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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 amendment 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;
- (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, and as amended by Resolution 1 adopted on 9 November 1988 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on the Global Maritime Distress and Safety System;
- (iii) the International Convention on Load Lines, 1966; and
- (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 April 1989 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74), amendments to SOLAS 74 adopted in May 1991, amendments adopted in November 1990 to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) and amendments adopted in July 1991 to MARPOL 73/78.

#### April 1989 Amendments to SOLAS 74

8 Certain amendments to SOLAS 74 were adopted by the Maritime Safety Committee of IMO on 11 April 1989 (Resolution MSC.13(57)) in accordance with the tacit amendment procedure specified in Article VIII(b) of the SOLAS Convention. Under this procedure, an amendment adopted by the 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 is deemed to have been accepted 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 April 1989 Amendments expired on 31 July 1991. Since no objection was received by the Secretary-General of IMO before that date, the Amendments will enter into force on 1 February 1992.

10 The April 1989 Amendments to SOLAS 74 deal, inter alia, with fire protection and other matters of importance to the safety of oil tankers. For this reason, these amendments should be considered of an important character for the purpose of the prevention of oil pollution. The Director proposes that the April 1989 Amendments to SOLAS 74 should be included in the list of instruments contained in Article 5.3(a) of the Fund Convention.

11 It is proposed that, if the Assembly were to share the Director's view regarding these amendments, the reference to the instrument listed in Article 5.3(a)(ii) should be amended to read as follows (amendments underlined):

- (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), MSC.6(48) and MSC.13(57) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983 and 11 April 1989, respectively, and as amended by Resolution 1 adopted on 9 November 1988 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on the Global Maritime Distress and Safety System;

12 The date of the replacement may not be earlier than six months from the date of the decision of the Assembly, in accordance with Article 5.4 of the Fund Convention. It is proposed that, if the Assembly were to decide on a replacement, it should take effect on 15 April 1992.

#### May 1991 Amendments to SOLAS 74

13 In May 1991, the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Resolution MSC.22(59)) in accordance with the tacit amendment procedure under Article VIII(b) of SOLAS 74. The prescribed period for notification of objections expires on 1 July 1993.

14 These amendments mainly relate to fire safety aspects of passenger ships, pilot transfer arrangements, the carriage of grain and the carriage of dangerous goods other than oil. In the opinion of the Director, they do not concern the safety of oil tankers, nor are they otherwise of relevance for the purpose of Article 5.3 of the Fund Convention. These amendments should therefore not be included in the list of instruments contained in Article 5.3(a) of the Fund Convention.

#### November 1990 Amendments to MARPOL 73/78

15 In November 1990, the Maritime Environment Protection Committee of IMO adopted amendments to MARPOL 73/78 (Resolution MEPC.42(30)) in accordance with the tacit amendment procedure laid down in Article 16 of the MARPOL Convention, which is similar to the one under SOLAS 74. The prescribed period for notification of objections expires on 16 September 1991. The Amendments will come into force on 17 March 1992 unless a sufficient number of objections have been filed. So far, no objections have been received by the Secretary-General of IMO.

16 The November 1990 Amendments relate to the designation of the Antarctic area as a special area under Annexes I and V of MARPOL 73/78. They 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 November 1990 Amendments to MARPOL 73/78 should not be included in the list of instruments contained in Article 5.3(a) of the Fund Convention.

**July 1991 Amendments to MARPOL 73/78**

17 In July 1991, the Marine Environment Protection Committee of IMO adopted amendments to MARPOL 73/78 (Resolution MEPC.47(31)) in accordance with the tacit amendment procedure specified in Article 16 of the MARPOL Convention. The prescribed period for notification of objections expires on 4 October 1992. The Amendments will come into force on 4 April 1993, unless a sufficient number of objections have been filed.

18 These Amendments include, inter alia, the addition of new regulations on shipboard oil pollution emergency plans which are closely linked with the provisions of the International Convention on Oil Pollution Preparedness, Response and Co-operation adopted in November 1990. The Director considers that these amendments are of an important character for the purpose of the prevention of oil pollution. However, it is not possible at this stage to determine whether the amendments in the Resolution will come into force. The Director therefore considers it premature for the Assembly to take a decision at its 14th session on whether to include these amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention.

19 In July 1991, the Marine Environment Protection Committee also adopted amendments to Annex V of MARPOL 73/78 (Resolution MEPC.48(31)). The prescribed period for notification of objections expires on 4 October 1992. The Amendments will come into force on 4 April 1993, unless a sufficient number of objections have been filed.

20 These latter amendments, which relate to the designation of the Wider Caribbean Sea Area as a special area for the purpose of Annex V of MARPOL 73/78, do not concern the safety 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 they should not be included in the list of instruments contained in Article 5.3(a) of the Fund Convention.

**Action to be Taken by the Assembly**

21 The Assembly is invited to:

- (a) consider whether to include in the list of instruments contained in Article 5.3(a) of the Fund Convention:
    - (i) the April 1989 Amendments to SOLAS 74 (paragraphs 8-12 above);
    - (ii) the May 1991 Amendments to SOLAS 74 (paragraphs 13 and 14 above);
    - (iii) the November 1990 Amendments to MARPOL 73/78 (paragraphs 15 and 16 above);
    - (iv) the July 1991 Amendments to MARPOL 73/78 (paragraphs 19 and 20 above);  
and
  - (b) take note of the Amendments referred to in paragraphs 17 and 18 above.
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