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Agenda item 5(c)

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RESOURCE MANAGEMENT

(c) Consideration of requests by Members, if any, for waiver of the application of Article 56 of the IMO Convention

Note by the Secretary-General

SUMMARY

Executive summary: This document provides background information to the Council on the application of Article 56 of the IMO Convention and requests for waiver, if any

Action to be taken: Paragraph 11

Related documents: C/ES.24/5(b)/Add.1 and C 93/9(c)/Add.1

Introduction

1 The Council, at its ninety-third session, having noted the Secretary-General's report on the application of Rule 56*bis* of the IMO Convention in the context of the Council's review of the Organization's Financial Framework in accordance with resolution A.967(24), reiterated its position that Rule 56*bis* should be retained in its present form. It also recalled that, under Article 56, subject to the grant of a waiver, a Member with dues outstanding for more than one year loses the right to vote not only in subsequent sessions of the Assembly and the Council but also in the Maritime Safety Committee, the Legal Committee, the Marine Environment Protection Committee, the Technical Co-operation Committee and the Facilitation Committee. Since this situation can arise between sessions of the Assembly (see document C 93/9(c)/Add.1), the Council decided that, in the interest of sustaining the Organization's financial health, the application of Article 56 should be strictly enforced between Assembly years.

2 With this in mind, this document provides background information on Article 56 of the IMO Convention and a summary of the present arrears position for the Organization's Members to enable Council to report to the Assembly on the matter of Article 56 waivers, as appropriate. The Council will be advised in due course of any requests for waivers that may be received.

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Background

3 The Assembly, at its seventeenth regular session, agreed to a package of measures designed to improve the financial position of the Organization and to promote the timely payment of the contributions of Member States. One component of the package was the adoption of Rules 56*bis* and 56*ter* to the Rules of Procedure of the Assembly, which define the detailed application of Article 56 of the IMO Convention concerning the right to vote. Article 56 states that:

“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.”

4 The Assembly, at its nineteenth regular session, strengthened the provisions of Rule 56*bis* and decided that, for the waiver by the Assembly of Article 56 of the IMO Convention, the following revised procedure shall be applied (see Rule 56*bis* 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 56 of the Convention. The notification shall call attention to the terms of Article 56 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 56 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 56 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 56 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 56 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.

* Reference to the Facilitation Committee is to be applied when the amendment to Article 56 of the IMO Convention has entered into force.

- (vi) A decision to waive the provision of Article 56 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 56 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.”

Application of Article 56 at the 24th regular session of the Assembly

5 To help the Council in its consideration of any requests for waiver, which may be submitted and bearing in mind the provisions of Rule 56*bis* and the terms of subparagraph (viii) above in particular, the following summarizes the position of those Member States, which were granted a waiver at the 24th regular session of the Assembly. At that session, the Assembly granted waivers to two Member States on reviewing the schedule of payments submitted and pledges made by these States to settle their arrears. Fourteen Member States were not granted a waiver and consequently lost their rights.

6 Of the two Member States, which were granted waivers:

- the Republic of Bolivia has cleared its arrears for 2004 to 2005 in accordance with its undertaking, and has partially paid for 2006. However, it has since fallen again under the provision of Article 56, as part of the 2006 assessment remains outstanding; and
- the Republic of Peru has cleared its arrears, in accordance with its undertaking and has fully paid for 2007. Consequently, it does not fall under the provision of Article 56.

7 The Eastern Republic of Uruguay, which did not claim waiver status during the last Assembly, has cleared its arrears for 2002 to 2005. However, it remains under the provision of Article 56 as the assessment for 2006 remains outstanding.

8 Of the 14 Members, which lost their voting rights:

- the Kingdom of Cambodia has cleared its arrears for 2005 and has partially paid for 2006. It has since fallen again under the provision of Article 56, as part of the 2006 assessment remains outstanding;
- the Republic of Cameroon has cleared its arrears for 2003 to 2006 and has fully paid for 2007. Consequently, it does not fall under the provision of Article 56;
- the Republic of Côte d'Ivoire has cleared its arrears for 2004 to 2005 and has partially paid for 2006. However, it remains under the provision of Article 56, as part of the 2006 assessment remains outstanding;

- the Republic of Paraguay has cleared its arrears for 2004 to 2005 and has partially paid for 2006. It has since fallen again under the provision of Article 56, as part of the 2006 assessment remains outstanding;
- Solomon Islands has fully cleared its arrears for 1998 to 2003. However, it remains under the provision of Article 56, as the assessments for 2004 to 2006 remain outstanding; and
- the remaining nine Member States: the Democratic Republic of Congo, the Republic of Djibouti, the Republic of Equatorial Guinea, the Republic of Guinea-Bissau, the Republic of Haiti, the Republic of Iraq, the Democratic Republic of Sao Tome and Principe, the Somali Democratic Republic and the Togolese Republic have made no payment.

Application of Article 56 at the forthcoming 25th regular session of the Assembly

9 In accordance with the provisions of Rule 56*bis*, the Director, Administrative Division, in July of this year, wrote to those Member States, which fall under the provision of Article 56, drawing attention to the requirements of Rule 56*bis* and, in particular, the need for them to submit a written application for waiver at least one month before the Assembly. The position of each Member State as at 31 August 2007, by reference to their status under the terms of Article 56, is shown at annex I to document C/ES.24/5(b)/Add.1. As the Council is required to report to the Assembly on its recommendation on the submission by any Member requesting waiver of the provision of Article 56, a list of Member States, which fall within the provision of Article 56 as at 31 August 2007, is shown at annex to assist the Council in its consideration of the issue.

