



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971**

ASSEMBLY  
19th session  
Agenda item 25

71FUND/A.19/22  
30 August 1996

Original: ENGLISH

## **ASSESSMENT OF ANNUAL CONTRIBUTIONS**

Note by the Director

### **1 Introduction**

1.1 Article 12 of the 1971 Fund Convention provides that the Assembly shall determine the amount of annual contributions to be levied, if any. For this purpose the Assembly shall make an estimate in the form of a budget of the 1971 Fund's expenditure and income for each calendar year, taking into account the necessity to maintain sufficient liquid funds.

1.2 The 1971 Fund's expenditure consists of:

- (a) costs and expenses of the administration of the 1971 Fund, and any deficit from preceding years;
- (b) payments of claims up to 1 million SDRs per incident (minor claims); and
- (c) payments of claims to the extent that the aggregate amount of the payments in respect of any one incident is in excess of 1 million SDRs (major claims).

Expenses mentioned in sub-paragraphs (a) and (b) above have to be met from the General Fund (Financial Regulation 7.1(c)) and expenses with respect to major claims as defined in sub-paragraph (c) above have to be met from Major Claims Funds (Financial Regulation 7.2(d)).

### **2 General Fund**

#### **2.1 Estimate of contributions needed for 1997**

2.1.1 Financial Regulation 7.1(c) provides that the monies in the General Fund shall be used to meet the costs and expenses of the administration of the 1971 Fund and for the satisfaction of claims up to 1 million SDRs per incident (minor claims).

2.1.2 Under Financial Regulation 7.1(b), a working capital shall be maintained at such a level as the Assembly may decide from time to time.

2.1.3 The amount of annual contributions needed for the General Fund in 1997 is estimated as follows:

|                    |   | £          |
|--------------------|---|------------|
| <b>Expenditure</b> |   |            |
| (a)                | Administrative expenses (draft Budget 1997)   | 1 821 720  |
| (b)                | Minor claims (as set out in Annex II)   | 790 717    |
| (c)                | Working capital   | 15 000 000 |
|                    |   | 17 612 437 |
| <b>Income</b>      |   |            |
| (a)                | Surplus as at 31.12.96  | 15 184 524 |
| (b)                | Interest to be earned in 1997   | 770 000    |
| (c)                | Reimbursement by the 1992 Fund of its share of administrative expenses for 1996 (1992 Fund's Budget 1996)       | 338 508    |
| (d)                | Reimbursement by the 1992 Fund of its share of administrative expenses for 1997 (1992 Fund's draft Budget 1997) | 583 716    |
| (e)                | Annual contributions required for General Fund  | 735 689    |
|                    |   | 17 612 437 |

2.1.4 This estimate is based on the following considerations. As for the individual incidents, reference is made to the information contained in document 71FUND/A.19/5 (Annex IV, Schedule III) and the various documents relating to incidents submitted to the 50th session of the Executive Committee.

2.1.5 It should be noted that any estimate in this document of amounts to be paid by the 1971 Fund in compensation or indemnification has been made solely for the purpose of the assessment of annual contributions, without prejudice to the position of the 1971 Fund in respect of the claims.

## 2.2 Surplus as at 31 December 1996

2.2.1 As shown in the draft budget for 1997 (document 71FUND/A.19/21, Annex), the surplus at the end of 1996 is estimated at £15 184 524, calculated as set out opposite.

2.2.2 The total payments by the 1971 Fund in respect of the *Sea Prince* incident will during 1996 exceed the maximum amount payable from the General Fund, viz 1 million SDRs (£975 724). Payments in excess of that amount will be made from the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund in respect of which the Assembly decided at its 18th session, in October 1995, to levy £11 million as 1995 annual contributions for the *Sea Prince* incident. With regard to that Major Claims Fund, reference is made to paragraph 3.6 below.

2.2.3 The total payments by the 1971 Fund in respect of the *Yeo Myung* incident may during 1996 exceed the maximum amount payable from the General Fund, viz 1 million SDRs (£963 298). Payments in excess of that amount will be made from the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund in respect of which the Assembly decided at its 18th session, in October 1995, to levy £2 million as 1995 annual contributions for the *Yeo Myung* incident. With regard to the that Major Claims Fund, reference is made to paragraph 3.7 below.

|  |           | £          |
|--|-----------|------------|
| Surplus as at 1 January 1996                               |           | 15 388 781 |
| <i>Add</i>   | £         |            |
| 1995 Annual contributions receivable in 1996               | 5 881 058 |            |
| Initial contributions                                      | 37 473    |            |
| Interest earned in 1996 (estimate)                         | 715 000   |            |
|  | 6 633 531 | 6 633 531  |
| <i>Less</i>  | £         | 22 022 312 |
| Administrative expenditure, Budget 1996                    | 1 435 930 |            |
| General claims expenditure in 1996 (as set out in Annex I) | 5 401 858 |            |
|  | 6 837 788 | 6 837 788  |
| Surplus as at 31 December 1996                             |           | 15 184 524 |

2.2.4 The total payments by the 1971 Fund in respect of the *Senyo Maru* incident will during 1996 exceed the maximum amount payable from the General Fund, viz 1 million SDRs (£959 421). Payments in excess of that amount will be made from the *Senyo Maru* Major Claims Fund in respect of which the Assembly decided at its 18th session, in October 1995, to levy £3 million for 1995 annual contributions. With regard to the *Senyo Maru* Major Claims Fund, reference is made to paragraph 7 below.

