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**RESTRICTED**

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## ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

**Note by the Director**

<b><i>Summary:</i></b>	The need for 2003 contributions to Major Claims Funds is examined. The proposals by the Director have been made with the view to expediting the winding up of the 1971 Fund. It is proposed to levy contributions to five Major Claims Funds for a total of £18.1 million and to reimburse the surpluses on five other Major Claims Funds for a total of £51.4 million.
<b><i>Action to be taken:</i></b>	Decide on the levy of 2003 contributions to five Major Claims Funds and the reimbursement of the surpluses on five other 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 Since the 1971 Fund has ceased to be in force it is not possible to levy further contributions to the General Fund, the balance of which is dealt with in the 2004 budget contained in a separate document (document 71FUND/AC.12/19). 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/AC.12/5, Annex IV, Schedule II) and to the various documents relating to incidents submitted to the 12th session of the Administrative Council.
- 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 2003. 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.
- 1.8 In the Director's view it is important that considerable progress be made towards the winding-up of the 1971 Fund. The proposals set out in this document should be regarded from this perspective.
- 1.9 The Director proposes that the surpluses on the *Aegean Sea*, *Sea Prince*, *Yeo Myung*, *Yuil N° 1* and *Nakhokda* Major Claims Funds should be distributed to contributors for a total of £51.4 million, which would make it possible to close these Major Claims Funds. It is further proposed to levy £1.7 million to the *Osung N° 3* Major Claims Fund so as to eliminate the deficit on that Fund which could then also be closed. There will be a fairly modest deficit on the *Braer* Major Claims Fund, and it is proposed that the deficit should be covered from the General Fund which would make it possible to close also that Major Claims Fund.
- 1.10 There will also be a considerable surplus in the region of £6.8 million on the *Keumdong N° 5* Major Claims Fund. However, some claims against the 1971 Fund arising from this incident are pending in the Korean Supreme Court and the Director considers therefore that it is premature to take a decision at this stage on the distribution of this surplus.
- 1.11 The remaining four Major Claims Funds (*Vistabella*, *Sea Empress*, *Nissos Amorgos* and *Pontoon 300*) cannot be closed since there are outstanding claims and other outstanding issues in respect of these incidents. The Director proposes to levy the amounts required (£16.4 million) to balance these four Major Claims Funds in the light of the developments which are expected to take place up to 1 March 2005 (the date when any 2004 contributions would be receivable).

## **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 30/6/2003	£0
Total previously levied to Major Claims Fund	£0
Compensation paid by 1971 Fund to 30/6/2003	£1 002 512
Miscellaneous paid by 1971 Fund to 30/6/2003	£243 246
Possible total compensation payable 1/7/03 - 1/3/05	0
Possible total miscellaneous payable 1/7/03 - 1/3/05	£25 000

## 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 2003 and 2004.
- 2.2.3 It is estimated that there will be a deficit on the *Vistabella* Major Claims Fund of approximately £550 000, after payments of fees and other expenses as well as interest on the deficit up to 1 March 2004, 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. The competent French Court of first instance has ordered the insurer to pay to the 1971 Fund FFfr8 289 858 (£879 460) plus interest. The insurer has appealed against the judgement. 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 governing bodies have previously decided that levy of 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. However, in the interest of making progress towards winding up the 1971 Fund, the Director considers that loans should no longer be taken from the General Fund. For this reason and in spite of the uncertainties of the outcome of the legal proceedings, the Director proposes that a levy of £600 000 should be made to cover the deficit on that Major Claims Fund and further costs resulting from the legal proceedings (cf section 14.3).

## 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	£37 651 869
Maximum payable from General Fund (1 million SDR)	£891 471
Estimated General Fund balance 30/6/2003	£0
Total previously levied to Major Claims Fund	£35 000 000
Compensation/indemnification paid by 1971 Fund to 30/6/2003	£34 154 786
Miscellaneous paid by 1971 Fund to 30/6/2003	£3 275 394
Possible total compensation/indemnification payable 1/7/03–1/3/05	£0
Possible total miscellaneous payable 1/7/03 – 1/3/05	£1 200 000

