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REPLACEMENT OF INSTRUMENTS ENUMERATED IN ARTICLE 5.3
OF THE FUND CONVENTION

Note by the Director

Introduction

1 According to Article 5.3 of the Fund Convention, the IOPC Fund may be exonerated, wholly or partially, from its obligation to pay indemnification to the shipowner or his guarantor if the IOPC Fund proves that, as a result of the actual fault or privity of the owner, the ship in question did not comply with the requirements laid down in the four instruments listed in subparagraph (a)(i) - (iv) of that Article and that the incident or the damage was caused wholly or partially by such non-compliance. This provision applies even in cases where the flag State of the vessel concerned is not a Party to the relevant instrument.

2 The instruments originally listed in Article 5.3(a) were:

- (i) the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended in 1962 (OILPOL 54);
- (ii) the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60);
- (iii) the International Convention on Load Lines, 1966; and
- (iv) the International Regulations for Preventing Collisions at Sea, 1960 (COLREG 60).

3 The purpose of Article 5.3 was to encourage shipowners, by means of indirect financial inducement, to make their ships conform to the requirements of the instruments mentioned in that Article, thereby reducing the risk of oil pollution incidents.

4 Article 5.4 of the Fund Convention provides a procedure of replacement of the instruments specified in Article 5.3(a). These instruments may, under

certain conditions, be replaced by new instruments if so decided by the IOPC Fund Assembly. Upon the entry into force of a new Convention designed to replace, in whole or in part, any of the instruments specified in Article 5.3(a), the Assembly may thus decide that the new Convention will replace such an instrument or part thereof for the purpose of Article 5.3. The Assembly will then fix the date from which such a replacement will take effect.

5 At its 8th session, the Assembly decided to interpret Article 5.4 so as to allow the inclusion in the list of instruments contained in Article 5.3(a) of not only new conventions but also amendments adopted by a tacit acceptance procedure, provided that such amendments were of an important character for the purpose of the prevention of oil pollution (documents FUND/A.8/12 and FUND/A.8/15, paragraph 15.1).

6 The Assembly has applied Article 5.4 in respect of the instruments listed in Article 5.3(a)(i), (ii) and (iv). The present list of instruments in Article 5.3(a) reads as follows:

- (i) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as amended by Resolution MEPC.14(20) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984; or
- (ii) the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 relating thereto and as amended by Resolutions MSC.1(XLV) and MSC.6(48) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981 and 17 June 1983, respectively; or
- (iii) the International Convention on Load Lines, 1966; or
- (iv) the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

7 The Assembly may wish to examine whether further modifications to the list should be made, resulting from amendments adopted in 1987 to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), amendments adopted in April 1988 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) and amendments adopted in 1987 to the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72).

1987 Amendments to MARPOL 73/78

8 The 1987 Amendments to MARPOL 73/78 were adopted by the Marine Environment Protection Committee of IMO on 1 December 1987 (Resolution MEPC.29(25)), under the tacit acceptance procedure specified in Article 16 of that Convention. Under this procedure, an amendment adopted by the Marine Environment Protection Committee is communicated by the Secretary-General of

IMO to the Parties to MARPOL 73/78. The amendment is deemed to have been accepted unless more than one third of the Parties, or Parties representing not less than half of the world's tonnage, have notified the Secretary-General of their objections to the amendment. An amendment deemed to have been accepted will enter into force in respect of all Parties except those having filed objections.

9 The 1987 Amendments to MARPOL 73/78 will enter into force on 1 April 1989, unless the prescribed number of objections have been made before 1 October 1988. At the time of drafting this document, no objections have been made to these Amendments.

10 The 1987 Amendments to MARPOL 73/78 relate to operational discharges. Under the Amendments, the Gulf of Aden is designated as a special area under Annex I of MARPOL 73/78.

11 The 1987 Amendments are not related to the safety standards of oil tankers, nor are they otherwise of relevance for the purpose of Article 5.3 of the Fund Convention. The Director considers, therefore, that the 1987 Amendments to MARPOL 73/78 should not be included in the list of instruments contained in Article 5.3(a) of the Fund Convention.

April 1988 Amendments to SOLAS 74

12 Amendments to SOLAS 74 were adopted by the Maritime Safety Committee of IMO on 21 April 1988 under the tacit acceptance procedure specified in Article VIII(b) of the SOLAS Convention (Resolution MSC.11(55)). This tacit acceptance procedure is similar to the one described in respect of MARPOL 73/78 (paragraph 8 above).

13 The prescribed period for making objections to the April 1988 Amendments to SOLAS 74 expires on 21 April 1989. Unless a sufficient number of objections are made, the April 1988 Amendments will enter into force on 22 October 1989. So far no objections have been received by the Secretary-General of IMO.

14 The April 1988 Amendments to SOLAS 74 relate to the safety for passenger ro-ro ferries.

15 These Amendments are not related to the safety standards of oil tankers, nor are they otherwise of relevance for the purpose of Article 5.3 of the Fund Convention. For this reason, the Director is of the view that the April 1988 Amendments to SOLAS 74 should not be included in the list of instruments contained in Article 5.3(a) of the Fund Convention.

1987 Amendments to COLREG 72

16 In 1987, at its 15th session, the Assembly of IMO adopted amendments to COLREG 72 (Resolution A.626(15)) in accordance with a tacit acceptance procedure, under Article VI of that Convention. This procedure is similar to

the tacit acceptance procedures under SOLAS 74 and MARPOL 73/78. The period for notifying objections to the Amendments expired on 19 May 1988. No Government made any objection within the prescribed time period. The 1987 Amendments will enter into force on 19 November 1989.

17 The Amendments cover technical details of the collision regulations and relate in most cases to operational requirements.

18 Bearing in mind the purpose of Article 5.3 of the Fund Convention, the 1987 Amendments do not seem to be relevant for the purpose of that Article. The Director is of the view, therefore, that they need not be included in the list contained in Article 5.3(a) of the Fund Convention.

19 It should be noted that the 1987 Amendments to COLREG 72 are similar to Amendments adopted in 1981. The IOPC Fund Assembly decided, at its 8th session, not to include the 1981 Amendments to COLREG 72 in the above-mentioned list (documents FUND/A.8/12, paragraph 35 and FUND/A.8/15, paragraph 15.3).

Action to be Taken by the Assembly

20 The Assembly is invited to consider whether to include in the list of instruments contained in Article 5.3(a) of the Fund Convention:

- (a) the 1987 Amendments to MARPOL 73/78 (paragraph 11 above);
 - (b) the April 1988 Amendments to SOLAS 74 (paragraph 15 above); and
 - (c) the 1987 Amendments to COLREG 72 (paragraph 18 above).
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