



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
22nd session
Agenda item 25

71FUND/A.22/21
27 August 1998

Original: ENGLISH

ASSESSMENT OF ANNUAL CONTRIBUTIONS

Note by the Director

Summary:	The need for 1999 annual contributions is examined.
Action to be taken:	Decide on the levy of 1999 annual contributions.

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 SDR 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 SDR (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 2000

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 SDR 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 2000 is estimated as follows:

		£
Expenditure		
(a)	Administrative expenditure, Budget 2000	1 753 120
(b)	Minor claims (as set out in Annex II)	1 486 000
(c)	Working capital	5 000 000
		8 239 120
Income		
(a)	Estimated surplus as at 31 December 1999	7 645 814
(b)	Interest to be earned in 2000 (estimate)	270 000
(c)	Annual contributions required for General Fund	323 306
		8 239 120

2.1.4 This estimate is based on the following considerations^{<1>}. As for the individual incidents, reference is made to the information contained in document 71FUND/A.22/8 (Annex IV, Schedule III) and the various documents relating to incidents submitted to the 62nd 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 Estimated surplus as at 31 December 1999

2.2.1 As shown in the draft budget for 2000 (document 71FUND/A.22/19, Annex), the surplus on the General Fund at the end of 1999 is estimated at £7 645 814 calculated as set out opposite.

2.2.2 As can be seen from Annex I, payments of compensation and/or indemnification from the General Fund have been made or are anticipated during 1999 in respect of four incidents. In addition, fees have been or will be incurred in respect of a number of incidents during 1999, in particular the *Nissos Amorgos* incident.

<1> As mentioned in paragraph 2.3.8 below, the estimates in this document are based on the assumption that the Assembly decides to maintain the working capital at £5 million. If Assembly were to decide otherwise, the Director would revise certain figures in the table set out in paragraph 2.1.3 above, and reconsider his proposals in respect of the General Fund.

	£	£
Surplus as at 1 January 1999		8 613 692
<i>Add</i>		
1998 annual contributions receivable in 1999	1 639 936	
Previous years' annual contributions receivable in 1999	2 126	
Interest to be earned in 1999 (estimate)	280 000	
	1 922 062	1 922 062
<i>Less</i>		10 535 754
Administrative expenditure, Budget 1999	1 395 275	
Previous years' annual contributions: credits payable in 1999	19 665	
General claims expenditure in 1999 (as set out in Annex I)	1 475 000	
	2 889 940	2 889 940
Estimated surplus as at 31 December 1999		7 645 814

2.3 Estimated 2000 expenditure

Administrative expenses

2.3.1 The administrative expenses of the 1971 Fund for 2000, as proposed by the Director in the draft budget for 2000, amount to £1 753 120 (document 71FUND/A.22/19).

Minor claims

2.3.2 The known incidents in respect of which payments might have to be made from the General Fund during 2000 are listed in Annex II.

2.3.3 With regard to the *Evoikos* incident, it is possible that the total payments by the 1971 Fund will during 2000 reach the maximum amount payable from the General Fund, ie 1 million SDR (£845 617). With regard to the establishment of an *Evoikos* Major Claims Fund, reference is made to paragraph 3.13 below.

2.3.4 It is expected that the total payments by the 1971 Fund in respect of the *Pontoon 300* incident will during 2000 exceed the maximum amount payable from the General Fund, ie 1 million SDR (£819 583). With regard to the establishment of a *Pontoon 300* Major Claims Fund, reference is made to paragraph 3.14 below.

2.3.5 It is estimated that the total payments by the 1971 Fund from the General Fund in 2000 will amount to £1 486 000. This estimate does not include any provision for the payment of claims in respect of incidents which might occur after the drafting of this document for which payments might have to be made before the end of 2000. 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 2001, actually have to be made earlier.

Working capital

2.3.6 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.

2.3.7 In October 1997, at its 20th session, the Assembly decided to reduce the working capital of the 1971 Fund from £10 million to £5 million (document 71FUND/A.20/30, paragraph 25). In October 1998, at its 59th session, the Executive Committee acting on behalf of the Assembly decided to maintain the working capital at that level (document 71FUND/EXC.59/17/A.21/24, paragraph 23).

2.3.8 The Director has submitted a document to the Assembly in which he proposes to maintain the level of the working capital at £5 million (document 71FUND/A.22/20). The table in paragraph 2.1.3

and the subsequent proposals of the Director concerning the General Fund are based on the assumption that the Assembly decides to maintain the working capital at £5 million. If the Assembly were to decide otherwise, the Director would revise certain figures in the table in paragraph 2.1.3 and his proposals in respect of the General Fund.

2.4 Estimated 2000 income

Estimated surplus

2.4.1 As set out in paragraph 2.2.1 above, the surplus in the General Fund at the end of 1999 is estimated at £7 645 814.

Interest

2.4.2 The income in interest during 2000 from the 1971 Fund's investments is estimated at £270 000, (Budget 2000, document 71FUND/A.22/19, Annex). This estimated yield is based on an average principal of about £5.0 million.