### 3.2 Analysis

- 3.2.1 The maximum amount payable from the General Fund (£891 471) has been used. A total of £35 million has been levied as contributions to the *Aegean Sea* Major Claims Fund. There was a surplus of £21.3 million on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.1).
- 3.2.2 A global agreement between the Spanish Government, the 1971 Fund, the owner of the *Aegean Sea* and his insurer was signed on 30 October 2002. Pursuant to that agreement the 1971 Fund paid the Spanish Government €38 386 172 corresponding to Pts 6 386 921 613 (£24.4 million). The 1971 Fund also paid €1 008 308 corresponding to Pts 167 768 311 (£634 253) to claimants that had not been included in the agreement and €927 362 corresponding to Pts 986 229 921 (£3.9 million) to the shipowner's insurer in respect of compensation and indemnification. The Fund has yet to reimburse the insurer some £1.2 million in respect of the Fund's share of the joint costs incurred in running the Claims Handling Office in La Coruña.
- 3.2.3 The balance on the *Aegean Sea* Major Claims Fund was £18.7 million as at 30 June 2003, out of which £90 645 represents outstanding contributions. After the payment of costs referred to in paragraph 3.2.2 the final surplus (including accrued interest) up to 1 March 2004 would be approximately £17.8 million. As regards the distribution of this surplus to the contributors reference is made to section 14.4.

## 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 30/6/2003	£0
Total previously levied to Major Claims Fund	£49 000 000
Compensation paid by 1971 Fund to 30/6/2003	£45 725 440
Miscellaneous paid by 1971 Fund to 30/6/2003	£5 507 116
Possible total compensation/indemnification payable 1/7/03 - 1/3/05	£0
Possible total miscellaneous 1/7/03 – 1/3/05	£20 000

## 4.2 Analysis

- 4.2.1 The maximum amount payable from the General Fund (£904 707) has been used. A total of £49 million has been levied as contributions to the *Braer* Major Claims Fund. There was a deficit of £54 000 on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.1).
- 4.2.2 The 1971 Fund has paid £45.7 million in compensation, which corresponds to the maximum amount payable by the Fund. Only one claim, for £1.5 million, is pending before the Court of Session in Edinburgh.
- 4.2.3 As a result of an undertaking by the shipowner's insurer to make funds available to cover any payments over and above the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR or £50 609 280), all established claims have been paid in full.
- 4.2.4 The total amount paid in compensation by the 1971 Fund is £45 725 440. There will be no further compensation payments by the 1971 Fund.
- 4.2.5 It is estimated that the deficit on the *Braer* Major Claims Fund was approximately £58 000 as at 30 June 2003.
- 4.2.6 The Director takes the view that some £20 000 in fees and expenses may be payable by the 1971 Fund by 1 March 2005.
- 4.2.7 It appears that there will be a deficit of around £80 000 on this Major Claims Fund. There are also outstanding contributions totalling £66 164. In view of the relatively modest deficit amount, estimated at some £150 000, the Director proposes that no further levy should be made to the *Braer* Major Claims Fund and that the deficit on the Major Claims Fund should be covered from the General Fund. He also proposes that any further payments in respect of this incident should be made from the General Fund.

## 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 30/6/2003	£0
Total previously levied to Major Claims Fund	£15 000 000
Compensation paid by 1971 Fund to 30/6/2003	£10 904 168
Miscellaneous paid by 1971 Fund to 30/6/2003	£2 005 670
Possible total compensation payable 1/7/03 - 1/3/05	£150 000
Possible total miscellaneous payable 1/7/03 - 1/3/05	£50 000

### 5.2 Analysis

- 5.2.1 The maximum amount payable from the General Fund (£933 146) has been used. A total of £15 million has been levied as contributions to the *Keumdong N°5* Major Claims Fund. There

was a surplus of £6.8 million on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.2).

- 5.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £10.9 million. Claims totalling £1.4 million are pending in the Korean Supreme Court. These claims are partly covered by a deposit of £795 000 made with the Court.
- 5.2.3 It is estimated that the balance on the *Keumdong N°5* Major Claims Fund was approximately £6.9 million as at 30 June 2003. There is in addition an amount of £795 000 deposited with the Supreme Court. There will in any event be a significant surplus in the region of £6.8 million on this Major Claims Fund. This figure includes outstanding contributions totalling £19 460.
- 5.2.4 Since litigation is pending before the Supreme Court, the Director considers that it is premature to make a decision at this stage regarding the distribution of the surplus on the *Keumdong N°5* Major Claims Fund to the contributors. If the Supreme Court's decision is rendered before the Assembly's October 2003 session, the Director will issue an addendum to this document with a proposal for such distribution.

