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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) and MEPC.47(31) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984 and 4 July 1991, 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) 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;
- (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 March 1992 to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), amendments adopted in October 1992 to MARPOL 73/78 and amendments adopted in December 1992 to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74).

March 1992 Amendments to MARPOL 73/78

8 In March 1992, the Marine Environment Protection Committee of the International Maritime Organization (IMO) adopted, by Resolutions MEPC.51(32) and MEPC.52(32), two sets of amendments to MARPOL 73/78, in accordance with the tacit amendment procedure specified in Article 16 of the MARPOL Convention. Under this procedure, an amendment adopted by the Committee is communicated by the Secretary-General of IMO to the Parties to the Convention. 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 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 prescribed period for notification of objections expired on 6 January 1993. Since no objection was received by the Secretary-General of IMO by that date, the Amendments came into force on 6 July 1993.

10 The Amendments covered by Resolution MEPC.51(32) introduced, inter alia, stricter requirements for all ships of 400 tons gross tonnage and above and for oil tankers of 150 tons gross tonnage and above in respect of the discharge of oil and in respect of oil filtering equipment.

11 The Amendments introduced by Resolution MEPC.52(32) relate to stricter design requirements for new oil tankers, in particular double hull or equivalent construction, and to provisions on the up-grading and phasing out of existing tankers.

12 At its 15th session, the Assembly considered that the Amendments covered by the Resolutions were of an important character for the purpose of the prevention of oil pollution. At the time of that session it was not possible to determine whether these Amendments would enter into force. The Assembly decided, therefore, that it was premature to take a decision at that session on whether to include the March 1992 Amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention (document FUND/A.15/28 paragraph 17.4).

13 Since the March 1992 Amendments to MARPOL 73/78 have entered into force, it is proposed that the reference to the instruments listed in Article 5.3(a)(i) should be amended to read as follows (amendments underlined):

- (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;

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 10 April 1994.

October 1992 Amendments to MARPOL 73/78

15 In October 1992, the Marine Environment Protection Committee adopted two sets of amendments to MARPOL 73/78 (Resolutions MEPC.57(33) and MEPC.58(33)) in accordance with the tacit amendment procedure specified in Article 16 of the MARPOL Convention. As regards Resolution MEPC.57(33) the prescribed period for notification of objections will expire on 1 January 1994, and unless a sufficient number of objections are received by that date, the Amendments will enter into force on 1 July 1994. With respect to Resolution MEPC.58(33), the prescribed period for notification of objections will expire on 30 August 1993, and unless a sufficient number of objections are received by that date, the Amendments will enter into force on 28 February 1994.

16 The Amendments introduced by Resolution MEPC.57(33) relate to the designation of the Antarctic area as a special area under Annex II of the Convention, which deals with pollution by noxious liquid substances other than oil carried in bulk. These Amendments also modify the lists of liquid substances contained in Annex II.

17 The Amendments covered by Resolution MEPC.58(33) introduce a new text of Annex III of MARPOL 73/78, which contains regulations for the prevention of pollution by harmful substances carried by sea in packaged form.

18 In the opinion of the Director, the Amendments covered by these Resolutions 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.

December 1992 Amendments to SOLAS 74

19 In December 1992, the Maritime Safety Committee of IMO adopted amendments to SOLAS 74 (Resolution MSC.27(61)) in accordance with the tacit amendment procedure under Article VIII(b) of SOLAS 74. This tacit amendment procedure is similar to the one described in respect of MARPOL 73/78. The prescribed period for notification of objections expires on 1 April 1994. The Amendments will enter into force on 1 October 1994, unless a sufficient number of objections have been filed. So far no objections have been received by the Secretary-General of IMO.

20 These Amendments include stricter safety requirements for new oil tankers, namely in respect of access to spaces in the cargo area and in respect of communications between the navigation bridge and machine space. The Director considers that these Amendments are of an important character for the purpose of the prevention of oil pollution.

21 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 16th 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

22 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 March 1992 Amendments to MARPOL 73/78 (paragraphs 8-14 above);
 - (b) the October 1992 Amendments to MARPOL 73/78 (paragraphs 15-18 above); and
 - (c) the December 1992 Amendments to SOLAS 74 (paragraphs 19-21 above).
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