



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
3rd extraordinary session
Agenda item 4

71FUND/A/ES.3/3
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ASSESSMENT OF ANNUAL CONTRIBUTIONS

Note by the Director

1 Consideration by the Assembly at its 19th session

1.1 The assessment of 1996 annual contributions was considered by the Assembly at its 19th session in October 1996 (documents 71FUND/A.19/22 and 71FUND/A.19/WP.1).

1.2 The Assembly decided not to levy any 1996 annual contributions to the General Fund. It was decided that £5 million should be credited to contributors from the General Fund, following a decision to reduce the working capital of the 1971 Fund from £15 million to £10 million (document 71FUND/A.19/30, paragraph 25.5).

1.3 The Assembly also decided to levy 1996 annual contributions to three Major Claims Funds for a total amount of £85 million. It was decided that part of the levies to the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds should be due for payment by 1 February 1997, and that the balance of these levies and the entire levy to the *Keumdong N°5* Major Claims Fund should be deferred. The Director was authorised by the Assembly to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 1997 (document 71FUND/A.19/30, paragraphs 25.6 and 25.7).

1.4 The Assembly considered that the amounts remaining on the *Taiko Maru* and *Toyotaka Maru* Major Claims Funds were substantial. The Assembly therefore decided, pursuant to the Financial Regulation 4.4, to reimburse the contributors to each of those Major Claims Funds, as indicated below, and to transfer the balance to the General Fund. It was also decided that these reimbursements should be made on the date of payment of the deferred levy, if and to the extent that such a deferred levy is made later in 1997 (document 71FUND/A.19/30, paragraph 25.9).

1.5 The Assembly's decisions are summarised in the table overleaf.

Fund	Total levy £	Payment by 1 February 1997 £	Maximum deferred levy £
<i>Keumdong N °5</i>	5 000 000	0	5 000 000
<i>Sea Prince/Yeo Myung/Yuil N °1</i>	50 000 000	13 000 000	37 000 000
<i>Sea Empress</i>	30 000 000	10 000 000	20 000 000
Total	85 000 000	23 000 000	62 000 000
Fund	Total reimbursement £	Credit on 1 February 1997 £	Deferred reimbursement £
General	-5 000 000	-5 000 000	0
<i>Taiko Maru</i>	-3 500 000	0	-3 500 000
<i>Toyotaka Maru</i>	-4 700 000	0	-4 700 000
Total	-13 200 000	-5 000 000	-8 200 000
Grand total	71 800 000	18 000 000	53 800 000

1.6 Invoices in respect of the 1996 annual contributions were issued by the Secretariat in November 1996 for a total of £17 283 223, for payment by 1 February 1997. As at 18 February 1997, 95.46% of this amount had been received.

2 The Nakhodka incident

2.1 The *Nakhodka* incident occurred off Japan on 2 January 1997 (ie after the 19th session of the Assembly in October 1996). It is clear that the total amount of the claims arising out of the *Nakhodka* incident will exceed the amount available under the 1971 Fund Convention.

2.2 The *Nakhodka* was registered in the Russian Federation, which has not ratified the 1992 Protocols but which is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention. The shipowner's right of limitation is therefore governed by the 1969 Civil Liability Convention, to which both Japan and the Russian Federation are Parties. The limitation amount applicable to the *Nakhodka* is estimated at 1 588 000 SDR (£1.3 million) under the 1969 Civil Liability Convention. Compensation in excess of the amount available under the 1971 Fund Convention, ie 60 million Special Drawing Rights (SDR) (£51 million), will be paid entirely by the 1992 Fund, up to the maximum amount available under the 1992 Fund Convention of 135 million SDR (£114 million).

3 Consideration by the Executive Committee in February 1997

The Executive Committee considered the *Nakhodka* incident at its 52nd session, held in February 1997.

3.1 Level of payments

3.1.1 As regards the question of whether the Director should be authorised to make payments, the Executive Committee noted that the total amount of the claims arising out of the *Nakhodka* incident would exceed the amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (£51 million). Since the 1992 Fund Convention also applied in the *Nakhodka* case, the Committee considered that the level of the 1971 Fund's payments should be determined by taking into account the amounts available under both the 1971 and the 1992 Fund Conventions, ie a total of 135 million SDR (£114 million) (document 71FUND/EXC.52/11, paragraph 3.7.10).

3.1.2 In view of the uncertainty as to the level of the total amount of the claims, the Executive Committee decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/his insurer at the time when the payment was made. It was also decided that this percentage should be reviewed at the Executive Committee's 53rd session, to be held in April 1997, in the light of further information as to the likely level of the claims and taking into account the position to be taken by the 1992 Fund Assembly (document 71FUND/EXC.52/11, paragraph 3.7.14).

3.1.3 It should be noted that an extraordinary session of the 1992 Fund Assembly, to be held from 16-18 April 1997, will be invited to consider the level of payments to be made by the 1992 Fund.

