



RESTRICTED

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Agenda item 27

92FUND/A.7/24
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ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

Note by the Director

Summary:	The need for 2002 contributions to Major Claims Funds is examined.
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Action to be taken:	Decide on the levy of 2002 contributions to the <i>Erika</i> Major Claims Fund.
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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).
- 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 The assessment of contributions to the General Fund, in accordance with Article 12.2(a) of the 1992 Fund Convention, has been incorporated in the draft budget and is dealt with in a separate document (document 92FUND/A.7/23). 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 92FUND/A.7/7, Annex IV, Schedule II) and to the various documents relating to incidents submitted to the 18th session of the Executive Committee.
- 1.6 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.
- 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 2002^{<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 Nakhodka Major Claims Fund

2.1 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 1992 Fund (ie 135 million SDR – 1971 Fund limit: 60 million SDR) = ¥12 921 811 176	£70 728 097
Maximum payable from General Fund (4 million SDR)	£3 382 620
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£78 000 000
Compensation paid by 1992 Fund to 30/6/2002	£49 983 847
Miscellaneous paid by 1992 Fund to 30/6/2002	£5 442 339
Possible total compensation payable by 1992 Fund 1/7/02 - 1/3/04	£15 462 000
Possible total miscellaneous payable by 1992 Fund 1/7/02 – 1/3/04	£ 500 000

2.2 Analysis

- 2.2.1 The total payments by the 1992 Fund in respect of the *Nakhodka* incident reached the maximum amount payable from the General Fund (£3 382 620) during 1999.
- 2.2.2 At their April/May 2002 sessions the 1992 and 1971 Funds governing bodies approved a global settlement containing the elements set out in document 92FUND/EXC.16/6, paragraph 3.1.31. However, the remaining claimants, i.e a number of Japanese government agencies and the Japan Maritime Disaster Prevention Centre, have not yet given their formal acceptance of the amounts offered in respect of their claims, which are for ¥1 488 million (£8.1 million) and ¥2 043 million (£11.2 million) respectively. The global settlement cannot be concluded until these outstanding claims are settled.
- 2.2.3 A total of £78 million has been levied as contributions to the *Nakhodka* Major Claims Fund. There was a surplus of £22 million in that Major Claims Fund as at 31 December 2001 (document 92FUND/A.7/7, Annex IV, Statement III.1).
- 2.2.4 The total amount of the established claims will exceed the amount available under the 1992 Fund Convention. The total payable by the 1992 Fund is 135 million SDR (fixed at ¥23 164 515 000 by the Assembly at its 2nd session, based on the rate of exchange as at 17 April 1997) less 60 million SDR payable under the 1969 Civil Liability Convention and the 1971 Fund

<1> In this document the conversion of currencies has been made on the basis of the rates of exchange applicable on 28 June 2002, unless indicated otherwise.

Convention of ¥10 242 703 824, which is calculated on the basis of the rate exchange as at 19 February 1997 as decided by the 1971 Fund Administrative Council at its 8th session held in July 2002 (document 71FUND/AC.8/6, paragraph 3.3.20).

2.2.5 The amount to be paid by the 1992 Fund is calculated as follows

135 million SDR	¥23 164 515 000
60 million SDR	¥10 242 703 824
Total payable by 1992 Fund	<u>¥12 921 811 176</u> (£70 728 097)

Since the 1992 Fund has already paid some ¥8 416 million in compensation, its remaining liability would be approximately ¥4 506 million (£24 664 000). However as a result of the global settlement, the 1992 Fund would only have to pay 80% of the settlement amounts of the pending claims referred to in paragraph 2.2.2 above, i.e some ¥2 825 million (£15.5 million).

2.2.6 Since 1 January 2000 all compensation payments have been made by the 1992 Fund. The 1971 Fund had then paid ¥8 695 408 430 which at that time was close to its limit (cf document 71FUND/AC.9/18, paragraph 10.2.6). However, using the rate as at 19 February 1997 as decided by the 1971 Fund Administrative Council, the amount payable by the 1971 Fund, i.e 58 412 000 SDR (60 million SDR minus the amount payable by the shipowner, 1 588 000 SDR) equals ¥9 971 613 596. The 1971 Fund should therefore pay an additional ¥ 1 276 205 166 (£7.0 million) to reach its limit and should reimburse this amount to the 1992 Fund. It is proposed that the adjustment of the payments between the 1992 Fund and the 1971 Fund should be made in the context of the distribution between the 1992 Fund and the 1971 Fund of the amount recovered as a result of the global settlement.

2.2.7 It is estimated that the balance on the *Nakhodka* Major Claims Fund was approximately £31.6 million as at 30 June 2002.

2.2.8 The Director takes the view that some £16 million, including fees and expenses, may be payable by the 1992 Fund by 1 March 2004 (the date when any 2003 contributions would be recoverable). The global settlement would result in the IOPC Funds recovering a significant amount, estimated at some ¥5 203 million (£28.5 million), from the shipowner and his insurer (document 92FUND/EXC.16/6, paragraph 3.1.33).

