



INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

MEMORANDUM

TO: Distribution

FROM: Alan Spackman, Vice President, Offshore Technical and Regulatory Affairs

SUBJECT: Report on the 97th session of the IMO Legal Committee

DATE: 18 February 2011

The 97th session of IMO's Legal Committee was held from 15 to 19 November 2010, under the Chairmanship of Prof. Lee-Sik Chai (Republic of Korea). Representatives from 77 Member States, two Associate Members of IMO, three United Nations and specialized agencies, three intergovernmental organizations and 17 non-governmental organizations were present. IADC was not represented at this meeting.

The following is a summary of issues addressed by the Sub-Committee that may interest owners or operators of mobile offshore drilling units:

Online access to the IMDG Code

The Secretariat reported that the complete text of the IMDG Code, incorporating amendment 27-94, which was in effect in 1996, will be placed on the IMO website in Portable Document Format (PDF).

Status of the Maritime Labour Convention 2006 (MLC 2006)

The representative of the International Labour Organization (ILO) reported that MLC 2006 had been ratified by a total of 11 countries. Nineteen further ratifications are needed to enable it to enter into force.

Interpretation and implementation of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001: Implementation Of The Convention

The Committee noted the report of its Correspondence Group, coordinated by Mrs. Birgit Sølling Olsen (Denmark), which considered:

(i) **Interface between the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC), and the Bunkers Convention**

The Committee approved the draft resolution on the Issuing of bunkers certificates to ships that are also required to hold a CLC certificate, and decided to submit it to the 106th regular session of the Council for consideration and, thereafter, for submission to the 27th regular session of the Assembly for adoption.

(ii) **Insurance and liability for claims where the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 76) does not apply (claims concerning Mobile Offshore Drilling Units (MODUs)) or claims covered by a reservation under article 18, paragraph 1 of LLMC 76**

The Group was in general agreement that MODUs fell under the provisions of the Bunkers Convention, as they would be covered by the definition of "ship" under article 1. The issue was, however, that MODUs are not covered by LLMC 76 and, consequently, it is uncertain how to calculate the insurance amount according to LLMC 76 where no other (lower) national limit is applicable. The majority of the Group felt that it was necessary to separate the insurance requirement and the liability limits

for insurance purposes. The Group concluded that MODUs are covered by the insurance requirement under article 7 of the Bunkers Convention. The amount of insurance for all types of ship falling under the definition of "ship" in the Bunkers Convention, including MODUs, should be calculated under LLMC 76, or a national system, but should in no case exceed the maximum LLMC 76 amount in force internationally. The reference made in article 7(1) of the Bunkers Convention specifies the maximum amount of insurance required, if no lower limit is applicable. This does not, however, prevent a State Party from having higher national limitation amounts, but the Bunkers Convention insurance will be limited, as it provides for special provisions (for example, direct action does not apply to these higher limits). The Group urged States to consider allowing MODUs the right to limitation of liability in accordance with LLMC 76 in national law, in order to ensure insurance coverage under the Bunkers Convention.

Concerns were expressed about the suggestion that Member States should be urged to consider allowing MODUs the right to limitation of liability in accordance with the LLMC in order to ensure insurance coverage under the Bunkers Convention. It was argued that the assumption that a MODU might fall under the Bunkers Convention, but not under the LLMC, was questionable, since the notion "ship" used in the Bunkers Convention would be the same as the notion "ship" used in the LLMC. Thus, if a MODU would qualify as a ship it would, in principle, fall under both the Bunkers Convention and the LLMC. It would, however, be questionable, whether all MODUs would qualify as a ship. Furthermore, it was argued that the Bunkers Convention would only apply if the ship in question would use bunker oil for its operation or propulsion. This requirement, would, however, rarely be met by MODUs. (IADC note: This is specious, most MODUs do use bunker oil, as defined by the Convention, for operations.) Finally it was pointed out that article 15(5)(b) of the LLMC expressly excluded floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof from its scope of application. Thus, it would not make sense to urge Member States to allow the owner of MODUs to limit their liability in accordance with the LLMC.

