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ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

Note by the Director

Summary:	The need for 2001 contributions to Major Claims Funds is examined.
Action to be taken:	Decide on the levy of 2001 contributions to Major Claims Funds.

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 assessment of contributions to the General Fund, in accordance with Article 12.2(a) of the 1971 Fund Convention, has been incorporated in the draft budget and is dealt with in a separate document (71FUND/A.24/20). 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.24/8, Annex IV, Schedule II) and to the various documents relating to incidents submitted to the 24th 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 2001^{<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>
Place of incident	Caribbean
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 30/6/2001	£0
Total previously levied to Major Claims Fund	£0
Compensation paid to 30/6/2001	£1 002 512
Miscellaneous paid to 30/6/2001	£196 928
Possible total compensation 1/7/01 - 1/3/03	0
Possible total miscellaneous 1/7/01 - 1/3/03	£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)).
- 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 2001 and 2002.

<1> In this document the conversion of currencies has been made on the basis of the rates of exchange applicable on 29 June 2001, unless indicated otherwise.

- 2.2.3 It is estimated that there will be a deficit on the *Vistabella* Major Claims Fund of approximately £462 000 by 1 March 2003, after deductions for fees and other expenses incurred during 2001 and 2002, 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.

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>
Place of incident	Spain
Date of incident	03/12/92
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit) Pts9 513 473 400 – Pts1 121 219 450 = Pts8 392 253 950	£30 361 285
Maximum payable from General Fund (1 million SDR)	£891 471
Estimated General Fund balance 30/6/2001	£0
Total previously levied to Major Claims Fund	£35 000 000
Compensation paid to 30/6/2001	£5 178 767
Miscellaneous paid to 30/6/2001	£3 181 095
Possible total compensation/indemnification 1/7/01 – 1/3/03	£26 188 973
Possible total miscellaneous 1/7/01 – 1/3/03	£1 250 000

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 £43.2 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.1).
- 3.2.2 Claims have been submitted in the Criminal Court in La Coruña for a total amount of some £82 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 £88 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 The 1971 Fund has paid approximately £5.2 million in compensation. The total amount of compensation payable under the 1971 Fund Convention is approximately £30.4 million.
- 3.2.6 The Executive Committee has decided that the 1971 Fund's payments should be limited for the time being to 40% of the established claims.

- 3.2.7 At its 5th session the Administrative Council authorised the Director to conclude an agreement with the Spanish Government, the shipowner and his insurer on a global settlement containing certain elements. Under the proposed settlement the 1971 Fund would pay a total of Pts6 508 433 644 (£23.5 million) to claimants. The Fund would in addition pay Pts278 197 307 (£1 006 000) to the shipowner/his insurer in indemnification under Article 5.1 of the 1971 Fund Convention. The Fund would also reimburse the insurer £900 000 relating to his share of joint costs. Discussions concerning the proposed global settlement are being pursued.
- 3.2.8 It is estimated that the balance on the *Aegean Sea* Major Claims Fund was approximately £44.4 million as at 30 June 2001.
- 3.2.9 The Director takes the view that some £27.4 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2003 (the date when any 2002 contributions would be receivable).
- 3.2.10 The Director considers that there is no need to make a decision 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>
Place of incident	United Kingdom
Date of incident	05/01/93
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit)	£45 725 440
Maximum payable from General Fund (1 million SDR)	£904 707
Estimated General Fund balance 30/6/2001	£0
Total previously levied to Major Claims Fund	£49 000 000
Compensation paid to 30/6/2001	£42 926 938
Miscellaneous paid to 30/6/2001	£4 991 417
Possible total compensation/indemnification 1/7/01 - 1/3/03	£4 010 282
Possible total miscellaneous 1/7/01 - 1/3/03	£200 000

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 £4.5 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.1).
- 4.2.2 The total amount of the admissible claims has not yet been established. The 1971 Fund has paid approximately £42.9 million in compensation (including the amounts referred to in paragraph 4.2.4 below). Further claims have been agreed at £6.2 million but have not yet been paid in full, and as regards these claims there remains £3.7 million unpaid. In addition, claims totalling £4.3 million are pending before the Court of Session in Edinburgh, but it is expected that claims totalling at least £2.6 million will not be pursued.
- 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 £2.3 million were made in respect of these claims during 2000 and 2001.

