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FUND 1971

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Agenda item 4

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ASSESSMENT OF ANNUAL CONTRIBUTIONS

Note by the Director

1 Funds required for the *Nakhodka* incident

1.1 It will be recalled that the Executive Committee decided at its 52nd session to limit payments, for the time being, to 60% of the damage suffered by each claimant. The Director has proposed to the Executive Committee that this limit should be maintained for the time being (document 71FUND/EXC.53/6, paragraph 9.2).

1.2 Claims arising from the *Nakhodka* incident will first be paid by the 1971 Fund, and then by the 1992 Fund. As indicated in paragraph 5.5 of document 71FUND/A/ES.3/3, the Director takes the view that the 1971 Fund should pay 60% of the damage suffered by each claimant, up to a total amount of 60 million SDR (£51 million), before the 1992 Fund commences payments of compensation. The proposals set out below are based on this approach.

1.3 It is believed that claims will be submitted for at least ¥ 20 000 million (£100 million). The claims received so far total ¥2 600 million (£13 million). The Director considers that further substantial claims will be submitted within a relatively short period of time. Bearing in mind that in previous incidents in Japan claims have generally been well documented and have not given rise to questions of principle, the Director is of the opinion that the 1971 Fund will have to make significant payments to claimants in the *Nakhodka* case during 1997, and that total payments in respect of agreed claims will during the year reach the 1971 Fund's limit of 60 million SDR (£51 million).

1.4 As indicated in paragraph 5.2 of document 71FUND/A/ES.3/3, the first 1 million SDR (£845 655) in respect of the *Nakhodka* incident has to be paid from the General Fund. The Director considers that payments up to that amount (including fees and expenses) should be made using the working capital, and that no adjustment should be made vis-à-vis the Assembly's decision in October 1996 not to levy annual contributions to the General Fund.

1.5 The Director therefore considers that £50 million should be available from the *Nakhodka* Major Claims Fund in the early autumn of 1997 for the payment of claims.

2 Source of funds for the *Nakhodka* Major Claims Fund

2.1 At its 52nd session, the Executive Committee considered various options to make available sufficient funds for the payment of claims arising from the *Nakhodka* incident, as presented by the Director in document 71FUND/EXC.52/8/Add.1, paragraphs 4.4 and 4.5. The Committee took the view that it would be inappropriate to await a decision by the Assembly in October 1997 to levy contributions to a *Nakhodka* Major Claims Fund, since there would not be sufficient funds available for the payment of claims arising from the *Nakhodka* incident until February 1998. It was recognised that it would be necessary at some stage to levy contributions to a *Nakhodka* Major Claims Fund, and it was considered that this should be done at the first opportunity (document 71FUND/EXC.52/11, paragraph 3.7.16).

2.2 The proposals set out below are based on those considerations, taking into account recent developments in respect of other incidents.

2.3 The working capital

2.3.1 It will be recalled that the working capital was reduced by the Assembly at its 19th session from £15 million to £10 million, with effect from 1 February 1997.

2.3.2 In order to ensure that funds are available to meet unforeseen payments and possible payments in respect of the *Nissos Amorgos* incident which occurred in Venezuela on 28 February 1997 (document 71FUND/EXC.53/7) and other new incidents, the Director considers that the working capital should not be used for the payment of claims arising from the *Nakhodka* incident over and above 1 million SDR, except in the short term until contributions to the *Nakhodka* Major Claims Fund have been received in early autumn of 1997.

2.4 Loans from present assets of other existing Major Claims Funds

2.4.1 One option would be to levy the entire amount of £50 million to the *Nakhodka* Major Claims Fund at this stage. This option would however put a heavy burden on contributors in the form of a very high additional levy during the summer of 1997. For this reason, the Director considers that it should be examined whether it would be possible to reduce the contributions to be levied the *Nakhodka* Major Claims Fund at this stage by using some of the 1971 Fund's assets as set out below.

2.4.2 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.

