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ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

Note by the Director

Summary:	The need for 2000 contributions to Major Claims Funds is examined.
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Action to be taken:	Decide on the levy of 2000 contributions to Major Claims Funds.
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1 **Introduction**

- 1.1 Article 12 of the 1971 Fund Convention provides that the Assembly shall determine the amount of 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).

- 1.3 Expenses mentioned in sub-paragraphs (a) and (b) of paragraph 1.2 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)).
- 1.4 As instructed by the Executive Committee, acting on behalf of the Assembly at its October 1999 session (document 71FUND/EXC.62/14/A.22/23, paragraph 23.7), the Director has considered how a clearer presentation of the budget could be made. The assessment of contributions to the General Fund, in accordance with Article 12.2(a) of the 1971 Fund Convention, has therefore been incorporated in the draft budget and is dealt with in a separate document (71FUND/A.23/18). This document deals only with the assessment of contributions to Major Claims Funds.
- 1.5 As for the individual incidents, reference is made to the information contained in the Financial Statements (document 71FUND/A.23/8, Annex IV, Schedule II) and to the various documents relating to incidents submitted to the 23rd session of the Assembly.
- 1.6 It should be noted that any estimate in this document of amounts to be paid by the 1971 Fund in compensation 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.
- 1.7 It should also be noted that - unless stated otherwise - information on the payments of compensation and miscellaneous expenses reflects the situation as at 30 June 2000^{<1>}. The Director considers that it might be necessary, in an addendum to this document, to modify some of the proposals set out below in the light of developments.

2 Vistabella Major Claims Fund

2.1 Summary information

Background information for consideration of the *Vistabella* Major Claims Fund is as follows:

Incident	<i>Vistabella</i>
Date of incident	07/03/91
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£743 092
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£0
Compensation paid to 30/6/2000	£1 002 512
Miscellaneous paid to 30/6/2000	£174 092
Possible total expenditure 1/7/2000 - 1/3/2002	£5 000

2.2 Analysis

- 2.2.1 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)).

<1> In this document the conversion of currencies has been made on the basis of the rates of exchange applicable on 18 August 2000, unless indicated otherwise.

- 2.2.2 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 2000 and 2001.
- 2.2.3 It is estimated that there will be a deficit on the *Vistabella* Major Claims Fund of approximately £439 000 by 1 March 2002, after deductions for fees and other expenses incurred during 2000 and 2001, as set out in the Annex.
- 2.2.4 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. It is uncertain when these proceedings will be completed.
- 2.2.5 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.
- 2.2.6 With regard to the estimate of the monies (some £439 000) required in respect of the *Vistabella* Major Claims Fund, reference is made to section 14 below.

3 Aegean Sea Major Claims Fund

3.1 Summary information

Background information for consideration of the *Aegean Sea* Major Claims Fund is as follows:

Incident	<i>Aegean Sea</i>
Date of incident	03/12/92
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit)	£30 679 610
Maximum payable from General Fund (1 million SDR)	£891 471
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£35 000 000
Compensation paid to 30/6/2000	£5 178 767
Miscellaneous paid to 30/6/2000	£2 953 880
Possible total expenditure 1/7/2000 - 1/3/2002	£28 806 000

3.2 Analysis

- 3.2.1 A total of £35 million has been levied as contributions to the *Aegean Sea* Major Claims Fund. The maximum amount payable from the General Fund (£891 471) has been used. There was a surplus of £40.7 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement III).
- 3.2.2 Claims have been submitted in the Criminal Court in La Coruña for a total amount of some £90 million. In a judgement rendered in April 1996, the Criminal 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 the judgement. This judgement was generally upheld by the Court of Appeal in a judgement rendered in June 1997.
- 3.2.3 Further claims totalling £80 million have been submitted to the Civil Court.
- 3.2.4 Claims became time-barred on or shortly after 3 December 1995.

