



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

THIRD INTERSESSIONAL  
WORKING GROUP  
Agenda item 2

92FUND/WGR.3/8/1  
15 May 2001  
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## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

### VARIOUS ISSUES OF A TREATY LAW NATURE

#### Note by the Director

<i>Summary:</i>	The document addresses certain issues which could be considered in the context of the Working Group's review of the international compensation regime, namely the position of the Executive Committee, failure to achieve a quorum in the Assembly and termination of the 1992 Fund Convention and of a revised version thereof.
<i>Action to be taken:</i>	Information to be noted.

#### **1     Introduction**

The Director considers it appropriate to draw the Working Group's attention to some issues which the Group may wish to examine in the context of its review of the international compensation regime, namely the position of the Executive Committee, the difficulties in achieving a quorum in the Assembly and the termination of the 1992 Fund Convention and of a revised version thereof.

#### **2     Establishment of the Executive Committee**

- 2.1     The 1971 Fund Convention provides for the establishment of an Executive Committee (Articles 16 and 21) and contains detailed provisions on the election, mandate and procedures of this Committee (Articles 22-27).
- 2.2     When the 1971 Fund Convention was revised in 1984, it was decided to abolish the Executive Committee since it was considered in the light of experience that this Committee did not fulfil any useful role. As a result the 1984 Protocol to the 1971 Fund Convention does not contain any

provisions corresponding to Articles 21 - 27 of that Convention, and the 1992 Protocol is identical to the 1984 Protocol on this point.

- 2.3 However, the experience gained within the 1971 Fund after 1984 showed that the Executive Committee played an important role. The 1992 Fund Assembly decided, therefore, at its 2nd session, to establish an Executive Committee by means of a Resolution (document 92FUND/A.2/29, section 18, and 1992 Fund Resolution N° 5 set out in Annex I to that document). The provisions in the Resolution on the election and mandate of the 1992 Fund Executive Committee are very similar to the corresponding provisions in the 1971 Fund Convention.
- 2.4 The Working Group may wish to consider whether, in the context of a revision of the 1992 Fund Convention, the revised Convention should contain provisions on an Executive Committee corresponding to those set out in the 1971 Fund Convention, resulting in the Committee again becoming a statutory body.

### **3 Failure to achieve a quorum in the Assembly**

- 3.1 The 1971 Fund Convention and the 1992 Fund Convention provide that a majority of the members of the respective Assembly shall constitute a quorum for its meetings (Article 20).
- 3.2 The 1971 Fund Assembly has encountered problems in obtaining a quorum. In fact, since April/May 1998 the 1971 Fund Assembly has failed to achieve a quorum. However, on a number of occasions before April/May 1998 the Assembly had achieved a quorum only by a very narrow margin.
- 3.3 The Working Group may wish to consider whether measures could be taken to prevent difficulties arising within the 1992 Fund if its Assembly were to fail to achieve a quorum at one or more of its sessions.

### **4 Termination of the 1992 Fund Convention and of an amended version thereof**

- 4.1 The termination of the 1971 Fund Convention is governed by Article 43 which reads:
1. This Convention shall cease to be in force on the date when the number of Contracting States falls below three.
  2. Contracting States which are bound by this Convention on the date before the day it ceases to be in force shall enable the Fund to exercise its functions as described under Article 44 and shall, for that purpose only, remain bound by this Convention.
- 4.2 Although many States denounced the 1971 Convention following the entry into force of the 1992 Protocols thereto and it was expected that many more States would do so in the near future, it was nevertheless considered likely that it would be many years before the number of Member States would fall below three and that there was a risk, therefore, that the 1971 Fund would cease to be financially viable. For this reason a Diplomatic Conference held from 25 to 27 September 2000 under the auspices of IMO adopted a Protocol to amend Article 43.1. Under the amended text, the 1971 Fund will cease to be in force on the date on which the number of 1971 Fund Member States falls below 25 or 12 months following the date on which the Assembly (or any other body acting on its behalf) notes that the quantity of contributing oil received in the remaining Member States falls below 100 million tonnes, whichever is the earlier. As for the entry into force of the Protocol, the Diplomatic Conference adopted the option of a tacit acceptance procedure. The Protocol will enter into force on 27 June 2001, unless one third of the remaining Member States have informed the Secretary-General of IMO by 27 March 2001 of their objection to the Protocol. No objections were presented by that date, and the Protocol will therefore enter into force on 27 June 2001.

4.3 Article 43.1 of the 1971 Fund Convention as amended by the 2000 Protocol reads:

This Convention shall cease to be in force:

- (a) on the date when the number of Contracting States falls below twenty-five; or
- (b) twelve months following the date on which the Assembly or any other body acting on its behalf notes that, according to the information provided by the Director on the basis of the latest available oil reports submitted by Contracting States in accordance with article 15, the total quantity of contributing oil received in the remaining Contracting States by those persons who would be liable to contribute pursuant to article 10 of the Convention falls below 100 million tonnes,

whichever is the earlier.

4.4 Article 36 of the Final Clauses to the 1992 Protocol to the 1971 Fund Convention is in substance identical to Article 43 of the 1971 Fund Convention in its original version.

4.5 If, as a result of the Working Group's review, a revised text of the 1992 Fund Convention was considered advisable, it might be appropriate to include also a provision along the lines used in the 2000 Protocol, ie that the revised Convention would cease to be in force when the number of Contracting States falls below a certain level or the quantity of contributing oil received in the remaining Contracting States falls below a given threshold, whichever is the earlier.

## **5 Action requested**

The Working Group is invited:

- a) to take note of the information contained in this document; and
  - b) to give due consideration to the issues raised in the document in its recommendations to the Assembly.
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