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Agenda item 5(d)

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RESOURCE MANAGEMENT

(d) Report on arrears of contributions and of advances to the Working Capital Fund and on the implementation of Article 61 of the IMO Convention

Requests for waivers of arrears

Note by the Secretary-General

SUMMARY

Executive summary: Having received a request from the Federal Republic of Somalia for a waiver of arrears, the Assembly, at its twenty-ninth session, requested that the Council consider the matter further and report to the thirtieth session of the Assembly. This document provides background information to support that consideration.

Strategic direction: 4

High-level action: 4.0.1

Output: 4.0.1.4

Action to be taken: Paragraph 21

Related documents: C/ES.28/4(c)/Add.1; A 29/D and C 115/D

Introduction

1 At its twenty-eighth extraordinary session, the Council considered a request for a waiver of arrears received from the Federal Republic of Somalia, attached as annex 3 to document C/ES.28/4(c). While the Council routinely considers requests made by Member States for waiver of the provisions of Article 61 of the IMO Convention (see paragraph 5) and makes recommendations to the Assembly thereon, the request from the Federal Republic of Somalia was not for such a waiver but a waiver of the full amount of assessments due to the Organization. The Council decided to forward that request to the Assembly for its consideration, noting that there was no provision in the IMO Convention for the Council to consider or make recommendations with respect to such a request. The Council further invited interested Member States to submit a document containing proposals for how such requests might be addressed to a future session of the Council.

2 At its twenty-ninth session, the Assembly recognized that there was no provision for such a waiver of arrears in the IMO Convention. It also determined that while no request for a waiver from the provisions of Article 61 of the IMO Convention had been received from the Federal Republic of Somalia, in view of the exceptional circumstances described in the application for a waiver of arrears, a waiver of the provisions of Article 61 of the IMO Convention should be granted for the Federal Republic of Somalia, and consequently its right to vote was restored. With respect to the matter of how such requests for waiver of arrears should be addressed, the Assembly requested the Council to consider the matter and to report to the thirtieth session of the Assembly.

3 To assist the Council in this consideration, this document contains information on the request made by the Federal Republic of Somalia and the impact of the present situation on the participation of that Member State in the work of the Organization; the relevant provisions of the IMO Convention and the Rules of Procedure of the Assembly with respect to that request; and the policy and precedent with respect to waiver of assessed contribution arrears both at IMO and elsewhere in the United Nations system.

Relevant provisions of the IMO Convention, the Rules of Procedure of the Assembly and the Financial Regulations

4 The work of the Organization is funded by assessments on Member States, on a scale determined by the Assembly in accordance with Article 60(b) of the IMO Convention. The effective operation of the Organization relies on timely payment of those assessments by Member States, a matter consistently promoted by the Council, most recently in the decisions taken under agenda item 4(b) at its twenty-eighth extraordinary session, and by the Assembly, most recently by means of resolution A.1102(29).

5 In order to ensure timely payment of assessments, the Organization relies on two measures – the Contributions Incentive Scheme (CIS), which incentivizes early payment of the current year's assessment by means of the allocation of points earned based on timing and amount of payment, those points subsequently being used to credit Member States with a proportion of the Organization's interest earnings; and Article 61 of the IMO Convention, which is reproduced below.

"Any Member which fails to discharge its financial obligation to the Organization within one year from the date on which it is due, shall have no vote in the Assembly, the Council, the Maritime Safety Committee, the Legal Committee, the Marine Environment Protection Committee, the Technical Co-operation Committee or the Facilitation Committee unless the Assembly, at its discretion, waives this provision."

6 While the CIS incentivizes payment of the current year's assessment, Article 61 provides a penalty for non-payment of arrears from earlier years. The combination of the CIS and the provisions of Article 61 have allowed the Organization to maintain one of the highest collection rates for assessments in the United Nations system, in excess of 98% for each of the last 10 years.

7 The Council will note that Article 61 allows for a Member State in arrears to participate fully in the work of the Organization, with the sole exception of the right to vote in the Assembly, the Council or the committees.