- 4.2.5 So far the total amount paid in compensation is £48 208 644, out of which the 1971 Fund has paid £42 926 938 and the shipowner's insurer £5 281 706. There is £2 400 636 available for further compensation. The 1971 Fund will also pay indemnification to the shipowner/his insurer for £1 211 780 and reimburse the insurer an amount of £397 866 representing an overpayment by the insurer in relation to the limitation amount.
- 4.2.6 It is estimated that the balance on the *Braer* Major Claims Fund was approximately £4.3 million as at 30 June 2001.
- 4.2.7 The Director takes the view that some £4.3 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2003 (the date when any 2002 contributions would be receivable).
- 4.2.8 The Director considers that a decision regarding 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.

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>
Place of incident	Republic of Korea
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 30/6/2001	£0
Total previously levied to Major Claims Fund	£15 000 000
Compensation paid to 30/6/2001	£10 470 922
Miscellaneous paid to 30/6/2001	£1 987 145
Possible total compensation 1/7/01 - 1/3/03	£1 500 000
Possible total miscellaneous 1/7/01 - 1/3/03	£35 000

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 £6.7 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.1).
- 5.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £10.5 million. Claims for a total of some £8.7 million which had been pursued in the Appellate Court were accepted by the Court for a total of £112 227, including interest. Although the 1971 Fund has paid this amount, some claimants have appealed to the Supreme Court. The amount claimed in the Supreme Court is £1.5 million. In view of the decision by some claimants to pursue their appeal, the 1971 Fund has been unable to retrieve the deposit of £795 000 paid in respect of the amount originally awarded by the District Court.
- 5.2.3 It is estimated that the balance on the *Keumdong N°5 Major Claims Fund* was approximately £6.8 million as at 30 June 2001, plus the amount of £795 000 deposited with the Court.

- 5.2.4 The Director considers that there is no need to make a decision 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>
Place of incident	Republic of Korea
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 30/6/2001	£0
Total previously levied to Major Claims Fund	£26 000 000
Compensation/indemnification paid to 30/6/2001	£21 026 917
Miscellaneous paid to 30/6/2001	£1 305 933
Possible total compensation 1/7/01 - 1/3/03	£3 000 000
Possible total miscellaneous 1/7/01 - 1/3/03	£200 000

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 £20.3 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.3).
- 6.2.2 The aggregate amount of compensation paid so far by the 1971 Fund is approximately £16.9 million. The 1971 Fund has also paid indemnification of the shipowner at £4.1 million. The 1971 Fund faces further claims for compensation for some £3 million.
- 6.2.3 It is estimated that the balance on the *Sea Prince* Major Claims Fund was approximately £10.1 million as at 30 June 2001.
- 6.2.4 The Director takes the view that some £3.2 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2003 (the date when any 2002 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 decision in respect of the surplus on the *Sea Prince* Major Claims Fund until the 1971 Fund's payments have been completed. He also considers that any future decision 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>}.

7 Yeo Myung Major Claims Fund

7.1 Summary information

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

<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 is 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).

Incident	<i>Yeo Myung</i>
Place of incident	Republic of Korea
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 30/6/2001	£0
Total previously levied to Major Claims Fund	£3 000 000
Compensation paid to 30/6/2001	£1 035 020
Miscellaneous paid to 30/6/2001	£258 361
Possible total compensation 1/7/01 - 1/3/03	£182 000
Possible total miscellaneous 1/7/01 - 1/3/03	£10 000

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 £3.3 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.3).
- 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 £182 000.
- 7.2.3 It is estimated that the balance on the *Yeo Myung* Major Claims Fund was approximately £3.4 million as at 30 June 2001.
- 7.2.4 The Director takes the view that some £192 000, including fees and expenses, may be payable by 1 March 2003.
- 7.2.5 It is expected that there will be a surplus on this Major Claims Fund of approximately £3.2 million when all claims and expenses regarding this incident have been paid. The Director considers it premature to make a decision in respect of the surplus on the *Yeo Myung* Major Claims Fund until the 1971 Fund's payments have been completed. He also considers that any future decision 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>
Place of incident	Republic of Korea
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 30/6/2001	£0
Total previously levied to Major Claims Fund	£18 000 000
Compensation paid to 30/6/2001	£14 487 167
Miscellaneous paid to 30/6/2001	£983 671
Possible total compensation 1/7/01 - 1/3/03	£500 000
Possible total miscellaneous 1/7/01 - 1/3/03	£10 000

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 £5.4 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.3).
- 8.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £14.5 million. Claims totalling £7.9 million, which have been assessed by the 1971 Fund's experts at £250 000, are pending.
- 8.2.3 It is estimated that the balance on the *Yuil N°1* Major Claims Fund was approximately £5.4 million as at 30 June 2001.
- 8.2.4 The Director takes the view that some £510 000, including fees and expenses, may be payable by the 1971 Fund by 1 March 2003 (the date when any 2002 contributions would be receivable).
- 8.2.5 The Director considers it premature to make a decision in respect of the surplus on the *Yuil N°1* Major Claims Fund until the 1971 Fund's payments have been completed. He also considers that any future decision 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 above).

