



INTERNATIONAL
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COMPENSATION
FUND 1992

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

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

Submitted by the Algerian delegation

- 1 At the 5th and 6th sessions of the IOPC Fund Assembly, Algeria took the opportunity to highlight the practical problems raised by Articles II(a)(ii) of the 1992 Civil Liability Convention and 3(a)(ii) of the 1992 Fund Convention (see documents 92FUND/A.6/20 and 92FUND/A.6/28), particularly for the Mediterranean countries.
- 2 While reiterating its position on the difficulties involved in applying the two aforementioned articles during the 7th session of the Fund Assembly (see 92FUND/A.7/20/1), Algeria tabled a draft resolution amending the text of the articles in question.

The text lays down the following provisions:

"This Convention shall apply exclusively:

- (a) to pollution damage caused:
 - (i) in the territory, including the territorial sea, of a Contracting State, and
 - (ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured."

- 3 An examination of this text shows that the scope of application covered by the 1992 Fund Convention concerns exclusively "pollution damage" caused either in the exclusive economic zone, or, where such a zone has not been delimited, as is the case in the Mediterranean, "in an area ... determined by that State", beyond the territorial sea within the limit of 200 miles from the baselines of that sea.
- 4 Thus, according to this text, any Contracting State which has not delimited its exclusive economic zone is entitled to make a declaration for the purposes of claiming rights to compensation in respect of oil pollution damage occurring within a maritime area of 200 miles from the baselines of the territorial sea of that State.
- 5 However, practical problems arise for a number of IOPC Fund Member States, particularly for States bordering the Mediterranean, including Algeria, because of its particular configuration and the narrowness of its breadth, which in some places is less than 200 miles, thus rendering inapplicable the provisions of the text of the 1992 Convention.
- 6 Strict application of the text in question to the Mediterranean calls into question the basic principles of the 1992 Fund Convention and gives rise to harmful consequences for certain Member States.
- 7 I – Algeria, whose 1 200-kilometre coastal frontage is exposed to oil pollution risks because of the heavy tanker traffic, seizes this new opportunity to emphasize the practical problems posed by the application of this text not only for the Mediterranean, but also for enclosed and semi-enclosed seas. Thus, to recognize a right to compensation, in the Mediterranean, within an area of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, irrespective of the name used to refer to that area, would involve raising at least the following problems:
- (1) if a State were to claim a right to compensation in such an area, this would be tantamount to establishing unilaterally an area under national jurisdiction and consequently to ignoring the law of the other coastal States concerned, given that this claim would be based on articles relating to the scope of application of the 1992 Conventions within an area located under the jurisdiction of the State in question. A declaration of this kind would be manifestly unfair;
 - (2) if the States bordering on the Mediterranean were to claim the right to compensation simultaneously, this would inevitably lead to overlapping of the areas in question and hence to insoluble problems of compensation in the event of oil pollution;
 - (3) this situation constitutes a potential source of inter-State contention and disputes which could have serious consequences, particularly as there is no provision in the 1992 Convention for any dispute settlement procedure in such a case.
- II – In order to resolve the problems referred to above, Algeria considers that, for the time being, the optimum solution would be to adopt, on a provisional basis, the SAR division in the Mediterranean. The advantages of this solution are threefold:

- (a) it is provisional in the sense that it does not prejudice maritime delimitations that might be undertaken by the coastal States, as is provided for in Article 2.1.7 of the Annex to the 1979 SAR (Hamburg) Convention;
- (b) it may be of a consensual nature, since the SAR division is the result of an agreement between the coastal States party to the SAR Convention (Article 2.1.4 of the Annex to the SAR Convention);
- (c) certain delegations have stated that they are prepared to examine it in concert with the coastal States bordering the Mediterranean.

III - Ultimately, Algeria is once again proposing that consideration be given to the question of an amendment to Articles 2(a)(ii) of the 1992 Civil Liability Convention and 3(a)(ii) of the 1992 Fund Convention that would take account of the particular nature of enclosed and semi-enclosed seas and would thus have the obvious advantage for the whole community of avoiding conflicts which might call into question the credibility of the instruments establishing the Fund.

- 8** The Algerian delegation remains at the disposal of the Intersessional Working Group to provide further clarification if necessary and would respond favourably to any suggestion that the Group might care to make in order to find a solution which is acceptable to States bordering the Mediterranean and other enclosed seas and which therefore safeguards their respective rights.
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