



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
4th extraordinary session
Agenda item 15

71FUND/A/ES.4/14/Add.1
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ANY OTHER BUSINESS

OPERATION OF THE 1971 FUND FROM 16 MAY 1998

Note by the Director

Summary:	Various measures are considered which might be taken to overcome the difficulties which would arise in administering the 1971 Fund after 16 May 1998 if it were to prove impossible for the Assembly and the Executive Committee to achieve a quorum after that date.
Action to be taken:	Adoption of Resolution on the operation of the 1971 Fund after 16 May 1998.

1 Overview

1.1 Introduction

1.1.1 In document 71FUND/A/ES.4/14, the Chairman has drawn the attention of the Assembly to certain difficulties which would arise in administering the 1971 Fund after 16 May 1998 in the likely event that it will not be possible after that date to achieve a quorum at sessions of the 1971 Fund Assembly.

1.1.2 Under Article 18.14 of the 1971 Fund Convention, it is the duty of the Assembly to perform - in addition to the functions specifically mentioned elsewhere in Article 18 - such other functions as are necessary for the proper operation of the 1971 Fund.

1.1.3 The drafters of the 1971 Fund Convention did not foresee that the operation of the 1971 Fund could be made impossible as a result of the lack of quorum in the Organisation's governing bodies, ie the Assembly and the Executive Committee, and for this reason the Convention does not contain any provisions dealing with such a situation. In the Director's view, it is crucial that - in the interests of

victims of pollution damage - measures are taken to enable the compensation system established under the 1971 Fund Convention to continue to function. Since the supreme organ of the 1971 Fund, ie the Assembly, has the general obligation to ensure the proper operation of the Organisation, the Director considers that it would be the responsibility of the 1971 Fund Assembly to take the necessary steps to this effect while it is still able to do so.

1.1.4 This document contains an examination of the various issues involved and indicates certain measures which might be considered by the Assembly in order to overcome or minimise these difficulties and thereby enable the 1971 Fund to continue to operate normally.

1.2 Problem areas

1.2.1 If the Assembly were unable to achieve a quorum, particular difficulties would arise in respect of some of the functions of the Assembly laid down in Article 18 of the 1971 Fund Convention which that body could not carry out. As outlined in paragraph 2 of document 71FUND/A/ES.4/14, the following functions of the Assembly have been identified as potential problem areas:

- the adoption of the budget and the fixing of annual contributions (Article 18.5)
- the election of the Executive Committee (Article 18.8) and the settlement of claims
- the appointment of the Director (Article 18.4), who is the legal representative of the 1971 Fund.

1.2.2 The first two of these problems would arise in October 1998 if the Assembly were unable to achieve a quorum at its 21st session. The problem of appointing a Director would arise in October 1999, since the present Director's mandate expires on 31 December 1999.

1.2.3 The three problem areas referred to are dealt with in detail in sections 4-6 below.

1.3 Possible measures to achieve a quorum

1.3.1 Invitations to attend sessions of the 1971 Fund Assembly are issued by the Director to all Member States by letter to the respective Ambassador or High Commissioner in London. In accordance with the Rules of Procedure of the Assembly, these invitations are sent with either 60 or 30 days' notice, dependent on whether it is a regular or an extraordinary session (Rule 2).

1.3.2 In view of the implications of sessions of the Assembly not achieving a quorum, it would be possible for the Director to take additional measures to encourage States to fulfil their responsibilities as Members of the 1971 Fund and attend the sessions. Such steps could include sending letters to Ambassadors and High Commissioners closer to the time of the sessions, urging them to make every effort to be represented at the meetings, and drawing their attention to the consequences of a quorum not being achieved.

1.4 Possible solutions

1.4.1 It is believed that considerable efforts should be made to urge 1971 Fund States to attend sessions of the Assembly. It is recognised, however, that these efforts may prove unsuccessful. It is suggested that the Assembly should, at this 4th extraordinary session, take measures to establish a framework in which, if a quorum is not achieved, the 1971 Fund may continue to operate normally in accordance with the duties imposed on the Assembly under Article 18.14.

