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OIL POLLUTION
COMPENSATION
FUND 1992

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ASSEMBLY
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Agenda item 8

ESTABLISHMENT OF CLAIMS SUBSIDIARY BODY

Note by the Director

1 Consideration at the Assembly's 1st session

1.1 At its 1st session, the Assembly considered the consequences of the 1992 Fund Convention not providing for an Executive Committee, and discussed the structure for the handling of claims for compensation (documents 92FUND/A.1/18 and 92FUND/A.1/34, paragraphs 18.1–18.8). It was noted that in recent years the Executive Committee of the 1971 Fund had played a vital role in the consideration of claims. The Assembly took the view that it would not be practicable to set up separate working groups to deal with claims arising out of each major incident, as had been suggested at the 1984 International Conference which adopted the 1984 Protocol to the Fund Convention.

1.2 The Assembly decided that claims for compensation under the 1992 Fund Convention should be handled within a three-layer framework of the Director, a claims subsidiary body and the Assembly. It was considered that this framework for claims handling would speed up settlements when no questions of principle were involved, while Member States would retain their role as policy makers.

1.3 It was decided that the 1992 Fund should have a claims subsidiary body to deal with claims for compensation. It was generally agreed that this body should consider new issues of principle and general policy questions as they arose (and not in the abstract), and take decisions on claims referred to it by the Director. It was also generally agreed that the claims subsidiary body would be able to extend the Director's general authority in respect of a given incident, and make recommendations to the Assembly, for example on questions of principle of great importance.

1.4 The Assembly decided that the composition and structure of the claims subsidiary body should correspond largely to the composition and structure of the Executive Committee of the 1971 Fund. It was agreed that the body should be established at the first session of the Assembly after the number of 1992 Fund Member States reached 25, and that it should be composed of 12–15 Member States, elected by the Assembly in accordance with certain criteria to be decided by the Assembly at its 1st extraordinary session. It was noted that these criteria should respect the requirements laid down in Article 18.9 of the 1992 Fund Convention.

1.5 The Assembly considered whether to elect substitute members of the claims subsidiary body. It was suggested that such substitute members could be called upon to take the place of a State on the claims subsidiary body when decisions had to be taken in respect of incidents which had occurred in the State which was a member of the subsidiary body. It was generally agreed that the interested member of the

claims subsidiary body would not be excluded from the discussions of that particular incident. The Assembly noted that the election of substitute members might provide a solution to the problem of establishing a quorum. Attention was drawn to the fact that, under Rule (vi) of the Rules of Procedure of the Executive Committee of the 1971 Fund, a member of the Executive Committee (or a public authority of that State) had no right to vote when its claim was being considered by the Committee.

1.6 The Director was instructed to study the composition, mandate and Rules of Procedure of the claims subsidiary body, including the possibility of electing substitute members, and to report to the Assembly at its 1st extraordinary session.

1.7 The Assembly also decided that, since the claims subsidiary body would take decisions of great importance for claimants, and that these decisions would also have consequences for the level of contributions required, credentials should be required for the representatives of those Member States which were members of the subsidiary body.

2 Relevant provision of the 1992 Fund Convention

2.1 The composition of the Claims Committee should fulfil the requirements of Article 18.9 of the 1992 Fund Convention which reads:

The functions of the Assembly shall be:

.....

9 to establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

.....

2.2 In deciding to abolish the Executive Committee, the 1984 Conference gave some indication of the type of body that might be appointed by the Assembly (as a subsidiary body) to perform the functions which, under the 1971 Convention, were carried out by the Committee. The delegations which participated in the discussions mentioned a number of criteria which the new body would have to meet. These criteria included:

- o it should provide for greater continuity of membership;
- o the membership should be tailored to particular requirements;
- o its membership should reflect adequate geographical distribution;
- o the Member States with the largest quantities of contributing oil should be represented;
- o it was essential to keep flexibility.

3 Further consideration by the Director

3.1 General

The Director proposes that the claims subsidiary body should be known as the Claims Committee.

3.2 Mandate

The Director proposes that the mandate of the Claims Committee should reflect the position taken by the Assembly at its 1st session (cf paragraph 1.3 above). A draft mandate, as contained in Annex I, is submitted to the Assembly for consideration.

3.3 Composition

3.3.1 As the Claims Committee will take decisions of great importance, the Director takes the view that the size of the Committee should be sufficient to allow adequate representation of Member States. He therefore proposes that the Claims Committee should comprise 15 Member States from the outset.