2.2.9 In the Director's view there is no need for any further levy to the *Nakhodka* Major Claims Fund.

2.2.10 The Director made a proposal to the governing bodies' July 2002 session that the financial benefits of the global settlement should be distributed between the 1971 Fund and the 1992 Fund in proportion to their respective liabilities under the 1971 Fund Convention and the 1992 Fund Convention, namely 58 412 000 SDR and 75 million SDR, respectively, i.e the 1971 Fund would receive 43.783% and the 1992 Fund 56.217%. On that basis, the 1971 Fund would recover some £12.5 million and the 1992 Fund some £16 million. However, one delegation proposed that the distribution should be made in such a way that the 1992 Fund would be reimbursed in full first. That proposal would result in the 1992 Fund recovering the entire amount of the £28.5 million and the 1971 Fund recovering nothing. The 1992 Fund Executive Committee and the 1971 Fund Administrative Council will be invited to decide, at their October 2002 sessions, on what basis the amount recovered should be distributed between the two Funds (cf document 92FUND/EXC.17/10, paragraphs 3.1.17 - 3.1.23).

2.2.11 Article 36 ter of the 1992 Fund Convention introduced a system for capping contributions for a certain period. If the aggregate amount of the contributions in respect of a levy to a Major Claims Fund for all contributors in any one Member State of the 1992 Fund exceed 27.5% of the total amount of that particular levy, the amounts payable by contributors in that State are reduced *pro rata* so that they together equal 27.5% of the total levy to that Fund. The total amount deducted from contributors in the capped State is borne by all other contributors to the Fund in question.

The capping of contributions to the 1992 Fund ceased to apply in respect of decisions to levy contributions taken by the 1992 Fund Assembly after the reports on contributing oil submitted by Member States exceeded 750 million tonnes. This quantity was reached in May 1997.

2.2.12 As set out in the Annex, contributions to the *Nakhodka* Major Claims Fund have been paid in the form of the following six levies. The capping procedure was applied to the first three levies.

1	£7 000 000 (capped)
2	£21 000 000 (capped)
3	£9 000 000 (capped)
4	£13 000 000 (not capped)
5	£17 000 000 (not capped)
6	£11 000 000 (not capped)

2.2.13 In the Director's view any recovery made by the 1992 Fund should be considered as a reimbursement in respect of the last levy and thereafter in respect of the second last levy and so on. If this Assembly were to agree with this proposal, the recovery would cover the entire sixth levy. If the Director's proposal as to the distribution between the two Funds were to be adopted, the recovery would also cover part of the fifth levy. Should the proposal by one delegation as to the distribution be adopted, the recovery would cover the entire fifth levy and possibly a small portion of the fourth levy. In the Director's view the repayment should be made on the same basis as these levies were made, ie that they were not capped.

2.2.14 When the global settlement has been concluded and the 1992 Fund has received the amount payable to it by the shipowner/UK Club and the amount to be reimbursed by the 1971 Fund, there will be a significant surplus on the *Nakhodka* Major Claims Fund. Pursuant to Financial Regulation 4.4, the surplus should be repaid to the contributors in the States that were Parties to the 1992 Fund Convention on the date of the incident (2 January 1997) who have paid contributions to the *Nakhodka* Major Claims Fund on the basis of the quantities of contributing oil received by each contributor during 1996 (ie the year before the incident). Since it is not yet clear when the global settlement will be concluded, or when monies will be recovered as a result of the settlement, the Director is not in a position to make any proposal concerning the repayment at this stage. However, he may make such a proposal in an addendum to this document in the light of any developments before the October 2002 Assembly session.

3 Erika Major Claims Fund

3.1 Summary information

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

Incident	<i>Erika</i>
Place of incident	France
Date of incident	12/12/99
Maximum amount of compensation payable by 1992 Fund (ie 135 million SDR=FFr 1 211 966 881 - CLC limit FFr 84 247 733) = FFr 1 127 719 148	£111 390 227
Maximum payable from General Fund (4 million SDR)	£3 380 680
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£90 000 000
Compensation paid by 1992 Fund to 30/6/2002	£18 796 329
Miscellaneous paid by 1992 Fund to 30/6/2002	£8 766 132
Possible total compensation payable by 1992 Fund 1/7/02 - 1/3/04	£91 550 266
Possible total miscellaneous payable by 1992 Fund 1/7/02 - 1/3/04	£7 000 000

3.2 Analysis

- 3.2.1 The total payments by the 1992 Fund in respect of the *Erika* incident reached the maximum amount payable from the General Fund (£3 380 680) during 2001.
- 3.2.2 A total of £90 million has been levied as contributions to the *Erika* Major Claims Fund. There was a surplus of £55 million on that Major Claims Fund as at 31 December 2001 (document 92FUND/A.7/7, Annex IV, Statement III.2).
- 3.2.3 It is estimated that the balance on the *Erika* Major Claims Fund was approximately £70 million as at 30 June 2002. The Director did not use the authorisation to levy a further £21 million for payment during the second half of 2002.
- 3.2.4 It is not possible to determine at this stage the total amount of the established claims. However, it is expected that the total amount of the claims submitted (including claims by the French Government and TotalFina which will only be pursued if and to the extent all other established claims have been paid in full) will exceed by far the amount available under the 1992 Fund Convention.
- 3.2.5 The Director takes the view that some £98.6 million, including fees and expenses, may be payable by the 1992 Fund by 1 March 2004 (the date when any 2003 contributions would be receivable).
- 3.2.6 As set out in the Annex, it appears that an estimated £28 million would be required in respect of the *Erika* Major Claims Fund. In this regard reference is made to section 4 below.

