



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

ASSEMBLY  
2nd extraordinary session  
Agenda item 6

71FUND/A/ES.2/6  
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## JOINT SECRETARIAT WITH THE 1992 FUND

### Note by the Director

#### 1 Joint Secretariat

1.1 It is provided in Article 36 quater (a) 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 In a Resolution adopted by the 1992 International Conference (Resolution 2, reproduced as the Annex to document 71FUND/A/ES.2/5), the Assembly was requested to authorise and instruct the 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.

1.3 There are two possible solutions as to Secretariat functions. 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 one 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. Having the two Organisations operated by two different Secretariats would result in major complications and entail unnecessary extra costs. Furthermore, the solution recommended by the 1992 International Conference, namely that the Secretariat of the 1971 Fund should also administer the 1992 Fund, appears to be the simplest and most 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.

1.4 During its consideration in October 1994 of the preparations for the entry into force of the 1992 Fund Convention, the Assembly took the view that the Director should base his further preparatory work on the assumption that the 1971 Fund and the 1992 Fund would be administered by a joint Secretariat headed by one Director during the period when the 1971 Fund and the 1992 Fund would operate concurrently. The Assembly noted the Director's view that the simplest and most practicable solution

during that period would be that the Secretariat of the 1971 Fund should administer the 1992 Fund, at least so long as the States with major receipts of contributing oil remained Parties to the 1971 Fund Convention.

## **2 Establishment of a 1992 Fund Secretariat**

2.1 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.

2.2 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 71FUND/A/ES.2/20, 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 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.

2.3 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.

2.4 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.

2.5 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 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.

2.6 During its consideration in October 1995 of the preparations for the entry into force of the 1992 Fund Convention, the Assembly addressed the issue 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. The Assembly took 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 have taken effect and the Member States of the 1992 Fund are no longer Members of the 1971 Fund).

2.7 The Director proposes that the Director of the two Organisations should be instructed to study, in the light of developments, the question of Secretariat functions after the expiry of the transitional period and report to the Assemblies of the two Organisations at their sessions in the autumn of 1996.

## **3 Personnel of the 1971 Fund**

3.1 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)).

3.2 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.

3.3 The Director has proposed to the Assembly of the 1992 Fund that it might wish to 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.

**Action to be taken by the Assembly**

4 The Assembly is invited to consider:

- (a) the establishment of a joint Secretariat with the 1971 Fund;
  - (b) the establishment of a 1992 Fund Secretariat at the end of the transitional period; and
  - (c) the position of the members of the 1971 Fund Secretariat when the 1992 Fund establishes its own Secretariat.
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