



QUORUM AT ASSEMBLY SESSIONS

Note by the Director

Summary:	At its October 2002 session the Assembly considered what measures should be taken to ensure that the 1992 Fund could continue to operate if the Assembly were to be unable to achieve a quorum. The Assembly adopted a Resolution creating a special body, the Administrative Council, which would assume the functions of the Assembly if the latter did not achieve a quorum. The Assembly decided that the operative part of the Resolution should be reconsidered at its October 2003 session. In this document the main issues dealt with in the operative part are analysed, in particular the quorum requirement, which in the text adopted in October 2002 was set at at least 25 Member States being present.
Action to be taken:	To reconsider the operative part of the Resolution, in particular as regards the quorum requirement.

1 **Introduction**

- 1.1 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.
- 1.2 At its 7th session held in October 2002, the Assembly considered a proposal by the Director that the Assembly should adopt a Resolution creating a subsidiary body, the Administrative Council, to ensure that the 1992 Fund would continue to operate if the Assembly were unable to achieve a quorum (document 92FUND/A.7/26). The Director's proposal was to a large extent modelled on a Resolution on the same matter adopted in 1998 by the 1971 Fund Assembly (1971 Fund Resolution N°13; see document 92FUND/A.7/26, Annex I).

2 **Consideration at the Assembly's October 2002 session**

- 2.1 When considering the matter at its October 2002 session, the Assembly noted that pursuant to Article 18.14 of the 1992 Fund Convention the Assembly, as the supreme organ of the 1992 Fund, had the general obligation to ensure the proper operation of the Organisation. It was also noted that under Article 18.9 the Assembly was authorised to establish any temporary or permanent subsidiary body, to define its terms of reference and to give it the authority to perform the functions entrusted to it.

- 2.2 It was noted that under the draft Resolution proposed by the Director, there would be no quorum requirement for the Administrative Council. A number of delegations considered, however, that a quorum requirement should be inserted in the Resolution. It was also questioned whether it would be necessary, as had been done in the Director's proposal, to insert a provision specifying that the Administrative Council should meet at least once every calendar year. The Director was invited to reconsider these issues.
- 2.3 During the same session, the Assembly considered a revised draft Resolution prepared by the Director (document 92FUND/A.7/WP.1) which took into account the views referred to in paragraph 2.2 above and contained alternative texts relating to the quorum issue and an amended text relating to the frequency of Administrative Council meetings. It was generally considered that a quorum requirement was necessary.
- 2.4 Several delegations made the point that it was important that a decision was taken at the October 2002 session which would provide for an Administrative Council to be set up in the event that the Assembly were unable to achieve a quorum in order to prevent the 1992 Fund from becoming unable to fulfil its functions.
- 2.5 Based on a compromise proposal by the Director, the Assembly decided unanimously to adopt 1992 Fund Resolution N°7 which is reproduced at the Annex (document 92FUND/A.7/26, paragraph 29.6).
- 2.6 The Assembly decided that the operative part of the Resolution should be reconsidered at its 8th session in October 2003.

3 Reconsideration of the operative part of the Resolution

- 3.1 The operative part of Resolution N°7 addresses three main issues, namely:
- a) mandate of the Administrative Council;
 - b) process for decision making;
 - c) quorum requirement.
- 3.2 It appears that the mandate of the Administrative Council, which is in very general terms, covers all aspects of the 1992 Fund's operation for which decisions may be required. In the Director's view no amendments are required in this regard.
- 3.3 As for the decision making, it is provided that decisions should be taken by the majority of the 1992 Fund Member States present and voting except where a qualified majority is required under Article 33 of the 1992 Fund Convention. In the Director's view, this provision is appropriate.
- 3.4 The 1971 Fund Administrative Council does not have any quorum requirement. During the discussion at the October 2002 session of the 1992 Fund Assembly it was generally considered that a quorum requirement was necessary, but different views were expressed as to the number of States which should be present for a quorum to be achieved, the proposals ranging from at least 25 to 30 Member States to one-fourth or one third of the Member States. The compromise adopted by the Assembly requires 25 Member States being present. The Assembly may wish to reconsider the quorum requirement.
- 3.5 It should be noted that the Assembly, which had been convened to hold its 7th extraordinary session from 8 to 10 May 2003, was unable to achieve a quorum at that session since only 38 States were present whereas the quorum required the presence of 39 States. As a result the Administrative Council dealt with the items contained in the agenda of the Assembly session.

4 **Action to be taken**

The Assembly is invited:

- a) to consider the information contained in this document; and
- b) to reconsider the operative part of 1992 Fund Resolution N°7, in particular as regards the quorum requirement.

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ANNEX

1992 Fund Resolution N°7

Adopted by the 1992 Fund Assembly at its 7th session, held in October 2002

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 FUND),

NOTING that there are 71 States Parties to the 1992 Fund Convention, that 11 States have deposited instruments of ratification or accession and that a number of other States are expected to become Parties within the near future,

RECOGNISING that, as a result of the great increase in the number of 1992 Fund Member States, there is a risk that the Assembly of the Organisation will in the near future no longer be able to achieve a quorum,

ACKNOWLEDGING that this would result in the 1992 Fund's being unable to operate in a normal way,

MINDFUL that the 1992 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 1992 Fund Convention, to perform such functions as are necessary for the proper operation of the 1992 Fund,

AWARE that under Article 18.9 of the 1992 Fund Convention the Assembly may establish any temporary or permanent subsidiary body it may consider necessary, to define its terms of reference and to give it the authority needed to perform its functions,

CONSCIOUS of the need to establish a structure which will permit the 1992 Fund to operate even if the Assembly does not achieve a quorum at one or more of its sessions;

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1992 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1992 Fund once every calendar year, as provided in Article 19, paragraph 1 of the 1992 Fund Convention, and in the invitations to urge States to make every effort to be represented at the session, and to draw attention to the consequences of a quorum not being achieved.
- 2 **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 1992 Fund Convention or which are otherwise necessary for the proper operation of the 1992 Fund;
 - (b) to elect members of the Executive Committee in accordance with 1992 Fund Resolution N°5;
 - (c) to give instructions to the Director concerning the administration of the 1992 Fund;
 - (d) to supervise the proper execution of the Convention and of its own decisions;

- 3 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;
- 4 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:
- (a) 1992 Fund Member States;
 - (b) other States which would be invited to attend sessions of the Assembly as observers; and
 - (c) intergovernmental organisations and international non-governmental organisations which have observer status with the 1992 Fund; and
- 5 **FURTHER DECIDES:**
- (a) that decisions of the Administrative Council shall be taken by majority vote of those 1992 Fund Member States present and voting, provided that decisions which under Article 33 of the 1992 Fund Convention require two-thirds majority shall be taken by two-thirds majority of the 1992 Fund Member States present;
 - (b) that at least 25 Member States shall constitute a quorum for the meetings of the Administrative Council;
 - (c) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
 - (d) that credentials are required for delegations in accordance with Rule 9 of the Rules of Procedure of the Assembly; and
 - (e) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise.
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