

ASSEMBLY
1st session
Agenda item 6

GENERAL PRINCIPLES

Note by the Director of the International Oil Pollution Compensation Fund

1 Introduction

1.1 In November 1992 an International Conference adopted two Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention. The Conference also adopted a Resolution which invited the Assembly of the 1971 Fund to instruct the Director of that Fund to perform duties under the 1992 Fund Convention (in addition to his functions under the 1971 Fund Convention), to encourage the early entry into force of the 1992 Protocol to the Fund Convention, and to make the necessary preparations for the first session of the Assembly of the organisation which would be established under that Protocol (the 1992 Fund). The Resolution also requested that the Director should enter into negotiations with the 1992 Fund with a view to reaching a mutually advantageous arrangement enabling both Funds to share a single Secretariat, headed by the Director. This Resolution is reproduced in the Annex to the present document.

1.2 It should be noted that in all the documentation submitted by the Director of the International Oil Pollution Compensation Fund (IOPC Fund) to the present session of the Assembly of the 1992 Fund, the following terminology has been used:

1971 Fund	The Organisation (IOPC Fund) established under the 1971 Fund Convention
1992 Fund Convention	The 1971 Fund Convention as amended by the 1992 Protocol thereto
1992 Fund	The Organisation established under the 1971 Fund Convention as amended by the 1992 Protocol thereto

2 Consideration by the Assembly of the 1971 Fund

2.1 As instructed by the 1971 Fund Assembly at its 17th session, the Director of the 1971 Fund studied a number of issues relating to the entry into force of the 1992 Protocol to the Fund Convention. The results of these studies were submitted to the Assembly of that Organisation at its 18th session in documents FUND/A.18/13 and FUND/A.18/13/1-16, which were prepared in consultation with the Secretary-General of IMO.

2.2 The Director of the 1971 Fund based his study and resulting proposals on the following assumptions:

- (a) The 1992 Fund's Headquarters would be located in the United Kingdom.
- (b) The 1971 Fund and the 1992 Fund would be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil remained Parties to the 1971 Fund Convention.
- (c) In view of the very close link that would exist between the 1971 Fund and the 1992 Fund, it was important that close co-ordination was ensured between the decisions of the 1971 Fund Assembly (and of the Executive Committee of the 1971 Fund in respect of functions allocated to it under the 1971 Fund Convention or by the 1971 Fund Assembly) and those of the 1992 Fund Assembly.
- (d) It would be an advantage if, to the extent possible, the same Internal Regulations and Financial Regulations were to apply in respect of the 1971 Fund and the 1992 Fund.
- (e) It would be necessary to co-ordinate the decisions of the Executive Committee of the 1971 Fund and the body of the 1992 Fund handling claims for compensation, since claims arising out of a particular incident might have to be dealt with by both Organisations.
- (f) As regards the payment of contributions to the 1971 Fund and the 1992 Fund, procedures should be developed which did not put an unnecessary administrative burden on the contributors.
- (g) A simple formula should be found for sharing the running costs of the joint Secretariat between the 1971 Fund and the 1992 Fund.
- (h) The two Organisations should, if possible, have the same External Auditor.

2.3 The 1971 Fund Assembly expressed the view that the 1971 Fund and the 1992 Fund should be administered by a joint Secretariat headed by one Director, at least so long as the States with major receipts of contributing oil were Parties to the 1971 Fund Convention.

2.4 At its 18th session, the 1971 Fund Assembly endorsed in general the proposals made by the Director of the 1971 Fund. Details of the positions adopted by the 1971 Fund Assembly are presented in each of the documents submitted to this session of the 1992 Fund Assembly (cf document FUND/A.18/26, paragraph 16).

2.5 It was recognised by the 1971 Fund Assembly that any positions which it took in respect of the structure or operation of the 1992 Fund were only proposals, and that any decisions on these issues would have to be taken by the Assembly of the 1992 Fund.

3 Documentation submitted by the Director of the 1971 Fund to the present session

3.1 At its 18th session, the Assembly of the 1971 Fund instructed its Director to prepare revised documents in the light of the discussions at that session and any further observations which might be made by Governments of Member States before 31 December 1995. The 1971 Fund Assembly also instructed him to present to the Secretary-General of IMO any document prepared by him for submission to the 1st session of the 1992 Fund Assembly, inviting the Secretary-General to circulate the documents to the States and organisations concerned.

3.2 The Director of the 1971 Fund has therefore submitted documentation to the 1st session of the 1992 Fund Assembly, on the basis of the considerations of the 1971 Fund Assembly. The Director's proposals are based on the assumptions set out in paragraph 2.2 above.

3.3 It should be noted that no further observations have been received from the Governments of Member States of the 1971 Fund.

4 Extraordinary session of the 1971 Fund Assembly

In view of the very close link which will exist between the 1971 Fund and the 1992 Fund, the 1971 Fund Assembly will be called upon to take certain decisions in the light of the decisions taken by the 1992 Fund Assembly at its 1st session. For this reason, the Assembly of the 1971 Fund will hold an extraordinary session during the same week as the 1st session of the 1992 Fund Assembly.

5 Action to be taken by the Assembly

The Assembly is invited to take note of the information contained in the present document.

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ANNEXResolution 2 of the 1992 International ConferenceRESOLUTION ON THE ESTABLISHMENT OF THE
INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992

THE CONFERENCE,

HAVING ADOPTED the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971,

CONSIDERING that there is a need, before the Protocol enters into force and for some time thereafter, to prepare certain administrative and organizational measures in order to ensure that the International Oil Pollution Compensation Fund (hereinafter referred to as "the Fund") to be established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as "the Fund Convention"), can operate properly as from the date of entry into force of the said Protocol,

CONSIDERING that there is a need to provide for a smooth transition of administrative and organizational measures to the regime under the 1992 Fund Convention,

1 REQUESTS the Assembly of the International Oil Pollution Compensation Fund, 1971 (hereinafter referred to as "the 1971 Fund"), established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 ("hereinafter referred to as "the 1971 Fund Convention"), to authorize and instruct its Director, on the basis that all expenses that may be incurred would be reimbursed by the Fund:

- (a) to perform, in addition to his functions under the 1971 Fund Convention, duties under the Fund Convention, provided that the interests of Parties to the 1971 Fund Convention are not unduly affected;
- (b) to make all possible efforts, in co-operation with other international organizations concerned such as the International Maritime Organization (IMO), to encourage early entry into force of the said Protocol;
- (c) to provide all necessary assistance for the setting up of the Fund;
- (d) to make the necessary preparations for the first session of the Assembly of the Fund, which is to be convened by the Secretary-General of IMO, in accordance with Article 36 of the Fund Convention;
- (e) to enter into negotiations with IMO with a view to enabling the Fund to reach agreements, as soon as possible, regarding accommodation and supporting services, as appropriate;
- (f) to enter into negotiations with the Fund at the appropriate time with a view to reaching a mutually advantageous arrangement enabling both Funds to share a single Secretariat, headed by the Director;

2 **RECOMMENDS** that regular sessions of the Assemblies, under Article 19, paragraph 1, of the Fund Convention and the 1971 Fund Convention, be held, as far as practicable, during the same period and at the same place;

3 **FURTHER RECOMMENDS** that the Fund should:

- (a) 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;
 - (b) enter into negotiations with the host Government so that the question of the privileges, immunities and facilities to be accorded to the Fund can be considered with a view to its being settled in a mutually satisfactory manner, having regard to the privileges, immunities and facilities accorded at present to the 1971 Fund.
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