3.2 Source of funds for the prompt payment of claims

3.2.1 As regards the need for the 1971 Fund to ensure that sufficient funds were available to enable that Organisation to make payments promptly for claims arising from the *Nakhodka* incident, the Executive Committee recognised that it was not authorised to take decisions on the levy of contributions or other budgetary matters and that such decisions could be taken only by the Assembly. The Committee considered that it would be inappropriate to await a decision by the Assembly in October 1997 to levy contributions to a *Nakhodka* Major Claims Fund, since there would not be sufficient funds available for the payment of claims arising from the *Nakhodka* incident until February 1998. It was recognised that it would be necessary at some stage to levy contributions to a *Nakhodka* Major Claims Fund, and it was considered that this should be done at the first opportunity.

3.2.2 In the light of the considerations set out in paragraph 3.2.1, the Executive Committee requested the Director to convene an extraordinary session of the 1971 Fund Assembly in accordance with Article 19.2 of the 1971 Fund Convention (document 71FUND/EXC.52/11, paragraph 3.7.17).

4 Financial Regulations

Financial Regulation 7.1(c)(i) provides that the General Fund shall be used for payment of claims up to 1 million SDR per incident (minor claims) (cf Article 12.2(a) of the 1971 Fund Convention). Financial Regulation 7.2 provides that a separate Major Claims Fund shall be established for each incident to the extent that the aggregate amount of the payment of claims exceeds 1 million SDR (major claims).

5 Requirement to levy contributions

5.1 It is expected that a number of claims arising out of the *Nakhodka* incident will be presented within the next few weeks. Some claimants will face considerable financial hardship if they are not paid within a short period of time. The clean-up operations in Japan are mainly carried out by small or medium sized businesses, and for such businesses cash flow is an important element. The Director believes that for this reason payments should be made promptly to these businesses. Several thousand fishermen have had to abandon their fishing activities and have instead participated in the clean-up operations. It is important that payments to these fishermen are also made promptly.

5.2 Compensation to be paid by the 1971 Fund for the first 1 million SDR (£845 655) in respect of the *Nakhodka* incident has to be paid from the General Fund (cf paragraph 4 above). As indicated in paragraph 1.2 above, the Assembly decided at its 19th session not to levy any 1996 annual contributions to the General Fund. Moreover, it was decided that £5 million should be credited to contributors following a decision to reduce the working capital of the 1971 Fund from £15 million to £10 million. The Director considers, nevertheless, that the working capital could be used for the payment of the first £845 655 in respect of the *Nakhodka* incident, and that no adjustment should be made vis-à-vis the Assembly's decision in October 1996 not to levy annual contributions to the General Fund.

5.3 As for payments of compensation by the 1971 Fund to the extent that they exceed £845 655, the question arises of when contributions should be levied to a *Nakhodka* Major Claims Fund, and for what amount.

5.4 Claims arising from the *Nakhodka* incident will first be paid by the 1971 Fund, and then by the 1992 Fund. In previous incidents in Japan claims have been submitted within a relatively short period of time and settlements have been made speedily. In the past, these claims have generally been well documented and have not given rise to questions of principle. For this reason, the Director is of the opinion that the 1971 Fund will have to make significant payments to claimants in the *Nakhodka* case during 1997.

5.5 As mentioned above, the Executive Committee decided to limit payments, for the time being, to 60% of the damage suffered by each claimant. The question arises, therefore, whether the 1971 Fund should for the time being pay only up to an aggregate amount of 60% of 60 million SDR (£51 million), or whether the 1971 Fund should pay 60% of the damage suffered by each claimant, up to a total amount of 60 million SDR. The Director takes the view that the latter approach should be followed. The proposal for the amount to be levied made in paragraph 5.7 below is based on this approach.

5.6 If the Assembly were to follow its past practice, contributions to a *Nakhodka* Major Claims Fund would not be levied until October 1997. At its 52nd session, the Executive Committee considered that it would be inappropriate to follow this practice, since there would not be sufficient funds available for the payment of claims arising from the *Nakhodka* incident until February 1998.

5.7 The Director proposes a levy of 1996 annual contributions to the *Nakhodka* Major Claims Fund for payment on the date of payment of the deferred levies referred to in paragraph 1.3 above. In the light of the amounts which could be borrowed from the General Fund or other Major Claims Funds, it is suggested that a levy in the region of £25-35 million would be appropriate. The Director will, in an addendum to this document, make a firm proposal for the amount to be levied.

5.8 Until sufficient contributions to the *Nakhodka* Major Claims Fund have been received, any payments in excess of £845 655 would have to be made from money borrowed from the General Fund or another Major Claims Fund. Such a loan would be repaid with interest to the Fund in question when sufficient contributions to the *Nakhodka* Major Claims Fund have been received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).

6 Action to be taken by the Assembly

The Assembly is invited, in accordance with Article 12 of the 1971 Fund Convention,

- (a) to take note of the information contained in this document; and
 - (b) to decide on an additional assessment of 1996 annual contributions in respect of the *Nakhodka* Major Claims Fund for payment during the second half of 1997 (paragraphs 5.4-5.8 above and document 71FUND/A/ES.3/3/Add.1).
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