1.4.2 To ensure the future operation of the 1971 Fund it may be appropriate to consider a two-stage delegation of functions, the first of which would be delegation to the Executive Committee (see section 2). As a second stage, two options are discussed: option A is that the administration of the

1971 Fund would be entrusted to the 1992 Fund (see section 3.1), and option B is that the functions of the 1971 Fund Assembly and Executive Committee would be delegated to a newly created body within the 1971 Fund (see section 3.2).

1.4.3 The Director should continue to convene regular sessions of the Assembly once every calendar year to endeavour to achieve a quorum. The measures envisaged in this document would be implemented only if a quorum has not been achieved. If a quorum were achieved, the 1971 Fund Assembly would function as normal.

2 Possible solution stage I:

Delegation of functions to the Executive Committee

2.1 It would be possible for the Assembly to delegate functions to the Executive Committee, to the extent permitted under the 1971 Fund Convention, so that the Committee may take decisions in place of the Assembly. Reference is made in particular to Article 26.1(c) of the 1971 Fund Convention, which provides that the Executive Committee shall "... perform such other functions as are allocated to it by the Assembly".

2.2 Under item 9 of the Assembly's Agenda at this session, the Assembly is invited to elect new members of the Executive Committee so as to ensure that the Committee can continue to function after 16 May 1998. In principle this election would, under Article 23.1, be for the period until the end of the next regular session of the Assembly, which is planned for October 1998. However, if the Assembly were to fail to achieve a quorum at that session, it appears that the Members of the Executive Committee would continue to hold office until such time as a regular session of the Assembly achieves a quorum. In order to increase the likelihood of the elected States attending the sessions, the election to the Executive Committee in April 1998 will be made, in accordance with the 1971 Fund's practice, from amongst those Member States which actually attend the Assembly session.

2.3 Under Article 22.1 of the 1971 Fund Convention, the Executive Committee shall consist of one third of the Members of the Assembly but of not less than seven or more than fifteen members. The Executive Committee is at present composed of fifteen members, and this composition will be maintained until the number of Member States falls below 43. A quorum requires at least two thirds of the members of the Committee attending the session, ie at present 10 Member States (Article 25).

2.4 It is likely that during the period between October 1998 and October 1999, a number of the States elected as members of the Executive Committee in April 1998 will accede to the 1992 Fund Protocol and denounce the 1971 Fund Convention. A number of the members of the Committee would therefore no longer be able to hold their seats, and the Committee would probably not achieve a quorum in the autumn of 1999.

2.5 As it is envisaged that the Executive Committee will not achieve a quorum for much more than a year after its election in April 1998, the delegation of functions from the Assembly to the Committee would be only a short-term solution.

2.6 It appears that it would not be appropriate for the Director to convene the Executive Committee once it was clear that no quorum could be achieved. This would be the case if six of the States elected to the Executive Committee at this session of the Assembly ceased to be Members of the 1971 Fund.

3 Possible solution stage II:

3.1 Option A - Entrusting the administration of the 1971 Fund to the 1992 Fund

3.1.1 It would be possible for the Assembly of the 1971 Fund to entrust the 1992 Fund to administer the 1971 Fund. This solution would have the advantage that the 1971 Fund would be administered by

an Organisation which has functions and objectives which are nearly identical to those of its own. In addition, the administration of the 1971 Fund would be carried out within an established legal framework.

3.1.2 It is important to protect the interests of 1971 Fund Member States, in particular those which attend a session of the 1971 Fund Assembly which is unable to achieve a quorum, and to make it possible for them to influence decisions on 1971 Fund matters. The 1971 Fund Assembly could invite the 1992 Fund to establish two bodies alongside the 1992 Fund Assembly and Executive Committee for the purpose of considering matters on behalf of the 1971 Fund. These two bodies, which could be known as the 1992 Fund Assembly's Council for the 1971 Fund and the 1992 Fund Executive Committee's Council for the 1971 Fund, would have compositions and rules of procedure identical to those of the 1992 Fund's Assembly and Executive Committee. Under the Rules of Procedure of the 1992 Fund Assembly and Executive Committee, 1971 Fund Member States are invited to attend the sessions but without voting rights. In the two bodies to be set up within the 1992 Fund to deal with 1971 Fund matters, however, those 1971 Fund Member States who are present at the sessions of those bodies would have full voting rights. For the purpose of establishing a quorum, only the 1992 Fund Member States would be taken into account. Decisions taken on the 1971 Fund's behalf by these Councils would be considered as decisions of the 1971 Fund.

