



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
6th session
Agenda item 29

92FUND/A.6/26
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QUORUM AT ASSEMBLY SESSIONS

Note by the Director

Summary:	In view of the experience of the 1971 Fund, the Director draws attention to the risk that the 1992 Fund Assembly may in the future be unable to achieve a quorum.
Action to be taken:	To consider whether measures should be taken to ensure that the 1992 Fund could continue to operate if the Assembly were unable to achieve a quorum.

- 1 Under Article 20 of the 1992 Fund Convention, which is identical to Article 20 of the 1971 Fund Convention, a majority of the Members of the Assembly shall constitute a quorum.
- 2 Even before the denunciation of the 1971 Fund Convention by a significant number of Member States with effect from the end of the transitional period in May 1998, the 1971 Fund Assembly had experienced difficulties in achieving a quorum. In some cases a quorum was obtained in the 1971 Fund Assembly with only a very slight margin, and only after strenuous efforts by the Secretariat to convince Member States of the importance of attending sessions of the Assembly. Even at the time when the 1971 Fund had 76 Members, the number of States attending the 1971 Fund Assembly was around 40.
- 3 Although the 1992 Fund Assembly has so far not encountered any difficulties in obtaining a quorum, there is in the Director's view a considerable risk that with a significant increase in membership problems will arise in this regard.
- 4 In October 2002, ie at the time of the 7th session of the 1992 Fund Assembly, the 1992 Fund will have at least 66 Member States. It is expected that during the next 12 months a significant number of States will ratify the 1992 Fund Convention. With the number of Member States approaching or exceeding 80, there is a risk of the Assembly not achieving a quorum.

- 5 When in early 1998 it became clear that the 1971 Fund Assembly was unlikely to achieve a quorum, that Assembly adopted at its 4th extraordinary session a Resolution (1971 Fund Resolution N°13) delegating certain functions to the Executive Committee with effect from the first session of the Assembly at which it became unable to achieve a quorum. If the Executive Committee were also unable to achieve a quorum, the functions of the Assembly would be assumed by a newly-created body, the Administrative Council, which has no quorum requirement. This Resolution is reproduced in the Annex.
- 6 The Assembly may wish to consider whether any measures should be taken at this early stage to ensure that the 1992 Fund could continue to operate if the Assembly were unable to achieve a quorum. One option would be for the functions of the Assembly to be delegated to the Executive Committee in respect of any session of the Assembly at which a quorum is not achieved. It should be noted however that, under the Resolution establishing the Committee (1992 Fund Resolution N°5), the members of the Executive Committee are elected for the period up to the end of the next regular session of the Assembly. For this reason, the Assembly may wish to consider that, if it does not achieve a quorum at one of its regular sessions, the members of the Executive Committee should continue in office until the end of the next regular session of the Assembly at which a quorum is achieved. Another option would be to establish a body corresponding to the 1971 Fund Administrative Council without quorum requirement.

Action to be taken by the Assembly

- 7 The Assembly is invited:
- (a) to consider the information contained in this document; and
 - (b) to take such decisions it may deem appropriate.

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ANNEX

1971 Fund Resolution N°13

Operation of the 1971 Fund from 16 May 1998 (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,

RECALLING Resolution N°11 of the 1971 Fund on co-operation between the 1971 Fund and its former Member States, in which it is recognised that former States Parties which have been affected by incidents covered by the 1971 Fund Convention but in respect of which settlements have not yet been finalised, should be entitled to present their views on pending cases in the competent bodies of the 1971 Fund,

- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1971 Fund once every calendar year, and in the invitations to urge States to make every effort to be represented at the meeting, and to draw attention to the consequences of a quorum not being achieved.
- 2 **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;
- 3 **RESOLVES ALSO** that, whenever 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;
- 4 **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:
- (a) to perform such functions as are allocated to the Assembly under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;
 - (b) to establish a subsidiary body to consider the settlement of claims;
 - (c) to give instructions to the Director concerning the administration of the 1971 Fund;
 - (d) to supervise the proper execution of the Convention and of its own decisions;
 - (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, at the earliest possible opportunity;
- 5 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum after the functions allocated to the Executive Committee in accordance with paragraph 2 have reverted to the Assembly pursuant to paragraph 3, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;
- 6 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:
- (a) 1971 Fund Member States;
 - (b) former 1971 Fund Member States;
 - (c) other States which would be invited to attend sessions of the 1971 Fund Assembly as observers; and
 - (d) intergovernmental organisations and international non-governmental organisations which have observer status with the 1971 Fund; and
- 7 **FURTHER DECIDES**:
- (a) that decisions of the Administrative Council shall be taken by majority vote of those 1971 Fund Member States and former 1971 Fund Member States present and voting, provided that a former 1971 Fund Member State shall have the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State;

- (b) that there shall be no quorum requirement for the Administrative Council;
- (c) that the Administrative Council shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either at his own initiative or at the request of its Chairman;
- (d) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
- (e) that the States invited to a session of the Administrative Council shall inform the Director of the person or persons who will attend; and
- (f) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise;

8 **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 Executive Committee in accordance with paragraph 2 above, or by the Administrative Council in accordance with paragraph 4 above.