Initial contributions

2.4.3 At the time of drafting this document, no State is known in respect of which initial contributions might have to be paid in 2000.

2.5 General Fund assessment

As shown from the estimates in the table in paragraph 2.1.3 above, contributions of £323 306 would be needed to balance the 2000 account of the General Fund. With regard to the estimate of the monies required in respect of the General Fund, reference is made to section 4 below.

3 Major Claims Funds

It should be noted that - unless stated otherwise - information on the payments of compensation, indemnification and miscellaneous expenses reflects the situation as at 30 June 1999. In view of the rapid developments which are occurring in respect of a number of incidents, the Director considers that it might be necessary, in an addendum to this document, to modify some of the proposals set out below.

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, ie 1 million SDR (£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 1971 Fund could be established. Payments in excess of 1 million SDR 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 1999 and 2000.

3.1.3 It is estimated that there will be a deficit on the *Vistabella* Major Claims Fund of approximately £433 000 by 1 March 2001, after deductions for fees and other expenses incurred during 1999 and 2000, as set out in Annex III.

3.1.4 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 62nd session of the Executive Committee). It is uncertain when these proceedings will be completed.

3.1.5 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.

3.1.6 With regard to the estimate of the monies (some £450 000) required in respect of the *Vistabella* Major Claims Fund, reference is made to section 4 below.

3.2 Haven

3.2.1 As set out in Annex III, a total of £25 million has been levied as annual contributions to the *Haven* Major Claims Fund. The maximum amount payable from the General Fund has been used. The balance on the *Haven* Major Claims Fund was £31.8 million as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement IV).

3.2.2 Agreement on a global settlement of all outstanding claims arising out of the *Haven* incident was signed on 4 March 1999. As a result, the 1971 Fund paid £28.2 million in compensation and indemnification, as set out in Annex III. Details of the agreement and the payments are contained in document 71FUND/EXC.62/3 submitted to the 62nd session of the Executive Committee.

3.2.3 It is estimated that the balance on the *Haven* Major Claims Fund was approximately £2.9 million as at 30 June 1999. In July 1999 payments of fees were made totalling £270 000. Deduction will have to be made for an exchange loss of £350 000.

3.2.4 All known claims arising out of this incident have been settled and paid. It is expected that all expenses will have been met by 31 December 1999, except for some minor expenses and fees relating to the legal proceedings in respect of certain fishery claims submitted in 1997 in the limitation proceedings, where the shipowner's insurer has undertaken to defend these claims at its own cost and should therefore reimburse the 1971 Fund for any fees which it might incur with regard to those proceedings (document 71FUND/EXC.62/3, paragraph 2.3).

3.2.5 It is estimated that there will be a surplus on the *Haven* Major Claims Fund of £2.1 million by 31 December 1999.

3.2.6 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 1971 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.

3.2.7 It appears that an estimated £2.1 million could be reimbursed to contributors to the *Haven* Major Claims Fund. In this regard reference is made to section 4 below.

3.3 Aegean Sea

3.3.1 As set out in Annex III, a total of £35 million has been levied as annual contributions to the *Aegean Sea* Major Claims Fund. The maximum amount payable from the General Fund has been used. The balance on the *Aegean Sea* Major Claims Fund was £39.0 million as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement IV).

3.3.2 Claims have been submitted in the Criminal Court for a total amount of some £96 million. In a judgement rendered in April 1996, the Criminal Court in La Coruña 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. This judgement was generally upheld by the Court of Appeal in a judgement rendered in June 1997.

3.3.3 Further claims have recently been submitted to the Civil Court. The total amount of these claims is not known, but it might be as high as £89 million.

3.3.4 Claims became time-barred on or shortly after 3 December 1995.

3.3.5 It is not possible at this stage to make an estimate of the total amount of the established claims. In the Director's view, this amount might reach at least £40 million.

3.3.6 The 1971 Fund has paid approximately £5.2 million in compensation, and the shipowner's insurer some £4.0 million. The total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR) is approximately £37 million.

3.3.7 The Executive Committee has decided that the 1971 Fund's payments should be limited for the time being to 40% of the established claims.

3.3.8 The 1971 Fund is continuing its efforts to reach out-of-court settlements of outstanding claims. It is not possible to express an opinion as to the likelihood of such settlements being reached. It is impossible to estimate when the procedure for the execution of the judgement will be completed. The situation in respect of the claims submitted in the Civil Court is also uncertain. In the light of these uncertainties, it is not possible to make any predictions as to the timetable for further payments.

3.3.9 It is estimated that the balance on the *Aegean Sea Major Claims Fund* was approximately £39.9 million as at 30 June 1999.

3.3.10 The Director considers that there is no need to make a proposal at this stage regarding annual contributions to the *Aegean Sea Major Claims Fund*.

3.4 *Braer*

3.4.1 As set out in Annex III, a total of £49 million has been levied as annual contributions to the *Braer Major Claims Fund*. The maximum amount payable from the General Fund has been used. The balance on the *Braer Major Claims Fund* was £6.6 million as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement IV).