3.1.3 A request would need to be made by the Assembly of the 1971 Fund to the Assembly of the 1992 Fund that the 1992 Fund should act on behalf of the 1971 Fund's organs.

3.1.4 From such time as the 1971 Fund Executive Committee fails to achieve a quorum, the functions previously allocated to it by the 1971 Fund Assembly, as well as any functions allocated to the Committee in accordance with the 1971 Fund Convention, should automatically revert to that Assembly. Thereafter, if a session of the Assembly was convened and failed to achieve a quorum, the items on the agenda of that session would be taken up, on behalf of the 1971 Fund, by the two bodies set up by the 1992 Fund to consider 1971 Fund matters, as appropriate.

3.1.5 It would be possible for the 1971 Fund Assembly to establish a subsidiary body to act in an advisory capacity to the special bodies set up by the 1992 Fund Assembly to act on behalf of the 1971 Fund. In view of the proposal regarding the position of the 1971 Fund Member States in these bodies, however, such a body might not be necessary.

3.1.6 It would be necessary for the Assembly of the 1992 Fund to give its agreement to the 1971 Fund's requests. This could be done by the adoption of an appropriately worded Resolution (cf document 92FUND/A/ES.3/20).

3.2 Option B - Delegation of functions to a newly established body within the 1971 Fund

3.2.1 Article 18.9 of the 1971 Fund Convention provides that the Assembly may "establish any temporary or permanent subsidiary body it may consider to be necessary". The 1971 Fund Assembly could therefore consider establishing a special body to take over the functions at present exercised by the Assembly and the Executive Committee, which could be known as the Administrative Council. Although it would be necessary for such a special body to be established by the Assembly at this 4th extraordinary session, the special body would not come into operation until delegation to the Executive Committee was no longer an effective means of ensuring that the 1971 Fund could function, ie from the first session of the Executive Committee which does not achieve a quorum.

3.2.2 The Administrative Council would be a body of the 1971 Fund. It is unlikely, however, that a body composed of only 1971 Fund Member States would be able to operate in the future. It would therefore be necessary to accept that this body would be composed, at least partially, of former 1971 Member States.

3.2.3 If the Assembly were to opt for this solution, it would be necessary for the Assembly to adopt a Resolution dealing with the creation, composition and allocation of functions to the Administrative Council.

4 Adoption of budget and fixing of annual contributions

4.1 Present practice: Adoption by the Assembly

Article 18.5 of the 1971 Fund Convention provides that the Assembly shall adopt the annual budget of the Organisation and fix the annual contributions. If the Assembly could achieve a quorum at its 21st session, to be convened for October 1998, it would on that occasion adopt the 1971 Fund's administrative budget for 1999 and decide on the levy of 1998 annual contributions, payable during 1999. There is a considerable risk, however, that a quorum will not be achieved at that session.

4.2 Stage I: Delegation to the Executive Committee

4.2.1 It follows from Article 19.1 of the 1971 Fund Convention that the Assembly may allocate to the Executive Committee the functions of adopting the annual budget of the 1971 Fund and fixing the annual contributions. If the Assembly were prepared to delegate these functions to the Executive Committee, it would be possible in October 1998 for the Committee to adopt the 1999 administrative budget and decide on the levy of 1998 annual contributions. From a financial point of view, this would enable the 1971 Fund to function in the normal way during the whole of the calendar year 1999.

4.2.2 As the Executive Committee would probably not achieve a quorum in the autumn of 1999, however, a different solution would be required for the adoption of the administrative budget for the year 2000 and beyond, and for the levying of annual contributions for the year 1999 and beyond.