3.3.2 Following the Assembly's decision that the composition and structure of the Claims Committee should correspond largely to the composition and structure of the Executive Committee of the 1971 Fund, the Director proposes that its composition should be governed by the same criteria as those that apply to the 1971 Fund's Executive Committee. This would mean that seven of the fifteen Committee members would be elected from among the eleven Member States in the territory of which the largest quantities of oil to be taken into account under Article 10 of the 1992 Fund Convention were received during the preceding calendar year, and that eight members would be elected from among the other Member States, whilst securing an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Member States particularly exposed to the risks of oil pollution and of Member States having large tanker fleets.

3.3.3 The need for continuity of membership of the Claims Committee would have to be balanced against the necessity of giving all Member States the opportunity to become a member of the Committee. For this reason, the Director proposes to retain the system applicable to the 1971 Fund's Executive Committee, ie that the election is for one year and that no State may serve on the Claims Committee for more than two consecutive terms.

3.3.4 As indicated in paragraph 1.5 above, it was suggested at the 1st session of the Assembly that substitute members could be elected to the Claims Committee to take the place of a member of the Committee when decisions needed to be taken in respect of an incident which had occurred in the territory of that Committee member, although the interested Committee member would not be excluded from the discussions of that particular incident. It should be noted that, based on the Rules of Procedure of the 1971 Fund's Executive Committee, the proposed Rules of Procedure for the Claims Committee (cf section 3.5 below) include a provision whereby a member of the Claims Committee would not have the right to vote when its claim, or that of a public authority of that State, was being considered by the Committee. Furthermore, the Director considers that, since in recent years, there has seldom been any problem in establishing a quorum for the Executive Committee of the 1971 Fund, there would be little advantage in electing substitute members of the Claims Committee for this purpose.

3.4 Formal establishment of the Claims Committee

3.4.1 Article 33 of the 1992 Fund Convention provides that the establishment of subsidiary bodies under Article 18.9 of the Convention, and matters relating to such establishment, shall require a two-thirds majority.

3.4.2 In view of the important role to be played by the Claims Committee, the Director proposes that it should be established by an Assembly Resolution. A draft Resolution is set out in Annex I for consideration by the Assembly.

3.5 Rules of Procedure

3.5.1 Article 18.9 of the 1992 Fund Convention provides that the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of a subsidiary body established by the Assembly in accordance with that Article. Rule 24 of the Rules of Procedure of the Assembly provides that subsidiary bodies shall follow those Rules of Procedure so far as they are applicable.

3.5.2 The Director is of the view that the Rules of Procedure of the Claims Committee should correspond largely to those of the Executive Committee of the 1971 Fund, rather than to those of the Assembly. It might therefore be appropriate to amend Rule 24 of the Assembly's Rules of Procedure to read as follows:

Rule 24

The Assembly may establish, in accordance with Article 18.9 of the 1992 Fund Convention, such temporary or permanent subsidiary bodies as it considers necessary. Such subsidiary bodies shall follow the present Rules of Procedure so far as they are applicable, unless the Assembly decides otherwise.

3.5.3 Since the Claims Committee is a subsidiary body of the Assembly, it appears that the Committee's Rules of Procedure should be adopted by the Assembly. The Director has prepared draft Rules of Procedure for the Claims Committee, as set out in Annex II, for consideration by the Assembly.

3.5.4 As indicated in paragraph 1.7 above, the Assembly decided at its 1st session that credentials should be required for representatives of Claims Committee members. This has been reflected in the draft Rules of Procedure.

4 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in the present document;
- (b) to take such decisions concerning the mandate and composition of the Claims Committee as it may deem appropriate;
- (c) to consider the draft Resolution on the establishment of a Claims Committee;
- (d) to consider the proposed amendment to the Rules of Procedure for the Assembly; and
- (e) to consider the draft Rules of Procedure for the Claims Committee.

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ANNEX I*DRAFT***Resolution N°[] - Establishment of the Claims Committee**

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

NOTING that the Assembly may, in accordance with Article 18.9 of the 1992 Fund Convention, establish any temporary or permanent subsidiary body it considers to be necessary, define its terms of reference and give it the authority needed to perform the functions entrusted to it,

NOTING FURTHER that, in accordance with that Article, the Assembly shall, when appointing the members of such a subsidiary body, endeavour to secure an equitable geographical distribution of members and to ensure that the Member States, in respect of which the largest quantities of contributing oil are received, are appropriately represented,

RECALLING the decision of the Assembly at its first session that the 1992 Fund should have a claims subsidiary body to deal with claims for compensation,