4 Director's proposals

4.1 Sums required

- 4.1.1 As set out in paragraph 2.2.9 above, the Director takes the view that there is no need for any further levy to the *Nakhodka* Major Claims Fund.
- 4.1.2 The Director considers that contributions of £28 million will be required in 2003 to balance the *Erika* Major Claims Fund (cf paragraph 3.2.6).
- 4.1.3 The Director believes it is important that sufficient funds are available for the payment of claims arising out of the *Erika* incident. 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 contributions. In the light of the position taken by the Assembly on previous occasions, the Director is of the view that the 1992 Fund should not take loans from banks and other financial institutions for this purpose.

4.2 The working capital

- 4.2.1 The Director has submitted a document to the Assembly in which he proposes that the working capital should be maintained at £20 million (document 92FUND/A.7/22).
- 4.2.2 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 *Erika* incident over and above 4 million SDR.

4.3 Loans from balances on other Major Claims Funds

- 4.3.1 Financial Regulation 7.2(d) provides that monies in any Major Claims Funds may be used to make loans to the General Fund or other Major Claims Funds, to the extent that sufficient money is not available in the relevant funds. Regulations 7.1(a)(iv) and 7.2(b)(iii) provide that any such loans shall be repaid with interest.

4.3.2 It is expected that the global settlement relating to the *Nakhodka* incident will be concluded during 2002. On that assumption, all claims and expenses arising out of the incident have been or will be paid. The surplus on that Major Claims Fund (including the sum recovered by the 1992 Fund from the UK Club and the sum reimbursed by the 1971 Fund) would have to be reimbursed to the contributors to this Major Claims Fund. For this reason the Director takes the view that loans should not be taken from the *Nakhodka* Major Claims Fund to the *Erika* Major Claims Fund.

4.4 Proposed levy

On the basis of these considerations, the Director proposes that a levy in the form of 2002 contributions should be made to the *Erika* Major Claims Fund for £28 million.

4.5 Timing of the levy

4.5.1 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.

4.5.2 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 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 (document 92FUND/A.1/34, paragraph 16).

4.5.3 The Director proposes that the entire proposed levy to the *Erika* Major Claims Fund (£28 million) should be due for payment by 1 March 2003.

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 2002 contributions to the *Erika* Major Claims Fund (paragraphs 3.2.6 and 4.4); and
- (c) to decide on the date of payment of 2002 contributions to this Major Claims Fund (paragraph 4.5.3).

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ANNEX

Major Claims Fund expenditure

(Figures in Pounds Sterling)

Incident	Date of Incident	Previous levies				Maximum Paid by the General Fund: 4 million SDR	Payments by 31/12/01 (including General Fund)		Major Claims Fund Balance 31.12.01	2002 Expenditure to 30/6/02		2002 Major Claims Fund Estimated Income		Estimated Major Claims Fund Balance 30.06.02	Possible Total Expenditure (compensation and miscellaneous 1/7/02-1/3/04)	Projected Major Claims Fund Surplus or (Requirement up to 01.03.04)
		Contribution Year	Assembly Session	Date Due	Amount		Compensation Paid by 31.12.01	Miscellaneous Paid by 31.12.01		Compensation Paid 1/1/02-30/6/02	Miscellaneous Paid 1/1/02-30/6/02	Contributions due in 2002	Interest to 30/6/02			
Nakhodka	02.01.97	1996	2nd ext	01.09.97	7 000 000	3 382 620	48 184 067	4 924 103	22 332 783	(1 799 780)	(518 236)	11 000 000	621 000	31 636 000	(15 962 000)	15 700 000 <1>
		1998	3rd	01.02.99	21 000 000											
				01.09.99	9 000 000											
		1999	4th	01.09.00	13 000 000											
		2000	5th	01.03.01	17 000 000											
		2001	6th	01.03.02	11 000 000											
					78 000 000											
					30 000 000											
			11 000 000													
			18 000 000													
Erika	12.12.99	2000	4th ext	01.09.00	40 000 000	3 380 680	9 773 083	6 508 935	55 261 020	(9 023 246)	(2 257 197)	25 000 000	1 380 000	70 361 000	(98 551 000)	(28 200 000)
		2000	5th	01.03.01	25 000 000											
		2001	6th	01.03.02	25 000 000											
					90 000 000											
					25 000 000											
			21 000 000													
								77 593 803					101 997 000	(114 513 000)	(12 500 000)	

<1> Recovery resulting from the global settlement not included