- 3.2.5 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.
- 3.2.6 The 1971 Fund has paid approximately £5.2 million in compensation. The total amount of compensation payable under the 1971 Fund Convention is approximately £30.7 million.
- 3.2.7 The Executive Committee has decided that the 1971 Fund's payments should be limited for the time being to 40% of the established claims.
- 3.2.8 The 1971 Fund is continuing its efforts to reach out-of-court settlements of all outstanding issues and considerable progress has been made. Nevertheless, it is not possible to express an opinion as to whether such settlements will be reached. It is impossible to estimate when the procedure for the execution of the Court of Appeal's 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 at this stage to make any predictions as to the timetable for further payments.
- 3.2.9 It is estimated that the balance on the *Aegean Sea* Major Claims Fund was approximately £41.8 million as at 30 June 2000.
- 3.2.10 The Director takes the view that some £28.8 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).
- 3.2.11 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.

4 Braer Major Claims Fund

4.1 Summary information

Background information for consideration of the *Braer* Major Claims Fund is as follows:

Incident	<i>Braer</i>
Date of incident	05/01/93
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit)	£45 726 280
Maximum payable from General Fund (1 million SDR)	£904 707
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£49 000 000
Compensation paid to 30/6/2000	£42 539 771
Miscellaneous paid to 30/6/2000	£4 932 589
Possible total expenditure 1/7/2000 - 1/3/2002	£4 899 000

4.2 Analysis

- 4.2.1 A total of £49 million has been levied as contributions to the *Braer* Major Claims Fund. The maximum amount payable from the General Fund (£904 707) has been used. There was a surplus of £6.3 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement III).
- 4.2.2 The total amount of the admissible claims has not yet been established. The 1971 Fund has paid approximately £42.5 million in compensation (including the amounts referred to in paragraph 4.2.4 below). Further claims have been agreed at £6.1 million but have not yet been paid in full. In addition, claims totalling £7.3 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.

- 4.2.3 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).
- 4.2.4 In October 1999 the Executive Committee authorised the Director to make partial payments to those claimants whose claims had been approved but not paid, if the claims pending in the court proceedings together with the claims which had been approved but not paid fell below £20 million (document 71FUND/EXC.62/14, paragraph 3.4.5. This situation arose in 2000, and payments at 40% of the established amounts totalling £1.9 million were made in respect of these claims in May and June 2000.
- 4.2.5 It is estimated that the balance on the *Braer* Major Claims Fund was approximately £4.4 million as at 30 June 2000.
- 4.2.6 The Director takes the view that some £4.9 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).
- 4.2.7 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.
- 4.2.8 With regard to the estimate of the monies (some £472 000) required in respect of the *Braer* Major Claims Fund, reference is made to section 14 below.

5 **Keumdong N°5 Major Claims Fund**

5.1 Summary information

Background information for consideration of the *Keumdong N°5* Major Claims Fund is as follows:

Incident	<i>Keumdong N°5</i>
Date of incident	27/09/93
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£933 146
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£15 000 000
Compensation paid to 30/6/2000	£10 069 870
Miscellaneous paid to 30/6/2000	£2 198 068
Possible total expenditure 1/7/2000 - 1/3/2002	£960 000

5.2 Analysis

- 5.2.1 A total of £15 million has been levied as contributions to the *Keumdong N°5* Major Claims Fund. The maximum amount payable from the General Fund (£933 146) has been used. There was a surplus of £6.5 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement IV).
- 5.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £10.1 million. Claims for a total of some £4.5 million are pending in court. The Korean Court of first instance has accepted these claims for a total of £940 000. 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 accepted amount of £940 000 with the Court.

- 5.2.3 It is estimated that the balance on the *Keumdong N°5* Major Claims Fund was approximately £6.5 million as at 30 June 2000, plus the amount of £940 000 deposited with the Court.
- 5.2.4 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.

6 Sea Prince Major Claims Fund

6.1 Summary information

Background information for consideration of the *Sea Prince* Major Claims Fund is as follows:

Incident	<i>Sea Prince</i>
Date of incident	23/07/95
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£975 724
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£26 000 000
Compensation paid to 30/6/2000	£10 601 454
Miscellaneous paid to 30/6/2000	£1 244 000
Possible total expenditure 1/7/2000 - 1/3/2002	£10 016 000

6.2 Analysis

- 6.2.1 A total of £26 million has been levied as contributions to the *Sea Prince* Major Claims Fund. The maximum amount payable from the General Fund (£975 724) has been used. There was a surplus of £19.1 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement V).
- 6.2.2 The aggregate amount of the claims paid so far by the 1971 Fund is approximately £10.6 million. The 1971 Fund faces further claims for compensation for some £4 million. The indemnification of the shipowner is estimated at £5.2 million.
- 6.2.3 It is estimated that the balance on the *Sea Prince* Major Claims Fund was approximately £19.6 million as at 30 June 2000.
- 6.2.4 The Director takes the view that some £10.0 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).
- 6.2.5 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. The Director considers it premature to make a proposal in respect of the surplus on *Sea Prince* 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^{<2>}.