## 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 30/6/2003	£0
Total previously levied to Major Claims Fund	£26 000 000
Compensation/indemnification paid by 1971 Fund to 30/6/2003	£21 088 059
Miscellaneous paid by 1971 Fund to 30/6/2003	£1 630 672
Possible total compensation payable 1/7/03 - 1/3/05	£0
Possible total miscellaneous payable 1/7/03 - 1/3/05	£0

### 6.2 Analysis

- 6.2.1 The maximum amount payable from the General Fund (£975 724) has been used. A total of £26 million has been levied as contributions to the *Sea Prince* Major Claims Fund. There was a surplus of £9.8 million on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.3).
- 6.2.2 The aggregate amount of compensation paid by the 1971 Fund is approximately £17 million. The 1971 Fund has also paid indemnification of the shipowner at £4.1 million. Following the settlement of all outstanding claims in 2003 the 1971 Fund retrieved an amount of £1 million that had been deposited with the Court in respect of these claims.
- 6.2.3 The 1971 Fund will not be required to make any further payments in respect of compensation, fees and expenses.
- 6.2.4 The balance on the *Sea Prince* Major Claims Fund was approximately £11 million as at 30 June 2003, out of which £47 170 represents outstanding contributions. The surplus is estimated at £11.1 million at 1 March 2004. As regards the distribution of the surplus to the contributors reference is made to section 14.4.

## 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>
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 30/6/2003	£0
Total previously levied to Major Claims Fund	£3 000 000
Compensation paid by 1971 Fund to 30/6/2003	£1 035 020
Miscellaneous paid by 1971 Fund to 30/6/2003	£258 361
Possible total indemnification payable 1/7/03 - 1/3/05	£11 000
Possible total miscellaneous payable 1/7/03 - 1/3/05	£9 000

### 7.2 Analysis

- 7.2.1 The maximum amount payable from the General Fund (£963 298) has been used. A total of £3 million has been levied as contributions to the *Yeo Myung* Major Claims Fund. There was a surplus of £3.6 million on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.3).
- 7.2.2 The aggregate amount of the claims paid by the 1971 Fund is approximately £1.0 million. Outstanding compensation claims totalling £170 000 are time barred and the 1971 Fund will not be required to make any further compensation payments.
- 7.2.3 It is estimated that the balance on the *Yeo Myung* Major Claims Fund was approximately £3.7 million as at 30 June 2003.
- 7.2.4 The Director takes the view that some £20 000 in indemnification, fees and expenses may be payable by 1 March 2004.
- 7.2.5 It is expected that when all outstanding payments regarding this incident have been made, there will be a surplus on this Major Claims Fund of approximately £3.7 million at 1 March 2004, out of which £6 104 represents outstanding contributions. As regards the distribution of this surplus to the contributors reference is made to section 14.4.

## 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 30/6/2003	£0
Total previously levied to Major Claims Fund	£18 000 000
Compensation paid by 1971 Fund to 30/6/2003	£15 216 584
Miscellaneous paid by 1971 Fund to 30/6/2003	£1 046 506
Possible total indemnification payable 1/7/03 - 1/3/05	£32 000
Possible total miscellaneous payable 1/7/03 – 1/3/05	£10 000

## 8.2 Analysis

- 8.2.1 The maximum amount payable from the General Fund (£952 517) has been used. A total of £18 million has been levied as contributions to the *Yuil N°1* Major Claims Fund. There was a surplus of £5.6 million on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.3).
- 8.2.2 The aggregate amount of the claims paid by the 1971 Fund is approximately £15.2 million. Claims totalling £494 000, which were rejected by the 1971 Fund, are pending in the courts, but it is expected that these claims will be withdrawn. The 1971 Fund will therefore not be required to make any further compensation payments but will pay indemnification of the shipowner for £32 000.
- 8.2.3 It is estimated that the balance on the *Yuil N°1* Major Claims Fund was approximately £5.1 million as at 30 June 2003.
- 8.2.4 The Director takes the view that some £42 000 in indemnification, fees and expenses may be payable by the 1971 Fund by 1 March 2005.
- 8.2.5 It is estimated that there will be a surplus of about £5.1 million on this Major Claims Fund at 1 March 2004 when all claims and expenses regarding this incident are expected to have been paid, out of which £36 341 represents outstanding contributions. As regards the distribution of the surplus to the contributors reference is made to section 14.4.