3.4.2 The total amount of the admissible claims is not yet established. The 1971 Fund has paid approximately £40.6 million in compensation and the shipowner's insurer £4.8 million. Further claims amounting to £5.7 million have been agreed. In addition, claims totalling £37.0 million are pending before the Court of Session in Edinburgh. Claims became time-barred on or shortly after 5 January 1996. The 1971 Fund has incurred significant amounts in fees and other costs, 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 1969 Civil Liability Convention and 1971 Fund Convention (60 million SDR, or £50.6 million).

3.4.4 It is estimated that the balance on the *Braer Major Claims Fund* was approximately £6.4 million as at 30 June 1999.

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 regarding 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 As set out in Annex III, a total of £15 million has been levied as annual contributions to the *Keumdong N°5* Major Claims Fund. The maximum amount payable from the General Fund has been used. The balance on the *Keumdong N°5* Major Claims Fund was £7.6 million as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement V).

3.5.2 The aggregate amount of the claims agreed and paid by the 1971 Fund so far is approximately £9.7 million. Claims for a total of some £10.2 million are pending in court. The Korean Court of first instance has admitted these claims for a total of £1.1 million. The 1971 Fund has lodged appeals since in its view the major part of these claims is not admissible. In order to be entitled to appeal the 1971 Fund had to deposit the admitted amount of £1.1 million with the Court.

3.5.3 It is estimated that the balance on the *Keumdong N°5* Major Claims Fund was approximately £6.3 million as at 30 June 1999.

3.5.4 The Director considers that there is no need to make a proposal at this stage regarding annual contributions to the *Keumdong N°5* Major Claims Fund.

3.6 Sea Prince

3.6.1 As set out in Annex III, a total of £26 million has been levied as annual contributions in respect of the *Sea Prince* incident. The maximum amount payable from the General Fund has been used. The balance on the *Sea Prince* Major Claims Fund was £18.3 million as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement VI).

3.6.2 The aggregate amount of the claims agreed so far is approximately £22.6 million. These claims have been paid in full for the settlement amounts. The 1971 Fund faces further claims for compensation over the limitation amount applicable to the shipowner for some £10 million. The shipowner's insurer is claiming indemnification of £4.8 million.

3.6.3 It is estimated that the balance on the *Sea Prince* Major Claims Fund was approximately £18.7 million as at 30 June 1999.

3.6.4 The Director considers that there is no need to make a proposal at this stage in respect of the *Sea Prince* incident regarding annual contributions to the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund^{<2>}.

3.7 Yeo Myung

3.7.1 As set out in Annex III, a total of £3 million has been levied as annual contributions in respect of the *Yeo Myung* incident. The maximum amount payable from the General Fund has been used. The balance on the *Yeo Myung* Major Claims Fund was £3.0 million as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement VI).

3.7.2 The aggregate amount of the claims agreed and paid by the 1971 Fund so far is approximately £980 000. There are pending claims for £1.2 million. The 1971 Fund's experts have assessed these claims at £50 000.

<2> As the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents occurred in the same Member State within a period of two months, the contributors to Major Claims Funds in respect of these three incidents are the same and the levy for all three incidents are based on the quantities of contributing oil received in the same year (1994). The Assembly therefore decided at its 18th session that these three Major Claims Funds should be amalgamated (documents 71FUND/A.18/15/Add.1, paragraph 8.2 and FUND/A.18/26, paragraphs 18.4 and 18.5).

3.7.3 It is estimated that the balance on the *Yeo Myung* Major Claims Fund was approximately £3.1 million as at 30 June 1999. It is expected that there will be a surplus on this Major Claims Fund of £2.1 million when all claims and expenses regarding this incident have been paid.

3.7.4 The Director considers it premature to make a proposal in respect of the surplus on *Yeo Myung* Major Claims Fund until the 1971 Fund's payments have been completed. He also considers that any future proposal should take into account the fact that the Major Claims Funds in respect of the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents have been amalgamated.

3.8 *Yuil N°1*

3.8.1 As set out in Annex III, a total of £18 million has been levied as annual contributions in respect of the *Yuil N°1* incident. The maximum amount payable from the General Fund has been used. The balance on the *Yuil N°1* Major Claims Fund was £5.3 million as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement VI).

3.8.2 The aggregate amount of the claims agreed and paid by the 1971 Fund so far is approximately £7.8 million. Claims totalling £9 million are pending. In the view of the 1971 Fund's experts, however, the assessment of these claims is unlikely to exceed £1 million.

3.8.3 It is estimated that the balance on the *Yuil N°1* Major Claims Fund was approximately £5.0 million as at 30 June 1999. It is expected that there will be a surplus on this Major Claims Fund when all claims and expenses regarding this incident have been paid.

3.8.4 The Director considers it premature to make a proposal in respect of the surplus on *Yuil N°1* Major Claims Fund until the 1971 Fund's payments have been completed. He also considers that any future proposal should take into account the fact that the Major Claims Funds in respect of the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents have been amalgamated.

