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OIL POLLUTION
COMPENSATION
FUND 1992

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ASSESSMENT OF CONTRIBUTIONS

Note by the Director

1 Introduction

1.1 Article 12 of the 1992 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 1992 Fund's expenditure and income for each calendar year, taking into account the necessity to maintain sufficient liquid funds.

1.2 The 1992 Fund's expenditure consists of:

- (a) costs and expenses of the administration of the 1992 Fund, and any deficit from preceding years;
- (b) payments of claims up to 4 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 4 million SDR (major claims).

Expenses mentioned in sub-paragraphs (a) and (b) above have to be met from the General Fund (Financial Regulation 7.1(c)) and expenses with respect to major claims as defined in sub-paragraph (c) above have to be met from Major Claims Funds (Financial Regulation 7.2(d)).

2 General Fund

2.1 Estimate of contributions needed for 1998

2.1.1 Financial Regulation 7.1(c) provides that the monies in the General Fund shall be used to meet the costs and expenses of the administration of the 1992 Fund and for the satisfaction of claims up to 4 million SDR per incident (minor claims).

2.1.2 Under Financial Regulation 7.1(b), a working capital shall be maintained at such a level as the Assembly may decide from time to time.

2.1.3 The amount of annual contributions needed for the General Fund in 1998 is estimated as follows:

		Option I	Option II
Expenditure		£	£
(a)	Administrative expenses (draft Budget 1998)	725 318	725 318
(b)	Payment to 1971 Fund for transfer of furniture, office equipment and other supplies	60 000	60 000
(c)	Minor claims (as set out in paragraph 2.3.3)	3 482 620	6 866 244
(d)	Working capital	12 000 000	12 000 000
		16 267 938	19 651 562
Income			
(a)	Estimated surplus as at 31.12.97	6 334 122	6 334 122
(b)	Interest to be earned in 1998	850 000	850 000
(c)	Annual contributions required for General Fund	9 083 816	12 467 440
		16 267 938	19 651 562

2.1.4 This estimate is based on the following considerations^{<1>}. As for the individual incidents, reference is made to the information contained in document 92FUND/A.2/15.

2.1.5 It should be noted that any estimate in this document of amounts to be paid by the 1992 Fund in compensation has been made solely for the purpose of the assessment of annual contributions, without prejudice to the position of the 1992 Fund in respect of the claims.

2.2 Estimated surplus as at 31 December 1997

2.2.1 As shown in the draft budget for 1998 (document 92FUND/A.2/24, Annex), the surplus at the end of 1997 is estimated at £6 334 122 calculated as set out opposite.

2.2.2 It is anticipated that no payments of compensation or fees will be made during 1997 in respect of the German oil spill referred to in paragraph 2.3.4, nor in respect of the *Nakhodka* and *Osung N°3* incidents.

2.3 Estimated 1998 expenditure

Administrative expenses

2.3.1 The administrative expenses of the 1992 Fund for 1998, as proposed by the Director in the draft budget for 1998, amount to £725 318 (document 92FUND/A.2/24).

<1> The estimates in this document are based on the assumption that the Assembly decides to increase the working capital of the 1992 Fund from £7 million to £12 million (cf paragraph 2.3.10). If the Assembly were to decide otherwise, the Director would have to revise certain figures set out in the table in paragraph 2.1.3 above, and reconsider his proposals in respect of the General Fund.

		£
Deficit as at 1 January 1997		-242 123
<i>Add</i>	£	
Contributions receivable in 1997	6 999 961	
Interest earned in 1997 (estimate)	160 000	
	7 159 961	7 159 961
<i>Less</i>	£	6 917 838
Administrative expenditure, Budget 1997	583 716	
General claims expenditure in 1997	0	
	583 716	583 716
Estimated surplus as at 31 December 1997		6 334 122

Payment to 1971 Fund

2.3.2 Secretariat functions will be transferred to the 1992 Fund from the 1971 Fund on 16 May 1998. In document 92FUND/A.2/11, the Director proposes that payment should be made to the 1971 Fund by the 1992 Fund for the transfer of ownership of furniture, office equipment and other supplies. This payment is estimated at £60 000.

Minor claims

2.3.3 The known incidents in respect of which payments may have to be made from the General Fund during 1998 are listed below.