2.2.5 It is expected that the total payments by the 1971 Fund in respect of the *Sea Empress* incident will during 1996 exceed the maximum amount payable from the General Fund, viz 1 million SDRs (£952 381). Payments in excess of that amount will be made from the General Fund and will be repaid when contributions to the *Sea Empress* Major Claims Fund have been levied and received. With regard to the establishment of a Major Claims Fund, reference is made to paragraph 3.10 below.

2.2.6 It is expected that the total payments by the 1971 Fund in respect of the *N°1 Yung Jung* incident will during 1996 exceed the maximum amount payable from the General Fund, viz 1 million SDRs (£939 408). Payments in excess of that amount will be made from the General Fund and will be repaid when contributions to the *N°1 Yung Jung* Major Claims Fund have been levied and received. With regard to the establishment of a Major Claims Fund, reference is made to paragraph 3.11 below.

2.2.7 As can be seen from Annex I, payments of compensation and/or indemnification have been made or are anticipated during 1996 in respect of five other incidents. In addition, fees have been or will be incurred in respect of a number of incidents during 1996, in particular the *Sea Prince*, *Yeo Myung* and *Sea Empress* incidents.

### 2.3 Estimated 1997 expenditure

#### *Administrative expenses*

2.3.1 The administrative expenses of the 1971 Fund for 1997, as proposed by the Director in the draft budget for 1997, amount to £1 821 720 (document 71FUND/A.19/21).

#### *Minor claims*

2.3.2 The known incidents in respect of which payments may have to be made from the General Fund during 1997 are listed in Annex II.

2.3.3 With respect to the *Honam Sapphire* incident, it is possible that the total payments by the 1971 Fund will during 1997 reach the maximum amount payable from the General Fund, ie 1 million SDRs (£961 945). As for the establishment of a Major Claims Fund, reference is made to paragraph 3.9 below.

2.3.4 It is estimated that the total payments by the 1971 Fund from the General Fund in 1997 will amount to £790 717. This estimate does not include any provision for the payment of claims in respect of incidents which may occur after the drafting of this document for which payments may have to be made before the end of 1997. Such payments would have to be met from the working capital. This would also apply to payments which, although envisaged as not being due before 1998, actually have to be made earlier.

#### *Working capital*

2.3.5 In October 1994, at its 17th session, the Assembly decided that the 1971 Fund should maintain a working capital of £15 million (document FUND/A.17/35, paragraph 20.3). The working capital is needed to cover claim payments not included in the estimated expenses for minor claims, and to make loans to major claims funds for the satisfaction of claims to the extent that sufficient money is not available in the major claims funds in question.

## 2.4 Estimated 1997 income

### *Surplus*

2.4.1 As set out in paragraph 2.2.1 above, the surplus in the General Fund at the end of 1996 is estimated at £15 184 524.

### *Interest*

2.4.2 The income in interest during 1997 from the 1971 Fund's investments is estimated at £770 000, (Budget 1997, document 71FUND/A.19/21, Annex). This estimated yield is based on an average principal of about £14 million.

### *Initial contributions*

2.4.3 At the time of drafting this document, no State is known in respect of which initial contributions may have to be paid in 1997.

### *Reimbursement by the 1992 Fund of its share of administrative expenses for 1996*

2.4.4 As set out in document 71FUND/A/ES.2/22, paragraph 9, the cost of running the joint Secretariat of the 1971 Fund and the 1992 Fund up to 31 December 1996 should be distributed with 75% to be paid by the 1971 Fund and 25% by the 1992 Fund. The 1971 Fund will invoice the 1992 Fund for these expenses on 1 February 1997, the date on which contributions to the 1992 Fund will be due. It is estimated that the 1992 Fund's share would be in the region of £338 508 (cf 1992 Fund Budget for 1996, document 92FUND/A.1/34, paragraph 26.2).

### *Reimbursement by the 1992 Fund of its share of administrative expenses for 1997*

2.4.5 In document 71FUND/A.19/21, the Director has proposed that the cost of running the joint Secretariat of the 1971 Fund and the 1992 Fund during 1997 should be distributed with 70% paid by the 1971 Fund and 30% by the 1992 Fund. The 1992 Fund will reimburse the 1971 Fund for its share of these expenses on 31 December 1997. It is estimated that the 1992 Fund's share would be £583 716 (cf Budget 1997, document 71FUND/A.19/21, Annex).