3.9 *Sea Empress*

3.9.1 As set out in Annex III, a total of £30 million has been levied as annual contributions to the *Sea Empress* Major Claims Fund. The maximum amount payable from the General Fund has been used. The balance on the *Sea Empress* Major Claims Fund was £22.0 million as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement V).

3.9.2 Claims became time-barred on or shortly after 15 February 1999. The total amount of the established claims is £16.4 million. The 1971 Fund has paid approximately £9.2 million in compensation, and the shipowner's insurer some £6.9 million. A number of claimants have commenced legal action against the 1971 Fund. Few of the those claimants have given any details in their writs of the amounts claimed. It is estimated, however, that the total amount of the claims pending in court is in the region of £23 million.

3.9.3 It is estimated that the balance on the *Sea Empress* Major Claims Fund was approximately £21.4 million as at 30 June 1999.

3.9.4 An estimated £2.0 million may be required in additional contributions in respect of the *Sea Empress* Major Claims Fund. In this regard reference is made to section 4 below.

3.10 *Nakhodka*

3.10.1 As set out in Annex III, a total of £52.5 million has been levied as annual contributions to the *Nakhodka* Major Claims Fund. The maximum amount payable from the General Fund has been used. There was a balance of £15.0 million on the *Nakhodka* Major Claims Fund as at 31 December 1998

(document 71FUND/A.22/8, Annex IV, Statement V), before receipt of the 1998 annual contributions of £7.5 million which were due on 1 February 1999.

3.10.2 The total amount of the claims is not yet determined, but it is certain that the aggregate amount of the established claims will exceed the maximum available under the 1969 Civil Liability Convention and 1971 Fund Convention (60 million SDR, or approximately £50.6 million), and that the 1992 Fund also will have to make payments in respect of this incident. Compensation totalling £35 million had been paid by 30 June 1999.

3.10.3 It is estimated that the balance on the *Nakhodka* Major Claims was approximately £14.9 million as at 30 June 1999.

3.10.4 It is expected that significant amounts will be paid in compensation during the second half of 1999, and that payments of compensation will reach 60 million SDR by the end of 1999.

3.10.5 It should be noted that it will not be possible to determine the total amount of fees and other expenses to be paid by the 1971 Fund in respect of the *Nakhodka* incident until the case has been finalised, since these expenses will need to be apportioned between the shipowner's insurer, the 1971 Fund and the 1992 Fund in accordance with their respective ultimate liability for the payment of compensation. Such costs, which will be significant, are to be paid by the 1971 Fund in addition to the maximum amount of compensation payable under the 1971 Fund Convention.

3.10.6 It appears that an estimated £917 000 would be required in respect of the *Nakhodka* Major Claims Fund. In this regard reference is made to section 4 below.

3.11 *Nissos Amorgos*

3.11.1 As set out in Annex III, a total of £2 million was levied as annual contributions to the *Nissos Amorgos* Major Claims Fund for payment by 1 February 1998. The balance on the *Nissos Amorgos* Major Claims Fund was £2.1 million as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement VII). The maximum amount payable from the General Fund, ie 1 million SDR (£849 762), has not yet been fully used.

3.11.2 It is not possible 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 at this stage to take as a basis a total figure for the established claims in the region of £8-10 million.

3.11.3 It is estimated that the balance on the *Nissos Amorgos* Major Claims Fund was approximately £2.2 million as at 30 June 1999.

3.11.4 The Director considers that there is no need to make a proposal at this stage regarding annual contributions to the *Nissos Amorgos* Major Claims Fund.

3.12 *Osung N°3*

3.12.1 As set out in Annex III, a total of £2 million has been levied as annual contributions to the *Osung N°3* Major Claims Fund for payment by 1 February 1998. The maximum amount payable from the General Fund has been used. There was a deficit of £2.8 million on the *Osung N°3* Major Claims Fund as at 31 December 1998 (document 71FUND/A.22/8, Annex IV, Statement VII).

3.12.2 The 1971 Fund has paid compensation totalling £6.4 million. Claims totalling £1.2 million are pending. It is estimated that these claims will be settled for a total amount of some £1 million.

3.12.3 It is estimated that the deficit on the *Osung N°3* Major Claims Fund was approximately £4.3 million as at 30 June 1999.

3.12.4 It appears that an estimated £5.3 million would be required in respect of the *Osung N°3* Major Claims Fund. In this regard reference is made to section 4 below.

3.13 Evoikos

3.13.1 As indicated in paragraph 2.3.3 above, it is possible that the total payments by the 1971 Fund in respect of the *Evoikos* incident during 2000 might reach the maximum amount payable from the General Fund (£845 617).

3.13.2 It is not possible to make an estimate at this stage of the total amount of the established claims which will fall within the scope of application of the 1971 Fund Convention.