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>
Place of incident	United Kingdom
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 30/6/2001	£0
Total previously levied to Major Claims Fund	£30 000 000
Compensation paid to 30/6/2001	£25 422 034
Miscellaneous paid to 30/6/2001	£3 522 366
Possible total compensation 1/7/01 - 1/3/03	£7 200 000
Possible total miscellaneous 1/7/01 - 1/3/03	£800 000

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 £7.3 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.2).
- 9.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £25.4 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 £7.2 million.
- 9.2.3 It is estimated that the balance on the *Sea Empress* Major Claims Fund was approximately £6.3 million as at 30 June 2001.
- 9.2.4 The Director takes the view that some £8 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2003 (the date when any 2002 contributions would be receivable).

- 9.2.5 With regard to the estimate of the monies (some £1.7 million) 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>
Place of incident	Japan
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 30/6/2001	£0
Total previously levied to Major Claims Fund	£53 500 000
Compensation paid to 30/6/2001	£43 346 110
Miscellaneous paid to 30/6/2001	£6 527 873
Possible total expenditure 1/7/01 - 1/3/03	£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 £5.4 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.2).
- 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. The total amount of the claims approved exceeds by far the amount available under the 1971 Fund Convention (approximately £50.3 million).
- 10.2.3 It is estimated that the balance on the *Nakhodka* Major Claims Fund was approximately £5.6 million as at 30 June 2001.
- 10.2.4 The maximum amount payable by the 1971 Fund in compensation is 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 31 December 1999, the 1971 Fund limit would be ¥8 177 184 311. The 1971 Fund had at that date 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 1 January 2000, all compensation payments have been made by the 1992 Fund. However, if the conversion were to be made at the rate of exchange at 29 June 2001, the Fund's limit would be ¥9 065 178 552, and the 1971 Fund would have to pay an additional ¥365 million (£2.1 million).
- 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 and that for the time being all compensation payments should be made by the 1992 Fund. He therefore considers that there is

<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.

no need to make a decision at this stage regarding annual contributions to the *Nakhodka* Major Claims Fund.

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>
Place of incident	Venezuela
Date of incident	28/02/97
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit)	£49 787 949
Maximum payable from General Fund (1 million SDR)	£849 762
Estimated General Fund balance 30/6/2001	£0
Total previously levied to Major Claims Fund	£2 000 000
Compensation paid to 30/6/2001	£1 699 495
Miscellaneous paid to 30/6/2001	£944 245
Possible total compensation/indemnification 1/7/01 - 1/3/03	£20 000 000
Possible total miscellaneous 1/7/01 - 1/3/03	£1 400 000

11.2 Analysis

- 11.2.1 A total of £2 million has been levied as contributions to the *Nissos Amorgos* Major Claims Fund. There was a surplus of £2.4 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.4). The Director did not use the authorisation to levy a further £25 million for payment during the second half of 2001.
- 11.2.2 The total payments by the 1971 Fund in respect of the *Nissos Amorgos* reached the maximum amount payable from the General Fund incident (£849 762) during 2001.
- 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 £20 million.
- 11.2.4 It is estimated that the balance on the *Nissos Amorgos* Major Claims Fund was approximately £624 000 as at 30 June 2001.
- 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 £21.4 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2003 (the date when any 2002 contributions would be receivable).
- 11.2.6 As set out in the Annex, it appears that on that basis an estimated £20.8 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 exceeds 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>
Place of incident	Republic of Korea
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 30/6/2001	£0
Total previously levied to Major Claims Fund	£7 300 000
Compensation paid to 30/6/01	£8 273 591
Miscellaneous paid to 30/6/01	£1 472 547
Possible total expenditure 1/7/01 - 1/3/03	0

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. The maximum amount payable from the General Fund (£845 906) has been used. There was a deficit of £1.1 million on that Major Claims Fund as at 31 December 2000 (document 71FUND/A.24/8, Annex IV, Statement III.4).

12.2.2 The 1971 Fund has paid compensation totalling £8.3 million.

12.2.3 All claims have been settled and paid and all expenses have also been paid.

12.2.4 It is estimated that the deficit on the *Osung N°3* Major Claims Fund was approximately £1.5 million as at 30 June 2001.

