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INTERNATIONAL CONFERENCE ON
MARINE POLLUTION 1973
Agenda item 8

CONSIDERATION OF A DRAFT PROTOCOL RELATING TO INTERVENTION
ON THE HIGH SEAS IN CASES OF MARINE POLLUTION
BY SUBSTANCES OTHER THAN OIL

COMMENTS AND PROPOSALS OF GOVERNMENTS
ON A DRAFT TEXT OF THE PROTOCOL

Comments submitted by the Government of France

Preamble, Paragraph 2: The French Government favours the deletion of this paragraph, which needlessly restricts the scope of the convention. It is not in fact necessary to establish a link between pollution by oil and pollution by other noxious substances, since two legal instruments can be independent of each other. An autonomous text which could either adopt the provisions of the 1969 Convention or make express reference to them would have the advantages, by opening the Convention to all States, of making it apply to a larger number of vessels, thus assuring better protection of the coastlines.

Article I - note 3: The French Government is in favour of retaining the words "of the sea" as they appear in the 1969 Convention, as pollution of the atmosphere on the high seas need not be a "grave and imminent danger" to the coastlines. On the other hand the measures to be taken should not be generalized and should remain exceptional courses of action.

* Outside translation.

Article I 2 a): In the terms of this subsection, any amendments to the list of noxious substances will be adopted by the Maritime Safety Committee and then "communicated" to the States Parties. The French Government cannot accept this amendment procedure insofar as it is not specified that those amendments will not bind States which declare them unacceptable. Any decisions taken by the Maritime Safety Committee must be approved either expressly or tacitly by the Contracting Parties; in the latter case provision should be made in the text of the Protocol for an approval period of about six months following receipt of the notification by the Government concerned.

Article I - 3: The French Government proposes the following wording: "Any Party may take such exceptional action as is provided for in paragraph 1 with regard to any one of the substances referred to in sub-paragraph 2 b). In such a case the Party shall be responsible for establishing that it has satisfied the conditions laid down in paragraph 1 and in sub-paragraph 2 b)."

Article 2, note: A provision such as this would indeed be appropriate in a convention for preventing pollution or co-operating in pollution control, but it seems dangerous and its scope seems ill-defined in the present Protocol. In fact it would risk involving a generalization of the measures of intervention, solely from the point of view of the reports submitted by ships' Masters. On the other hand what could be the responsibility of a Master who had failed to give notice of a casualty likely to present a danger?