## 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 30/6/2003	£0
Total previously levied to Major Claims Fund	£30 000 000
Compensation paid by 1971 Fund to 30/6/2003	£30 918 323
Miscellaneous paid by 1971 Fund to 30/6/2003	£5 041 209
Possible total compensation payable 1/7/03 - 1/3/05	£325 000
Possible total miscellaneous payable 1/7/05 – 1/3/05	£400 000



## 9.2 Analysis

- 9.2.1 The maximum amount payable from the General Fund (£952 381) has been used. A total of £30 million has been levied as contributions to the *Sea Empress* Major Claims Fund. There was a surplus of £86 000 on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.2).
- 9.2.2 The aggregate amount of compensation paid by the 1971 Fund so far is approximately £31 million. It is estimated that further payments totalling £325 000 will be made in 2003 after which the 1971 Fund will not be required to make any further compensation payments.
- 9.2.3 It is estimated that there was a deficit on the *Sea Empress* Major Claims Fund of approximately £423 000 as at 30 June 2003. There are also outstanding contributions totalling £14 688.
- 9.2.4 The 1971 Fund has taken recourse action against the Milford Haven Port Authority. This action will result in further significant legal costs. In the event that the Fund's action were to be settled out of court these costs are expected to be approximately £400 000. However, if the case were to go to trial the total costs in the Court of first instance would be in the region of £2.3 million. Should the 1971 Fund lose in the court proceedings it may be ordered to reimburse the Port Authority a significant amount in litigation costs.
- 9.2.5 The Director takes the view that some £725 000, including fees and expenses, may be payable by the 1971 Fund by 1 March 2005 (the date when any 2004 contributions would be receivable).
- 9.2.6 With regard to the estimate of the amount (some £1.3 million) required in respect of the *Sea Empress* Major Claims Fund, reference is made to section 14.3.

## 10 Nakhodka Major Claims Fund

### 10.1 Summary information

- 10.1.1 A global settlement was signed on 28 October 2002 between the 1971 Fund and the 1992 Fund, on the one hand, and the owner of the *Nakhodka* and his insurer, on the other hand.
- 10.1.2 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)	£54 580 062
Maximum payable from General Fund (1 million SDR)	£845 655
Estimated General Fund balance 30/6/2003	£0
Total previously levied to Major Claims Fund	£53 500 000
Compensation paid by 1971 Fund to 30/6/2003	£49 629 799
Miscellaneous paid by 1971 Fund to 30/6/2003	£6 541 968
Possible total expenditure payable 1/7/03 - 1/3/05	£0

### 10.2 Analysis

- 10.2.1 A total of £53.5 million has been levied as contributions to the *Nakhodka* Major Claims Fund. There was a surplus of £14.4 million on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.2).
- 10.2.2 As a result of the global settlement the 1971 Fund and the 1992 Fund recovered ¥5 229 812 901 (£27 286 787) in respect of compensation payments made by the Funds and £3 617 526 in respect

of the insurer's share of the joint costs. The governing bodies of the Funds decided, at their October 2002 sessions, that the financial benefits of the global settlement should be distributed in proportion to the respective liabilities of the two Funds, resulting in the 1971 Fund receiving 43.268% and the 1992 Fund 56.732% of these benefits. It was also decided that all joint costs borne by the Funds should be apportioned between the two Funds on the same basis (documents 71FUND/AC.9/20, paragraph 15.6.23 and 92FUND/EXC.18/14, paragraph 3.3.23). The 1971 Fund's share of the monies received from the insurer was £14 632 127 (i.e. £11 806 447 in respect of compensation and £2 825 680 in respect of miscellaneous costs).

- 10.2.3 The balance on the *Nakhodka* Major Claims Fund was approximately £14.6 million as at 30 June 2003, out of which £116 290 represents outstanding contributions.
- 10.2.4 All known claims arising out of this incident have been settled and paid. Any further claims would be time-barred. All expenses have been paid.
- 10.2.5 There will be a surplus on the 1971 Fund *Nakhodka* Major Claims Fund of £14.9 million at 1 March 2004. As regards the distribution of this surplus to the contributors, reference is made to section 14.4.

## 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)	£47 522 100
Maximum payable from General Fund (1 million SDR)	£849 762
Estimated General Fund balance 30/6/2003	£0
Total previously levied to Major Claims Fund	£2 000 000
Compensation paid by 1971 Fund to 30/6/2003	£2 561 449
Miscellaneous paid by 1971 Fund to 30/6/2003	£1 112 604
Possible total compensation/indemnification payable 1/7/03–1/3/05	£10 600 000
Possible total miscellaneous payable 1/7/03 – 1/3/05	£250 000

### 11.2 Analysis

- 11.2.1 The maximum amount payable from the General Fund (£849 762) has been used. A total of £2 million has been levied as contributions to the *Nissos Amorgos* Major Claims Fund. There was a deficit of £330 000 on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.4). The Director did not use the authorisation to levy a further £21 million for payment during the second half of 2003.
- 11.2.2 It is not possible to estimate at this stage the total amount of the established claims. The settled claims total some £15.9 million.
- 11.2.3 It should be noted that the total amount of the outstanding claims in court by far exceeds the maximum amount payable under the 1971 Fund Convention (approximately £47.5 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.

