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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

Draft Resolution presented by Algeria concerning the application of Articles II(a)(ii) of the 1992 Civil Liability Convention and 3(a)(ii) of the 1992 Fund Convention

- 1** The question of extending the scope of application of the 1992 Conventions to the area equivalent to the EEZ, i.e. 200 miles from the baselines of the territorial sea, has been the subject of intense discussions at previous Fund Assemblies, following which it was decided to place it on the agenda of subsequent Assemblies (see 92 FUND/A.6/28).
- 2** Algeria, it should be noted, highlighted at the 5th and 6th Assemblies the difficulties of applying the provision contained in Articles II(a)(ii) of the 1992 Civil Liability Convention and 3(a)(ii) of the 1992 Fund Convention.
- 3** Under this provision, which is identical in the above-mentioned articles, each Contracting State has, for the purposes of oil pollution compensation, the right to make a declaration on the EEZ or, if it has not established such a zone, on 'an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law' within the limit of 200 miles from the baselines of the territorial sea.
- 4** This provision is being challenged on the following grounds :
 1. that the granting of compensation and other rights associated therewith will operate on the basis of a simple unilateral delimitation of the area equivalent to the Exclusive Economic Zone, i.e. 200 miles from the baselines of the territorial sea;

2. that it does not take account of the special arrangements applying to enclosed and semi-enclosed seas such as the Mediterranean and other similar maritime areas throughout the world;
 3. that this text is inconsistent with Articles 123 and 74(3) of the UN Convention on the Law of the Sea, whereby any delimitation is subject to bilateral or multilateral agreements or arrangements concluded between all the coastal States concerned.
- 5** In substance, the text of Articles II(a)(ii) of the 1992 Civil Liability Convention and 3(a)(ii) of the 1992 Fund Convention is, as it stands, a potential source of present and future contention and disputes extending beyond the scope of rights to compensation and concerns all States bordering enclosed and semi-enclosed seas.
- 6** In view of the special configuration of the Mediterranean and other enclosed seas, implementation of the 1992 Conventions as they stand would be tantamount to 'overlapping' delimitation of the coastal States vis-à-vis the area equivalent to the EEZ and a *de facto* substitution which is harmful with regard to other coastal States' rights to compensation.
- 7** This provision, which is therefore deficient in that it does not take into consideration the specific arrangements applying to enclosed and semi-enclosed seas such as the Mediterranean, calls into question international legality.
- 8** For all these reasons, Algeria reserved its position with regard to the tripartite Franco-Italian-Spanish declaration at the 5th and 6th sessions of the Fund Assembly of October 2000 and 2001 and emphasized the difficulties of applying the 1992 Conventions (see 92FUND/A.6/20, Annex).
- 9** Algeria, which stated that it was willing to seek any concerted solution, considers that the application of the provision of the 1992 Conventions is subject to 'the prior conclusion of agreements or arrangements between the coastal States concerned', in accordance with Articles 123 and 74(3) of the Convention on the Law of the Sea and that the prior implementation of that Convention, which is a superior norm, is imperative.
- 10** Thus, in order to find a definitive solution to this problem which will safeguard the rights of all the Contracting States concerned, Algeria proposes that the Assembly adopt this resolution amending the current provision of the aforementioned Articles II(a)(ii) and 3(a)(ii) of the 1992 Conventions.
- 11** We hope that this amendment, which is in the interests of all Contracting States, will meet with the approval of the Assembly.

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ANNEX

DRAFT RESOLUTION PRESENTED BY ALGERIA

1. **CONSIDERING** that under the terms of Resolution No. 4 of the 1992 Fund Assembly, the Contracting States of the International 1992 Fund Convention are invited to make a declaration on the establishment of an Exclusive Economic Zone (EEZ) or which designates an equivalent area pursuant to Article II(a)(ii) of the 1992 Civil Liability Convention and Article 3(a)(ii) of the 1992 Fund Convention,
2. **CONSIDERING** the particular nature of the geographical configuration characterizing the Mediterranean, which, under the terms of Article 122 of the United Nations Convention on the Law of the Sea, is a semi-enclosed sea and consequently requires special arrangements to be applied that take account of the common interests of each coastal State,
3. **CONSIDERING**, nevertheless, that under the terms of Articles 74(3) and 123 of the United Nations Convention on the Law of the Sea, 'States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention',
4. **CONSIDERING** that the application to the Mediterranean of Article II(a)(ii) of the 1992 Civil Liability Convention and Article 3(a)(ii) of the 1992 Fund Convention is a source of difficulties and gives rise to present and future disputes for the States bordering the Mediterranean,
5. **CONSIDERING** therefore that the application of the two above-mentioned 1992 Conventions to the Mediterranean should be subject to the prior conclusion of delimitation agreements or to any other arrangement between the States concerned, in accordance with the aforementioned Articles 74(3) and 123,
6. **CONSIDERING** that the Tripartite Declaration of Spain, France and Italy formulated at the IOPC Fund's 5th Assembly in October 2000 and confirmed at the IOPC Fund's 6th Assembly in October 2001, does not take account either of the realities of the Mediterranean Sea or of compliance with international law, in this case Articles 74(3) and 123 of the United Nations Convention on the Law of the Sea, and is also of a concerted nature, which departs from the provisions of the 1992 Fund Convention, under which the Contracting States are invited to make their declaration solely on an individual basis,
7. **CONSIDERING** that Article 3(a)(ii) of the 1992 Fund Convention is, as it stands, deficient in that it fails to specify expressly the particular nature of enclosed and semi-enclosed seas and that its application is a potential source of contention and disputes for the States bordering those seas, which may constitute a harmful precedent,
8. **CONVINCED** of the need to find a definitive solution to this problem, which calls into question international legality, and to provide for arrangements which in future will avoid disputes arising from the application of Article II(a)(ii) of the 1992 Civil Liability Convention and Article 3(a)(ii) of the 1992 Fund Convention,
9. For all these reasons, the Assembly **ADOPTS** this Resolution and calls upon the IMO's Legal Committee to carry out the necessary work and make the necessary amendments for which we propose that the following subparagraph be added to Articles II(a)(ii) and 3(a)(ii) respectively of the 1992 Civil Liability Convention and the 1992 Fund Convention:

'In the particular case of enclosed and semi-enclosed seas which have a special geographical configuration, the application of the provisions of this article shall be subject to the conclusion of bilateral or multilateral agreements between the coastal States concerned.'
10. The Assembly **ADOPTS** the recommendations contained in this resolution.