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REPLACEMENT OF INSTRUMENTS ENUMERATED IN ARTICLE 5.3 OF THE FUND CONVENTION

Note by the Director

Introduction

1 In accordance with 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 sub-paragraph (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 for replacing 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 Resolutions MEPC.14(20), MEPC.47(31), MEPC.51(32) and MEPC.52(32) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984, 4 July 1991, 6 March 1992 and 6 March 1992 respectively;
- (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), MSC.13(57) and MSC.27(61) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983, 11 April 1989 and 11 December 1992, 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 May 1994 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74), amendments adopted in November 1994 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 December 1994 and in May 1995 to SOLAS 74.

May 1994 Amendments to SOLAS 74

8 In May 1994, the Conference of Contracting Governments to SOLAS 74 and the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Conference Resolution 1 and Resolution MSC.31(63) respectively) in accordance with the tacit amendment procedure specified in Article VIII(b) of SOLAS 74. Under this procedure, an amendment adopted by such a Conference or 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 Governments of such States representing not less than 50% of the gross tonnage of the world's merchant fleet, 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 Parties except those having filed objections.

9 The dates on which the prescribed period for notification of objections to the Amendments contained in the respective Resolutions expire and the corresponding dates on which the Amendments will enter into force, unless a sufficient number of objections have been filed, are as follows:

	Expiry of period for notification of objections	Date on which amendments will enter into force unless a sufficient number of objections have been made
Amendments contained in Annex I to Conference Resolution 1 (Chapters X and XI)	1 July 1995	1 January 1996
Amendments contained in Annex 2 to Conference Resolution 1 (Chapter IX)	1 January 1998	1 July 1998
Amendments contained in Resolution MSC.31(63) (Regulation V/8-1 and Regulation V/15-1)	1 July 1995	1 January 1996
Amendments contained in Resolution MSC.31(63) (amendments other than those referred to above)	1 January 1998	1 July 1998

10 The Amendments covered by Conference Resolution 1 introduce three new Chapters, ie Chapters IX, X and XI. Chapter IX, which applies inter alia to oil tankers of 500 gross tonnage and over, makes it compulsory for ships to comply with the International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by IMO. Chapter X contains provisions relating to safety measures for high speed craft. Chapter XI, which contains provisions relating to special measures to enhance maritime safety, introduces inter alia an enhanced programme of surveys for tankers which are more than five years old.

11 The Amendments covered by Resolution MSC.31(63) include requirements affecting the safety of oil tankers, viz mandatory ship reporting systems, emergency towing arrangements on all tankers of 20 000 dwt and above, fire protection arrangements for fuel oil, lubricating oil and other flammable oils and improved navigation bridge visibility.

12 At its 17th session, the Assembly considered that the Amendments covered by Conference Resolution 1 of the Conference of Contracting Governments to SOLAS 74 and by Resolution MSC.31(63) were of an important character for the purpose of the prevention of oil pollution. However, the Assembly took the view that at the time of the session it was not possible to determine whether these Amendments would enter into force and that it was therefore premature to take a decision at that

session on whether to include the May 1994 Amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention (document FUND/A.17/35, paragraph 31.3).

13 It has now been established that the Amendments contained in Annex I to Conference Resolution 1 and some of the Amendments covered by Resolution MSC.31(63) (ie. those relating to Regulation V/8-1 and Regulation V/15-1) will enter into force on 1 January 1996. It is proposed, therefore, that 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), MSC.13(57) and MSC.27(61) and, as regards Regulations V/8-1 and V/15-1, by Resolution MSC.31(63) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983, 11 April 1989, 11 December 1992 and 23 May 1994, 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 and as amended by Resolution 1 adopted on 23 May 1994 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974;

14 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 1 May 1996.

November 1994 Amendments to MARPOL 73/78

15 In November 1994, the Conference of Parties to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto, adopted amendments to MARPOL 73/78 (Resolutions 1, 2 and 3), in accordance with the tacit amendment procedure specified in Article 16 of the MARPOL Convention. This tacit amendment procedure is similar to the one described in respect of SOLAS 74.

16 The prescribed period for notification of objections expires on 3 September 1995. The Amendments will come into force on 3 March 1996, unless a sufficient number of objections have been filed.

17 The Amendments covered by Resolutions 1, 2 and 3 introduce extension of Port State control on operational requirements. Under these Resolutions, most States may inspect ships of other States to ensure that the crews are able to carry out essential shipboard procedures relating to marine pollution prevention. Resolution 1 covers amendments to Annex I (oil pollution) and Annex II (pollution by noxious liquid substances), Resolution 2 amendments to Annex III (pollution by harmful substances in packaged form), and Resolution 3 amendments to Annex V (garbage).

18 The Director considers that the Amendments contained in these Resolutions are not relevant for the purpose of Article 5.3 of the Fund Convention, because in his view these Amendments do not introduce any new requirements for ships to comply with. These amendments should therefore not be included in the list of instruments contained in Article 5.3(a) of the Fund Convention.

December 1994 Amendments to SOLAS 74

19 In December 1994, the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Resolution MSC.42(64)) in accordance with the tacit amendment procedure specified in Article VIII(b) of SOLAS 74. The prescribed period for notification of objections expires on 1 January 1996. The Amendments will enter into force on 1 July 1996, unless a sufficient number of objections have been filed.

20 The Amendments covered by MSC.42(64) make it mandatory to provide the cargo information required by the Code of Safe Practice for Cargo Storage and Securing adopted by IMO. They also make it mandatory to load, stow and secure cargo units in accordance with a manual that must be up to a standard at least equivalent to guidelines developed by IMO in that Code.

21 In the opinion of the Director, the Amendments contained in Resolution MSC.42(64) 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.

May 1995 Amendments to SOLAS 74

22 In May 1995, the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Resolution MSC.46(65)) in accordance with the tacit amendment procedure specified in Article VIII(b) of SOLAS 74. The prescribed period for notification of objections expires on 1 July 1996. The Amendments will enter into force on 1 January 1997, unless a sufficient number of objections have been filed.

23 Under the Amendments covered by Resolution MSC.46(65), States may make ships' routing systems mandatory when adopted and implemented in accordance with guidelines and criteria developed and adopted by IMO. A ship shall use a mandatory ships' routing system adopted by IMO as required for its category or cargo carried and in accordance with the relevant provisions in force, unless there are compelling reasons not to use a particular ships' routing system.

24 The Director takes the view that these Amendments are of an important character for the purpose of the prevention of oil pollution.

25 It is not possible at this stage to determine whether the Amendments covered by this Resolution will enter into force. The Director therefore considers it premature for the Assembly to take a decision at its 18th session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention.

Action to be Taken by the Assembly

26 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 May 1994 Amendments to SOLAS 74 (paragraphs 8-14 above);
 - (b) the November 1994 Amendments to MARPOL 73/78 (paragraphs 15-18 above);
 - (c) the December 1994 Amendments to SOLAS 74 (paragraphs 19-21 above); and
 - (d) the May 1995 Amendments to SOLAS 74 (paragraphs 22-25 above).
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