



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

OFFSHORE PETROLEUM EXPLOITATION AND INTERNATIONAL LAW

VEDIKA AGARWAL
BA., LL. B(H)
AMITY UNIVERSITY
KOLKATA, INDIA

Abstract: In the current scenario, the exploitation of oil and natural gas deposits on and offshore still represents the most significant global energy needs. For decades, offshore hydrocarbon resources have been explored and exploited among the traditional commercial uses of coastal continental shelf. However, this activity presents considerable potential threats to the marine environment. Surprisingly, a global multilateral environment does not govern the offshore gas and oil sectors, although public international and regional law rules are generally applicable. The maritime oil & gas industry is instead regulated primarily by national legislation.

Besides, it is subject to a mostly independent sector, which traditionally uses its contractual solutions in a capital-intensive industry.

ADDRESSING THE RISKS OF OFFSHORE OIL EXPLOITATION

Recent accidents on offshore oil platforms have drawn attention to the ecological and human risks inherent to this industrial activity. In the current context of the continued development of deep and ultra-deep offshore drilling, which affects the integrity of oceans and seas as a common property, it therefore appears essential that those risks be addressed and that progress be made towards the construction of an international legal framework.

DIFFERENT INITIATIVES, DISAPPOINTING OUTCOMES

At the intergovernmental level, two legal and political processes have been initiated to advance pollution prevention and control: the Indonesian and Russian proposals are both based on the observation that international law falls well short of covering the cross-border dimensions of offshore oil exploitation when considering the increasing risks involved. It is indeed with caution that international law addresses the obligations of states, as sovereignty and jurisdiction issues often limit its scope and impacts. As for regional initiatives and conventions, they are often chronically absent or of very limited effectiveness.

SUPPORTING A COMPREHENSIVE APPROACH

The deficiencies of a highly fragmented international law therefore call for support to a comprehensive approach that aims to: counterbalance the power of oil companies and their professional organisations with an international legal framework that creates obligations; and establish a common set of obligations for states (and operators) covering the entire process of approval, monitoring, intervention, sanctions and liability regime. International institutions such as UNEP and IMO could take on this responsibility and promote the creation of a comprehensive convention on offshore oil exploitation.

Research Questions

Some of the intriguing research questions, which this term paper aspires to answer earnestly by the end, are as follows. :

- Is UNCLOS customary International law?
- How successful is UNCLOS?
- What are the several regional initiatives?
- Implication of IMO Convention so far to support it?
- What are the deficiencies of regional initiatives?
- What is the challenges role of CMI?
- What are some new institutional perspectives?

Research Methodology

The research methodology which has been employed for the purpose of survey and factfinding is secondary in nature. It includes materials which are bibliographical in disposition, and incorporates data and figures available in pertinent websites. The primary yielders of information are :

- Journals
- Research papers
- Scholarly blogs
- e-Newspapers
- Books
- Academic references

Owing to the present day pandemic situation, the panel of writers had to refrain themselves from making use of primary sources of documentation. Prioritizing the need to maintain physical distancing during this tough time of crisis, this research paper has attempted to compensate for the absence of “field data” by critically focusing on the already available standpoints, furnishing the writers’ take on the subject matter with relevant statistical inputs and concocting authentic statements of discussions and arguments.

Chapterization

- **INTRODUCTION**
- **Chapter 1**

The UNCLOS’S Purpose

1.1 Individual State Obligations international law

- **Chapter 2**

IMO Convention

- **Chapter 3**

- Regional Initiatives

2.1 UNCLOS

2.2 Regional initiatives which have been taken

2.3 Examples of such initiatives

2.4 Offshore Protocol

- **Chapter 4**

Deficiencies of Regional laws

- **Chapter 5**

The Challenged Role of CMI

- **Chapter 6**

New Institutional Perspectives

Oil Pollution and International Law

- **Conclusion**

References

List of Statues

Introduction: raising awareness on offshore oil exploitation risks

In recent years, a series of accidents on offshore oil platforms has drawn attention to the inadequacy of international law in relation to the legal framework of the activity.

On 21st August 2009, a well on the Montara platform, located in the Australian Exclusive Economic Zone (EEZ), exploded during the drilling of a new well. According to the Australian Maritime Safety Authority (AMSA), by 30th August the oil slick had spread over 1,750 square miles of ocean, in an area rich in coral reefs and marine biodiversity, and which also provides an important migration corridor for whales and sea turtles. Within days, the oil slick had extended across 5,800 square miles, affecting waters under Indonesian jurisdiction. The presence of oil was discovered 38 miles from Indonesia's Rote Island in the Timor Sea¹.