<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 FUND/A.18/15/Add.1, paragraph 8.2 and FUND/A.18/26, paragraphs 18.4 and 18.5).

7 Yeo Myung Major Claims Fund

7.1 Summary information

Background information for consideration of the *Yeo Myung* Major Claims Fund is as follows:

Incident	<i>Yeo Myung</i>
Date of incident	03/08/95
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£963 298
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£3 000 000
Compensation paid to 30/6/2000	£1 035 020
Miscellaneous paid to 30/6/2000	£257 208
Possible total expenditure 1/7/2000 - 1/3/2002	£225 000

7.2 Analysis

- 7.2.1 A total of £3 million has been levied as contributions to the *Yeo Myung* Major Claims Fund. The maximum amount payable from the General Fund (£963 298) has been used. There was a surplus of £3.1 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement V).
- 7.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £1.0 million. There are pending claims for £200 000.
- 7.2.3 It is estimated that the balance on the *Yeo Myung* Major Claims Fund was approximately £3.2 million as at 30 June 2000.
- 7.2.4 It is expected that there will be a surplus on this Major Claims Fund of £2.9 million when all claims and expenses regarding this incident have been paid. 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 (see footnote <2>).

8 Yuil N°1 Major Claims Fund

8.1 Summary information

Background information for consideration of the *Yuil N°1* Major Claims Fund is as follows:

Incident	<i>Yuil N°1</i>
Date of incident	21/09/95
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£952 517
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£18 000 000
Compensation paid to 30/6/2000	£14 487 168
Miscellaneous paid to 30/6/2000	£861 076
Possible total expenditure 1/7/2000 - 1/3/2002	£1 672 000

8.2 Analysis

- 8.2.1 A total of £18 million has been levied as contributions to the *Yuil N°1* Major Claims Fund. The maximum amount payable from the General Fund (£952 517) has been used. There was a surplus of £5.2 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement V).
- 8.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £14.5 million. Claims totalling £10.5 million are pending. In the view of the 1971 Fund's experts, however, the assessment of these claims is unlikely to exceed £500 000.
- 8.2.3 It is estimated that the balance on the *Yuil N°1* Major Claims Fund was approximately £5.2 million as at 30 June 2000.
- 8.2.4 The Director takes the view that some £1.7 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).
- 8.2.5 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 (see footnote <2>).

9 Sea Empress Major Claims Fund

9.1 Summary information

Background information for consideration of the *Sea Empress* Major Claims Fund is as follows:

Incident	<i>Sea Empress</i>
Date of incident	15/02/96
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£952 381
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£30 000 000
Compensation paid to 30/6/2000	£17 549 572
Miscellaneous paid to 30/6/2000	£2 982 382
Possible total expenditure 1/7/2000 - 1/3/2002	£16 500 000

9.2 Analysis

- 9.2.1 A total of £30 million has been levied as contributions to the *Sea Empress* Major Claims Fund. The maximum amount payable from the General Fund (£952 381) has been used. There was a surplus of £21.9 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement IV).
- 9.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £17.5 million. Claims became time-barred on or shortly after 15 February 1999. A number of claimants have commenced legal action against the 1971 Fund. It is estimated that the total amount of the claims pending in court is in the region of £23 million.
- 9.2.3 It is estimated that the balance on the *Sea Empress* Major Claims Fund was approximately £14.1 million as at 30 June 2000.
- 9.2.4 The Director takes the view that some £16.5 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).

- 9.2.5 With regard to the estimate of the monies (some £2 441 000) required in respect of the *Sea Empress* Major Claims Fund, reference is made to section 14 below.