2.5 General Fund assessment

As shown from the estimates in the table in paragraph 2.1.3 above, contributions of £735 689 would be needed to balance the 1997 account of the General Fund. The Director considers that this deficit could be covered by the working capital. The Assembly may therefore wish to decide not to levy any annual contributions for the General Fund in 1996.

3 Major Claims Funds

3.1 Vistabella

3.1.1 During 1994, the total payments by the 1971 Fund in respect of the *Vistabella* incident reached the maximum amount payable from the General Fund, viz 1 million SDRs (£743 092). The Assembly decided at its 17th session, in October 1994, to postpone a decision to levy annual contributions to the *Vistabella* Major Claims Fund until the total cost of the incident to the IOPC Fund could be established. Payments in excess of 1 million SDRs have been made from money borrowed from the General Fund; this loan will be repaid with interest to the General Fund when contributions to the *Vistabella* Major Claims Fund have been levied and received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).

3.1.2 The total of the established claims amounts to £1 002 512. Any further claims are time-barred. The 1971 Fund will incur certain amounts in fees in 1996 and 1997. The expected total payments by the 1971 Fund in respect of the *Vistabella* incident by 31 December 1997 can be summarised as follows:

|   | £         |
|---|-----------|
| Compensation  | 1 002 512 |
| Fees and expenses to 31.12.95                           | 68 619    |
|   | 1 071 131 |
| Fees and expenses 1996-1997 (estimate)                  | 40 000    |
|   | 1 111 131 |
| To be paid from General Fund                            | -743 092  |
|   | 368 039   |
| Interest on loan from General Fund 1996-1997 (estimate) | 15 000    |
|   | 383 039   |
| To be paid from Major Claims Fund                       | 383 039   |

3.1.3 The 1971 Fund has taken legal action against the owner of the *Vistabella* and his insurer for the purpose of recovering the amount of compensation paid by the Fund (cf the document submitted to the 50th session of the Executive Committee). It is uncertain when these proceedings will be completed.

3.1.4 In view of the uncertainty in respect of the legal proceedings referred to above and the relatively small amounts involved, the Director takes the view that a decision to levy annual contributions to the *Vistabella* Major Claims Fund should be postponed until the final total cost of the incident to the 1971 Fund can be established.

3.2 Haven

3.2.1 In October 1991, at its 14th session, the Assembly decided to levy £15 million for 1991 annual contributions to the *Haven* Major Claims Fund, due by 1 February 1992 (document FUND/A.14/23, paragraph 16.2). At its 15th session, in October 1992, the Assembly decided to levy a further £10 million for 1992 annual contributions to the *Haven* Major Claims Fund, due by 1 February 1993 (document FUND/A.15/28, paragraph 14.4).

3.2.2 The maximum amount payable from the General Fund (£764 798) has already been used for the payment of fees and other expenses. The balance on the *Haven* Major Claims Fund was £29 156 430 at 31 December 1995 (document 71FUND/A.19/5, Annex VI, Statement V). During 1996, the 1971 Fund has paid compensation to claimants in France for a total of £1 382 138, and it is expected that payments to two Italian claimants for a total of £670 000 will be made very shortly. It is estimated that the balance on the *Haven* Major Claims Fund will be approximately £27.5 million by 31 December 1996, after the addition of interest accrued during 1996 on the investment of its assets and deductions for fees and other expenses incurred during 1996.

3.2.3 The situation in respect of the claims arising out of the *Haven* incident is described in a document to the 50th session of the Executive Committee. It should be noted that, as set out in that document, the 1971 Fund has maintained in the legal proceedings in Italy that the majority of the claims arising out of the *Haven* incident became time-barred as regards the Fund on or shortly after 11 April 1994.

3.2.4 At its 43rd session, in June 1995, the Executive Committee instructed the Director to continue negotiations with claimants and authorised him to agree, on behalf of the 1971 Fund, to a global settlement within the framework of a total amount of Lit 137 643 800 000 (£58.4 million), as set out in paragraph 3.14 of document FUND/EXC.43/7, on certain terms and conditions. Of this total, the 1971 Fund would contribute an amount of Lit 78 693 580 000 (£33.4 million) corresponding to the difference between the shipowner's limitation fund and the maximum Fund limit of 60 million SDRs (Lit 102 643 800 000 or £43.5 million). The Executive Committee stated that the negotiations with the claimants were without prejudice to the 1971 Fund's position in respect of the question of time-bar, pending a solution of all outstanding issues.

3.2.5 As reported to the Assembly at its 18th session, the Italian Government had neither accepted the offer of a global settlement on the terms set out in paragraph 3.2.4 above, nor given an indication that it was looking favourably at the offer. For this reason, the Assembly interpreted this to mean that the offer had not been accepted by the Government. The Assembly took the position that any future initiative towards a global settlement had to be taken by the claimants, including the Italian Government, and that, should the claimants, including the Italian Government, wish to revert to a settlement on the terms of the previous offer, then the matter would have to be referred to the Assembly for decision. The Assembly noted that the shipowner's insurer intended, at least for some time, to continue its negotiations and discussions with the local authorities in Italy in the hope that, if these authorities would agree to be part of a global settlement, the Italian Government's position might be modified (document FUND/A.18/26, paragraphs 11.8, 11.9 and 11.12).

