23/22, paragraph 6.17).

3 Consideration by the 1992 Fund Assembly at its October 2000 session

At its 5th session held in October 2000, the 1992 Fund Assembly considered the problems facing the 1971 Fund. A number of delegations stated that in the light of the adoption of the 2000 Protocol to the 1971 Fund Convention and the 1971 Fund's purchase of insurance cover the concerns expressed by them at the 1992 Fund Assembly's April 2000 session had been allayed. Since it was likely that the 1971 Fund Convention would cease to be in force by the end of 2001 or during the summer of 2002 at the latest, the 1992 Fund Assembly decided to maintain the existing arrangement under which the 1992 Fund shared a Secretariat with the 1971 Fund and the 1992 Fund Director was also Director of the 1971 Fund, in order to ensure the efficient handling of pending incidents involving the 1971 Fund and the orderly winding up of that Organisation (document 92FUND/A.5/28, paragraphs 9.7 - 9.9).

4 Recent developments

- 4.1 The 2000 Protocol to the 1971 Fund Convention entered into force on 27 June 2001.
- 4.2 As a result of further denunciations of the 1971 Fund Convention during 2000 and 2001, the number of Member States will fall to 24 on 24 May 2002, when the denunciation of the

Convention by the United Arab Emirates takes effect. The Convention will therefore cease to be in force on 24 May 2002 and will not apply to incidents occurring after that date.

- 4.3 In July 2001 the Director exercised the option to extend the insurance cover up to 31 October 2002.
- 4.4 Two incidents have occurred in respect of which the 1971 Fund will use the insurance cover, namely the *Zeinab* incident (United Arab Emirates, on or about 14 April 2001) and the *Singapura Timur* (Malaysia, on 28 May 2001).

5 Director's proposal

- 5.1 As set out above, the Administrative Council decided at its October 2000 session that the liquidation of the 1971 Fund should be dealt with by the organs of the Fund.
- 5.2 In the Director's view, the 1971 Fund should continue to operate in the same manner as hitherto. The 1971 Fund Convention ceases to be in force on 24 May 2002 and the Convention will therefore not apply to incidents occurring after that date. When the 1971 Assembly or Administrative Council, as the case may be, meets in October 2002, it will be clear which incidents will involve the 1971 Fund. The Director hopes that at that time a number of pending incidents will have been finalised. The Assembly or the Administrative Council will therefore at that time be in a better position to assess whether any special measures should be taken to facilitate and speed up the winding up of the Organisation. The Director also considers that it is premature at this stage to appoint an eminent person to oversee the winding up of the 1971 Fund.

6 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document;
 - (b) to note that the 2000 Protocol to the 1971 Fund Convention amending Article 43.1 entered into force on 27 June 2001;
 - (c) to note that the 1971 Fund Convention will cease to be in force on 24 May 2002 and will not apply to incidents occurring after that date;
 - (d) to consider how the 1971 Fund should be administered in the future and in particular the position of the joint Secretariat and the Director;
 - (e) to decide whether to appoint an eminent person to oversee the winding up of the 1971 Fund; and
 - (f) to give the Director such other instructions as it may deem appropriate on the issues dealt with in this document.
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