- 11.2.4 It is estimated that the deficit on the *Nissos Amorgos* Major Claims Fund was approximately £354 000 as at 30 June 2003. There are also outstanding contributions totalling £2 256. As a result of the decision by the Administrative Council in July 2003 to increase the level of payments to 65% of the loss or damage suffered, an amount of £3.8 million is payable. If the level of payments in respect of the settled claims were increased to 100%, the 1971 Fund would pay a further £5.6 million. The 1971 Fund may also pay indemnification of the shipowner which is estimated not to exceed £1.2 million. It should be noted, however, that as a result of the significant depreciation of the Venezuelan Bolivar, there is a considerable degree of uncertainty as to the conversion of the amounts of the various claims into Pounds sterling.
- 11.2.5 On the basis of the estimates set out in paragraph 11.2.4, the Director takes the view that some £11.3 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2005 (the date when any 2004 contributions would be receivable). In this regard reference is made to section 14.3.
- 11.2.6 In view of the uncertainty as to the outcome of the legal proceedings in respect of the outstanding claims, the Director considers that it would be premature to levy any contributions at this stage to cover these claims.

## 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 30/6/2003	£0
Total previously levied to Major Claims Fund	£7 300 000
Compensation paid by 1971 Fund to 30/6/03	£8 193 887
Miscellaneous paid by 1971 Fund to 30/6/03	£1 588 738
Possible total expenditure payable 1/7/03 - 1/3/05	0

### 12.2 Analysis

- 12.2.1 The maximum amount payable from the General Fund (£845 906) has been used. A total of £7.3 million has been levied as contributions to the *Osung N°3* Major Claims Fund. There was a deficit of some £1.5 million on that Major Claims Fund as at 31 December 2002 (document 71FUND/AC.12/5, Annex IV, Statement III.4).
- 12.2.2 The 1971 Fund has paid compensation totalling £8.2 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 £1 536 000 as at 30 June 2003. This deficit has been covered by a loan from the *Aegean Sea* Major Claims Fund. The *Osung N°3* Major Claims Fund is paying interest on this loan up to the date of repayment (1 March 2004). There are also outstanding contributions totalling £28 087.
- 12.2.5 Since all claims and expenses relating to the *Osung N°3* incident have been paid, the Director proposes that contributions for an amount of £1.7 million should now be levied to cover the deficit

on this Major Claims Fund (cf section 14.3) and that any surplus on that Fund should be transferred to the General Fund.

### 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	£52 074 290
Maximum payable from General Fund (1 million SDR)	£819 583
Estimated General Fund balance 30/6/2003	£0
Total previously levied to Major Claims Fund	£0
Compensation paid by 1971 Fund to 30/6/2003	£817 208
Miscellaneous paid by 1971 Fund to 30/6/2003	£455 448
Possible total compensation payable 1/7/03 - 1/3/05	£2 300 000
Possible total miscellaneous payable 1/7/03 - 1/3/05	£200 000

#### 13.2 Analysis

- 13.2.1 The maximum amount payable from the General Fund incident (£819 583) has been used. No levy has been made to the *Pontoon 300* Major Claims Fund. There was a deficit of £413 000 as at 31 December 2002.
- 13.2.2 Claims have been presented for a total amount of some £33 million. However, in the 1971 Fund's view, claims totalling £30 million are considered to be time-barred and claims totalling £24 million are considered to be in any event inadmissible.
- 13.2.3 It is estimated that there was a deficit on the *Pontoon 300* Major Claims Fund of some £462 000 as at 30 June 2003. This deficit has been covered by a loan from the General Fund. The *Pontoon 300* Major Claims Fund will pay interest on this loan.
- 13.2.4 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. This amount includes settled claims totalling £1.1 million, payment of which is currently limited to 75% of the settlement amounts.
- 13.2.5 The Director takes the view that some £2.5 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2005 (the date when any 2004 contributions would be receivable).
- 13.2.6 As set out in the Annex, it appears that an estimated £3.0 million would be required in respect of the Major Claims Fund. The Director proposes that this amount should be levied (cf section 14.3).

### 14 Director's proposals

#### 14.1 The working capital

- 14.1.1 The working capital has been fixed by the Assembly at £5 million.
- 14.1.2 As set out in document 71FUND/AC.12/18, the working capital will be partly used during 2003 and 2004 to cover the 1971 Fund's share of the costs of running the joint Secretariat, the costs for

winding up the 1971 Fund and some compensation payments. The Director considers that the working capital should not be used for the payment of claims arising from the incidents referred to in section 14.3 over and above 1 million SDR.