4.3 Stage II: Option A - Entrusting the administration of the 1971 Fund to the 1992 Fund

4.3.1 If the administration of the 1971 Fund were to be entrusted to the 1992 Fund, these functions would be exercised by the competent special bodies set up by the 1992 Fund to deal with 1971 Fund matters.

4.3.2 At their sessions in October 1997, the Assemblies of the 1971 Fund and 1992 Fund decided that the costs of running the joint Secretariat for 1998 should be distributed with 60% to be paid by the 1971 Fund and 40% by the 1992 Fund. The 1971 Fund Assembly could decide that the distribution of costs between the two Organisations would be on a sliding scale until the 1971 Fund was wound up. However, it is difficult to assess the impact of the workload of the respective Organisations on the joint Secretariat over the coming years. It might therefore be considered inappropriate for the distribution to be fixed for the remainder of the 1971 Fund's existence. The distribution of the administrative cost should therefore be decided annually. When taking a decision on this distribution, particular attention should be paid to the interests of the contributors to the 1971 Fund.

4.4 Stage II: Option B - Delegation to a 1971 Fund Administrative Council

It would be possible for the Assembly to delegate to the proposed 1971 Fund Administrative Council the functions of adopting the annual budget and fixing the annual contributions.

5 Settlement of claims

5.1 Present practice: Settlement by the Executive Committee

Article 18.7 of the 1971 Fund Convention provides that the Assembly shall approve settlements of claims against the 1971 Fund, take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4.5, and determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible. However, this function of the Assembly is allocated to the Executive Committee in accordance with Article 26.1(b)(ii), which provides that the Committee shall - in place of the Assembly - approve settlements of claims against the Fund and take all other steps envisaged in Article 18.7 in relation to such claims.

5.2 Stage II: Option A - Entrusting the administration of the 1971 Fund to the 1992 Fund

If the administration of the 1971 Fund were to be entrusted to the 1992 Fund, the competent special bodies set up by the 1992 Fund to deal with 1971 Fund matters would deal with issues relating to the settlement of claims in the place of the 1971 Fund Assembly and Executive Committee.

5.3 Stage II: Option B - Delegation to a 1971 Fund Administrative Council

As the Executive Committee would probably not achieve a quorum in the autumn of 1999, the Assembly could delegate to the proposed 1971 Fund Administrative Council the function of approving the settlements of claims against the 1971 Fund.

5.4 Stage II: Option C - Delegation to the Director and establishment of permanent claims advisory group

5.4.1 With regard to the settlement of claims, the Assembly might wish to consider another possible solution, namely extending the Director's authority to settle claims. This third option could be adopted in place of Options A and B, as regards the settlement of claims. It could also be used in addition to one of these options.

5.4.2 Under Internal Regulation 7.4, the Director has general authority to make final settlement of claims up to certain amounts. In recent years, pursuant to Internal Regulation 7.5, the Executive Committee has given the Director more extensive powers to settle claims. This wider delegation has normally been granted in respect of a particular incident, and the Director has been given general authority to settle all claims arising out of the incident, provided that the claims do not give rise to any question of principle which has not previously been decided by the Committee.

5.4.3 The Assembly may wish to consider whether it would be appropriate to extend the Director's general powers to make final settlements and pay claims. This would require amendments to the Internal Regulations either by the Assembly at this session, or by Executive Committee at a later session if the Assembly's function of adopting the Internal Regulations, as contained in Article 18.3 of the 1971 Fund Convention were allocated to the Committee.

5.4.4 If the Assembly were prepared to give the Director such wide powers, it might be appropriate to consider whether a permanent claims advisory group should be established to assist the Director in his consideration of important and difficult claims issues. It appears that it would be very useful for the Director to be able to discuss difficult issues with a number of experienced persons who have represented their Governments in 1971 Fund bodies. In the light of Resolution N°11 of the 1971 Fund, such a claims advisory group would also need to include representatives of States which have denounced the 1971 Fund Convention.

6 Appointment of Director

6.1 Present practice: Appointment by the Assembly

6.1.1 Article 18.4 of the 1971 Fund Convention provides *inter alia* that the Assembly shall appoint the Director. In accordance with Article 29.1, the Director is the chief administrative officer of the 1971 Fund. His duties are set out in Articles 29.1 and 29.2.