8 Further, the Rules of Procedure of the Assembly provide for a Member State in arrears to apply for and receive, at the Assembly's discretion, a waiver of the provisions of Article 61 under certain conditions. The procedure to be followed is set out in Rule 56*bis*. A Member

State receiving a waiver of Article 61 would therefore be able to participate fully in the work of the Organization in all respects, including the right to vote. A waiver typically covers a biennium, following which a further request for waiver would be required.

9 Neither the IMO Convention nor the Rules of Procedure of the Assembly make any reference to a waiver, or write off, of the arrears themselves. The Financial Regulations, which are approved by the Assembly, note in Regulation 5.9 that:

"A Member State which withdraws from the Organization shall not be entitled to adjustment in respect of contributions paid or assessed. In the event that the most recent financial statements show that the Organization has net liabilities, the Member State will be assessed a closing contribution of a proportion of the net liability in those financial statements consistent with the proportion of the overall appropriation assessed on that Member State for the preceding financial period."

10 This Regulation does not provide for a waiver of a Member State's obligations with respect to its assessment even on withdrawal from the Organization. The Financial Regulations also state in Financial Regulation 10.4 that:

"The Secretary-General may, after full investigation, authorize the writing off of losses of cash, stores and other assets, provided that a statement of all such amounts written off shall be submitted to the External Auditor with the financial statements."

11 While the latter Regulation does not explicitly exclude its application to the arrears of assessments, which are an "asset" of the Organization, it has always been considered in practice to so exclude because providing the Secretary-General alone with the authority to take the step of writing off arrears of assessed contributions would not appear proportionate in view of the extensive arrangements made for consideration by the Council and the Assembly of requests for waiver of Article 61.

12 While the Assembly has authority under the Article 15(g) of the IMO Convention to "vote the budget and determine the financial arrangements of the Organization, in accordance with part XIII", and authority under Article 60(b) to "apportion the expenses among the Members in accordance with a scale to be fixed by it after consideration of the proposals of the Council thereon", there are no established procedures for requesting, considering, assessing or granting a waiver of arrears of assessed contributions, or of how the expense of the amount written off might be reassessed on other Member States or otherwise incorporated in the Organization's budget.

The situation with respect to the Federal Republic of Somalia

13 The Federal Republic of Somalia currently has arrears amounting to £105,732.56, dating back to 1989.

14 On 18 August 2015, the Government of the Federal Republic of Somalia wrote to the Secretary-General requesting a waiver of the full amount of the outstanding contributions due, from 1989 to 2015, and to start paying from the 2016 contribution (see annex 1 to this document). The Secretary-General replied to that letter on 27 August 2015, noting that there is no provision in the IMO Convention for such a write-off (see annex 2).

15 As noted in paragraph 7, the outstanding arrears of the Federal Republic of Somalia would still allow for its full participation in the work of the Organization, excepting only the right to vote in the Assembly or the committees. Following the decision of the Assembly to waive the provisions of Article 61, that right to vote was restored and consequently the Federal Republic of Somalia can participate in the work of the Organization without restriction.

16 Should arrears remain outstanding by the time of the thirtieth session of the Assembly in 2017, a further waiver of the provisions of Article 61 could be sought and, at the discretion of the Assembly, granted.

Precedent at the IMO and elsewhere in the United Nations system

17 While requests for waiver of Article 61 are received regularly in advance of the Assembly, there is no precedent at IMO for waiving arrears of contributions, nor for Member States to make such a request. Member States have, in the past, had arrears outstanding for many years but have then subsequently made the relevant payments – most notably in the recent past one Member State in 2007 resumed paying after an absence of 23 years, while another Member State resumed paying in 2008 after an absence of 34 years, and both have settled their arrears in full.

18 The assessments totalling £355,306 for 1990-1992 made on the former Socialist Federal Republic of Yugoslavia (SFRY) are shown separately from the contributions made and those due and payable by all Member States (including those outstanding from previous years) to reflect the special circumstances relating to the pre-dissolution arrears of that former Member State. In considering those arrears, the Assembly has previously agreed that settlement will depend on the results of ongoing negotiations regarding succession issues at the United Nations General Assembly, and that any settlement there will be reported to the Council for its consideration in determining an appropriate treatment for the Organization's arrears from that same source. At no time has consideration been given to waiving such arrears in advance of any decision by the United Nations General Assembly.