3.13.3 It appears that an estimated £117 000 might be required in respect of the *Evoikos* Major Claims Fund. In view of the uncertainty as to the total established claims and the relatively small amounts involved, however, the Director takes the view that a decision to levy annual contributions to the *Evoikos* Major Claims Fund should be postponed until the final total cost of the incident to the 1971 Fund can be established. In this regard reference is made to section 4 below.

3.14 Pontoon 300

3.14.1 As indicated in paragraph 2.3.4 above, it is estimated that the total payments by the 1971 Fund in respect of the *Pontoon 300* incident during 2000 will reach the maximum amount payable from the General Fund (£819 583).

3.14.2 It is not possible 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 at this stage to take as a basis a total figure for the established claims in the region of £1.3 million.

3.14.3 It appears that an estimated £198 000 would be required in respect of the *Pontoon 300* Major Claims Fund. In view of the uncertainty as to the total established claims and the relatively small amounts involved, however, the Director takes the view that a decision to levy annual contributions to the *Pontoon 300* Major Claims Fund should be postponed until the final total cost of the incident to the 1971 Fund can be established. In this regard reference is made to section 4 below.

4 Director's proposals

4.1 Sums repayable

4.1.1 In the Director's view, the balance on the *Haven* Major Claims Fund is substantial. He therefore proposes that an amount of £2.1 million should be reimbursed to the contributors to the *Haven* Major Claims Funds and that the balance be transferred to the General Fund.

4.1.2 The Director considers it premature to make proposal in respect of the expected surpluses on the *Yeo Myung* and *Yuil N°1* Major Claims Funds (cf paragraphs 3.7.4 and 3.8.4).

4.2 Sums required

4.2.1 The Director considers that an amount of £323 000 would be required in 2000 to balance the General Fund. In view of the relatively small amount, however, he takes the view that there is no need to make a levy to the General Fund in the context of the 1999 annual contributions.

4.2.2 As indicated in paragraphs 3.1.5, 3.13.3 and 3.14.3, the Director considers that there is no need to make proposals at this stage regarding the *Vistabella*, *Evoikos* and *Pontoon 300* Major Claims Funds.

4.2.3 The Director takes the view that there is no need to levy further contributions at this stage in respect of the *Aegean Sea*, *Braer*, *Keumdong N°5*, *Sea Prince* and *Nissos Amorgos* incidents (cf paragraphs 3.3.10, 3.4.5, 3.5.4, 3.6.4 and 3.11.4).

4.2.4 The Director considers that contributions of £2.0 million, £1.0 million and £5.3 million will be required in 2000 to balance the *Sea Empress*, *Nakhodka* and *Osung N°3* Major Claims Fund (cf paragraphs 3.9.4, 3.10.6 and 3.12.4), as set out in Annex III.

4.2.5 The Director believes it is important that sufficient funds are available for the payment of claims arising out of the above-mentioned incidents. The sources of funds which can be considered for this purpose are the working capital, loans from balances on other Major Claims Funds and the levying of annual contributions. In the light of the position taken by the Assembly on previous occasions, the Director is of the view that the 1971 Fund should not take loans from banks and other financial institutions for this purpose.

4.3 The working capital

4.3.1 It will be recalled that the working capital was reduced by the Assembly at its 20th session from £10 million to £5 million, with effect from 1 February 1998. This reduces the margin which the working capital was intended to provide.

4.3.2 In order to ensure that funds are available to meet unforeseen payments and payments in respect of new incidents, the Director considers that the working capital should not be used for the payment of claims arising from the incidents listed in paragraph 4.2.3 over and above 1 million SDR.

4.4 Loans from balances on other Major Claims Funds

4.4.1 Financial Regulation 7.2(d) provides that monies in any Major Claims Funds may be used to make loans to other Major Claims Funds, to the extent that sufficient money is not available in the relevant funds. Regulation 7.2(b) provides that any such loans shall be repaid with interest.

4.4.2 It appears that, from those Major Claims Fund on which it is projected that there will be a surplus (*Aegean Sea*, *Braer*, *Keumdong N°5*, *Sea Prince*, *Yeo Myung*, *Yuil N°1* and *Nissos Amorgos*) on 1 March 2001 (cf Annex III), an amount in the region of £34.5 million might available for making loans to the General Fund and to those Major Claims Funds on which it is estimated that money totalling some £8.9 million will be needed by 1 March 2001.

4.4.3 However, in his report on the 1998 accounts the External Auditor has indicated that it may become necessary, with the 1971 Fund's declining Membership, to restrict inter-fund borrowing between Major Claims Funds to those incidents where the same contributors are involved (document 71FUND/A.22/8, Annex II, paragraph 46). This would rule out the possibility of loans between existing Major Claims Funds, with the exception of the amalgamated *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund (see footnote 2 above).

