



INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

MEMORANDUM

TO: Distribution

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

SUBJECT: Report on the 98th session of the IMO Legal Committee

DATE: 11 April 2011

The 98th session of IMO's Legal Committee was held from 4 to 8 April 2011, under the Chairmanship of Mr. Kofi Mbiah (Ghana). Representatives from 81 Member States, two Associate Members of IMO, two United Nations and specialized agencies, three intergovernmental organizations and 19 non-governmental organizations were present. IADC was represented at this meeting by Alan Spackman, IADC Vice President, Offshore Technical and Regulatory Affairs.

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

Status of the Maritime Labour Convention, 2006 (MLC 2006)

The observer of the International Labour Office (ILO) reported that:

- The MLC 2006 had been ratified by 12 States representing approximately 48 per cent of the world fleet based on gross tonnage. Eighteen more ratifications were needed to achieve the required number for entry into force.
- A number of measures had been taken by ILO to encourage further ratifications.
- Several States had indicated that they were working to ratify the Convention before the end of 2011, to enable it to enter into force in 2012 (in the same year as the 2010 Manila amendments to the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) and the 1995 STCW Code).
- The Tripartite Preparatory MLC 2006 Committee would hold a meeting from 12 to 14 December 2011, to discuss the operating procedures for the Special Tripartite Committee, to be set up after the entry into force of the MLC 2006, with a view to adopting amendments to the Convention.

Fair treatment of seafarers in the event of a maritime accident

The Committee approved a draft Assembly resolution on Fair treatment of seafarers in the event of a maritime accident, 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.

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, as coordinator of the informal intersessional consultative group, introduced the report of the group. In so doing, the delegation stressed the following points:

- dedicated instruments, in particular, the mechanism for compensating victims of transboundary oil pollution damage were not, to date, in force;
- sharing information on States' regulatory regimes or bilateral or regional arrangements may be a good starting point for study;

- the issue could move forward, in conjunction with the global initiative to protect the marine environment, proposed by the Russian Federation to the G20 Summit in Toronto in 2010;
- there was a need to develop effective measures for mitigating and responding to the impact on the environment caused by incidents of pollution, as well as liability and compensation issues connected with transboundary oil pollution damage;
- it was important to keep the discussion open, in order to lead to a more comprehensive understanding and common perception of the issues;
- consideration of the proposal to develop a liability and compensation regime for transboundary damage emanating from offshore platforms by the Legal Committee, would assist efforts;
- approval, by the Council and the Assembly, of the proposal to the Strategic Direction would help the common interest of working for clean oceans; and
- Indonesia was planning to hold an international workshop on the issue, in Bali, or elsewhere in Indonesia, in 2011, to pursue the objectives, and was open for further suggestions and ideas to prevent transboundary harm or minimize its risk.

The Secretariat introduced its review of international and regional instruments already in existence, and drawing attention, in particular, to:

- the provisions of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) which *inter alia* require States to control pollution of the marine environment from seabed activities and provide recourse for compensation for damage caused by such pollution; the Convention itself does not impose a liability and compensation regime;
- a 1977 Convention on Civil Liability for Oil Pollution Damage from Offshore Activities (CLEE), which contains the text for such a regime, but had not entered into force;
- a 1974 regional Convention between Denmark, Finland, Norway and Sweden on protection of the environment, which provided for compensation for oil spills from offshore platforms and which could serve as a precedent for regional action;
- customary international law, which provided for State responsibility for acts infringing the rights of neighboring States, and international legal decisions which indicated that this could extend to transboundary oil pollution damage caused by offshore oil operations;
- other international and regional conventions and IMO instruments and codes, which dealt with combating pollution from offshore activities, but did not establish liability and compensation regimes;
- the 2010 United Nations Environment Programme Guidelines, which provided for the development of domestic legislation on liability and compensation for damage from activities dangerous to the environment, but did not extend to offshore platforms;
- a 2004 European Union Environmental Liability Directive, which made operators carrying out dangerous activities responsible for damage, regardless of fault, but which applied only in a limited degree to oil rig accidents;
- the 1974 voluntary Offshore Pollution Liability Agreement (OPOL), which made major oil companies operating in and around the North Sea liable for compensation from damage caused by oil spills from offshore facilities; and
- the United Nations 1992 Environment Conference, and General Assembly resolutions, which dealt with the development of national and international law on liability and compensation for transboundary harm arising from hazardous activities, taking into account principles and articles drafted by the International Law Commission.

The delegation of the Russian informed the Committee about the work on this topic, which had been carried out in the framework of the G20, as follows:

- at the G20 Summit, in July 2010, the President of the Russian Federation proposed a global initiative to protect the marine environment from oil spills, the aim of which was to promote co-operation between the G20 nations in the exchange of best practices for

preventing and minimizing the consequences of oil spills from offshore exploitation and marine transportation;

- the G20 had formed a working group, chaired by the Russian Federation, with Brazil and Turkey as co-chairs. For the G20 Summit in Seoul in November 2010, the group had prepared a "Review of international regulation of oil and gas exploitation and exploration and marine transportation from the perspective of marine environmental protection". The review provided sound organizational guidance for the exchange of best practices in this field;
- at the Seoul Summit the mandate of the working group was endorsed and strengthened. The Seoul Summit declaration included a paragraph advocating the continuation of this work with the involvement of organizations including OECD, IMO, the International Association of Drilling Contractors, the International Energy Agency and OPEC and that a report be submitted to the G20 Summit in France in 2011; and
- the first meeting of the working group was held in February 2011 in Moscow. The parameters for its future work were outlined and would take into account the outcome of the reports on recent oil spills by the United States Presidential Commission and the Australian Commission.

