

ASSEMBLY - 1st session
Agenda item 12

DETERMINATION RELATING TO THE REPLACEMENT OF
INSTRUMENTS ENUMERATED IN ARTICLE 5(3)

Note by the Secretariat of IMCO

1. It may be recalled that the exoneration feature provided in paragraph 3 of Article 5 of the Fund Convention was adopted by the 1971 Conference as a measure to encourage conformity with the highest standards of safety of life at sea and pollution prevention by providing financial inducement to do so in the operation of the Fund Convention.
2. It was recognized that the standards contained in the various conventions and instruments would in the course of time be up-dated, and certain consequential measures were therefore inserted in the 1971 Convention in order that the Fund Convention should in this regard conform at all times to the existing safety and pollution prevention regimes. These measures include the direct applicability, under provisions of paragraph 3(a) of Article 5, of amendments which are determined at the time of adoption to be of such an important nature that a declaration of non-acceptance of them should either be withdrawn or else result in the non-accepting Party being excluded from further participation in the pertinent Convention.
3. The Secretariat in document OPCF/A.I/9 dealt with another form of measure for up-dating the Convention. This deals exclusively with conventions "designed to replace, in whole or in part, any of the Instruments specified in paragraph 3". For the replacement of these conventions the Fund Assembly is given the option of deciding under certain conditions to replace in paragraph 3 any of the "Instruments" mentioned therein by the appropriate new Convention.
4. No such option is given in respect of amendments. They either apply directly as stated above (subject to the "important nature" limitation) or are not provided for by the Convention.

5. The Assembly may wish to express its opinion as to whether this is a lacuna in the Convention. Under its provisions the Assembly would not seem to be empowered to make provision for a date of replacement in respect of amendments such as those of 1969 to the 1954 Pollution Convention, which were not adopted under the "important nature" provision, bearing in mind that the Fund Convention provision regarding amendments in Article 5, 3(a)(v) is expressly limited to the amendments of important nature and that Article 5, 4 does not mention amendments of any kind.