#### 14.2 Loans from balances on other Major Claims Funds

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. Such loans have been made on a number of occasions in the past. However, the Director considers that at this stage in the winding up of the 1971 Fund it would not be appropriate to continue to make loans between Major Claims Funds.

#### 14.3 Proposed levies

The Director proposes that contributions should be levied to the following Major Claims Funds as set out below (cf paragraphs 2.2.5, 9.2.6, 11.2.5, 12.2.5, and 13.2.6):

<i>Vistabella</i> Major Claims Fund	£0.6 million
<i>Sea Empress</i> Major Claims Fund	£1.3 million
<i>Nissos Amorgos</i> Major Claims Fund	£11.5 million
<i>Osung N°3</i> Major Claims Fund	£1.7 million
<i>Pontoon 300</i> Major Claims Fund	<u>£3.0 million</u>
<b>Total</b>	<u>£18.1 million</u>

#### 14.4 Reimbursement of balances on Major Claims Funds

- 14.4.1 Financial Regulations 4.4 and 4.5 deal with the case where there is a surplus on a Major Claims Fund after the periods set out in Article 6 of the 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.

##### *Aegean Sea Major Claims Fund*

- 14.4.2 As set out in paragraph 3.2.3 above, it is estimated that there will be a final surplus on the *Aegean Sea* Major Claims Fund of £17 860 000 at 1 March 2004. After the deduction of outstanding contributions of £90 645, the Director proposes that £17.7 million of the balance should be reimbursed to the contributors and the remaining balance should be transferred to the General Fund.

##### *Keumdong N°5 Major Claims Fund*

- 14.4.3 As indicated in paragraph 5.2.4 above, the Director considers that it is premature to make a decision at this stage regarding the distribution of the surplus on the *Keumdong N°5* Major Claims Fund.

##### *Sea Prince, Yeo Myung and Yuil N° 1 Major Claims Funds*

- 14.4.4 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 in 1995 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).

- 14.4.5 As set out in paragraphs 6.2.4, 7.2.5 and 8.2.5 above, it is estimated that at 1 March 2004 there will be a surplus of £11.1 million on the *Sea Prince* Major Claims Fund, of £3.7 million on the *Yeo Myung* Major Claims Fund and of £5.1 million on the *Yuil N°1* Major Claims Fund. The total surplus on these amalgamated Major Claims Funds is estimated at some £19.9 million. However, as set out above, there are still some uncertainties in respect of the amounts to be paid. Deductions will also have to be made for outstanding contributions in respect of these Major Claims Funds totalling some £90 000. The Director proposes therefore that a total of £19 million (*Sea Prince* Major Claims Fund - £11 million, *Yeo Myung* Major Claims Fund - £3.5 million and *Yuil N°1* Major Claims Fund - £4.5 million) be reimbursed to the contributors to these three Major Claims Fund, that the remaining balance be used to make any further payments in respect of these incidents and that the final balance be transferred to the General Fund.

*Nakhodka Major Claims Fund*

- 14.4.6 As set out in paragraph 10.2.5 above, it is estimated that there will be a surplus on the 1971 Fund *Nakhodka* Major Claims Fund of £14.9 million at 1 March 2004. After the deduction of outstanding contributions of £116 290, the Director proposes that an amount of £14.7 million be reimbursed to the contributors and that the remaining balance be transferred to the General Fund.

*Summary of proposed reimbursements*

- 14.4.7 The proposed reimbursements are as follows:

<i>Aegean Sea</i> Major Claims Fund	£17.7 million
<i>Sea Prince</i> / <i>Yeo Myung</i> / <i>Yuil N°1</i> Major Claims Fund	£19.0 million
<i>Nakhodka</i> Major Claims Fund	<u>£14.7 million</u>
<b>Total</b>	<b><u>£51.4 million</u></b>

14.5 Timing of levies and reimbursements

- 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 in 1996, 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 March 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 levies (cf section 14.3) to the *Vistabella*, *Sea Empress*, *Nissos Amorgos*, *Osung N°3* and *Pontoon 300* Major Claims Funds should be payable by 1 March 2004.

14.5.4 The Director proposes that the reimbursements referred to in section 14.4 should be made on 1 March 2004 and that the transfers of the final surpluses on any Major Claims Fund to the General Fund should also be made on that date.