3.2.6 There has been no indication from the Italian Government that it wishes to achieve a settlement on the terms referred to above. If developments in the *Haven* case before the 19th session of the Assembly were to justify it, the Director would issue an addendum to this document.

### 3.3 *Aegean Sea*

3.3.1 In October 1993, at its 16th session, the Assembly decided to levy £20 million for 1993 annual contributions to the *Aegean Sea* Major Claims Fund, due by 1 February 1994 (document FUND/A.16/32, paragraph 17.4). At its 17th session, in October 1994, the Assembly decided to levy a further £15 million for 1994 annual contributions to the *Aegean Sea* Major Claims Fund, due by 1 February 1995 (FUND/A.17/35, paragraph 21.3).

3.3.2 Claims have been submitted for a total amount of some £125 million. It is not possible at this stage to make any estimate of the total amount of the established claims. Claims became time-barred on or shortly after 3 December 1995. In the Director's view, the total amount of the established claims may reach at least £40 million. The 1971 Fund has paid approximately £4.2 million in compensation, and the shipowner's P & I insurer has paid some £4.0 million. The limitation amount applicable to the *Aegean Sea* is approximately £5.8 million. The 1971 Fund will also incur significant amounts in fees and other costs.

3.3.3 In a judgement rendered by Criminal Court in La Coruña on 30 April 1996, the Court considered that in respect of most of the claims submitted, there was insufficient evidence for it to assess the quantum of the damage suffered, and for that reason the Court referred most of the claims to the procedure for the execution of judgement.

3.3.4 The balance on the *Aegean Sea Major Claims Fund* as at 31 December 1995 amounted to £33 842 451 (document 71FUND/A.19/5, Annex IV, Statement VI). It is estimated that the balance on this Major Claims Fund will be approximately £35 million by 31 December 1996.

3.3.5 The Director considers it premature to make any proposal at this stage for a further levy of annual contributions to the *Aegean Sea Major Claims Fund*. Any payments in excess of the £35 million raised as 1993 and 1994 annual contributions to that Major Claims Fund 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 further contributions to the *Aegean Sea Major Claims Fund* have been levied and received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).

### 3.4 Braer

3.4.1 In October 1993, at its 16th session, the Assembly decided to levy £35 million for 1993 annual contributions to the *Braer Major Claims Fund*, due by 1 February 1994 (document FUND/A.16/32, paragraph 17.4). In October 1995, at its 18th session, the Assembly decided to levy a further £14 million for 1995 annual contributions to that Major Claims Fund, due by 1 February 1996 (document FUND/A.18/26, paragraph 18.4(a)).

3.4.2 The total amount of the claims is not yet established. The 1971 Fund has paid approximately £41 million in compensation, and the shipowner's P & I insurer has paid some £4.8 million. Further claims amounting to £1.9 million have been agreed. In addition, claims amounting to £75 million have been submitted to the Court of Session in Edinburgh. Claims became time-barred on or shortly after 5 January 1996. The limitation amount applicable to the *Braer* is approximately £5.5 million. The 1971 Fund has incurred significant amounts in fees and other costs, totalling some £2.5 million, and further expenses for considerable amounts will be incurred in this regard.

3.4.3 In October 1995 the Executive Committee decided to suspend further payments of compensation, in view of the possibility that the total amount of the established claims would exceed the maximum available under the Conventions (60 million SDRs, or £57 million).

3.4.4 As at 31 December 1995, the *Braer Major Claims Fund* showed a deficit of £7 794 155 (document 71FUND/A.19/5, Annex IV, Statement VII). Following the receipt of annual contributions during 1996, it is estimated that the balance on this Major Claims Fund will be approximately £5.7 million by 31 December 1996.

3.4.5 In view of the uncertainty in respect of the outcome of the legal proceedings referred to above, the Director takes the view that a decision to levy further annual contributions to the *Braer Major Claims Fund* should be postponed until the total cost of the incident to the 1971 Fund can be established.

### 3.5 Keumdong N°5

3.5.1 In October 1993, at its 16th session, the Assembly decided to levy £5 million for 1993 annual contributions to the *Keumdong N°5 Major Claims Fund*, due by 1 February 1994 (document FUND/A.16/32, paragraph 17.4). At its 17th session, in October 1994, the Assembly decided to levy a further £10 million for 1994 annual contributions to the *Keumdong N°5 Major Claims Fund*, due by 1 February 1995 (FUND/A.17/35, paragraph 21.3).