19 Through the Finance and Budget Network (FBN), a group reporting to the United Nations system's High Level Committee on Management (HLCM), the Secretariat has made enquiries to establish precedent elsewhere. Organizations were asked whether they had provisions in their Convention or similar instrument establishing procedures to consider and approve the waiver of arrears of assessed contributions, and whether there was any precedent of such a waiver being made. Of the twelve organizations responding:

- none of the organizations have formal provisions in their Conventions or other related instruments establishing arrangements for writing-off arrears of assessed contributions. While one organization had a similar reference in its Financial Regulations to that mentioned in paragraph 10 above, in that case the authorization given to the Director-General explicitly excludes the authorization to write off assessed contributions; and
- other than the United Nations itself, and one instance where an organization approved a write-off of a portion of the pre-dissolution arrears relating to a former Member State, no organization had any precedent for writing-off arrears of assessed contributions, with a number of organizations noting that this would only be considered in cases where a precedent had already been established by a request for write-off being approved by the General Assembly. The United Nations Secretariat reported that the General Assembly had, on one occasion, agreed to write off arrears of contributions, reflecting in that case that the General Assembly had itself limited the participation of a Member State during

the years in question. The General Assembly had also on another occasion written off a portion of pre-dissolution arrears for a former Member State, and had removed one Member State from the scale of assessment following its decision not to participate in the work of the United Nations for a particular biennium.

20 There is therefore little precedent in the United Nations system as a whole, either for formal procedures for considering and deciding on applications for write-off of arrears of assessed contributions, or for such write-offs occurring in practice, other than decisions taken by the General Assembly of the United Nations in very specific circumstances.

Action requested of the Council

21 The Council is invited to take note of the information contained in this document and decide as it may deem appropriate.

ANNEX 1

JAMHUURIYADDA FEDERAALKA SOOMAALIYA
WASAARADDA DEKADAHA & GAADIIDKA BADDA
XAFIISKA Wasiirka



مهورية الصومال الفيدرالية
وزارة الموانئ والنقل البحري
مكتب الوزير

SOMALI FEDERAL REPUBLIC
Ministry of Ports and Marine Transport
Office of the Minister

Ref: XW/WD&GB/ 63 /2015

Date: 18/08/2015

Fr: Hon. Nur Farah Hersi
Minister of Ports & Marine Transport
The Government of Federal Republic of Somalia
Mogadishu, Somalia.

To: Mr Koji Sekimizu - Secretary General
International Maritime Organisation
4 Albert Embankment
London SE1 7SR
United Kingdom
E-mail Address: info@imo.org

Subject: Request for waiver (annual IMO membership fees)

Dear Secretary General,

With reference to the IMO official letter dated 01 August 2015 regarding Member state contribution, The Government of Federal Republic of Somalia is planning to nominate high official delegates to attend 29 session of the assembly to be held 23 Nov. to 02 Dec. 2015. The government previously requested the IMO (not responded) to waive any and all pending payments, including (annual membership fees) of last 20 years and/or as recorded, because of the following circumstances:

- ✓ Somalia has been in chaos since the collapse of the Siad Barre regime in 1991 and the subsequent civil war;

- ✓ Somalia lacks an effective central government and administration that can provide basic services and collect taxes; and
- ✓ The economy crippled through widespread destruction of national infrastructure and institutional base, lack of adequate investment & rampant unemployment

While Government of Federal Republic of Somalia is doing all that is in its power to normalize the situation, I would greatly appreciate it if you would consider these urgent circumstance and allow the Somalia to start payment of annual membership fee from the year 2016 onwards.

Yours sincerely,


H.E Nur Farah Hersi
Minister of the Ministry



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ANNEX 2

ORGANISATION
MARITIME
INTERNATIONALE



INTERNATIONAL
MARITIME
ORGANIZATION

ORGANIZACIÓN
MARITIMA
INTERNACIONAL

SECRÉTAIRE GÉNÉRAL

SECRETARY-GENERAL

SECRETARIO GENERAL

27 August 2015

His Excellency
Mr. Nur Farah Hersi
Minister of Ports & Marine Transport
The Government of Federal Republic of Somalia
Mogadishu
Somalia

Excellency,

Subject: Request for waiver (Annual IMO Membership Fees)