10 *Nakhodka* Major Claims Fund

10.1 Summary information

Background information for consideration of the *Nakhodka* Major Claims Fund is as follows:

Incident	<i>Nakhodka</i>
Date of incident	02/01/97
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit)	£51 198 118
Maximum payable from General Fund (1 million SDR)	£845 655
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£53 500 000
Compensation paid to 30/6/2000	£43 346 110
Miscellaneous paid to 30/6/2000	£6 527 873
Possible total expenditure 1/7/2000 - 1/3/2002	£0

10.2 Analysis

- 10.2.1 A total of £53.5 million has been levied as contributions to the *Nakhodka* Major Claims Fund. The maximum amount payable from the General Fund (£845 655) has been used. There was a surplus of £4.1 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement IV).
- 10.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £43.3 million. Claims became time-barred on or shortly after 2 January 2000. It is not possible to determine at this stage the total amount of the established claims. However, the total amount of the claims approved exceeds by far the amount available under the 1971 Fund Convention (approximately £50.2 million).
- 10.2.3 It is estimated that the balance on the *Nakhodka* Major Claims Fund was approximately £5.3 million as at 30 June 2000.
- 10.2.4 By 31 December 1999 the 1971 Fund had paid up to its limit of 60 million SDR minus the limitation amount applicable to the shipowner ie 1 588 000 SDR, which gives 58 412 000 SDR. The rate of conversion of this amount into Yen has not yet been fixed^{<3>}. If the conversion were to be made at the rate of exchange as at 18 August 2000, the 1971 Fund limit would be ¥8 294 770 231. The 1971 Fund has made compensation payments totalling some ¥8 700 million. If that rate of exchange were to be used, the 1971 Fund would have paid over its limit, due to the significant appreciation of the Japanese Yen since the 1971 Fund's payments were made. Since 31 December 1999, all compensation payments have been made by the 1992 Fund. The 1971 Fund will therefore not make any significant payments by 1 March 2002 (the date when any 2001 contributions would be receivable) unless the Yen were to weaken considerably.
- 10.2.5 The Director takes the view that the adjustment of the payments between the 1971 Fund and the 1992 Fund should not be made until the rate of exchange referred to in paragraph 10.2.4 has been fixed, since further changes in currency rates are likely. He therefore considers that there is no need to make a proposal at this stage regarding annual contributions to the *Nakhodka* Major Claims Fund.

<3> The conversion should be made on the basis of the rate of exchange applicable on the date on which the shipowner constitutes the limitation fund. This fund has not yet been established.

11 Nissos Amorgos Major Claims Fund

11.1 Summary information

Background information for consideration of the *Nissos Amorgos* Major Claims Fund is as follows:

Incident	<i>Nissos Amorgos</i>
Date of incident	28/02/97
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit)	£47 993 203
Maximum payable from General Fund (1 million SDR)	£849 762
Estimated General Fund balance 30/6/2000	£71 867
Total previously levied to Major Claims Fund	£2 000 000
Compensation paid to 30/6/2000	£17 695
Miscellaneous paid to 30/6/2000	£760 200
Possible total expenditure 1/7/2000 - 1/3/2002	£28 000 000

11.2 Analysis

- 11.2.1 A total of £2.0 million has been levied as contributions to the *Nissos Amorgos* Major Claims Fund. There was a surplus of £2.3 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement VI).
- 11.2.2 It is estimated that the total payments by the 1971 Fund in respect of the *Nissos Amorgos* will reach the maximum amount payable from the General Fund incident (£849 762) during 2000 (cf document 71FUND/A.23/18, paragraph 2.1.2).
- 11.2.3 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 to take as a basis a total figure for the established claims in the region of £25-£30 million.
- 11.2.4 It is estimated that the balance on the *Nissos Amorgos* Major Claims was approximately £2.2 million as at 30 June 2000.
- 11.2.5 On the basis of the estimate of the total figure for the established claims set out in paragraph 11.2.3, the Director takes the view that some £28 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).
- 11.2.6 As set out in the Annex, it appears that on that basis an estimated £25.8 million would be required in respect of the *Nissos Amorgos* Major Claims Fund. In this regard reference is made to section 14 below.
- 11.2.7 It should be noted, however, that the total amount of the claims in court by far exceed the maximum amount payable under the 1971 Fund Convention (approximately £52.6 million) and that some of these claims are pending in the Supreme Court of Venezuela which may render its judgements in the near future. The outcome of these proceedings is uncertain and there would be no possibility to appeal against the Supreme Court's judgements.