3.5.2 The aggregate amount of the claims accepted so far is approximately £10 million. Claims for a total of some £50 million are pending. Among these, claims amounting to £36 million have been submitted to the Court. It is possible that considerable payments of compensation will be made during 1997. The limitation amount applicable to the shipowner is approximately £60 800.

3.5.3 It should be noted that when a judgement is rendered by the Court of first instance, the defendant may be ordered, under Korean law, to deposit with the Court the amounts awarded by the Court even if he has appealed against the judgement.

3.5.4 The balance on the *Keumdong N°5* Major Claims Fund as at 31 December 1995 amounted to £11 957 808 (document 71FUND/A.19/5, Annex IV, Statement IX). It is estimated that the balance on this Major Claims Fund will be approximately £6 million by 31 December 1996.

3.5.5 On the basis of these considerations, the Director proposes that a third levy should be made to the *Keumdong N°5* Major Claims Fund in the form of 1996 annual contributions for a total of £5 million. In view of the uncertainty regarding the timing of payments of compensation, however, the Director proposes that all of this levy should be deferred (see section 4.3 below). Any payments in excess of the £15 million raised as 1993 and 1994 annual contributions to that Major Claims Fund, or in excess of the additional levy, 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 further contributions to the *Keumdong N°5* Major Claims Fund have been levied and received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d))

### 3.6 Sea Prince

3.6.1 In October 1995, at its 18th session, the Assembly decided to levy £11 million for 1995 annual contributions to a Major Claims Fund in respect of the *Sea Prince* incident, due by 1 February 1996 (document FUND/A.18/26, paragraph 18.4(b)).

3.6.2 The aggregate amount of the claims accepted so far is approximately £15.6 million. Claims for a total of some £63 million are pending. It is expected that considerable payments of compensation will be made during 1997. The limitation amount applicable to the shipowner is approximately £13.1 million.

3.6.3 As for the possibility that the 1971 Fund would be ordered to pay a deposit into the Court, reference is made to paragraph 3.5.3 above.

3.6.4 On the basis of these considerations, the Director proposes that a second levy should be made in respect of the *Sea Prince* incident to the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund in the form of 1996 annual contributions for a total of £30 million. In view of the uncertainty regarding the timing of payments of compensation, however, the Director proposes that part of this levy should be deferred (see section 4.3 below). Any payments in excess of the £11 million raised as 1995 annual contributions to that Major Claims Fund in respect of the *Sea Prince* incident, or in excess of the additional levy, 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 further contributions in respect of the *Sea Prince* incident have been levied and received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).

### 3.7 Yeo Myung

3.7.1 In October 1995, at its 18th session, the Assembly decided to levy £2 million for 1995 annual contributions to a Major Claims Fund in respect of the *Yeo Myung* incident, due by 1 February 1996 (document FUND/A.18/26, paragraph 18.4(b)).

3.7.2 The aggregate amount of the claims accepted so far is approximately £600 000. Claims for a total of some £7.6 million are pending. It is expected that considerable payments of compensation will be made during 1997. The limitation amount applicable to the shipowner is approximately £16 500.

3.7.3 As for the possibility that the 1971 Fund would be ordered to pay a deposit into the Court, reference is made to paragraph 3.5.3 above.

3.7.4 On the basis of these considerations, the Director proposes that a second levy should be made in respect of the *Yeo Myung* incident to the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund in the form of 1996 annual contributions for a total of £5 million. In view of the uncertainty regarding the timing of payments of compensation, however, the Director proposes that part of this levy should be deferred (see section 4.3 below). Any payments in excess of the £2 million raised as 1995 annual contributions to that Major Claims Fund in respect of the *Yeo Myung* incident, or in excess of the additional levy, 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 further contributions in respect of the *Yeo Myung* incident have been levied and received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).

### 3.8 Yuil N°1

3.8.1 In October 1995, at its 18th session, the Assembly decided to levy £7 million for 1995 annual contributions to a Major Claims Fund in respect of the *Yuil N°1* incident, due by 1 February 1996 (document FUND/A.18/26, paragraph 18.4(b)).

3.8.2 The aggregate amount of the claims accepted so far is approximately £12.5 million. Claims for a total of some £51 million are pending. It is expected that considerable payments of compensation will be made during 1997. The limitation amount applicable to the shipowner is approximately £192 000.

3.8.3 As for the possibility that the 1971 Fund would be ordered to pay a deposit into the Court, reference is made to paragraph 3.5.3 above.

3.8.4 On the basis of these considerations, the Director proposes that a second levy should be made in respect of the *Yuil N°1* incident to the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund in the form of 1996 annual contributions for a total of £15 million. In view of the uncertainty regarding the timing of payments of compensation, however, the Director proposes that part of this levy should be deferred (see section 4.3 below). Any payments in excess of the £7 million raised as 1995 annual contributions to that Major Claims Fund in respect of the *Yuil N°1* incident, or in excess of the additional levy, 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 further contributions in respect of the *Yuil N°1* incident have been levied and received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).