6.1.2 The present Director's mandate expires on 31 December 1999. In accordance with past practice, the appointment of the Director of the 1971 Fund would take place at the session of the Assembly to be held in the autumn of 1999.

6.1.3 If, as is likely, it is not possible for the Assembly to achieve a quorum at that session, the Assembly could not appoint a Director. If no Director were to be appointed, the 1971 Fund would have no legal representative after 31 December 1999. This would lead to a situation where the 1971 Fund could no longer operate.

6.2 Stage I: Delegation to the Executive Committee

6.2.1 Under Article 26.1(c) of the 1971 Fund Convention, the Executive Committee shall perform such functions (other than those referred to in sub-paragraphs (a) and (b) as are allocated to it by the Assembly. It appears, therefore that the Assembly would be able to delegate to the Executive Committee the function of appointing the Director, in spite of the fact that Article 26.1(b)(i) provides that the Committee shall make provision "... for the appointment of such personnel, other than the Director, as may be necessary ...".

6.2.2 If the Assembly were to delegate the appointment of the Director to the Executive Committee, pursuant to Article 26.1(c), the problem of appointing a Director for the year 2000 and beyond would still exist, as the Executive Committee would probably not achieve a quorum in the autumn of 1999.

6.3 Stage II: Option A - Entrusting the administration of the 1971 Fund to the 1992 Fund

If the administration of the 1971 Fund were to be entrusted to the 1992 Fund, the 1992 Fund Assembly's Council for the 1971 Fund would appoint the Director of the 1971 Fund on behalf of that Organisation. The Council would then have to decide whether the person appointed should be the person who held the post of Director of the 1992 Fund.

6.4 Stage II: Option B - Delegation to a 1971 Fund Administrative Council

If the administration of the 1971 Fund were to be entrusted to a 1971 Fund Administrative Council, this Council would appoint the Director of the 1971 Fund.

6.5 Stage II: Option C - Decision that the 1971 Fund Director shall be the Director of the 1992 Fund

6.5.1 With regard to the appointment of the Director, the Assembly might wish to consider another possible solution which could be adopted in place of Options A and B.

6.5.2 At its 1st session, the Assembly of the 1992 Fund requested that the 1971 Fund Assembly authorise the Director of the 1971 Fund to perform the function of Director of the 1992 Fund while the 1971 Fund Convention and the 1992 Fund Convention were both in force (document 92FUND/A.1/34, paragraph 9.1). The 1971 Fund Assembly decided to authorise its Director to perform that function (document 71FUND/A/ES.2/22). The 1992 Fund Assembly then appointed the present Director of the

1971 Fund as Director of the 1992 Fund, and decided that his term of office should expire on the same date as his contract in his capacity as the 1971 Fund Director, ie on 31 December 1999 (document 92FUND/A.1/34, paragraph 9.3).

6.5.3 The Assembly might wish to consider taking a decision to the effect that the person appointed Director of the 1992 Fund would *ex officio* also be Director of the 1971 Fund, subject to the 1992 Fund Assembly's agreeing to such a solution.

6.5.4 The solution referred to in paragraph 6.5.3 would not operate if - at a later stage - the 1992 Fund Assembly were to decide that the Director of the 1992 Fund should not be Director of the 1971 Fund also, or if the person to be appointed Director of the 1992 Fund were not prepared to be Director of the 1971 Fund also. In this situation, it would be necessary to revert to Option A or B, as adopted by the 1971 Fund Assembly.

7 Proposals for consideration

7.1 It is suggested that the Assembly should consider the following measures to resolve the issues addressed in this document.

7.2 Firstly, considerable efforts should be made to urge 1971 Fund States to attend sessions of the Assembly. As outlined in paragraph 1.3.2 above, the Director should take additional measures to encourage States to fulfil their responsibilities as Members of the 1971 Fund, so that a quorum can be achieved in the Assembly.