4.4.4 The Director considers that a distinction should be made between Major Claims Funds for those incidents which occurred before the end of the transitional period (ie 15 May 1998) and Major Claims Funds for incidents which have occurred or may occur thereafter. As regards the former group of Major Claims Funds, the contributors are largely identical and there is a sufficient contributions base for further levies to Major Claims Funds relating to those incidents. The Director therefore takes the view that it would be appropriate to continue to allow internal loans between such Major Claims Funds in the future. With regard to the second group of Major Claims Funds (ie those relating to incidents after 15 May 1998), however, the situation in the Director's view is different. As a result of the progressively decreasing quantities of contributing oil which would form the basis for the levy of contributions to such Major Claims Funds, the Director considers that internal loans should not be taken between such Major Claims Funds nor between Major Claims Fund of the second group and Major Claims Funds of the first group. Furthermore, the Director considers that loans should not be taken from the General Fund to Major Claims Funds of either group.

4.5 Director's proposal

On the basis of these considerations, the Director proposes that levies in the form of 1999 annual contributions should be made to the *Sea Empress* Major Claims Fund for £2.0 million, to the *Nakhodka* Major Claims Fund for £1.0 million and to the *Osung N°3* Major Claims Fund for £5.3 million. These levies would total £8.3 million. In addition, the Director proposes reimbursing £2.1 million to contributors to the *Haven* Major Claims Fund. This would result in a net levy of £6.2 million.

4.6 Timing of levies/reimbursements

4.6.1 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. However, the Director has proposed in document 71FUND/A.22/12 that this date should be changed to 1 March.

4.6.2 At its 2nd extraordinary session, the Assembly decided to introduce a deferred invoicing system. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower 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).

4.6.3 The Director is of the view that the entire proposed levies to the *Nakhodka* and *Osung N°3* Major Claims Fund should be due for payment by 1 March 2000. He is also of the view that the proposed reimbursement in respect of the *Haven* Major Claims Fund should be made on 1 March 2000. If the Director's proposal regarding Internal Regulation 3.7 is not adopted, however, the date for payment/reimbursement would be 1 February 2000.

4.6.4 In view of the uncertainty regarding the timing of payments of compensation in respect of the *Sea Empress* incident, the Director proposes that the entire proposed levy to the *Sea Empress* Major Claims Fund should be deferred, and that the Director should be authorised to decide whether to invoice all or part of the amount of the deferred levy for payment during the second half of 2000.

4.6.5 The Director's proposals are summarised in the following table:

Levy	Total proposed levy/ reimbursement £	Proposed payment by/reimbursement on 1.3.00 £	Maximum deferred levy £
<i>Haven</i> Major Claims Fund	(2 100 000)	(2 100 000)	0
<i>Sea Empress</i> Major Claims Fund	2 000 000	0	2 000 000
<i>Nakhodka</i> Major Claims Fund	1 000 000	1 000 000	0
<i>Osung N°3</i> Major Claims Fund	5 300 000	5 300 000	0
Total	6 200 000	4 200 000	2 000 000

5 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 decide in respect of the assessment for 1999 annual contributions to the General Fund (paragraphs 2.5 and 4.2.1);
- (c) to decide in respect of assessments for 1999 annual contributions to the following Major Claims Funds (paragraphs 4.2.4 and 4.5):
 - (i) *Sea Empress* Major Claims Fund (paragraphs 3.9.4 and 4.5);
 - (ii) *Nakhodka* Major Claims Fund (paragraphs 3.10.6 and 4.5);
 - (iii) *Osung N°3* Major Claims Fund (paragraphs 3.12.4 and 4.5);
- (d) to decide in respect of the credit balance on the *Haven* Major Claims Fund (paragraphs 3.2.7, 4.1.1 and 4.5);
- (e) to decide on the dates of payment of 1999 annual contributions to the three Major Claims Funds listed above (paragraphs 4.6.3-4.6.5) and the date for reimbursing contributors in respect of the *Haven* Major Claims Fund (paragraphs 4.6.3 and 4.6.5);
- (f) to take note of the Director's position that any decision to levy annual contributions to the *Vistabella*, *Evoikos* and *Pontoon 300* Major Claims Funds should be postponed (paragraphs 3.1.6, 3.13.3, 3.14.3 and 4.2.2);
- (g) to note the Director's view of the situation in respect of the *Yeo Myung* and *Yuil N°1* Major Claims Funds (paragraphs 3.7.4, 3.8.4 and 4.1.2); and
- (h) to note the Director's view that no levy in the form of 1999 annual contributions should be made to the *Aegean Sea*, *Braer*, *Keumdong N°5*, *Sea Prince* and *Nissos Amorgos* Major Claims Funds (paragraphs 3.3.10, 3.4.5, 3.5.4, 3.6.4, 3.11.4 and 4.2.3).