### 3.9 Honam Sapphire

3.9.1 The total payments by the 1971 Fund in respect of the *Honam Sapphire* incident during 1997 may reach the maximum payable from the General Fund, ie 1 million SDRs (£961 945). It is not possible at this stage, however, to make any estimate of the total amount of the established claims.

3.9.2 The Director considers it premature to make any proposal for a levy to a *Honam Sapphire* Major Claims Fund. Any payments in excess of £961 945 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 contributions to the *Honam Sapphire* Major Claims Fund have been levied and received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).

3.9.3 If developments before the 19th session of the Assembly were to justify it, the Director would make a proposal for a levy to the *Honam Sapphire* Major Claims Fund in an addendum to this document.

### 3.10 Sea Empress

3.10.1 As indicated in paragraph 2.2.5 above, it is expected that the total payments by the 1971 Fund in respect of the *Sea Empress* incident during 1996 will reach the maximum amount payable from the General Fund, ie 1 million SDRs (£952 381).

3.10.2 It is difficult to estimate at this stage the total amount of the established claims. However, based on the estimates of the 1971 Fund's experts, the Director takes the view that it would be appropriate to take as a basis a total figure for the established claims in the region of £40–55 million. The limitation amount applicable to the *Sea Empress* is estimated at £8 million.

3.10.3 On this basis, and taking into account the fees and expenses that will be incurred by the 1971 Fund, the Director proposes a levy of 1996 annual contributions to the *Sea Empress* Major Claims Fund of £35 million. In view of the uncertainty regarding the timing of payments of compensation, however, the Director proposes that part of this levy should be deferred (see section 4.3 below). Any payments in excess of £952 381, or any payments in excess of the additional £35 million, 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 *Sea Empress* Major Claims Fund have been received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).

### 3.11 N°1 Yung Jung

3.11.1 As indicated in paragraph 2.2.6 above, it is estimated that the total payments by the 1971 Fund in respect of the *N°1 Yung Jung* incident during 1996 will reach the maximum payable from the General Fund, ie 1 million SDRs (£939 408). It is not possible at this stage, however, to make any estimate of the total amount of the established claims.

3.11.2 The Director considers it premature to make any proposal for a levy to a *N°1 Yung Jung* Major Claims Fund. Any payments in excess of £939 408 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 contributions to the *N°1 Yung Jung* Major Claims Fund have been levied and received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).

3.11.3 If developments before the 19th session of the Assembly were to justify it, the Director would make a proposal for a levy to the *N°1 Yung Jung* Major Claims Fund in an addendum to this document.

## 4 Date of payment

4.1 Internal Regulation 3.7 provides that, unless the Assembly decides otherwise, payment of annual contributions shall be due on 1 February of the year following that in which the Assembly decides on the levy of annual contributions.

4.2 At its 2nd extraordinary session, the Assembly decided to introduce a deferred invoicing system whereby the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower total amount should be invoiced for payment by 1 February in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary. The Assembly also decided that the Director was authorised to decide whether to issue the invoices for all or part of the additional amount determined by the Assembly (document 71FUND/A/ES.2/22, paragraph 11).

4.3 The Director is of the view that, since the timing of the payment of claims in respect of the *Keumdong N°5*, *Sea Prince*, *Yeo Myung*, *Yuil N°1* and *Sea Empress* incidents is uncertain, it would be appropriate to defer part of the proposed levies, or, in respect of the *Keumdong N°5*, the entire levy. He therefore proposes 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 Director should be authorised to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 1997. The Director's proposals are summarised in the following table:

| Levy  | Total Levy | Payment by<br>1 February 1997 | Maximum<br>deferred<br>levy |
|---|------------|-------------------------------|-----------------------------|
| General Fund  | 0          | 0                             | 0                           |
| <i>Keumdong N°5</i> Major Claims Fund                   | 5 000 000  | 0                             | 5 000 000                   |
| <i>Sea Prince/Yeo Myung/Yuil N°1</i> Major Claims Fund: |            |                               |                             |
| <i>Sea Prince</i>                                       | 30 000 000 | 15 000 000                    | 15 000 000                  |
| <i>Yeo Myung</i>  | 5 000 000  | 2 000 000                     | 3 000 000                   |
| <i>Yuil N°1</i>   | 15 000 000 | 7 000 000                     | 8 000 000                   |
| <i>Sea Empress</i> Major Claims Fund                    | 35 000 000 | 20 000 000                    | 15 000 000                  |
| Total   | 90 000 000 | 44 000 000                    | 46 000 000                  |

## 5 Surplus on the *Taiko Maru* Major Claims Fund

5.1 Financial Regulations 4.4 and 4.5 deal with the case where there is a surplus on a Major Claims Fund after the periods set out in Article 6 of the Fund Convention for bringing actions have lapsed and all claims and expenses arising out of the relevant incident have been settled, or where the Executive Committee is satisfied that no more claims will be made against the 1971 Fund and no more expenses will have to be met. If there remains a substantial amount on the Major Claims Fund, the Assembly shall decide whether such an amount shall be credited or reimbursed pro rata to the contributors to that Major Claims Fund. Should the Assembly consider that the remaining amount is not substantial, this amount shall be transferred to the General Fund.