7.3 It must be recognised, however, that such measures may prove unsuccessful. It is proposed that, if a session of the Assembly fails to achieve a quorum, its functions should, as a first stage, be allocated to the Executive Committee, with effect from the first session of the Assembly which fails to achieve a quorum (cf section 2 above). All functions of the Assembly should thus be allocated to the Executive Committee to the extent permitted under the 1971 Fund Convention.

7.4 From such time as the Executive Committee fails to achieve a quorum, the functions allocated to it by the Assembly should automatically revert to the Assembly. Thereafter, if a session of the Assembly was convened and failed to achieve a quorum, the items on the agenda of that session would be taken up by the 1992 Fund Assembly's Council for the 1971 Fund or by the 1992 Fund Executive Committee's Council for the 1971 Fund, as appropriate, on behalf of the 1971 Fund (cf section 3.1 above). This eventuality should be indicated in the invitations to States to attend the sessions of the 1971 Fund Assembly and of the 1992 Fund Assembly's Council for the 1971 Fund or of the 1992 Fund Executive Committee's Council for the 1971 Fund, as appropriate.

7.5 Until the 1971 Fund is eventually wound up, the Director would continue to convene regular sessions of the Assembly once every calendar year to endeavour to achieve a quorum. If a quorum were achieved, the 1971 Fund Assembly would resume its functions as normal. If, however, at a later stage, the 1971 Fund Assembly were to fail to achieve a quorum, the procedure would be that referred to in paragraph 7.4.

7.6 It is proposed that the framework set out in paragraphs 7.2-7.5 would be appropriate for resolving the issues dealt with in sections 4 and 5, ie the functions of adopting the budget and fixing the annual contributions and of approving the settlement of claims.

7.7 As for the function of appointing the Director, it is proposed that the Assembly should take a decision to the effect that the person appointed Director of the 1992 Fund after 31 December 1999 is *ex officio* Director of the 1971 Fund (cf section 6.5). Such a decision would require the agreement of the 1992 Fund Assembly. The Assembly may also wish to decide that, if at a future date this solution does not operate, the Director should be appointed by the body which at that time is responsible for taking decisions on the administration of the 1971 Fund, ie the 1971 Fund Assembly if it has a quorum

(cf paragraphs 7.4 and 7.5), the Executive Committee in stage I (cf paragraph 7.3), or the 1992 Fund Assembly's Council for the 1971 Fund (cf paragraph 7.4).

7.8 It is suggested that these proposals would require the adoption by the 1971 Fund Assembly of a resolution. Pursuant to Article 33.1(b) of the 1971 Fund Convention, a decision by the Assembly to allocate the functions specified in Article 18.5 requires a three-fourths majority. It would appear, therefore, that the adoption of such a resolution would require a three-fourths majority of the States present. The Assembly is invited to consider a draft resolution contained in the Annex.

7.9 If the Assembly were to adopt option B, ie the creation of an Administrative Council (cf section 3.2 above), a corresponding resolution would have to be adopted.

7.10 In addition to the functions required to ensure that the 1971 Fund will be able to continue to operate normally, it is suggested that it might be appropriate to consider the issues relating to the future winding up of the 1971 Fund. In accordance with Article 43, the 1971 Fund Convention shall cease to be in force on the date when the number of Contracting States falls below three. Pursuant to Article 44, the Assembly shall 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.

7.11 Even if the Assembly were to take the various measures proposed in this document, it would appear to be almost impossible for the 1971 Fund to continue to function in a proper way until such time as only two Member States remain. It is therefore suggested that it would be appropriate to explore whether procedures could be established to enable the 1971 Fund to be wound up earlier. Before the winding up could take place, however, the 1971 Fund would have to meet its obligations in respect of all incidents which occurred before the Convention ceased to be in force. If the 1971 Fund were to entrust its administration to the 1992 Fund, it might be considered appropriate for the 1992 Fund Assembly's Council for the 1971 Fund to start considering at an early stage the issues relating to the winding up of the 1971 Fund. Should the Assembly opt for the creation of a 1971 Fund Administrative Council, these issues should be considered by that body.

8 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document;
- (b) to take such decisions on the issues dealt with in this document as it may consider appropriate;
and
- (c) to consider adopting a Resolution in respect of these issues.