* * *

Annex I - General Fund Claims Expenditure in 1999

71FUND/A.22/21

(figures in £ Sterling)

Incident	Date	Maximum Payable From General Fund: 1 million SDR	Payments by 31.12.98		Balance Payable From General Fund 31.12.98	1999 Expenditure				Estimated General Fund Expenditure in 1999	Estimated Total General Fund Expenditure up to 31.12.99	Estimated Balance Payable From General Fund 31.12.99
			Compensation Paid by 31.12.98	Miscellaneous Paid by 31.12.98		Compensation/Indemnification		Miscellaneous				
						Paid	Estimate	Paid	Estimate			
			1.1.99-30.6.99	1.7.99-31.12.99		1.1.99-30.6.99	1.7.99-31.12.99					
<i>Iljad</i>	9.10.93	930,977	0	(125)	930,852	0	(747,000)	0	(20,000)	(767,000)	(768,000)	164,000
<i>Boyang N°51</i>	25.5.95	972,668	0	(1,200)	971,468	0	0	0	(291)	(1,000)	(3,000)	971,000
<i>Dae Woong</i>	27.6.95	991,965	(395,926)	(46,609)	549,430	0	0	0	(1,425)	(2,000)	(445,000)	548,000
<i>Honam Sapphire</i>	17.11.95	961,945	0	(87,060)	874,885	0	0	0	(19,482)	(20,000)	(108,000)	855,000
<i>Kriti Sea</i>	9.8.96	943,599	0	0	943,599	0	0	0	(10,000)	(10,000)	(10,000)	934,000
<i>N°1 Yang Jung</i>	15.8.96	939,408	(293,032)	(112,793)	533,583	0	0	(20,866)	(30,000)	(51,000)	(457,000)	483,000
<i>Nissos Amorgos</i>	28.2.97	849,762	0	(259,591)	590,171	(16,339)	(64,000)	(159,677)	(41,000)	(282,000)	(542,000)	309,000
<i>Plate Princess</i>	27.5.97	851,165	0	(21,583)	829,582	0	0	(7,046)	(1,000)	(9,000)	(31,000)	821,000
<i>Diamond Grace</i>	2.7.97	828,844	0	0	828,844	0	0	0	(5,000)	(5,000)	(5,000)	824,000
<i>Katja</i>	7.8.97	839,335	0	(1,392)	837,943	0	0	0	(5,000)	(5,000)	(7,000)	833,000
<i>Evoikos</i>	15.10.97	845,617	0	(1,327)	844,290	0	0	(62)	(10,000)	(11,000)	(13,000)	834,000
<i>Kyungnam N°1</i>	7.11.97	822,208	0	(12,194)	810,014	(120,295)	(9,000)	(73,245)	(20,000)	(223,000)	(236,000)	588,000
<i>Pontoon 300</i>	7.1.98	819,583	(264,887)	(132,673)	422,023	0	(63,000)	(8,372)	(10,000)	(82,000)	(480,000)	341,000
<i>Marisa Sayalero</i>	8.6.98	817,261	0	(7,085)	810,176	0	0	(4,432)	(2,000)	(7,000)	(15,000)	804,000
			(126,646,865)	(22,159,614)		(38,039,575)	(883,000)	(3,780,877)	(194,000)	(1,475,000)		

Annex II - General Fund Claims Expenditure in 2000

71FUND/A.22/21

(figures in £ Sterling)

Incident	Date	Maximum Payable From General Fund 1 million SDR	Estimated Balance Payable From General Fund 31.12.99	2000 Estimated Expenditure			Estimated General Fund Expenditure in 2000	Estimated Total General Fund Expenditure up to 31.12.00	Estimated Balance Payable From General Fund 31.12.00
				Compensation	Indemnification	Miscellaneous			
<i>Iliad</i>	9.10.93	930,977	164,000	0	0	(20,000)	(20,000)	(783,000)	144,000
<i>Kriti Sea</i>	9.8.96	943,599	934,000	0	0	(10,000)	(10,000)	(20,000)	924,000
<i>Nissos Amorgos</i>	28.2.97	849,762	309,000	0	0	(200,000)	(200,000)	(742,000)	109,000
<i>Katja</i>	7.8.97	839,335	833,000	0	(76,000)	(5,000)	(81,000)	(88,000)	752,000
<i>Evoikos</i>	15.10.97	845,617	834,000	(384,000)	(430,000)	(20,000)	(834,000)	(847,000)	0
<i>Pontoon 300</i>	7.1.98	819,583	341,000	(321,000)	0	(20,000)	(341,000)	(821,000)	0
							(1,486,000)		

Annex III - Major Claims Fund Expenditure

71FUND/A.22/21

(figures in £ Sterling)

