



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
4th extraordinary session
Agenda item 3

71FUND/A/ES.4/2
24 April 1998

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TRANSFER OF SECRETARIAT FUNCTIONS

Note by the Director

Summary: Information is given on certain issues relating to the transfer of the Secretariat functions from the 1971 Fund to the 1992 Fund on 15 May 1998.

Action to be taken: Decision on the operation of the 1971 Fund's Appeals Board after 15 May 1998.

1 Introduction

1.1 At the 2nd extraordinary session of the 1971 Fund Assembly and the 1st session of the 1992 Fund Assembly it was decided that the 1971 Fund and the 1992 Fund should have a joint Secretariat. It was decided that the Secretariat of the 1971 Fund should, at least for the time being, administer also the 1992 Fund (documents 71FUND/A.ES/2/22, paragraph 6.3 and 92FUND/A.1/34, paragraph 8.2).

1.2 At its 1st extraordinary session, the Assembly of the 1992 Fund decided that the 1992 Fund should establish its own Secretariat from the date on which the transitional period ended, ie the date on which the compulsory denunciations of the 1969 Civil Liability Convention and the 1971 Fund Convention would take effect. It was also decided that the 1992 Fund Secretariat, once established, would be authorised to administer also the 1971 Fund (document 92FUND/A/ES.1/22, paragraphs 6.2 and 6.4).

1.3 Having noted the decisions taken by the 1992 Fund Assembly, the 1971 Fund Assembly decided, at its 19th session, that the 1971 Fund should be administered by the 1992 Fund Secretariat once the latter had been established, and adopted a resolution to this effect (1971 Fund Resolution N°10, document 71FUND/A.19/30, paragraphs 11.3 and 11.4). The Resolution is reproduced in the Annex.

1.4 The transitional period will end on 15 May 1998. The Secretariat functions of the two Organisations will therefore be transferred from the 1971 Secretariat to a 1992 Fund Secretariat as from 16 May 1998.

1.5 The transfer of the Secretariat from the 1971 Fund to the 1992 Fund gives rise to a number of questions of an administrative nature. The Director has considered it appropriate to raise certain of these issues at this session of the Assembly, so as to enable the Assembly to give him such instructions as it may consider necessary.

2 Transfer of staff members

2.1 At its 1st session, the Assembly of the 1992 Fund adopted a Resolution (1992 Fund Resolution N°1) to the effect that, when the 1992 Fund established its own Secretariat, the personnel employed by the 1971 Fund would, if they so wished, 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 (document 92FUND/A.1/34, Annex I). The 1971 Fund Assembly welcomed the adoption of this Resolution (document 71FUND/A/ES.2/22, paragraph 6.7).

2.2 The contracts of employment of 1971 Fund staff members which have been concluded or extended since the adoption of the 1992 Fund Resolution N°1 in June 1996 contain a clause to the effect that the respective staff member will as from 16 May 1998 be employed by the 1992 Fund. All other staff members have agreed to be employed by the 1992 Fund as from 16 May 1998.

3 Provident Fund for the 1992 Fund Secretariat

3.1 In accordance with Staff Regulation 23, the 1971 Fund has a Provident Fund to which both the Organisation and staff members contribute in accordance with the provisions of Staff Rule VIII.5. The share of the staff member in the 1971 Fund's Provident Fund shall, at the discretion of the Director, be payable to the staff member on his separation from the 1971 Fund (Staff Rule VIII.5(c)). Staff members are therefore entitled to be paid their respective share of the Provident Fund when their employment with the 1971 Fund ceases, ie on 15 May 1998. Since there will no longer be a 1971 Fund Secretariat after 15 May 1998, there will be no need for the 1971 Fund to continue to operate a Provident Fund after that date.

3.2 At its 20th session, the Assembly endorsed a proposal by the Director in respect of the staff members' share of the 1971 Fund's Provident Fund, viz that those staff members who wished to do so would be entitled to transfer their respective shares of the 1971 Provident Fund (or part thereof) to the 1992 Fund's Provident Fund in conjunction with the transfer of the Secretariat functions. It was noted that the United Kingdom tax authorities had confirmed that there would be no adverse tax consequences of such a transfer provided that the 1992 Fund's Provident Fund would be identical in all essential respects to the 1971 Fund's Provident Fund (document 71FUND/A.20/30, paragraph 12.5).

3.3 The staff members have each indicated whether they want to transfer their share (or part thereof) of the 1971 Fund's Provident Fund to the 1992 Fund's Provident Fund. The transfers will be effected on 16 May 1998.

4 Transfer of ownership of furniture, office equipment and other supplies

4.1 The furniture, office equipment and other supplies used by the joint Secretariat are owned by the 1971 Fund.

4.2 At its 20th session, the Assembly decided that the title of furniture, office equipment and other supplies should be transferred from the 1971 Fund to the 1992 Fund with effect from 16 May 1998, for a payment of an amount to be calculated on the basis of the inventory as at 31 December 1995, the year

prior to the establishment of the 1992 Fund, less adjustments for assets purchased prior to that date that have been written off thereafter. At the time of that session the payment was estimated at £60 000. It should be noted that in respect of the period from 1 January 1996 the cost of the purchase of new assets has been shared between the 1971 Fund and the 1992 Fund.

4.3 The amount to be paid by the 1992 Fund will be reviewed by the Director in the light of the inventory position as at 15 May 1998.

5 Appeals Board

5.1 The 1971 Fund has established an Appeals Board to settle disputes between staff members, former staff members or rightful claimants to their estates and the Director concerning individual decisions applying to persons in the former categories, who base their case on the non-observance of the Staff Regulations, Staff Rules or the conditions of employment.

5.2 Section II of the Statute of the Appeals Board of the 1971 Fund adopted by the Assembly provides that the Appeals Board shall consist of three nationals of different Member States, to be appointed by the Assembly. Three substitute members from three other Member States shall also be appointed (paragraph (a)).

5.3 At its 20th session, the Assembly appointed the following members and substitute members of the Appeals Board to hold office until the 22nd session of the Assembly.

<u>Members</u>	<u>Substitute Members</u>
Mr A Benguerrah (Algeria)	Mr P Escherich (Germany)
Mr T G Ariyaratne (Sri Lanka)	Mr E Conte (Italy)
Sir Franklin Berman (United Kingdom)	Mr K Takiguchi (Japan)

5.4 Since the Secretariat functions will be transferred from the 1971 Fund to the 1992 Fund on 16 May 1998, the 1971 Fund will not have a Secretariat after that date. However, there could be issues arising from the employment by the 1971 Fund of the staff members before that date which would be brought before the Appeals Board of the 1971 Fund. It is proposed, therefore, that the Appeals Board of the 1971 Fund should remain in office in its present composition to deal with any such issues which may arise, although some of its members will be nationals of States which will no longer be Members of the 1971 Fund. It is expected that, by the time of the 21st session of the Assembly, in October 1998, the Director will be in a position to propose when the Appeals Board of the 1971 Fund could be disbanded.

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 take a decision on the operation of the 1971 Fund's Appeals Board after 15 May 1998 (paragraph 5.4); and
- (c) to give the Director such instructions as it may deem appropriate in relation to the transfer of the Secretariat functions from the 1971 Fund to the 1992 Fund from 16 May 1998.

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ANNEX

Resolution N°10 - 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 1992 Fund has authorised the 1992 Fund Secretariat to administer also the 1971 Fund,

NOTING ALSO 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 shall 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.