* * *

ANNEX

Draft Resolution
on the operation of the 1971 Fund after 16 May 1998

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

NOTING that there are 76 States Parties to the 1971 Fund Convention;

AWARE that 24 of these States 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,

RECOGNISING that, as a result of these States leaving the 1971 Fund, it is likely, despite considerable efforts to be made by the Director, that the Assembly of the Organisation will no longer be able to achieve a quorum and that the same may in the near future apply to its Executive Committee,

ACKNOWLEDGING that this would result in the 1971 Fund's being unable to operate in a normal way,

MINDFUL that the 1971 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

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,

AWARE that the Assembly may allocate functions to the Executive Committee in accordance with Article 26.1(c) of the 1971 Fund Convention,

NOTING that, under Article 44.2, 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,

CONSCIOUS of the need to establish a structure which will permit the 1971 Fund to operate from 16 May 1998 until such time as it is wound up,

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1971 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

CONSIDERING that it is important to ensure that the interests of States which remain Members of the 1971 Fund are protected,

TAKING INTO ACCOUNT that the International Oil Pollution Compensation Fund 1992 (1992 Fund), established under the 1992 Fund Convention, has functions and objectives which are nearly identical to those of the 1971 Fund;

- 1 **RESOLVES** that, in addition to those functions which are allocated to the Executive Committee pursuant to Article 26.1 of the 1971 Fund Convention, the following functions of the Assembly shall be delegated to the Executive Committee with effect from the first session of the Assembly at which the latter is unable to achieve a quorum, on the condition that if the Assembly were to achieve a quorum at a later session or sessions, the Assembly would resume the functions previously allocated to the Committee.

- (a) to adopt the annual budget and fix the annual contributions;
 - (b) to appoint auditors and approve the accounts of the 1971 Fund;
 - (c) to supervise the proper execution of the 1971 Fund Convention and of its own decisions;
 - (d) to perform such other functions as are otherwise necessary for the proper operation of the 1971 Fund;
 - (e) to 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 1971 Fund;
- 2 **RESOLVES ALSO** that, from such time as the Executive Committee fails to achieve a quorum, all functions undertaken by the Committee (ie those allocated by the Assembly and those allocated in accordance with the 1971 Fund Convention) shall revert to the Assembly;
- 3 **REQUESTS** that the 1992 Fund shall, from such time as the 1971 Fund Assembly fails to achieve a quorum after the measures referred to in paragraphs 1 and 2 above have been taken, on behalf of the 1971 Fund exercise the functions of the 1971 Fund Assembly, on the condition that, if the 1971 Fund Assembly were to achieve a quorum at a later session or sessions, that Assembly would resume those functions;
- 4 **INVITES** the 1992 Fund Assembly to establish two bodies alongside the 1992 Fund Assembly and Executive Committee for the purpose of considering and deciding on matters on behalf of the 1971 Fund, which could be known as the 1992 Fund Assembly's Council for the 1971 Fund and the 1992 Fund Executive Committee's Council for the 1971 Fund, and which would have compositions and rules of procedure identical to those of the 1992 Fund's Assembly and Executive Committee, except that the 1971 Fund Member States shall be invited to take part in these sessions with full voting rights;
- 5 **FURTHER REQUESTS** that the 1992 Assembly shall invite the following States and organisations to take part, without voting rights, in sessions of the bodies referred to in paragraph 4 above:
- (a) former 1971 Fund Member States which are not Members of the 1992 Fund;
 - (b) other States which would be invited to attend sessions of the 1971 Fund Assembly as observers; and
 - (c) intergovernmental organisations and international non-governmental organisations which have observer status with the 1971 Fund; and
- 6 **FURTHER RESOLVES** that the Director of the 1971 Fund shall *ex officio* be the person who holds the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agrees thereto and that the Director of the 1992 Fund agrees to carry out the functions of the Director of the 1971 Fund also, or, if these conditions are not met, that the Director shall be appointed by the 1971 Fund Executive Committee in accordance with paragraph 1 above, or by the 1992 Fund Assembly's Council for the 1971 Fund in accordance with paragraphs 3 and 4 above.
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