14.6 Impact of the Director's proposal on contributors

Since most contributors will receive substantial amounts in reimbursements from various Major Claims Funds, these contributors will not be called upon to make any net payments in respect of the contributions due by 1 March 2004.

14.7 Outstanding contributions received after 1 March 2004

The Director proposes that any receipts of outstanding contributions received after 1 March 2004 in respect of the Major Claims Funds closed at that date should be transferred to the General Fund.

**15 Action to be taken by the Administrative Council**

The Administrative Council 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 2003 contributions to the *Vistabella*, *Sea Empress*, *Nissos Amorgos*, *Osung N°3* and *Pontoon 300* Major Claims Funds (paragraphs 2.2.5, 9.2.6, 11.2.5, 12.2.5, 13.2.6 and 14.3) and on the date of payment of these contributions (paragraph 14.5.3);
- (c) to consider the Director's proposal that the deficit on the *Braer* Major Claims Fund should be covered from the General Fund (paragraph 4.2.7);
- (d) to decide on the Director's proposals for distribution of the surpluses on the *Aegean Sea*, *Sea Prince*, *Yeo Myung*, *Yuil N°1* and *Nakhodka* Major Claims Funds (paragraphs 14.4.5 and 14.4.7);
- (e) to consider the Director's proposal that any surplus on the *Osung N°3* Major Claims Fund be transferred to the General Fund (paragraph 12.2.5); and
- (f) to consider the Director's view that that it is premature for the Administrative Council to make a decision at this stage regarding the distribution of the surplus on the *Keumdong N°5* Major Claims Fund (paragraph 5.2.4); and
- (g) to decide on the Director's proposal as regards outstanding contributions received after 1 March 2004 (paragraph 14.7)

\* \* \*

# ANNEX

## Major Claims Funds expenditure

(Figures in Pounds Sterling)

Incident	Date	Previous levies				Maximum Paid From General Fund: 1 million SDR	Payments by 31/12/02 (including General Fund)		Major Claims Fund Balance 31/12/02	2003 Expenditure to 30/6/03		2003 Major Claims Fund Estimated Income		Estimated Major Claims Fund Balance 30/06/03	Possible Total Expenditure (comp/indem and miscellaneous) 1/7/03-1/3/05	Estimated Interest 1/7/03-1/3/04	Projected Major Claims Fund Surplus on/ (Requirement up to) 01/03/05
		Contribution Year	Assembly Session	Date Due	Amount		Compensation Paid by 31/12/02	Miscellaneous Paid by 31/12/02		Compensation/ Indemnification Paid 1/1/03-30/6/03	Miscellaneous Paid 1/1/03-30/6/03	Contributions due in 2003	Interest to 30/6/03				
Vistabella	07/03/91					743 092	(1 002 512)	(231 343)	(490 762)	0	(11 903)	0	(6 570)	(510 000)	(25 000)	(10 000)	(550 000)
Aegean Sea	03/12/92	1993	16th	01/02/94	20 000 000												
		1994	17th	01/02/95	15 000 000												
					35 000 000	891 471	(31 267 244)	(3 266 824)	21 275 306	(2 887 542)	(8 570)	0	336 280	18 716 000	(1 200 000)	350 000	17 860 000
Braer	05/01/93	1993	16th	01/02/94	35 000 000												
		1995	18th	01/02/96	14 000 000												
					49 000 000	904 707	(45 725 440) <sup>&lt;1&gt;</sup>	(5 505 674)	(53 448)	0	(1 442)	0	(2 402)	(58 000)	(20 000)	(1 500)	(80 000)
Keumdong N°5	27/09/93	1993	16th	01/02/94	5 000 000												
		1994	17th	01/02/95	10 000 000												
					15 000 000	933 146	(10 904 168)	(2 003 708) <sup>&lt;2&gt;</sup>	6 814 510	0	(1 962)	0	119 093	6 932 000	(200 000)	150 000	6 880 000 <sup>&lt;3&gt;</sup>
Sea Prince	23/07/95				5 000 000												
		1995	18th	01/02/96	11 000 000												
		1996	19th	01/02/97	7 000 000												
			19th	01/09/97	5 000 000												
		1997	20th	01/02/98	3 000 000												
Yeo Myung	03/08/95				26 000 000	975 724	(21 078 735)	(2 652 875)	9 783 210	(9 324)	1 022 203 <sup>&lt;4&gt;</sup>	0	170 280	10 967 000	0	220 000	11 180 000
					18 000 000												
					7 000 000												
		1995	18th	01/02/96	2 000 000												
		1996	19th	01/02/97	1 000 000												
Yuii N°1	21/09/95				3 000 000	963 298	(1 035 020)	(258 361)	3 618 948	0	0	0	63 343	3 683 000	(20 000)	70 000	3 730 000
					4 000 000												
		1995	18th	01/02/96	7 000 000												
		1996	19th	01/02/97	5 000 000												
			19th	01/09/97	6 000 000												
Sea Empress	15/02/96				18 000 000	952 517	(14 662 768)	(1 001 956)	5 634 008	(553 816)	(44 550)	0	95 480	5 132 000	(42 000)	100 000	5 190 000
					4 000 000												
					4 000 000												
					2 500 000												
		1996	19th	01/02/97	10 000 000												
Nakhodka	02/01/97				20 000 000	952 381	(30 918 323)	(4 534 357)	86 184	0	(506 852)	0	(1 977)	(423 000)	(725 000)	(30 000)	(1 180 000)
					30 000 000												
					7 000 000												
					2 000 000												
		1996	3rd ext	01/09/97	15 000 000												
		1997	20th	01/02/98	30 000 000												
		1998	21st	01/02/99	7 500 000												
		1999	22nd	01/03/00	1 000 000												
					53 500 000	845 655	(49 629 799)	(6 527 881)	14 413 356 <sup>&lt;5&gt;</sup>	0	(14 087)	0	249 196	14 649 000	0	290 000	14 930 000
					5 000 000												