Incident	Amount payable from General Fund (4 million SDR)	Compensation/ Indemnification		Miscellaneous	Total	
		Option I	Option II		Option I	Option II
<i>German oil spill</i>	3 752 700	0	0	100 000	100 000	100 000
<i>Nakhodka</i>	3 382 620	3 382 620	3 382 620	0	3 382 620	3 382 620
<i>Osung N°3</i>	3 383 624	0	3 383 624	0	0	3 383 624
Expenditure 1998					3 482 620	6 866 244

2.3.4 The 1992 Fund has been informed by the German authorities that a claim will be presented against the Fund in respect of an oil spill which occurred in the North Sea off Germany in June 1996. This claim has been estimated at approximately £1.9 million. In view of the uncertainty as to the legal situation in respect of this incident, no compensation payments in respect of this case are anticipated during 1998, but fees and expenses of some £100 000 are expected. If any compensation payments were to be required, they would have to be made from the working capital.

2.3.5 As indicated in document 71FUND/A.20/24, paragraph 3.10.2, it is certain that the aggregate amount of the established claims arising out of the *Nakhodka* incident will exceed the maximum amount available under the 1969 Civil Liability Convention and 1971 Fund Convention (60 million SDR, or approximately £50 million), and that the 1992 Fund will have to make payments of compensation. The Director considers that payments by the 1992 Fund during 1998 will exceed the maximum amount payable from the General Fund, ie 4 million SDR (£3 382 620). As for the establishment of a Major Claims Fund, reference is made to paragraph 3.1 below.

2.3.6 With respect to the *Osung N°3* incident, claims have arisen in both the Republic of Korea and in Japan. In view of the great uncertainty as to the total amount of the established claims, the Executive Committee of the 1971 Fund decided, at its 54th session, held in June 1997, that payments of compensation should for the time being be limited to 25% of the damage or loss actually suffered by each claimant as assessed by the experts of the 1971 Fund at the time the payment was made. It is not possible to determine at this stage whether the total claims arising out of this incident will exceed the aggregate amount available under the 1969 Civil Liability Convention and 1971 Fund Convention (60 million SDR, or approximately £50 million). If this were to be the case, however, all payments of compensation under those Conventions would have to be pro-rated. Since Japan was Party also to the 1992 Fund Convention at the time of the incident, Japanese claimants would be entitled to compensation under the 1992 Fund Convention for the balance of the established amounts. The Assembly of the 1992 Fund will be invited to consider whether, in such a situation, Japanese claimants should receive the balance from the 1992 Fund as soon as agreements have been reached with the respective claimants on the admissible amount, and the 1992 Fund present a subrogated claims against the 1971 Fund in due course. If the Assembly were to answer this question in the affirmative, the maximum amount payable from the General Fund in respect of this incident, ie 4 million SDR (£3 383 624) should be included (see option II in the table in paragraph 2.3.2).

2.3.7 It is estimated that the total payments by the 1992 Fund from the General Fund in 1998 will amount to £3 482 620 or, if payments were to be made in respect of the *Osung N°3* incident, £6 866 244 (options I and II, respectively, in the table in paragraph 2.1.3). These estimates do not include any provision for the payment of claims in respect of incidents which may occur after the drafting of this document for which payments may have to be made before the end of 1998. Such payments would have to be met from the working capital. This would also apply to payments which, although envisaged as not being due before 1999, actually have to be made earlier.

Working capital

2.3.8 The working capital is needed to cover claim payments not included in the estimated expenses for minor claims, and to make loans to major claims funds for the satisfaction of claims to the extent that sufficient money is not available in the major claims funds in question.

2.3.9 In October 1996, at its 1st extraordinary session, the Assembly decided to set the working capital of the 1992 Fund at £7 million (document 92FUND/A/ES.1/22, paragraph 18).

2.3.10 The Director has submitted a document to the Assembly in which he proposes an increase of the working capital (document 92FUND/A.2/25). The table in paragraph 2.1.3, and the subsequent proposals of the Director concerning the General Fund are based on the assumption that the Assembly decides to increase the working capital to £12 million. If the Assembly were to decide otherwise, the Director would revise certain figures in the table in paragraph 2.1.3 and his proposals in respect of the General Fund.

2.4 Estimated 1998 income

Estimated surplus

2.4.1 As set out in paragraph 2.2.1 above, the surplus on the General Fund at the end of 1997 is estimated at £6 334 122.

Interest

2.4.2 The income in interest during 1998 from the 1992 Fund's investments is estimated at £850 000 (draft Budget 1998, document 92FUND/A.2/24, Annex). This estimated yield is based on an average principal of about £12 million.

2.5 General Fund assessment

2.5.1 As shown from the estimates in the table in paragraph 2.1.3 above, contributions of £9 083 816 (option I), or, if payments were to be made in respect of the *Osung N°3* incident, £12 467 440 (option II), would be needed to balance the 1998 account of the General Fund.

2.5.2 The Assembly may therefore wish to decide to fix the total levy of contributions for the General Fund at £9 million or £12 million, depending on its decision in respect of the *Osung N°3* incident, for payment by 1 February 1998.