HEREBY CREATES a Claims Committee which shall be established at the first session of the Assembly after the number of 1992 Fund Member States has reached 25,

DECIDES that the Claims Committee shall be composed of [15] Member States elected by the Assembly to hold office until the end of the next regular session of the Assembly, and that a member may not serve on the Claims Committee for more than two consecutive terms, except to the extent necessary to comply with the eligibility requirements,

FURTHER DECIDES that [7] Claims Committee members shall first be elected from among the [11] Member States in the territory of which the largest quantities of oil to be taken into account under Article 10 of the 1992 Fund Convention were received during the preceding calendar year, that [8] members shall then be elected from among the other Member States, and that the Assembly shall, when electing the members of the Committee, secure an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Member States particularly exposed to the risks of oil pollution and of Member States having large tanker fleets,

ADOPTS the following mandate for the Claims Committee:

The functions of the Claims Committee shall be:

- 1 to take decisions in place of the Assembly on matters referred to in Article 18.7 of the 1992 Fund Convention, in particular on claims for compensation referred to it by the Director;
- 2 to consider new issues of principle and general policy questions relating to claims for compensation as they arise (and not in the abstract) and procedures for handling incidents;

- 3 to extend, to the extent it considers appropriate, the Director's authority to make final settlement of claims arising out of a given incident beyond that vested in him in accordance with the Internal Regulations;
- 4 to give the Director such instructions in respect of the handling of claims for compensation as may be required; and
- 5 to make such recommendations to the Assembly, for example on questions of principle of great importance, as the Claims Committee may deem appropriate.

* * *

ANNEX II*DRAFT***Rules of Procedure for the Claims Committee**

The Rules of Procedure for the Claims Committee shall be the same as those for the Assembly to the extent that they are relevant to and capable of applying to the proceedings of the Committee, subject to the following modifications:

- (i) Unless the context otherwise requires, and subject to the provisions set out below, references to "the Assembly", "sessions of the Assembly", "Chairman" and "Member" in the Rules of Procedure shall be read as if referring "the Claims Committee", "sessions of the Claims Committee", "Chairman of the Claims Committee" and "member of the Claims Committee".

- (ii) Rule 2 shall be replaced by the following text:

The Claims Committee shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either on his own initiative or at the request of its Chairman or of at least one-third of its members. It shall meet at such places as may be convenient.

- (iii) Rules 4 and 5 shall be replaced by the following text:

The Director shall invite Members of the 1992 Fund who are not Claims Committee members to attend meetings of the Claims Committee as observers.

The Director with the approval of the Chairman shall normally invite those States and organisations which would be invited to attend sessions of the Assembly. However, the Director shall have the discretion, after consultation with the Chairman, not to invite all or any of these States and organisations to be represented at meetings of the Claims Committee which are to be held in private.

- (iv) Rule 12 shall be replaced by the following text:

Sessions of the Claims Committee shall be held in public unless the Committee decides otherwise.

- (v) Rule 14 shall be replaced by the following text:

The provisional agenda of each regular session of the Claims Committee shall include items required to be dealt with by the application of the mandate of the Committee, as adopted by the Assembly, as well as items which have been requested by the Assembly or by a Member of the 1992 Fund.

- (vi) Rule 17 shall be replaced by the following text:

The provisional agenda together with supporting documents shall normally be communicated by the Director to the Claims Committee members at least 45 days before meetings.

- (vii) Rule 19 shall not apply.

- (viii) Rule 20 shall be replaced by the following text:

The Claims Committee shall elect a Chairman and a Vice-Chairman from among the representatives of the Committee members. The Chairman and Vice-Chairman shall hold office at all session of the Claims Committee between two ordinary sessions of the Assembly.

- (ix) Rule 21 shall be replace by the following text:

The first session of the Claims Committee after an ordinary session of the Assembly shall be opened by the representative of former Chairman's delegation or, if that delegation is not a Committee member, of the Vice-Chairman's delegation or, if this delegation is not a Committee member either, by the Director.

- (x) Rule 24 shall not apply.

- (xi) Rule 33 shall apply subject to the following:

If a Committee member or a public authority of a Committee member has a claim against the 1992 Fund, such a member shall have no voting right when that claim is being considered by the Claims Committee.

- (xii) Rule 42 shall be replaced by the following text:

At least two-thirds of the members of the Claims Committee shall constitute a quorum for its meetings.

- (xiii) Rule 55 shall not apply.

- (xiv) Rule 56 shall be replaced by the following:

These Rules of Procedure may be amended by the Assembly.