Incident	Date	Balance Payable From General Fund 31.12.98	Previous levies			Maximum Payable From General Fund: 1 million SDR	Payments by 31.12.98 (including General Fund)		Balance Payable From General Fund 31.12.98	Major Claims Fund Balance 31.12.98	1999 Expenditure to 30.6.99		1999 Major Claims Fund Estimated Income		Estimated Major Claims Fund Balance 30.6.99	Possible Total Expenditure (comp/indem and miscellaneous 1.7.99-1.3.01)	Projected Major Claims Fund Surplus or (Requirement up to) 1.3.01
			Contribution Year	Assembly Session	Date Due		Amount	Compensation Paid by 31.12.98			Miscellaneous Paid by 31.12.98	Compensation/ Indemnification Paid 1.1.99-30.6.99	Miscellaneous Paid 1.1.99-30.6.99	Contributions due in 1999			
<i>Vistabella Haven</i>	7.3.91 11.4.91		1991 14th 1.1.92 15,000,000		743,092	(1,002,512)	(153,302)		(412,722)	0	0	0	0	(413,000)	(20,000)	(433,000)	
			1992 15th 1.2.93 10,000,000														
			25,000,000		764,798	(2,048,108)	(4,535,088)		31,798,545	(28,237,676)	(720,666)	0	78,106	2,919,000	(720,000)	2,199,000	
<i>Aegean Sea</i>	3.12.92		1993 16th 1.2.94 20,000,000														
			1994 17th 1.2.95 15,000,000														
			35,000,000		891,471	(5,178,767)	(2,428,541)		39,033,430	0	(210,837)	0	1,067,621	39,891,000	(25,000,000)	14,891,000	
<i>Braer</i>	5.1.93		1993 16th 1.2.94 35,000,000														
			1995 18th 1.2.96 14,000,000														
			49,000,000		904,707	(40,640,279)	(4,212,207)		6,561,979	0	(227,629)	0	17,419	6,352,000	(5,386,000)	966,000	
<i>Keumdong N°5</i>	27.9.93		1993 16th 1.2.94 5,000,000														
			1994 17th 1.2.95 10,000,000														
			15,000,000		933,146	(9,656,362)	(963,566)		7,603,635	(413,508)	(1,067,961)	0	168,360	6,291,000	(560,000)	5,731,000	
			Authorized but not levied 1.9.97 5,000,000														
<i>Sea Prince</i>	23.7.95		1995 18th 1.2.96 11,000,000														
			1996 19th 1.2.97 7,000,000														
			19th 1.9.97 5,000,000														
			1997 20th 1.2.98 3,000,000														
			26,000,000		975,724	(10,401,699)	(1,116,534)		18,337,254	(46,570)	(68,431)	0	501,112	18,724,000	(14,000,000)	4,724,000	
			Authorized but not levied 1.9.97 18,000,000														
			Authorized but not levied 1.9.98 7,000,000														
<i>Sea Myung</i>	3.8.95		1995 18th 1.2.96 2,000,000														
			1996 19th 1.2.97 1,000,000														
			3,000,000		963,298	(985,756)	(234,489)		2,969,971	0	0	0	81,674	3,052,000	(1,000,000)	2,052,000	
			Authorized but not levied 1.9.97 4,000,000														
<i>Yuil N°1</i>	21.9.95		1995 18th 1.2.96 7,000,000														
			1996 19th 1.2.97 5,000,000														
			19th 1.9.97 6,000,000														
			18,000,000		952,517	(14,154,063)	(693,545)		5,262,865	(243,456)	(126,358)	0	134,559	5,028,000	(1,000,000)	4,028,000	
			Authorized but not levied 1.9.97 4,000,000														
			Authorized but not levied 1.9.98 4,000,000														
			Authorized but not levied 1.9.99 2,500,000														
<i>Sea Empress</i>	15.2.96		1996 19th 1.2.97 10,000,000														
			19th 1.9.97 20,000,000														
			30,000,000		952,381	(8,395,880)	(2,465,343)		22,031,946	(953,956)	(254,369)	0	572,650	21,397,000	(23,400,000)	(2,003,000)	
			Authorized but not levied 1.9.99 7,000,000														
<i>Vukhodka</i>	2.1.97		1996 3rd ext 1.9.97 15,000,000														
			1997 20th 1.2.98 30,000,000														
			1998 21st 1.2.99 7,500,000														
			52,500,000		845,655	(28,046,725)	(4,079,222)		14,991,454	(6,802,315)	(1,149,894)	7,500,000	399,829	14,940,000	(15,857,000)	(917,000)	
			Authorized but not levied 1.9.98 5,000,000														
<i>Nissos Amorgos</i>	28.2.97	590,171	1997 20th 1.2.98 2,000,000														
			Authorized but not levied 1.9.98 3,000,000														
			2,000,000		849,762	0	(259,591)	590,171	2,111,451	0	0	0	58,065	2,170,000	0	2,170,000	
<i>Ostung N°3</i>	3.4.97		1997 20th 1.2.98 2,000,000														
			Authorized but not levied 1.9.98 8,000,000														
			Authorized but not levied 1.9.99 6,000,000														
			2,000,000		845,906	(5,182,869)	(594,145)		(2,832,295)	(1,205,460)	(212,329)	0	0	(4,251,000)	(1,000,000)	(5,251,000)	
<i>Evoikos</i>	15.10.97	844,290	Authorized but not levied 1.9.99 2,000,000														
					845,617			0		0	0	0	0	0	(117,000)	(117,000)	
<i>Pontoon 300</i>	7.1.98	422,023															
					819,583			0		0	0	0	0	0	(198,000)	(198,000)	
						(125,693,020)	(21,735,573)		147,457,513			7,500,000	3,079,395	116,100,000	(88,258,000)	27,842,000	