12 Osung N°3 Major Claims Fund**12.1 Summary information**

Background information for consideration of the *Osung N°3* Major Claims Fund is as follows:

Incident	<i>Osung N°3</i>
Date of incident	03/04/97
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£845 906
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£7 300 000
Compensation paid to 30/6/2000	£7 917 128
Miscellaneous paid to 30/6/2000	£1 304 419
Possible total expenditure 1/7/2000 - 1/3/2002	£387 000

12.2 Analysis

12.2.1 A total of £7.3 million has been levied as contributions to the *Osung N°3* Major Claims Fund, including an amount of £5.3 million payable by 1 March 2000. The maximum amount payable from the General Fund (£845 906) has been used. There was a deficit of £5.1 million on that Major Claims Fund as at 31 December 1999 (document 71FUND/A.23/8, Annex IV, Statement VI).

12.2.2 The 1971 Fund has paid compensation totalling £7.9 million. A claim for £313 000 is pending.

12.2.3 It is estimated that the deficit on the *Osung N°3* Major Claims Fund was approximately £984 000 as at 30 June 2000.

12.2.4 The Director takes the view that some £387 000, including fees and expenses, may be payable by the 1971 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).

12.2.5 With regard to the estimate of the monies (some £1 371 000) required in respect of the *Osung N°3* Major Claims Fund, reference is made to section 14 below.

13 Pontoon 300 Major Claims Fund**13.1 Summary information**

Background information for consideration of the *Pontoon 300* Major Claims Fund is as follows:

Incident	<i>Pontoon 300</i>
Date of incident	07/01/98
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£819 583
Estimated General Fund balance 30/6/2000	£7 823
Total previously levied to Major Claims Fund	£0
Compensation paid to 30/6/2000	£302 298
Miscellaneous paid to 30/6/2000	£194 704
Possible total expenditure 1/7/2000 - 1/3/2002	£3 543 000

13.2 Analysis

- 13.2.1 It is estimated that the total payments by the 1971 Fund in respect of the *Pontoon 300* will reach the maximum amount payable from the General Fund incident (£819 583) during 2000 (cf document 71FUND/A.23/18, paragraph 2.1.3).
- 13.2.2 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 to take as a basis a total figure for the established claims in the region of £3 million. It should be noted, however, that a claim for £36 million is pending in court.
- 13.2.3 The Director takes the view that some £3.5 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).
- 13.2.4 As a result, a *Pontoon 300* Major Claims Fund would have to be established. As set out in the Annex, it appears that an estimated £3.5 million would be required in respect of that Major Claims Fund. In view of the uncertainty as to the total established claims, the Director takes the view, however, that a decision to levy contributions to the *Pontoon 300* Major Claims Fund should be postponed until the situation becomes clearer.
- 13.2.5 With regard to the estimate of the monies (some £3 543 000) required in respect of the *Pontoon 300* Major Claims Fund, reference is made to section 14 below.

14 Director's proposals

14.1 Sums required

- 14.1.1 As indicated in paragraphs 2.2.5 and 13.2.4, the Director considers that there is no need to make proposals at this stage regarding the *Vistabella* and *Pontoon 300* Major Claims Funds.
- 14.1.2 The Director takes the view that there is no need to levy further contributions at this stage in respect of the *Braer*, *Sea Empress* and *Osung N°3* incidents (cf paragraphs 4.2.7, 9.2.5 and 12.2.5).
- 14.1.3 The Director considers that contributions of £25.8 million may be required in 2001 to balance the *Nissos Amorgos* Major Claims Fund (cf paragraphs 11.2.6 and 11.2.7).
- 14.1.4 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.

14.2 The working capital

- 14.2.1 The working capital has been fixed by the Assembly at £5 million.
- 14.2.2 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 paragraphs 14.1.1-14.1.3 over and above 1 million SDR.

