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COMPENSATION
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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 October 1988 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) and amendments adopted in March 1989 to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). The Assembly may also wish to take note of other amendments to some of the instruments referred to in paragraph 6 above.

October 1988 Amendments to SOLAS 74

8 Amendments to SOLAS 74 were adopted by the Maritime Safety Committee of IMO in October 1988 under the tacit acceptance procedure specified in Article VIII(b) of the SOLAS Convention (Resolution MSC.12(56)). Under this procedure, an amendment adopted by the Maritime Safety Committee is communicated by the Secretary-General of IMO to the Governments of Contracting States. The

amendment is deemed to have been accepted unless more than one third of these Governments, or the Governments of States representing at least half of the world's tonnage, have notified the Secretary-General of their objection to the amendment. An amendment that comes into force will in principle enter into force in respect of all Contracting States except those having filed objections.

9 The prescribed period for making objections to the October 1988 Amendments to SOLAS 74 expires on 28 October 1989. Unless a sufficient number of objections are made, the 1989 Amendments will enter into force on 29 April 1990. So far no objections have been received by the Secretary-General of IMO.

10 The October 1988 Amendments to SOLAS 74 relate to the safety of passenger ships.

11 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 October 1988 Amendments to SOLAS 74 should not be included in the list of instruments contained in Article 5.3(a) of the Fund Convention.

March 1989 Amendments to MARPOL 73/78

12 Amendments to MARPOL 73/78 were adopted by the Marine Environment Protection Committee on 17 March 1989 under a tacit acceptance procedure (Resolution MEPC 34(27)). The time period for notification of objections expires on 11 April 1990. The amendments will come into force on 12 October 1990, unless a sufficient number of objections have been filed.

13 These amendments relate to Annex II of MARPOL 73/78 regarding noxious liquid substances in bulk and are therefore not of any relevance for the prevention of oil pollution. For this reason, the Director proposes that they should not be included in the list of instruments contained in Article 5.3(a) of the Fund Convention.

Other Amendments to the Instruments Listed in Article 5.3 of the Fund Convention

14 Since the 11th session of the Assembly, a Conference held in November 1988 adopted Resolutions containing certain amendments to SOLAS 74 and to the 1978 Protocol to SOLAS 74 (IMO documents GMDSS/CONF/9 and GMDSS-P/CONF/6, respectively). These amendments are subject to a tacit amendment procedure. The periods for raising objections expire on 1 February 1990; unless a sufficient number of objections are made the amendments will enter into force on 1 February 1992. Another Conference adopted a Protocol to SOLAS 74 and a Protocol to the 1966 Convention on Load Lines (IMO documents HSSC/CONF/11 and HSSC/CONF/12, respectively); these Protocols require explicit acceptance by a certain number of States for their entry into force, and it is not possible to predict when they will come into force. In addition, certain amendments to SOLAS 74 were adopted by the Maritime Safety Committee on 11 April 1989 (Resolution MSC.13(57)) under a tacit amendment procedure. The prescribed

period for raising objections to these amendments expires on 31 July 1991. These Amendments will enter into force on 1 February 1992, unless a sufficient number of objections are made.

15 The Protocols and Resolutions referred to above contain certain provisions which, in the Director's view, are of an important character for the prevention of oil pollution. However, it will take a considerable time before it can be established when the amendments contained in the Protocols will come into force; the amendments covered by the Resolutions will not come into force until 1992. The Director therefore considers it premature for the Assembly to take a decision, already at its 12th session, on whether to include them in the list of instruments contained in Article 5.3 of the Fund Convention. The Director intends to submit this question to the Assembly for consideration at a later session.

Action to be Taken by the Assembly

16 The Assembly is invited:

- (a) to consider whether to include in the list of instruments contained in Article 5.3(a) of the Fund Convention:
 - (i) the October 1988 Amendments to SOLAS 74 (paragraph 11 above);
 - (ii) the March 1989 Amendments to MARPOL 73/78 (paragraph 13 above); and
 - (b) to take note of the Amendments referred to in paragraph 14 above.
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