Among other views expressed during the discussion were the following:

- as regards the insurance requirement under article 7 of the Bunkers Convention, it was possible that some States may choose not to limit liability and it was necessary to ensure that there were such limits and that the insurance confirmed the limits;
- with regard to paragraph 20 of the document, urging Member States to consider allowing MODUs the right to limitation of liability in accordance with the LLMC in national law in order to ensure insurance coverage under the Bunkers Convention, in some States MODUs were excluded from limitation of liability by law; and
- it may be difficult for MODUs to obtain insurance if they are not entitled to limit their liability.

(iii) The issuance of bunkers certificates to new buildings

Two issues were considered, the first being when a hull (ship under construction) becomes a ship, as defined in the Bunkers Convention, *i.e.* when the hull is seagoing; the second being, who is obliged to maintain insurance for the hull.

With regard to the first issue, the coordinator of the Group explained that the Group had agreed that a hull fitted with machinery or equipment constructed to use or contain bunker oil for its operation or propulsion will be seagoing when it performs restricted sea journeys, for example, for testing the hull and/or equipment, as well as when it is being moved, towed or floating on its own.

With regard to the question as to who is obliged to maintain insurance for the hull, the coordinator of the Group explained that the majority of the Group was in favor

of leaving the matter to national law. The Group's conclusion was that when a hull is registered, the registered owner should take out insurance when the hull is seagoing, and the State of registry should issue the insurance certificate, and when there is no registered owner, the issue of determining the owner should be left to individual States. In all other cases it is left to national legislation.

The comment was made that the "individual State" might be the State where the shipyard is located, or where the order for the new build was placed, or where the building yard is located and in whose waters the ship performs its trials – the answer was dependent on the precise terms of the contract.

The Committee approved the draft guidelines prepared by the Group and decided that the Group's conclusions, together with the guidelines, should be disseminated by means of a Circular Letter (Circular letter No. 3145) and posted on the IMO website.

One delegation noted the need for transparency, consistency and solidarity in applying the Convention. In its view, merely arriving at a common understanding and interpretation of the important issues considered by the Group would not satisfy this need. The best means of removing the Convention's existing and potential ambiguities would be by amending the Convention.

Proposal to amend the limits of liability of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96)

The Committee was informed by the delegation of Australia that, in accordance with the tacit amendment procedure in article 8 of LLMC 76/96, it had submitted a document to the Secretariat, on 10 November 2010, on behalf of 20 co-sponsors, proposing that the limits of liability as set by article 6.1(b) of the Convention should be increased by an amount permitted by article 8, to be determined by the Legal Committee and that the limits set in article 6.1(a) be increased proportionately.

The Secretariat informed the Committee that the Secretary-General expected to circulate the proposal in the near future.

Proposal to add a new work program item to address liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation

The delegation of Indonesia proposed a new work program item to develop an international regime addressing liability and compensation in case of transboundary oil pollution damage caused by offshore exploration and exploitation activities, in the wake of the Montara well offshore oil platform accident.

Among the views expressed in favor of exploring the Indonesian proposal, as further elaborated by the delegation of Indonesia, namely to consider further the liability and compensation issues for transboundary pollution damage resulting from offshore oil exploration and exploitation activities, were the following:

- prompt measures were necessary to fill the gap where pollution damage was caused by transboundary oil spills;
- this was an appropriate time for the Organization to discuss this issue, in light of the recent Deepwater Horizon incident and the Montara well offshore oil platform incident;
- incidents involving transboundary pollution damage from offshore platforms might occur in any part of the world and not every country was able to tackle the problem on its own; accordingly, international regulation was advisable;
- immovable oil storage units are outside the scope of the Civil Liability and Fund Conventions and should be regulated;
- the proposal, as modified by the subsequent intervention by the delegation of Indonesia, was within the scope of IMO's mandate and IMO has in the past developed regulations relating to fixed platforms, including the 1988 and 2005 SUA Fixed Platforms Protocols;
- there is no other international forum with a better mandate to deal with the issue; and

- oil pollution knows no borders and, accordingly, it was important to have in place a mechanism to compensate victims.