12.2.5 With regard to the estimate of the monies (some £1.5 million) 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>
Place of incident	United Arab Emirates
Date of incident	07/01/98
Maximum amount of compensation payable by 1971 Fund	£53 087 949
Maximum payable from General Fund (1 million SDR)	£819 583
Estimated General Fund balance 30/6/2001	£0
Total previously levied to Major Claims Fund	£0
Compensation paid to 30/6/2001	£807 038
Miscellaneous paid to 30/6/2001	£260 024
Possible total compensation 1/7/01 - 1/3/03	£3 000 000
Possible total miscellaneous 1/7/01 - 1/3/03	£500 000

13.2 Analysis

- 13.2.1 The total payments by the 1971 Fund in respect of the *Pontoon 300* reached the maximum amount payable from the General Fund incident (£819 583) during 2000 (cf document 71FUND/A.24/20, paragraph 2.1.3). No levy has been made to the *Pontoon 300* Major Claims Fund.
- 13.2.2 Claims have been presented for a total amount of some £36 million. However, in the 1971 Fund's view, a claim for a significant amount has become time-barred and that in any event a major part of that claim is not admissible.
- 13.2.3 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 £3 million.
- 13.2.4 The Director takes the view that some £3.5 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2003 (the date when any 2002 contributions would be receivable).
- 13.2.5 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 £3.8 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.

14 Director's proposals

14.1 Sums required

- 14.1.1 As indicated in paragraphs 3.2.10, 5.2.4, 6.2.5, 7.2.5, 8.2.5 and 13.2.5, the Director considers that there is no need to make decisions at this stage regarding the *Aegean Sea*, *Keumdong N° 5*, *Sea Prince*, *Yeo Myung*, *Yuil N° 1* and *Pontoon 300* Major Claims Funds.
- 14.1.2 The Director takes the view that decisions regarding annual contributions to the *Vistabella* and *Braer* Major Claim Funds should be postponed until the total cost of the incidents to the 1971 Fund can be established (cf paragraph 2.2.5 and 4.2.8).
- 14.1.3 The Director considers that contributions of £1.7 million may be required in 2001 to balance the *Sea Empress* Major Claims Fund, £20.8 million to balance the *Nissos Amorgos* Major Claims Fund and £1.5 million to balance the *Osung N° 3* Major Claims Fund (cf paragraphs 9.2.5, 11.2.6 and 12.2.4).
- 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 paragraph 14.3 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 Funds 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 2003 (cf the Annex), an amount in the region of £42.8 million might be available for making loans to those Major Claims Funds (*Vistabella, Sea Empress, Nissos Amorgos, Osung N°3* and *Pontoon 300*) on which it is estimated that money totalling some £28.2 million will be needed by 1 March 2003.
- 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, 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 £20.8 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 2001 annual contributions should be made only to the *Nissos Amorgos* Major Claims Fund for £21 million.

14.5 Timing of levy

14.5.1 Internal Regulation 3.7, 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 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 (£21 million) should be deferred and that the Director should be authorised to decide whether to invoice all or part of the deferred levy.

15 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 2001 contributions to the *Nissos Amorgos* Major Claims Fund (paragraphs 11.2.6 and 14.4) and on the date of payment of these contributions (paragraph 14.5.3);
- (c) to decide on the Director's proposal that a decision on the *Vistabella* and *Braer* Major Claims Funds should be postponed until the total cost of the incidents to the 1971 Fund can be established (paragraphs 2.2.5 and 4.2.8);
- (d) to consider the Director's proposal that the deficits on the *Vistabella*, *Sea Empress*, *Osung N° 3* and *Pontoon 300* Major Claims Funds should be covered by means of internal loans from those Major Claims Funds which have a surplus (paragraphs 2.2.5, 9.2.5, 12.2.4, 13.2.5, 14.1.1 and 14.3.6);
- (e) to consider the Director's view that there is no need for the Assembly to make a decision at this stage regarding the *Aegean Sea*, *Keumdong N° 5*, *Sea Prince*, *Yeo Myung* and *Yuil N° 1* Major Claims Funds (paragraphs 3.2.10, 5.2.4, 6.2.5, 7.2.5, and 8.2.5); and
- (f) to note the Director's view of the situation in respect of the *Nakhodka* incident (paragraph 10.2.5).

* * *

ANNEX

Major Claims Fund expenditure

(Figures in £ Sterling)

[illegible]