14.3 Loans from balances on other Major Claims Funds

- 14.3.1 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.
- 14.3.2 However, in his report on the 1998 accounts the External Auditor 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). The External Auditor referred to this recommendation in his report on the 1999 accounts (document 71FUND/A.23/8, Annex II, paragraph 14).
- 14.3.3 In the document relating to the assessment of annual contributions presented to the Assembly's 22nd session, the Director expressed the view 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 took 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 was 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 considered that internal loans should not be taken between such Major Claims Funds nor between Major Claims Funds of the second group and Major Claims Funds of the first group. Furthermore, the Director considered that loans should not be taken from the General Fund to Major Claims Funds of either group.
- 14.3.4 At its 62nd session the Executive Committee, acting on behalf of the Assembly, noted the Director's position as regards inter-fund borrowing and endorsed his position (document 71FUND/EXC.62/14/A.22/23, paragraph 25.10).
- 14.3.5 It appears that, from those Major Claims Fund on which it is projected that there will be a surplus (*Aegean Sea, Keumdong N°5, Sea Prince, Yeo Myung, Yuil N°1* and *Nakhodka*) on 1 March 2002 (cf the Annex), an amount in the region of £39.9 million might be available for making loans to those Major Claims Funds (*Vistabella, Braer, Sea Empress, Nissos Amorgos, Osung N°3* and *Pontoon 300*) on which it is estimated that money totalling some £34.1 million will be needed by 1 March 2002.
- 14.3.6 All incidents dealt with in this document occurred before the end of the transitional period (ie 15 May 1998). The Director considers, therefore, that it would be appropriate to make internal loans between the Major Claims Funds relating to these incidents. As indicated in paragraph 14.3.5, there would be sufficient surplus funds in the Major Claims Funds referred to there. The Director proposes therefore that the sums which may be required to balance the *Vistabella, Braer, Sea Empress, Osung N°3* and *Pontoon 300* incidents should be made available by means of internal loans from those Major Claims Funds which have a surplus.
- 14.3.7 The same could apply to the *Nissos Amorgos* Major Claims Fund, for which there is an estimated deficit of £25.8 million. However, in view of the great uncertainty as to the total amount of the established claims, the Director proposes that internal loans should not be relied upon in this instance, and that a levy should be made to that Major Claims Fund.

14.4 Director's proposal

On the basis of these considerations, the Director proposes that a levy in the form of 2000 annual contributions should be made only to the *Nissos Amorgos* Major Claims Fund for £25 million.

14.5 Timing of levy

14.5.1 Internal Regulation 3.7, as amended by the Executive Committee at its 62nd session (document 71FUND/EXC.62/14/A.22/23, paragraph 14.2), provides that unless the Assembly decides otherwise, payment of annual contributions shall be due on 1 March of the year following that in which the Assembly decides on the levy of annual contributions.

14.5.2 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).

14.5.3 The Director is of the view that the entire proposed levy to the *Nissos Amorgos* Major Claims Fund (£25 million) should be deferred and that the Director should be authorised to decide whether to invoice all or part of the deferred levy.

5 Action to be taken by the Assembly

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

- (a) to take note of the information contained in this document;
- (b) to decide in respect of the assessment for 2000 contributions to the *Nissos Amorgos* Major Claims Fund (paragraphs 11.2.6 and 14.4);
- (c) to decide on the date of payment of 2000 contributions to the *Nissos Amorgos* Major Claims Fund (paragraph 14.5.3);
- (d) to note the Director's view that there is no need to make proposals at this stage regarding the *Vistabella* and *Pontoon 300* Major Claims Funds (paragraphs 2.2.5, 13.2.4 and 14.1.1);
- (e) to take note of the Director's view that there is no need to levy further contributions at this stage in respect of the *Braer*, *Sea Empress* and *Osung N°3* incidents (paragraphs 4.2.7, 9.2.5, 12.2.5 and 14.1.2); and
- (f) to note the Director's view of the situation in respect of the *Aegean Sea*, *Keumdong N°5*, *Sea Prince*, *Yeo Myung*, *Yuil N°1* and *Nakhodka* incidents (paragraphs 3.2.11, 5.2.4, 6.2.5, 7.2.4, 8.2.5 and 10.2.5).