5.2 At its 16th session, in October 1993, the Assembly decided to levy annual contributions to the *Taiko Maru* Major Claims Fund in the amount of £10 million (document FUND/A.16/32, paragraph 17.4). The contributions to this Major Claims Fund were due by 1 February 1994.

5.3 All known claims arising out of this incident have been settled and paid, and all expenses have been met. Although further claims arising from the *Taiko Maru* incident will not become time-barred until 31 May 1999, at the expiry of the six-year period laid down in Article 6 of the Fund Convention, the Director considers it extremely unlikely that further claims will be submitted or any further expenses incurred. For this reason, the Assembly is invited to take a decision in respect of the surplus on this Major Claims Fund.

5.4 As at 31 December 1995, there was a surplus of £3 395 410 on the *Taiko Maru* Major Claims Fund (document 71FUND/A.19/5, Annex IV, Statement VIII). It is estimated that the surplus on this Major Claims Fund will be approximately £3.6 million on 31 December 1996. In the Director's view, this amount is substantial. He therefore proposes that an amount of £3.5 million should be reimbursed to the contributors to the *Taiko Maru* Major Claims Funds on 1 February 1997 and that the balance be transferred to the General Fund.

## 6 Surplus on the *Toyotaka Maru* Major Claims Fund

6.1 At its 17th session, in October 1994, the Assembly decided to levy £9 million for 1994 annual contributions to the *Toyotaka Maru* Major Claims Fund, due by 1 February 1995 (FUND/A.17/35, paragraph 21.3).

6.2 All known claims arising out of this incident have been settled and paid and all expenses have been met. Although further claims arising from the *Toyotaka Maru* incident will not become time-barred until 17 October 2000, at the expiry of the six-year period laid down in Article 6 of the Fund Convention, the Director considers it extremely unlikely that further claims will be submitted or any further expenses will be incurred. For this reason, the Assembly is invited to take a decision in respect of the surplus on this Major Claims Fund.

6.3 As at 31 December 1995, there was a surplus of £4 651 365 on the *Toyotaka Maru* Major Claims Fund (document 71FUND/A.19/5, Annex IV, Statement X). It is estimated that the surplus on this Major Claims Fund will be approximately £4.8 million on 31 December 1996. In the Director's view, this amount is substantial. He therefore proposes that an amount of £4.7 million should be reimbursed to the contributors to the *Toyotaka Maru* Major Claims Funds on 1 February 1997 and that the balance be transferred to the General Fund.

## **7 Surplus on the *Senyo Maru* Major Claims Fund**

7.1 At its 18th session, in October 1995, the Assembly decided to levy £3 million for 1995 annual contributions to the *Senyo Maru* Major Claims Fund, due by 1 February 1996 (document FUND/A.18/26, paragraph 18.4(c)).

7.2 As mentioned in paragraph 2.2.4 above, the total payments by the 1971 Fund in respect of the *Senyo Maru* incident have exceeded the maximum amount payable from the General Fund, viz 1 million SDRs (£959 421).

7.3 When it is established that there will be no further claims against the 1971 Fund arising out of this incident, the Director will submit a proposal to the Assembly in respect of the surplus on the *Senyo Maru* Major Claims Fund. Any claims will become time-barred on 3 September 2001, at the expiry of the six-year period laid down in Article 6 of the Fund Convention.

## **8 Action to be taken by the Assembly**

In accordance with Article 12 of the 1971 Fund Convention, the Assembly is invited:

- (a) to take note of the information contained in this document;
- (b) to consider the Director's proposal not to levy any 1996 annual contributions to the General Fund (paragraph 2.5);
- (c) to decide in respect of assessments for 1996 annual contributions to the following Major Claims Funds (cf summary of Director's proposals in paragraph 4.3):
  - (i) *Keumdong N°5* Major Claims Fund (paragraph 3.5.5);
  - (ii) *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund (paragraphs 3.6.4, 3.7.4 and 3.8.4);
  - (ii) *Sea Empress* Major Claims Fund (paragraph 3.10.3);
- (d) to decide on the dates of payment of 1996 annual contributions to the three Major Claims Funds listed above (cf Director's proposals in paragraph 4.3);
- (e) to decide in respect of the surplus on the following Major Claims Funds:
  - (i) *Taiko Maru* Major Claims Fund (cf Director's proposal in paragraph 5.4);
  - (ii) *Toyotaka Maru* Major Claims Fund (cf Director's proposal in paragraph 6.3);

- (f) to take note of the Director's position that any decision to levy annual contributions to the *Vistabella* Major Claims Fund should be postponed until the total cost of the incident to the 1971 Fund can be established (paragraph 3.1);
- (g) to take note of the situation in respect of the *Haven* Major Claims Fund (paragraph 3.2);
- (h) to note the Director's view that no further levy in the form of 1995 annual contributions should be made to the *Aegean Sea* and *Braer* Major Claims Funds (paragraphs 3.3 and 3.4);
- (i) to note that the Director considers it premature to levy annual contributions to the *Honam Sapphire* and *N°1 Yung Jung* Major Claims Funds (paragraphs 3.9 and 3.11); and
- (j) to take note of the situation in respect of the surplus on the *Senyo Maru* Major Claims Fund (paragraph 7).