Eight months later, on 20th April 2010, the Deepwater Horizon drilling rig –operated by Beyond Petroleum (BP) and situated in waters 1,500 meters deep in the Gulf of Mexico, within the jurisdiction of the United States– exploded, caught fire and sank. The resultant leak could not be stopped until 85 days later when the well was finally capped, during which time the equivalent of 4.9 million barrels of oil had dumped into the sea.²

In June 2011, the Chinese and American-operated Penglai 19-3 platform leaked a substantial amount of oil that covered an area of 840 km³ within a month. The Chinese authorities did not acknowledge the incident until one month after the leak began.

These occasions have served to raise public awareness on the extent to which offshore oil exploitation is moving into increasingly deep waters². Offshore exploitation now represents 30% of global oil production and 20% of oil reserves. Deep offshore (over 500 meters below sea level) and ultra-deep (more than 1000 meters) exploitation accounts for 3% of total oil production, the prime areas being the Gulf of Mexico, the North Sea, West Africa and the South China Sea. Areas for future development include Brazil's Atlantic coast, Eastern Canada, the Barents Sea and the Arctic Ocean. Recently, permits have been granted that extend the underwater depth reached by drilling operations to 3000 metres and beyond.

The accidents and the potential future risks, particularly in relation to the Arctic as and when the coastal states issue drilling permits here, serve to highlight the deficiency of international law when confronted with a development that affects the integrity of oceans and seas as a common property.

¹. Document OMI LEG 97/14/1 from 10/09/2010

² https://www.un.org/Depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/akohou_0708_benin_PPT.pdf

ClarkR. B.1989Marine Pollution (2nd ed.), Clarendon Pr., 0-19854-263-1
6.DahmG.DelbrueckJ.WolfrumR.2002Voelkerrecht. Band I/2 (2nd ed.), Walter der Gruyter, 3-89949-023-1 7.DzurekD.

J.SchofieldC.2001Parting the Red Sea: Boundaries Offshore Resources and Transit, IBRU, 1- 89764- 346-2

8.GautamD.2010Trans-Boundary Marine Oil Pollution and Its International Legal Aspects, In: Private Law: Rights, Duties and Conflicts, Kierkegaard, S.M. (Ed.), 980988IAITL, 978-8-79913-858-6Copenhagen

³. ISEMAR – Note n°125 from May 2010 – The offshore oil exploitation: maritime issues Hydrocarbon transportation is governed by specific international regulations that have contributed to: a reduction of the volume of oil released at sea by tankers; improvements in the control of accident risks; a better organization of the response to maritime distress signals and international cooperation; and a compensation scheme and an international fund. Nothing of that kind, however, exists for offshore oil platforms. This industry develops under the sole responsibility of the states involved, without these states having to account for their actions. The reason why such a *status quo* persists is hard to comprehend given that hundreds of multilateral environmental agreements have been established in countless other fields. Could it be due to the political strength of the oil industry and of the states that benefit from its activities? Whatever the answer, in the current context of the continued development of deep and ultra- deep offshore drilling, it appears essential that progress be made towards the construction of an international order.

Initiatives with international scope

After the Deepwater explosion, President Obama set up a Commission of Inquiry which addressed the issues of regional cooperation with Mexico and Cuba in the prevention of platform accidents and in the control pollution resulting from such incidents.

At the intergovernmental level, two legal and political processes have been initiated:

m The first by Indonesia, which has waters under its jurisdiction that were polluted in 2009 after the spillage of oil and gas into the Timor Sea by a platform located in Australian seas. Indonesia introduced a proposal to the Legal Committee of the International Maritime Organization (IMO) to adopt a new work programme on liability and compensation relating to pollution caused by the offshore oil exploration and exploitation. m The second was initiated by Dmitri Medvedev, the Russian President. In November 2010 at the G20 summit in Seoul, he announced that Russia would seek the approval of the 2011 G20 on the adoption of a convention on pollution resulting from offshore oil activity. Dmitri Medvedev had previously raised this issue on World Environment Day on 5th June 2010, when he focused on the deficiencies of international law in terms of both risk prevention and the clean-up of environmental damage. In its communiqué on 24th July 2010, the Russian government set out the reasons behind this initiative, highlighting similarities between the *modus operandi* of the oil and banking industries (processes that were exposed by the 2008 financial crisis). Shared characteristics such as high demand, massive risk, a lack of transparency and weaknesses in external regulation systems, all inevitably tend to lead to disaster. The Russian initiative, which was very ambitious in its potential scope, led to the establishment of a G20 working group entitled “Global Marine Environment Protection Initiative”. The working group met twice in 2011. At the time of writing, the results of this initiative seem quite hypothetical.

