



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

ASSEMBLY  
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Agenda item 16

FUND/A.9/13  
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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 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.

3 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's 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.

4 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).

5 The Assembly has applied Article 5.4 in respect of the instruments listed in Articles 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 Resolution MSC.1(XLV) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981;
- (iii) the International Convention on Load Lines, 1966;  
or
- (iv) the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

6 The Assembly may wish to examine whether further modifications to the list should be made, resulting from Amendments adopted in 1983 to the International Convention for the Safety of Life at Sea (SOLAS 74) and Amendments adopted in 1985 to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78).

#### 1983 Amendments to SOLAS 74

7 At the 8th session of the Assembly, the Director reported that further amendments to SOLAS 74 had been adopted by the IMO Maritime Safety Committee in 1983 by Resolutions MSC.4(48), MSC.5(48) and MSC.6(48) (1983 Amendments), and that these amendments were subject to a tacit acceptance procedure. Under this procedure, an amendment adopted by the Maritime Safety Committee or a conference, as the case may be, 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.

8 Resolutions MSC.4(48) and 5(48) relate to the adoption of the International Bulk Chemicals Code and the International Gas Carriers Code, respectively, and are thus not relevant for the purpose of this document.

9 The 1983 Amendments to SOLAS 74 are mainly related to Chapter III (Life Saving Appliances and Arrangements) and Chapter VII (Carriage of Dangerous Goods, International Bulk Chemicals Code, International Gas Carriers Code), but also include certain amendments to Chapter II-1 (Sub-division and Stability, Machinery and Electrical Installations), Chapter II-2 (Construction - Fire Protection, Fire Detection and Fire Extinction) and Chapter IV (Radiotelegraphy and Radiotelephony).

10 The period for notifying objections to the 1983 Amendments to SOLAS 74 expired on 1 January 1986. No Government made any objection to the Amendments within the prescribed period. The 1983 Amendments entered into force for all Contracting Parties to SOLAS 74 on 1 July 1986.

11 During the discussions at the 8th session of the Assembly in October 1985, it was pointed out that some amendments, especially those in Chapter II-2, had important implications for the safety of tankers. The Assembly agreed that the character of the 1983 Amendments to SOLAS 74 justified their inclusion in the list contained in Article 5.3(a). However, the Assembly considered it premature to take any decision in this regard at its 8th session, as it would not be possible to establish until 1 January 1986 whether the 1983 Amendments would enter into force (document FUND/A.8/15, paragraph 15.4).

12 As mentioned above, the 1983 Amendments entered into force on 1 July 1986. In view of the position taken by the Assembly at its 8th session, the Director suggests that the 1983 Amendments to SOLAS 74 adopted by Resolution MSC 6(48) be included in the list of instruments contained in Article 5.3(a). The reference to the instrument listed in Article 5.3(a)(ii) should thus be amended to read as follows:

- (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;".

13 Under Article 5.4 of the Fund Convention, the date of replacement may not be earlier than six months from the date of the decision by the Assembly. It is proposed that, if the Assembly were to decide on a replacement, it should take effect from 1 May 1987.

1985 Amendments to MARPOL 73/78

14 Two further sets of amendments to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) were adopted by the Marine Environment Protection Committee in 1985 by Resolutions MEPC.16(22) and MEPC.21(22). These Amendments were adopted under a tacit acceptance procedure.

15 The 1985 Amendments will enter into force on 6 April 1987, unless they are specifically rejected before 5 October 1986 by either not less than one third of all Contracting Parties or by Contracting Parties whose combined merchant fleets total more than 50% of the world's gross tonnage. At the time of the drafting of this document, no Contracting State had made an objection to the Amendments. When the 9th session of the IOPC Fund's Assembly is held, it will be known whether the Amendments will come into force.

16 The first set of amendments relates to Annex II to MARPOL 73/78. Annex II deals with operational and accidental pollution by those noxious liquid substances carried in bulk, listed in Appendix II to Annex II. This list does not include any persistent hydrocarbon mineral oil (cf Article 1.2 of the Fund Convention). The second set of amendments relates to Protocol I of MARPOL 73/78, which deals with the reporting of incidents involving harmful substances.

17 The 1985 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 1985 Amendments to MARPOL 73/78 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

18 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 1983 Amendments to SOLAS 74 (paragraph 12 above),  
and
  - (b) the 1985 Amendments to MARPOL 73/78 (paragraph 17 above).
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