3 Major Claims Funds

In view of the rapid developments which are occurring in respect of the *Nakhodka* and *Osung N°3* incidents, the Director considers that it may be necessary, in an addendum to this document, to modify some of the proposals set out below.

3.1 *Nakhodka*

3.1.1 In April 1997, at its 2nd extraordinary session, the Assembly decided to levy £7 million to the *Nakhodka* Major Claims Fund for payment by 1 September 1997 (document 92FUND/A/ES.2/6, paragraphs 4.5 and 4.7).

3.1.2 As indicated in paragraph 2.3.5, it is estimated that the total payments by the 1992 Fund in respect of the *Nakhodka* incident during 1998 will reach the maximum payable from the General Fund, ie 4 million SDR (£3 382 620).

3.1.3 It is estimated that the balance on the *Nakhodka* Major Claims Fund will be approximately £6.9 million by 31 August 1997.

3.1.4 It is not possible to estimate at this stage the total amount of the established claims. However, based on the estimates of the experts of the 1971 and 1992 Funds, the Director takes the view that it would be appropriate at this stage to take as a basis a total figure for the established claims at least £100 million, of which £50 million would be payable by the 1992 Fund.

3.1.5 On this basis, and taking into account the fees and expenses that will be incurred by the 1992 Fund, the Director proposes that a second levy should be made to the *Nakhodka* Major Claims Fund in the form of 1997 annual contributions for a total of £30 million. In view of the uncertainty regarding the timing of payments of compensation, however, the Director proposes that the whole of this levy should be deferred (see section 4.3 below). Any payments by the 1992 Fund in excess of the amount available in that Major Claims Fund would have to be made from money borrowed from the General Fund; such a loan would be repaid with interest to the Fund in question when sufficient contributions to the *Nakhodka* Major Claims Fund have been received (cf Financial Regulation 7.1(c)(iv)).

3.2 *Osung N°3*

3.2.1 As indicated in the table in paragraph 2.3.3, it is estimated that the total payments by the 1992 Fund in respect of the *Osung N°3* incident during 1998 will, if the Assembly decides that the 1992 Fund should make full payments to claimants in Japan, reach the maximum payable from the General Fund, ie 4 million SDR (£3 383 624). It is not possible at this stage, however, to make any estimate of the total amount of the established claims.

3.2.2 The Director considers it premature to make any proposal for a levy to a *Osung N°3* Major Claims Fund for the 1992 Fund. Any payments in excess of the amount available in the General Fund would have to be made from money borrowed from the General Fund; such a loan would be repaid with interest to the General Fund when contributions to the *Osung N°3* Major Claims Fund have been levied and received (cf Financial Regulation 7.1(c)(iv)).

4 Date of payment

4.1 Internal Regulation 3.7 provides that, unless the Assembly decides otherwise, payment of contributions shall be due on 1 February of the year following that in which the Assembly decides on the levy of contributions.

4.2 At its 1st 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 (document 92FUND/A.1/34, paragraph 16).

4.3 As indicated in paragraph 2.5.2 above, the Director proposes that the entire levy to the General Fund should be due for payment by 1 February 1998. However, since the timing of the payment of claims by the 1992 Fund in respect of the *Nakhodka* incident is uncertain, the Director is of the view that it would be appropriate to defer the entire proposed levy in respect of the *Nakhodka* Major Claims Fund. He therefore proposes that the Director should be authorised to decide whether to invoice all or part of the amount of the deferred levy for payment during the second half of 1998. The Director's proposals are summarised in the following table:

Levy	Option I			Option II		
	Total Levy	Payment by 1 February 1998	Maximum deferred levy	Total Levy	Payment by 1 February 1998	Maximum deferred levy
General Fund	9 000 000	9 000 000	0	12 000 000	12 000 000	0
<i>Nakhodka</i> Major Claims Fund	30 000 000	0	30 000 000	30 000 000	0	30 000 000
Total	39 000 000	9 000 000	30 000 000	42 000 000	12 000 000	30 000 000

5 Action to be taken by the Assembly

The Assembly is invited, in accordance with Article 12 of the 1992 Fund Convention:

- (a) to take note of the information contained in this document;
- (b) to decide in respect of the assessment for 1997 contributions to the General Fund (paragraph 2.5.2);
- (c) to decide in respect of the assessment for 1997 contributions to the *Nakhodka* Major Claims Fund (paragraph 3.1);
- (d) to decide on the dates of payment of contributions to the General Fund and to the *Nakhodka* Major Claims Fund (paragraph 4.3); and
- (e) to note the Director's view that no levy in the form of 1997 contributions should be made to the *Osung N°3* Major Claims Fund (paragraph 3.2).