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Agenda item 3(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

<i>Executive summary:</i>	This document provides background information to the Council on the application of Article 56 of the IMO Convention and requests for waiver, if any
<i>Action to be taken:</i>	Paragraph 10
<i>Related document:</i>	Subsequent addenda

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.942(23), reiterated its position that Rule 56*bis* should be retained in its present form. At the same Council session, it was 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 a background to Article 56 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 requests for waivers which 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 At its nineteenth regular session, the Assembly 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:

- “(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.
- “(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 23rd 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 provision 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 twenty-third regular session of the Assembly. At that session, the Assembly granted waivers to five Member States on reviewing the schedule of payments submitted and pledges made by these States to settle their arrears. Fifteen Member States were not granted a waiver and consequently lost their rights.

6 Of the five Member States which were granted waivers:

- Guinea cleared its arrears in accordance with its undertaking and paid its contributions from 1988 to 2005 in full. Guinea is thus no longer under Article 56;
- Gabon cleared its arrears in accordance with its undertaking and paid its contributions from 1977 to 2005 in full. Gabon is thus no longer under Article 56;
- Bolivia cleared its arrears in accordance with its undertaking for 2002 and 2003 and was no longer under Article 56. However, its contribution for 2004 has only been partially paid. Consequently, Bolivia has again fallen under Article 56;
- The Democratic Republic of the Congo cleared its arrears in full in accordance with its undertaking up to 1998 and partially cleared its arrears for 1999; and
- Uruguay has not yet cleared its arrears in accordance with its undertaking.

7 Of the 15 Member States which lost their voting rights at the twenty-third regular session of the Assembly, Mauritania has paid its arrears in full up to 2004, and hence no longer falls under Article 56. The remaining 14 States have made either partial or no payment. Those making partial payments were:

- Benin fully cleared its arrears up to 2001 and partially cleared its arrears for 2002;
- Haiti fully cleared its arrears up to 1993 and partially cleared its arrears for 1994; and
- Togo which fully cleared its arrears up to 1996 and partially cleared its arrears for 1997.

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

8 In accordance with the provisions of Rule 56*bis*, the Secretary-General has written to those Member States, which fall within 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 2005, by reference to their status under the terms of Article 56, is shown at annex I to document C/ES.23(b)/Add.2. 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 2005, is attached at annex to this document to assist the Council in its consideration of the issue.

9 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

10 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 IMO Convention, the Council is required to report to the Assembly on the matter with its recommendations on the submission from any Member requesting waiver of the provision of Article 56 of the Convention; and
- .3 to decide accordingly.

**MEMBER STATES FALLING WITHIN THE PROVISIONS OF ARTICLE 56 OF THE IMO CONVENTION
AS AT 31 AUGUST 2005**

	BALANCE DUE AS AT 1/01/05			RECEIPTS			BALANCE DUE AS AT 31/8/05			TOTAL DUE £
	2005 £	1988-04 £	EARLIER \$	2005 £	1988-04 £	EARLIER \$	2005 £	1988-04 £	EARLIER \$	
Member States under Article 56 and which were granted a waiver at the 23rd session of the Assembly										
DEMOCRATIC REPUBLIC OF THE CONGO	3,795	28,631	0	0	8,000	0	3,795	20,631	0	24,426
URUGUAY	5,271	31,186	0	0	0	0	5,271	31,186	0	36,457
	£9,066	£59,816	\$0	£0	£8,000	\$0	£9,066	£51,816	\$0	£60,882
Member States under Article 56 which were not granted a waiver at the 23rd session of the Assembly										
BENIN	3,795	7,524	0	0	0	0	3,795	7,524	0	11,319
DJIBOUTI	3,795	43,922	0	0	0	0	3,795	43,922	0	47,717
EQUATORIAL GUINEA	3,795	54,560	30,250	0	0	0	3,795	54,560	30,250	75,628
GUINEA-BISSAU	3,795	53,860	13,721	0	0	0	3,795	53,860	13,721	65,490
HAITI	3,795	40,939	0	0	3,795	0	3,795	37,144	0	40,939
IRAQ	7,931	480,145	94,824	0	0	0	7,931	480,145	94,824	542,221
LIBYAN ARAB JAMAHIRIYA	13,879	78,575	0	0	0	0	13,879	78,575	0	92,454
MALAWI	3,795	13,716	0	0	0	0	3,795	13,716	0	17,511
MOLDOVA	3,795	10,575	0	0	0	0	3,795	10,575	0	14,370
PARAGUAY	3,795	7,591	0	0	0	0	3,795	7,591	0	11,386
SAO TOME & PRINCIPE	5,301	62,722	0	0	0	0	5,301	62,722	0	68,023
SOLOMON ISLANDS	3,795	23,990	0	0	0	0	3,795	23,990	0	27,785
SOMALIA	3,795	49,780	0	0	0	0	3,795	49,780	0	53,575
TOGO	3,795	25,647	0	0	0	0	3,795	25,647	0	29,442
	£68,856	£953,546	\$138,795	£0	£3,795	\$0	£68,856	£949,751	\$138,795	£1,097,859
Member States under Article 56 since the 23rd session of the Assembly										
BOLIVIA	15,116	28,875	0	0	16,492	0	15,116	12,382	0	27,498
CAMBODIA	60,154	68,214	0	0	58,926	0	60,154	9,289	0	69,443
CAMEROON	8,573	7,123	0	0	0	0	8,573	7,123	0	15,696
CONGO	3,795	5,893	0	0	0	0	3,795	5,893	0	9,688
COTE D'IVOIRE	3,795	1,874	0	0	0	0	3,795	1,874	0	5,669
NICARAGUA	3,795	3,712	0	0	3,113	0	3,795	598	0	4,393
PERU	15,958	15,707	0	0	0	0	15,958	15,707	0	31,665
SEYCHELLES	4,965	23	0	0	0	0	4,965	23	0	4,988
The former YUGOSLAV REPUBLIC OF MACEDONIA	3,795	3,607	0	0	3,595	0	3,795	12	0	3,807
	£119,946	£135,029	\$0	£0	£82,126	\$0	£119,946	£52,902	\$0	£172,848
YUGOSLAVIA*	0	355,306	0	0	0	0	0	355,306	0	355,306
	£119,946	£490,335	\$0	£0	£82,126	\$0	£119,946	£408,208	\$0	£528,154

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

Note: Arrears due in US Dollars have been converted to sterling at the August 2005 UN rate of exchange of \$1.00 = 0.571