2.4.3 The balances on the various Major Claims Funds as at 31 March 1997 are as follows (in round figures):

Major Claims Fund.		Balance on 31.3.97 £ million	
<i>Haven</i>			27.8
<i>Aegean Sea</i>			34.5
<i>Braer</i>			5.6
<i>Keumdong</i>			6.7
<i>Sea Prince/Yeo Myung/Yuil N°1</i>	<i>Sea Prince</i>	14.9	
	<i>Yeo Myung</i>	2.2	
	<i>Yuil N°1</i>	3.6	
		<hr/>	
		20.7	20.7
<i>Taiko Maru</i>			3.5
<i>Toyotaka Maru</i>			4.7
<i>Senyo Maru</i>			0.3
<i>Sea Empress</i>			8.8
Total			112.6

2.4.4 The Director considers that an amount of either £10 million or £35 million could be made available for use during 1997 from the balances on other existing Major Claims Funds, as set out in paragraphs 2.4.5–2.4.9 below.

Haven Major Claims Fund

2.4.5 The balance on the *Haven* Major Claims Fund on 31 March 1997 was approximately £27.8 million.

2.4.6 At its 52nd session, the Executive Committee instructed the Director to continue the discussions with the Italian Government and the shipowner/UK Club concerning the possibility of arriving at a global settlement in the *Haven* case within the parameters laid down by the Assembly and the Committee (document 71FUND/EXC.52/11, paragraph 3.1.9).

2.4.7 Since the Executive Committee's 52nd session, further discussions have been held between representatives of the Italian Government and the Director, and between the Government and the shipowner/UK Club. The Director has been informed that the offer of a global settlement was considered at a governmental meeting held in Rome on 13 March 1997. He understands that no decision was taken as to whether to accept or reject that offer. He also understands that the Italian Government decided to set up a commission to give an opinion as to whether Italy was bound to apply the 1976 Protocol to the 1971 Fund Convention in the *Haven* case although it had not yet entered into force when the incident occurred (document 71FUND/A/ES.3/2, paragraphs 2.10 and 2.11).

2.4.8 In view of these developments, it is not possible to predict when the Italian Government will take a position with regard to the offer of a global settlement made by the shipowner/UK Club and the 1971 Fund. If it were considered that a global settlement could be reached in the near future and that such a settlement would become binding on the Italian State within the coming few months, then it would not be appropriate to use the present balance on the *Haven* Major Claims Fund to make loans to other Major Claims Funds. On the other hand, if it were considered unlikely that a binding agreement could be concluded before October 1997, then it would be possible to make available some £25 million from the *Haven* Major Claims Fund, to be used as loans to other Major Claims Funds, since such loans could be repaid on 1 February 1998, when 1997 annual contributions would be received.

Other Major Claims Funds

2.4.9 Taking into consideration payments in connection with other incidents which are anticipated to be made before 1 February 1998 from the respective Major Claims Funds, the Director is of the view that some £10 million could be made available from the *Aegean Sea* and *Braer* Major Claims Funds, to be used as loans to other Major Claims Funds. Such loans would be repaid on 1 February 1998, when the 1997 annual contributions would be received.

3 Deferred levies to be made in respect of other Major Claims Funds

3.1 At its 19th session, the Assembly decided that part of the levies to the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds should be levied for payment by 1 February 1997, and that the balance of these levies (£37 million and £20 million, respectively) and the entire levy to the *Keumdong N°5* Major Claims Fund (£5 million) should be deferred. The Director was authorised to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 1997 (document 71FUND/A.19/30, paragraphs 25.6 and 25.7).

3.2 The Director estimates that extra monies will be required in respect of the *Sea Prince*, *Yuil N°1* and *Sea Empress* incidents in the amounts of £5.0 million, £6.0 million and £20.0 million, respectively, and that no extra monies will be needed in respect of the *Keumdong N°5* and *Yeo Myung* incidents.

3.3 The Director considers that monies could be made available to the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds from the balances on other existing Major Claims Funds, as set out in the table overleaf, thereby reducing the amounts of contributions to be levied at this stage.

3.4 Depending on whether or not the Assembly considers it appropriate to make loans from the *Haven* Major Claims Fund at this stage, the Director takes the view that deferred levies will be required in respect of the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds in the amounts of either £5 million and £15 million, respectively, or £11 million and £20 million, respectively. He intends to issue invoices in accordance with the Assembly's decision on the issue of whether such loans should be made.

4 Deferred repayment of balances on Major Claims Funds

4.1 At its 19th session, the Assembly decided that reimbursement of the balances on the *Taiko Maru* and *Toyotaka Maru* Major Claims Funds (£3.5 million and £4.7 million, respectively) should be made on the date of payment of a deferred levy, if and to the extent that such a deferred levy was made later in 1997 (document 71FUND/A.19/30, paragraph 25.9).