Other comments made in connection with the proposal, as modified, included the following:

- oil spills from offshore rigs differ from those from ships, since offshore exploration and exploitation activities are normally carried out on the continental shelf of States and are regulated by national law and bilateral agreements, making the need for a uniform, global regime questionable;
- IMO's mandate to deal with such issues was questioned;
- although IMO could be considered the competent Organization by elimination, it was advisable to consult with other international bodies, which might have a role to play, including the United Nations Environment Programme (UNEP), the International Seabed Authority (ISA), the United Nations Office of Legal Affairs/Division for Ocean Affairs and the Law of the Sea (UN/DOALOS) and the International Law Commission;
- some reservations were expressed as to whether the CLC/FUND model was the most appropriate. Issues such as limitation of liability and the establishment of a fund would require special consideration to determine how exactly it might operate in the context of the proposal;
- under the United Nations Convention on the Law of the Sea (UNCLOS) States have the right to establish limits of liability for this type of activity;
- the matter should be considered only with regard to oil pollution extending beyond national jurisdiction;
- while the proposal was theoretically attractive, many practical issues needed to be discussed;
- to assess the need to undertake work on this proposal, the Committee should consider the international and regional instruments already in existence, as well as a proposal on a global initiative to protect the marine environment, recently submitted by the Russian Federation to the G20 Summit (Canada); and
- further study was needed, including a survey of national laws and regional solutions, to assess the existing legal structures and their effectiveness and to identify gaps, if any, relating to the availability of compensation.

Offers of assistance were made by the observer delegations of UNEP and the Comité Maritime International (CMI). Both had undertaken work in the areas of liability and compensation for environmental damage, especially in connection with craft which do not easily fall within the generally-accepted definition of a ship.

Most delegations that spoke expressed support, in principle, for the inclusion of an item in the Committee's work program to consider liability and compensation issues for transboundary pollution damage resulting from offshore oil exploration and exploitation activities.

It was noted that Strategic Direction of the Organization's Strategic Plan, as currently worded, refers to "shipping", and therefore does not cover pollution caused by offshore oil exploration and exploitation activities. Accordingly, the Committee approved the proposal to recommend that the Council, and through it, the Assembly, revise the Strategic Direction to read as follows:

"IMO will focus on reducing and eliminating any adverse impact by shipping or by offshore oil exploration and exploitation activities on the environment by ... developing effective measures for mitigating and responding to the impact on the environment caused by shipping incidents and operational pollution from ships and liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities."

The Committee recommended that interested States and Organizations should work together intersessionally, to develop the proposal further. The delegation of Indonesia offered to coordinate this work. Both IADC and the International Association of Oil and Gas Producers (OGP) are participating in this intersessional group.

Next session

The 98th session of the Committee is scheduled to be held 4 to 8 April 2011.

The agenda includes consideration of:

- Consideration of a proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96), in accordance with article 8 of LLMC 96;
- Provision of financial security in cases of abandonment, personal injury to, or death of seafarers in the light of the progress towards the entry into force of the ILO Maritime Labour Convention, 2006 and of the amendments relating thereto;
- Fair treatment of seafarers in the event of a maritime accident.

It is also likely that a report from the intersessional group examining liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation will be considered under "any other business."

The complete report of the Committee, including annexes to the report, is available on the IADC's website at: <http://iadc.org/committees/offshore/IMO.html>.

Please feel free to contact me by phone (+1 / 713 292 1964) or e-mail (alan.spackman@iadc.org) with any questions you may have regarding this report.