I have the honour to refer to your letter of 18 August, reference: XW/WD&GB/63/2015 requesting a waiver of any and all contributions owed by the Federal Republic of Somalia, including the annual assessment. The arrears of contributions due from the Federal Republic of Somalia as at 30 June 2015 are summarized in the table below:

Contributions due and payable from 1989 to 2015

Year	Balance due (£)
1989 to 2014	95,436.56
2015	5,163.00
Total	100,599.56

As you may be aware, Article 61 of the IMO Convention, which I have attached for ease of reference, provides for those Members in arrears for more than one year to lose their right to vote in the Assembly, the Council and the Committees of the Organization. The Assembly does, however, have the authority to waive this provision with respect to voting rights, the detailed procedures for which are defined in Rule 56bis of the Rules of Procedure of the Assembly. Such a waiver would require, in accordance with Rule 56bis(ii), a written application for waiver along with a payment schedule indicating the timescale over which arrears will be paid. This Rule is also reproduced for convenience in the attachment to this letter.

There is, however, no provision in the IMO Convention or elsewhere for the waiver of the outstanding arrears themselves; the waiver applies solely to the associated removal of voting rights. Without such a provision, the matter would be one for determination by the Member States of the Organization rather than the Secretariat and, while the Assembly may consider the matter should you make a formal submission for a waiver of the outstanding arrears, you may wish to be aware that there has not been a precedent for such a write-off for any Member State in the history of the Organization.

I am required to report to the twenty-eighth extraordinary session of the Council in November of this year on the status of contributions of all Member States and I should be grateful, therefore, if you would advise me if your Government wishes to apply for a waiver of the provisions of Article 61 of the IMO Convention, in accordance with the procedure set out in Rule 56bis of the



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Rules of Procedure of the Assembly, and of any other submission you may wish to make to the subsequent twenty-ninth session of the Assembly.

Please accept, Excellency, the assurances of my highest consideration.



Koji Sekimizu
Secretary-General

Encl.

Article 61 of the Convention of the International Maritime Organization

Any Member which fails to discharge its financial obligation to the Organization within one year from the date on which it is due, shall have no vote in the Assembly, the Council, the Maritime Safety Committee, the Legal Committee, the Marine Environment Protection Committee, the Technical Co-operation Committee or the Facilitation Committee unless the Assembly, at its discretion, waives this provision.

Rule 56bis of the Rules of Procedure of the Assembly

- (i) The Secretary-General shall send at least one written notification to any Member which has failed to discharge its financial obligations to the Organization under Article 61 of the Convention. The notification shall call attention to the terms of Article 61 regarding the loss of vote in the Assembly, the Council, the Maritime Safety Committee, the Legal Committee, the Marine Environment Protection Committee, the Technical Co-operation Committee and the Facilitation Committee.
- (ii) Any Member wishing to request a waiver of the provision of Article 61 in respect of itself shall submit a written application to the Secretary-General at least one month before the Assembly giving reasons therefor, with a payment schedule indicating the timescale over which arrears will be paid.
- (iii) The Secretary-General shall submit to the Council a list of Members which have failed to discharge their financial obligations, together with any requests for waiver of the provision of Article 61 which have been received from any such Members.
- (iv) The Council shall submit to the Assembly a report on the matter, together with its recommendations on the submission by any Member of a request for waiver of the provision of Article 61 of the IMO Convention.
- (v) The Assembly shall consider the report of the Council at the commencement of each session. Taking into account the recommendations of the Council, and assessing each application on its individual merits, the Assembly shall take decisions on the waiver of the provision of Article 61 of the Convention in respect of any or all of the Members from which requests for waiver have been received, together with any conditions attached to such a waiver.
- (vi) A decision to waive the provision of Article 61 may only be taken in respect of a Member which has submitted a request for waiver in accordance with subparagraph (ii) above.
- (vii) A decision to waive the provision of Article 61 will normally be taken only in respect of a Member which has discharged in full the requirements, at the date of submitting the request for waiver, of the financial undertaking given under the terms of any previous request for waiver.
- (viii) In exercising its discretion, the Assembly will not normally consider an application for waiver from a Member whose payments are three years or more in arrears.