# ANNEX

## Major Claims Funds expenditure

(Figures in Pounds Sterling)

Incident	Date	Previous levies				Maximum Paid From General Fund: 1 million SDR	Payments by 31/12/02 (including General Fund)		Major Claims Fund Balance 31/12/02	2003 Expenditure to 30/6/03		2003 Major Claims Fund Estimated Income		Estimated Major Claims Fund Balance 30/06/03	Possible Total Expenditure (comp/indem and miscellaneous) 1/7/03-1/3/05	Estimated Interest 1/7/03-1/3/04	Projected Major Claims Fund Surplus on/ (Requirement up to) 01/03/05
		Contribution	Assembly	Date	Amount		Compensation	Miscellaneous		Compensation/ Indemnification	Miscellaneous	Contributions	Interest				
		Year	Session	Due			Paid by 31/12/02	Paid by 31/12/02		Paid 1/1/03-30/6/03	Paid 1/1/03-30/6/03	due in 2003	to 30/6/03				
Nissos Amorgos	28/02/97	1997	20th	01/02/98	2 000 000	849 762	(2 561 449)	(1 099 287)	(333 299)	0	(13 317)	0	(6 657)	(354 000)	(10 850 000)	(75 000)	(11 280 000)
Authorised but not levied	01/09/98	3 000 000															
Authorised but not levied	01/09/01	25 000 000															
Authorised but not levied	01/09/02	21 000 000															
Authorised but not levied	01/09/03	21 000 000															
Osung N°3	03/04/97	1997	20th	01/02/98	2 000 000	845 906	(8 193 887)	(1 588 738)	(1 513 153)	0	0	0	(22 595)	(1 536 000)	0	(40 000)	(1 580 000)
		1999	22nd	01/03/00	5 300 000												
					7 300 000												
		Authorised but not levied	01/09/98	8 000 000													
		Authorised but not levied	01/09/00	2 000 000													
Pontoon 300	07/01/98					819 583	(817 208)	(415 450)	(413 076)	0	(39 998)	0	(7 981)	(462 000)	(2 500 000)	(12 000)	(2 980 000)
														56 736 000	(15 582 000)	1 011 500	42 120 000

- <1> In the 2002 Financial Statements compensation payments totalled £46 947 721, out of which £1 222 281 had been paid from the shipowner's indemnification amount.
- <2> Includes deposits of £795 000 with courts for compensation claims
- <3> Excludes court deposits of £795 000
- <4> Includes refund of Kwon2,060,000,000 deposited with courts for compensation claims
- <5> Includes £14 632 127 recovery as a result of global settlement

In accordance with the 1971 Fund's accounting practice, the following amounts which have been included as contributions in the balances set out above remain outstanding as at the 30 June 2003.	
Major Claims Fund	Outstanding contributions as on 30/6/03
<i>Aegean Sea</i>	90 645
<i>Braer</i>	66 164
<i>Keumdong N°5</i>	19 460
<i>Sea Prince</i>	47 170
<i>Yeo Myung</i>	6 104
<i>Yuil N°1</i>	36 341
<i>Sea Empress</i>	14 688
<i>Nakhodka</i>	116 290
<i>Nissos Amorgos</i>	2 256
<i>Osung N°3</i>	28 087