Only one delegation (Brazil) expressed strong reservations regarding the IMO proceeding with this work. Two delegations (United States and Netherlands) expressed some concern, the remainder of delegations speaking expressed views in favor of continuing consultations regarding liability and compensation issues in respect of damage caused by transboundary pollution damage resulting from offshore oil exploration activities.

Comments offered regarding the issue included the following:

- the Indonesian proposal reflects norms in UNCLOS, customary international law, and regional conventions on control of offshore pollution;
- efforts must continue, and would be helped by ascertaining why the 1977 CLEE Convention had not entered into force;
- before discussing whether to develop an international, global instrument, it would be desirable to obtain the views of industry;
- while there was a need for more work to be done, including an alignment of proposals with existing IMO procedures and related conventions, the distinction between fixed and mobile offshore installations could probably be accommodated;
- the reason why the 1977 CLEE Convention had not entered into force could partly be explained by the conditions at the time, which had changed substantially since then; it would be beneficial to study existing regional conventions, especially the Convention for the Protection of the Mediterranean Sea against Pollution (1976) and its most recent Protocols (the Barcelona Convention); acknowledging the over-arching UNCLOS provisions, regional instruments may offer the best solutions in the future, both for fixed and mobile rigs;
- the Committee should not wait for another serious incident to occur before acting, and if IMO did not take the initiative, it was doubtful whether any other body was competent to do so. The subject should be pursued through a formal Correspondence or Working Group, with clear terms of reference on matters such as coverage of fixed and mobile structures, and relationship with other instruments, including the Barcelona Convention;
- caution should be exercised in considering the subject, and an analytical approach should be taken in pursuing it, including identifying gaps that exist in the relevant instruments, whether or not offshore facilities are subject to national jurisdiction, and identifying reasons why existing instruments have not entered into force;
- the subject was important and the fact that the questions in the report had not yet been answered, indicated a need for further work;
- the group should focus on collecting and analysing national legislation on the topic; and
- IMO should be proactive in developing minimum standards on this subject.

- a distinction should be drawn between fixed and floating mobile platforms; fixed platforms were subject to national jurisdiction, and compensation was regulated by law; liability for an oil spill which crossed national boundaries, from a land-based rig, even if actually pumped from under the seabed, was subject to law;
- given the different geographic nature of the coast lines, transboundary pollution should be regulated with bilateral or regional agreements;
- IMO's mandate to deal with such issues was questioned;
- the need to develop liability and compensation provisions had not yet been established; and
- it was advisable to include in the consultations other international bodies, which might have a role to play: UN-DOALOS and the International Law Commission.

The observer delegation of the Comité Maritime International (CMI) noted that, for 30 years, CMI had been working on a draft convention on Offshore Mobile Craft. In 1998, it had submitted a comprehensive report to the Legal Committee (document LEG 78/10) on craft which do not easily fall within the generally accepted definition of a ship, and the application of certain existing maritime law conventions to such craft had proved difficult. The document reported on the need and prospects for a new international convention to address these problems, and the possibility of enlarging the scope of such a convention to apply, in appropriate cases, not only to mobile offshore units but also to fixed structures. The document also contained what could be the framework for a possible treaty instrument.

With regard to CLEE, 1977, the CMI informed the Committee that the said treaty did not enter into force because it contained higher limits than the 1976 LLMC Convention. In addition, the voluntary OPOL Agreement had been concluded and was working well. However, there was now a need for international uniformity and the fact that, in the past, IMO had developed treaties and regulations relating to fixed platforms, including the 1988 and 2005 SUA Fixed Platforms Protocols, OPRC, MARPOL and the MODU Code, demonstrated that the subject was within the scope of IMO's mandate.

The Committee recommended that, pending approval by the Council and the Assembly of the amendment to Strategic Direction, the informal consultative group of interested States and organizations should continue to work together intersessionally, coordinated by Indonesia, to develop the proposal further. Both IADC and the International Association of Oil and Gas Producers (OGP) are participating in this group.

Certificates of insurance for bareboat registered vessels under the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Wreck Removal Convention)

Germany proposed a draft Assembly resolution on the issue of which authority is responsible for issuing certificates of insurance for bareboat registered vessels under the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Wreck Removal Convention). The resolution interprets the term "State of the ship's registry" in article 12, paragraph 2 of the Convention as "flag State", that is to say the State responsible for issuing wreck removal certificates for bareboat registered vessels.

The Committee approved the draft resolution on the issuing of wreck removal certificates to bareboat-registered vessels and decided to submit it to the 106th session of the Council for consideration and, thereafter, for submission to the 27th session of the Assembly, for adoption.

Next session

The 99th session of the Committee is scheduled to be held 16 to 20 April 2012.

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).

- 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
- Analysis of liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities (subject to approval by Council and Assembly of the Committee's recommendation for a revision of Strategic Direction).

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."

Elections

The Committee re-elected, by acclamation, Mr. Kofi Mbiah (Ghana) as Chairman, and Mssrs. Jan de Boer (Netherlands), and Mr. Walter de Sá Leitão (Brazil) as first and second Vice-Chairmen of the Committee, respectively, for 2012.

The complete report of the Committee, including annexes to the report, will be made 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.