10 The Council will, in due course, be advised of the details of requests for waiver, which may be received after this document has been issued, in order that it can report on the matter and make its recommendations to the Assembly in accordance with Rule 56*bis* subparagraph (iv).

Action requested of the Council

11 The Council is invited:

- .1 to take note of the information contained in this document and any addendum thereto;
- .2 to note that, in accordance with Rule 56*bis*, subparagraph (iv) of the Rules of Procedure of the Assembly, the Council is required to report to the Assembly on the matter with its recommendations on the submission by any Member of a request for waiver of the provision of Article 56 of the IMO Convention; and
- .3 to decide accordingly.

ANNEX

MEMBER STATES UNDER THE PROVISION OF ARTICLE 56 AS AT 31 AUGUST 2007

	BALANCE DUE AS AT 01/01/07			RECEIPTS			BALANCE DUE AS AT 31/08/07			TOTAL DUE £
	2007 £	1988-06 £	EARLIER \$	2007 £	1988-06 £	EARLIER \$	2007 £	1988-06 £	EARLIER \$	
i Member States under Article 56 which were not granted a waiver at the 24th session of the Assembly										
COTE D'IVOIRE	4,112	9,604	0	0	8,290	0	4,112	1,314	0	5,426
DEMOCRATIC REPUBLIC OF THE CONGO (THE)	4,112	28,361	0	0	0	0	4,112	28,361	0	32,473
DJIBOUTI	4,112	51,652	0	0	0	0	4,112	51,652	0	55,764
EQUATORIAL GUINEA	4,112	62,290	30,250	0	0	0	4,112	62,290	30,250	81,315
GUINEA-BISSAU	4,112	61,590	13,721	0	0	0	4,112	61,590	13,721	72,466
HAITI	4,112	44,874	0	0	0	0	4,112	44,874	0	48,986
IRAQ	7,607	495,519	94,824	0	0	0	7,607	495,519	94,824	549,874
SAO TOME AND PRINCIPE	4,112	71,958	0	0	0	0	4,112	71,958	0	76,070
SOLOMON ISLANDS	4,112	11,349	0	0	0	0	4,112	11,349	0	15,461
SOMALIA	4,112	57,510	0	0	0	0	4,112	57,510	0	61,622
TOGO	4,112	33,377	0	0	0	0	4,112	33,377	0	37,489
	£48,727	£928,084	\$138,795	£0	£8,290	\$0	£48,727	£919,794	\$138,795	£1,036,947
ii Member States under Article 56 since the 24th session of the Assembly										
BOLIVIA	7,964	7,009	0	0	0	0	7,964	7,009	0	14,973
CAMBODIA	60,599	57,467	0	0	57,447	0	60,599	20	0	60,619
CAPE VERDE	4,112	7,730	0	0	0	0	4,112	7,730	0	11,842
CONGO (THE)	4,112	3,819	0	0	0	0	4,112	3,819	0	7,931
DOMINICA	23,084	12,847	0	0	12,835	0	23,084	12	0	23,096
DOMINICAN REPUBLIC (THE)	4,112	3,935	0	0	0	0	4,112	3,935	0	8,047
GUATEMALA	4,112	55	0	0	0	0	4,112	55	0	4,167
LEBANON	8,412	8,657	0	0	0	0	8,412	8,657	0	17,069
LIBYAN ARAB JAMAHIRIYA (THE)	13,706	13,633	0	0	0	0	13,706	13,633	0	27,339
MADAGASCAR	4,112	6	0	0	0	0	4,112	6	0	4,118
MALAWI	4,112	3,935	0	0	0	0	4,112	3,935	0	8,047
MAURITANIA	4,923	3,921	0	0	0	0	4,923	3,921	0	8,844
NAMIBIA	6,473	5,895	0	0	0	0	6,473	5,895	0	12,368
NICARAGUA	4,112	6,985	0	0	0	0	4,112	6,985	0	11,097
PARAGUAY	4,112	2,151	0	0	0	0	4,112	2,151	0	6,263
SERBIA	4,112	7,730	0	0	0	0	4,112	7,730	0	11,842
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	4,112	140	0	0	0	0	4,112	140	0	4,252
TURKMENISTAN	4,112	3,798	0	0	0	0	4,112	3,798	0	7,910
URUGUAY	6,235	11,257	0	0	5,271	0	6,235	5,986	0	12,221
YUGOSLAVIA*	0	355,306	0	0	0	0	0	355,306	0	355,306
ZIMBABWE	4,112	3,947	0	0	0	0	4,112	3,947	0	8,059
	£180,740	£520,223	\$0	£0	£75,553	\$0	£180,740	£444,670	\$0	£625,410
TOTAL	£229,467	£1,448,307	\$138,795	£0	£83,843	\$0	£229,467	£1,364,464	\$138,795	£1,662,357

Note:

*The former SFRY pre-dissolution arrears due from the five successor States pending a decision by the United Nations General Assembly.

Arrears due in US Dollars have been converted to sterling at the August 2007 UN rate of exchange of \$1.00 = £0.493