4.2 The Director intends to make these repayments on the date when the above-mentioned deferred levies and the levy to the *Nakhodka* Major Claims Fund are due.

5 Levy required for the *Nakhodka* Major Claims Fund

Depending on whether or not the Assembly considers it appropriate to make loans from the *Haven* Major Claims Fund at this stage, the Director proposes that annual contributions to the *Nakhodka* Major Claims Fund should be levied for £26 million or £40 million.

6 Summary of levies

If the Director's proposal were to be adopted by the Assembly, the levies and reimbursement could be summarised as follows:

Major Claims Fund	Maximum deferred levy £ million	Extra monies required £ million	Source of funds (Haven balance not available)		Source of funds (Haven balance available)	
			Borrowed from other Major Claims Funds £ million	To be levied £ million	Borrowed from other Major Claims Funds £ million	To be levied £ million
<i>Keumdong N°5</i>	5.0	0.0	0.0	0.0	0.0	0.0
<i>Sea Prince)</i>	23.0	5.0	0.0	5.0	0.0	5.0
<i>Yeo Myung)</i>	4.0	0.0	0.0	0.0	0.0	0.0
<i>Yull N°1)</i>	10.0	6.0	0.0	6.0	6.0	0.0
	37.0	11.0	0.0	11.0	6.0	5.0
<i>Sea Empress</i>	20.0	20.0	0.0	20.0	5.0	15.0
<i>Nakhodka</i>	-	50.0	10.0	40.0	24.0	26.0
Total gross levy	62.0	81.0	10.0	71.0	35.0	46.0
Major Claims Fund	Deferred reimbursement £ million		To be credited £ million		To be credited £ million	
<i>Taiko Maru</i>	3.5		3.5		3.5	
<i>Toyotaka Maru</i>	4.7		4.7		4.7	
Total credit	8.2		8.2		8.2	
Total net levy	53.8		62.8		37.8	

7 Date of payment

7.1 At its 19th session, the Assembly decided that the deferred levies referred to in paragraph 3 above should be invoiced for payment during the second half of 1997.

7.2 Annual contributions to the *Nakhodka* Major Claims Fund will have to be paid by any person who received more than 150 000 tonnes of contributing oil within the territory of a Member State of the 1971 Fund during 1996 (ie in the year preceding that in which the incident occurred), if the State was a Member of the 1971 Fund on 2 January 1997.

7.3 In accordance with Internal Regulation 4.1, the reports on contributing oil received during 1996 should have reached the Director not later than 31 March 1997. Experience in previous years indicates that a number of the reports will be received during April and early May 1997. The Director will set out the situation in a separate Addendum.

7.4 When the Secretariat calculates the amount of contributions payable per tonne of contributing oil, it has to make an estimate of the quantities received in those States which have not yet submitted their reports. In order to enable the Director to make a reasonably accurate assessment of the amount payable per tonne to the *Nakhodka* Major Claims Fund, it is important that reports have been submitted in respect of the major part of the total quantity of contributing oil received in 1996. The Director considers that it would not be appropriate to calculate the levy per tonne to the *Nakhodka* Major Claims Fund until, at the very least, half of the expected quantity of contributing oil has been reported. In order to allow more time for States to submit their oil reports, the Director would prefer that the Secretariat should prepare the invoices in May, for payment by 1 September 1997 (rather than for payment by 1 August 1997, as had previously been envisaged).

7.5 The Director therefore proposes that the levy to the *Nakhodka* Major Claims Fund as well as the deferred levies and repayments referred to in this document should all be due by 1 September 1997.

8 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 whether to use the present balance on the *Haven* Major Claims Fund to make loans to other Major Claims Funds (paragraph 2.4.8);
 - (c) to decide on an additional assessment of annual contributions in respect of the *Nakhodka* Major Claims Fund (paragraph 5);
 - (d) to decide on the date of payment of the contributions in respect of the *Nakhodka* Major Claims Fund (paragraph 7);
 - (e) to note the Director's intention to make deferred levies in respect of the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds, as authorised by the Assembly at its 19th session (paragraph 3);
 - (f) to note the Director's intention not to make a deferred levy in respect of the *Keumdong N°5* Major Claims Fund (paragraph 3); and
 - (g) to note the Director's intention to reimburse the balances on the *Taiko Maru* and *Toyotaka Maru* Major Claims Funds, as authorised by the Assembly at its 19th session (paragraph 4).
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