\* \* \*

**ANNEX I**

**CLAIMS EXPENDITURE IN 1996 (General Fund)**

(Figures in £ Sterling)

| Incident                      | Compensation/Indemnification |                     |                          | Miscellaneous    |                     |                          | 1996 Total       | Total     |
|-------------------------------|------------------------------|---------------------|--------------------------|------------------|---------------------|--------------------------|------------------|-----------|
|                               | Paid by 31.12.95             | Paid 1.1.96-30.6.96 | Estimate 1.7.96-31.12.96 | Paid by 31.12.95 | Paid 1.1.96-30.6.96 | Estimate 1.7.96-31.12.96 |                  |           |
| <i>Kumi Maru N°2</i>          | 11 264                       | -                   | -                        | 2 328            | 3 504               | -                        | 3 504            | 17 096    |
| <i>Kihnu</i>                  | -                            | -                   | 100 000                  | -                | 1 492               | 30 000                   | 131 492          | 131 492   |
| <i>Ryoyo Maru</i>             | 106 491                      | -                   | -                        | 18 493           | -                   | 5 000                    | 5 000            | 129 984   |
| <i>Iliad</i>                  | -                            | -                   | -                        | 125              | -                   | 20 000                   | 20 000           | 20 125    |
| <i>Seki</i>                   | -                            | -                   | -                        | 6 607            | 26 607              | 20 000                   | 46 607           | 53 214    |
| <i>Sung II N°1</i>            | 30 919                       | -                   | -                        | 42 134           | -                   | -                        | 0                | 73 053    |
| <i>Unknown Moroccan spill</i> | -                            | -                   | -                        | -                | -                   | 20 000                   | 20 000           | 20 000    |
| <i>Dae Woong</i>              | -                            | 35 646              | -                        | 1 440            | -                   | 20 000                   | 55 646           | 57 086    |
| <i>Sea Prince</i>             | -                            | -                   | *586 214                 | 128 415          | 161 095             | 100 000                  | 847 309          | **975 724 |
| <i>Yeo Myung</i>              | 87 902                       | 374 726             | *304 796                 | 534              | 95 340              | 100 000                  | 874 862          | **963 298 |
| <i>Shinryu Maru N°8</i>       | -                            | -                   | 150 000                  | -                | -                   | 20 000                   | 170 000          | 170 000   |
| <i>Senyo Maru</i>             | -                            | -                   | *909 421                 | -                | -                   | 50 000                   | 959 421          | **959 421 |
| <i>Honam Sapphire</i>         | -                            | -                   | 200 000                  | -                | 1 228               | 50 000                   | 251 228          | 251 228   |
| <i>Toko Maru</i>              | -                            | -                   | -                        | -                | -                   | 5 000                    | 5 000            | 5 000     |
| <i>Sea Empress</i>            | -                            | -                   | *379 107                 | -                | 273 274             | 300 000                  | 952 381          | **952 381 |
| <i>Kugenuma Maru</i>          | -                            | -                   | 100 000                  | -                | -                   | 20 000                   | 120 000          | 120 000   |
| <i>N°1 Yung Jung</i>          | -                            | -                   | *889 408                 | -                | -                   | 50 000                   | 939 408          | 939 408   |
| <b>Expenditure 1996</b>       |                              |                     |                          |                  |                     |                          | <b>5 401 858</b> |           |

\* Remainder of first 1 million SDRs

\*\* First 1 million SDRs

\*\*  
\*\*  
\*\*

**ANNEX II**

**CLAIMS THAT MAY HAVE TO BE PAID FROM THE GENERAL FUND DURING 1997 (estimates)**

(Figures in £ Sterling)

| Incident                      | Compensation/Indemnification | Miscellaneous | Total          |
|-------------------------------|------------------------------|---------------|----------------|
| <i>Kihnu</i>                  |                              | 20 000        | 20 000         |
| <i>Iliad</i>                  | -                            | 20 000        | 20 000         |
| <i>Unknown Moroccan spill</i> | -                            | 10 000        | 10 000         |
| <i>Dae Woong</i>              | -                            | 5 000         | 5 000          |
| <i>Honam Sapphire</i>         | *700 717                     | 10 000        | 710 717        |
| <i>Kugenuma Maru</i>          | 20 000                       | 5 000         | 25 000         |
| <b>Expenditure 1997</b>       |                              |               | <b>790 717</b> |

\* Remainder of first 1 million SDRs