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ANY OTHER BUSINESS

Note by the French Delegation

1 The provisions of Article XII bis of the International Convention on Civil Liability for Oil Pollution Damage, 1969, resulting from the amendments made to that Convention by Article 9 of the Protocol adopted on 25 May 1984, cover the situation of a State which is a Party both to the 1969 Convention and to the 1969 Convention as amended by the Protocol (the 1984 Convention).

In this case, sub-paragraph (a) of that Article provides that if an incident has caused pollution damage within the scope of the 1984 Convention, liability under that Convention is deemed to be discharged if, and to the extent that, it also arises under the 1969 Convention.

The same applies in sub-paragraph (b) if such State is also a Party to the 1971 Convention: in this case, liability arises under the 1984 Convention only to the extent that the pollution damage remains uncompensated after application of the 1971 Convention.

Lastly, sub-paragraph (d) of that Article provides that the total sum of the limitation fund to be constituted is reduced by the amount by which liability has been deemed to be discharged in accordance with sub-paragraph (a) of that Article.

2 The scope of these provisions, which form what is known as the phased-in approach for the simultaneous operation of the 1969 Convention and the 1984 Convention, should, in the opinion of the French delegation, be clarified. It is desirable that a State which may find itself in this situation should know exactly, when becoming a Party to the 1984 Convention while remaining a Party to the 1969 Convention, what are the conditions under which this machinery for the combined application of the two Conventions will operate.

In this connection, it would be appropriate, in particular, to consider the different situations that may arise and to avoid any divergency of interpretation concerning the applicable provisions.

With regard to the applicable amounts of compensation and indemnification, the specific situation would be as follows: in the first place the cover of 14 million SDRs under the 1969 Convention would apply (under sub-paragraph (a) of Article XII bis) to which would be added cover under the 1971 Convention which would bring the total up to 45 million SDRs (under sub-paragraph (b) of that Article). To this amount would be added the amount under the 1984 Convention, 59.7 million SDRs, after deduction of the amount under the 1969 Convention, 14 million SDRs, namely 45.7 million SDRs. Under the terms of sub-paragraph (d) of Article XII bis, this is the total amount of the limitation fund to be constituted for the application of the 1984 Convention. This example uses the maximum amount of liability. Different figures would of course be obtained with other tonnages.

It would seem that this latter amount of 45.7 million SDRs is added to the amount resulting from the application of the 1969 and 1971 Convention (by application of sub-paragraphs (a) and (b) of that Article), making a total of:  $45 + 45.7 = 90.7$  million SDRs.

3 This assumption appears correct if the pollution damage is covered by the 1969 and 1971 Conventions.

However, there seem to be cases in which pollution damage is covered by the 1984 Convention and not by the 1969 and 1971 Conventions. For example, the case of pollution damage from unladen oil tankers or pollution damage occurring in the economic zone, or preventive measures taken in the absence of pollution.

In these various situations, the 1984 Convention will be applicable but there can be no application of the 1969 and 1971 Conventions.

Another situation may occur where pollution damage occurs both in the territorial waters and in the economic zone. In this case, the 1969 and 1971 Conventions would apply to cover pollution damage in the territorial waters and also the preventive measures taken both in the territorial waters and in the economic zone. On the other hand, pollution damage in the economic zone could not be compensated other than under the 1984 Convention.

It might also happen that pollution damage occurred both in the territory of a State Party only to the 1969 and 1971 Conventions and in that of a State Party both to the 1969 and 1971 Conventions and to the 1984 Convention. In this case, the State Party only to the 1969 and 1971 Conventions would be compensated under those Conventions only for damage covered by those Conventions and the State Party to the 1984 Convention would be compensated for damage covered by that Convention. But because of

the fact that the latter State is a Party both to the 1969 and 1971 Conventions and to the 1984 Convention, the provisions of Article XII bis of the 1984 Protocol would be applicable and the compensation would be made first under the 1969 Convention and next under the 1971 Convention concurrently with compensation for damage to the State Parties only to the 1969 and 1971 Conventions. Furthermore, such a State Party to the 1984 Convention will be able to receive additional compensation under the provisions of sub-paragraph (d) of Article XII bis.

Lastly, it goes without saying that if the pollution damage occurring in the territory of the two States is covered only by the 1984 Convention, there will be no compensation for damage in the State Party only to the 1969 and 1971 Conventions; such compensation will be obtainable only under the 1984 Convention for damage in the territory (territorial waters and economic zone) of the State Party to that Convention.

4 It would be desirable for an exchange of views to take place between the representatives of the Member States of the International Oil Pollution Compensation Fund concerning the conditions of application and scope of the provisions of Article XII bis of the Protocol to the 1969 Convention, thereby making it possible clearly to establish a doctrine which it will be sufficient to apply subsequently when such situations occur in connection with requests for compensation addressed to the Fund.

In order to avoid too much time being devoted to study of this matter during the present IOPC Fund Assembly, the latter might be invited to decide that a working group, open to all Member States of the Fund and to the States and other international organisations participating in its work as observers, might be entrusted with the task of discussing the subject and reporting thereon to the Fund Assembly.

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