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COMPENSATION
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APPLICATION OF THE 1992 FUND CONVENTION TO THE EEZ OR AN AREA DESIGNATED UNDER ARTICLE 3(a)(ii) OF THE 1992 FUND CONVENTION

Note by the Director

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| Summary: | Twenty-two States so far have provided information on their EEZ or designated areas. |
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| Action to be taken: | Information to be noted. |
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- 1 At its 1st session the Assembly noted that the geographical scope of application of the 1992 Fund Convention included the exclusive economic zone (EEZ) established under the United Nations Convention on the Law of the Sea. It was recognised that in order to determine the geographical scope of application of the 1992 Fund Convention in respect of a given Member State, it was necessary for the 1992 Fund to know whether that State had established an EEZ or designated an area under Article 3(a)(ii) of that Convention (document 92FUND/A.1/34, paragraph 21.1).
- 2 The Assembly adopted a Resolution at its 1st session (1992 Fund Resolution N°4) to the effect that States which established an EEZ or designated an area under Article 3(a)(ii) of the 1992 Fund Convention before ratifying the 1992 Fund Convention were invited to notify the Secretary-General of the IMO accordingly when they deposited their instruments of ratification in respect of that Convention, and that States which established an EEZ or designated an area after ratification

were invited to notify the Director accordingly (document 92FUND/A.1/34, paragraph 21.2 and Annex IV).

- 3 Information on the EEZ or designated areas has so far been submitted by 22 of the 62 States for which the 1992 Fund Convention will be in force at the time of the 6th session of the Assembly, as listed below:

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| Australia | France | Marshall Islands | Sweden |
| Bahamas | Germany | Mauritius | Tunisia |
| Belgium | Grenada | Mexico | United Kingdom |
| Canada | Ireland | New Zealand | Uruguay |
| Denmark | Jamaica | Norway | |
| Finland | Latvia | Spain | |

- 4 The Assembly at its 5th session invited the Director to circulate the declarations on the establishment of an EEZ or designated area. In December 2000 he circulated the declarations received so far and intends to circulate annually any declarations received during the year.
- 5 At its 5th session the Assembly took note of a joint declaration made by the Governments of France, Italy and Spain with reference to Article 3(a)(ii) of the 1992 Protocol to the 1969 Civil Liability Convention and Article 4(a)(ii) of the 1992 Protocol to the 1971 Fund Convention which was reproduced in the Annex to document 92FUND/A.5/18/1. That declaration gave rise to a number of interventions at the 5th session which are reflected in the Record of Decisions (document 92FUND/A.5/28, paragraphs 22.4 – 22.10).
- 6 The Secretary-General of IMO received on 16 May 2001 a communication from the Government of the People's Democratic Republic of Algeria relating to the application of article 3(a)(ii) of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, and article 4(a)(ii) of the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. The declaration by Algeria is reproduced at the Annex to this document.
- 7 The Director would like to draw attention to a declaration made by the Republic of Turkey in connection with the deposit of its instrument of accession to the 1992 Fund Convention which reads as follows:

In relation to Article II/a (ii) of this Convention, the Republic of Turkey considers that this Article is not in conformity with international law and it defines those maritime areas as high seas whereby no country has jurisdiction and sovereign rights according to international law. The Republic of Turkey, however, taking into consideration the objectives of this Convention, reserves its rights deriving from the Convention. Within this context, the Republic of Turkey hereby declares that in maritime areas where there has been no delimitation agreement between opposite or adjacent coastal States, the exercise of authority or any claim thereof under this Convention by any coastal State Party to this Convention, creates no rights or obligations with regard to delimitation of maritime areas, nor does it create a precedent for the future agreements between those States concerning the delimitation of maritime areas under national jurisdiction.

Action to be taken by the Assembly

- 8 The Assembly is invited to take note of the information contained in this document.

ANNEX

Algerian declaration regarding the application of article 3(a)(ii) of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, and article 4(a)(ii) of the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

In view of the special configuration of the Mediterranean Sea, Algeria is in favour of a concerted solution that meets the common interests of the contracting States that border that sea. Pending the establishment of exclusive economic zones by these States, in accordance with international law, Algeria recommends, for the purpose of applying article 3(a)(ii) of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, and article 4(a)(ii) of the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, the provisional adoption of the division made under the International Convention of Hamburg on Maritime Search and Rescue, 1979 (SAR Convention).

Such a division will be in accordance with the provisions of article 123 of the United Nations Convention on the Law of the Sea which urges States bordering enclosed or semi-enclosed seas to cooperate with each other “in the exercise of their rights and in the performance of their duties” and with that of article 74(3) of that Convention which recommends a provisional arrangement pending a final delimitation.

I - The tripartite declaration – a reminder

In brief, the Franco-Italian-Spanish declaration, drawn up in accordance with article 3(a)(ii) of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, and with article 4(a)(ii) of the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, provides that, in view of the special configuration of the Mediterranean Sea, each riparian State Party to the two above-mentioned protocols has the right to request compensation for the pollution damage provided for in those texts, including loss of earnings. It also provides that this right applies to all pollution damage within the limit of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Lastly, it specifies that it is without prejudice to a dispute or an opinion of a State Party to the declaration concerning the law of the sea and the nature and extent of the jurisdiction of coastal States and flag States.

II - The Algerian position regarding the tripartite declaration

Algeria already reserved its position with regard to this declaration at the October 2000 session of the Fund Assembly. In the light of further examination, it finds that the declaration cannot be considered, for the following reasons:

1 The tripartite declaration contradicts the letter of the 1992 Protocol amending CLC 69 to the extent that it includes loss of earnings in compensation for pollution, whereas this is excluded under article 2(6) of the Protocol.

2 Contrary to what the declaration says, it runs counter to the realities of the Mediterranean Sea by stating that any request for compensation may be made within the 200 nautical mile limit measured from the baselines. Indeed, in view of its “special” configuration and breadth, the Mediterranean meets the definition of “enclosed or semi-enclosed sea” under article 122 of the CLS.

3 Algeria is one of the countries most exposed to the risk of major oil pollution because of the large amount of oil traffic along its coasts. Some 150 million tonnes of oil are currently carried through the Mediterranean every year, much of it at 20 miles off the Algerian coast.

4 By providing for compensation rights within this 200 nautical mile limit, the tripartite declaration is in fact encouraging the States concerned to establish an area under their national jurisdiction of 200 nautical miles measured from the baselines. The clear reference to article 3(a)(ii) of the Protocol of 1992 to amend CLC 69 and to article 4(a)(ii) of the Protocol of 1992 to amend the 1971 Fund Convention is designed solely to justify that position.

Thus, far from proposing a solution that meets the interests of the States bordering the Mediterranean Sea, the declaration does not tend to encourage co-operation within the Mediterranean as a whole.