The Indonesian and Russian proposals are both based on the observation that international law falls well short of covering the cross-border dimensions of offshore oil exploitation when considering the increasing risks involved. 4

3 . Speech to the IMO Legal Committee – 15th November

Chapter 1- International law and its deficiencies

International law relating to offshore oil production is marked by the fact that the activity takes place in marine areas under sovereignty or jurisdiction. It is therefore with caution that international law addresses the obligations of states.

The UN Convention on the Law of the Sea (UNCLOS)

UNCLOS applies a strict application of the 1945 Truman Doctrine which states: “the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation [in this casen the United States] is reasonable and just”. Since then, the UNCLOS has extended this principle to the EEZ.

The Convention is implementing this principle, while adding to it certain, albeit very limited, obligations related to the protection of the marine environment, among which are:

- Article 60-4, which enables states to establish drilling installations with safety zones.
- Article 194-1, which calls on states to take “all measures (...) necessary to prevent, reduce and control pollution of the

marine environment...”

- With regards to continental shelves, Article 1943-c asserts that coastal states should limit the “pollution from installations and devices used for the exploitation or exploration of the natural resources of the seabed and its subsoil”. Coastal states must also adopt national legislation to control offshore drilling activity.

Under section 208, the parties are also invited to establish global and regional regimes to prevent pollution from offshore activities. They should establish compensation schemes and prescribe under certain conditions the removal of exploitation structures once operational lifetimes have ended (Article 235-3).

The UNCLOS therefore has the legal basis to create international regulations relating to pollution from offshore oil activities. It has yet to give substance to these provisions. However, the conventions adopted within the International Maritime Organization (IMO) and regional seas agreements have thus far provided an insufficient solution.

The UNCLOS's Purpose

The UNCLOS preamble's definition of a "legal order" represents a balance of competing interests to accomplish a common objective:

Recognizing the necessity of creating through this convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans that will facilitate international communication, promote the peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their living resources, and the study, protection, and preservation of the marine environment. For next generations UNCLOS as a whole lays forth nation-states' duties and rights in order to accomplish this.

UNCLOS establishes a worldwide standard wherein nation-states acknowledge a "duty to safeguard and conserve the maritime environment" Each state has the only authority to regulate operations inside its 200-nautical-mile EEZ, twelve-mile territorial sea, and own coastline regions in order to fulfil that commitment. Each state also regulates the actions of its citizens abroad and on the high seas. States "are individually and collectively accountable for their ocean space, and, with other nations, responsible for all the world's waters." ⁵

Individual State Obligations

While UNCLOS acknowledges a state's sovereign interest in ocean-related business, it stipulates that the interest is subordinate to the responsibility to safeguard maritime resources. In line with their environmental policies and in accordance with their obligation to safeguard and conserve the maritime environment, governments have the sovereign right to use their natural resources, according to Article 193. This use of the words "obligation" and "responsibility" highlights how important marine resource conservation is throughout UNCLOS.

UNCLOS mandates that its provisions be incorporated both globally into cooperation agreements with other nations and regionally into domestic legislation by states. Each state must "determine the allowable catch of the living resources in its [EEZ] and shall ensure through proper conservation and management measures that the maintenance of those resources]... is not endangered by overexploitation," according to Article 61, "Conservation of the Living Resources." Coastal governments must work with the proper international bodies as necessary to accomplish these goals.

- 4 <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/law-of-the-sea>
https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm
<https://www.imo.org/en/About/Conventions/Pages/ListOfConventions.aspx>

Chapter -2. The IMO conventions

Although the IMO sticks to its mandate to deal only with maritime shipping, and not to fixed installations, some of the conventions it has adopted set out rules that apply to, or could apply to, oil platforms. However, the issue is complicated by the fact that an increasing amount of oil platforms are made up of floating structures, which cannot navigate independently⁶.

Some convention provisions explicitly apply to oil platforms, regardless of the type. For example, Annex V of the MARPOL Convention 73/78 prohibits the discharge of household solid waste, including packaging, from offshore platforms as it does from ships. The London Convention (1972/1996) on marine pollution also applies to waste dumped from platforms. The 1990 IMO International Convention on Oil Pollution Preparedness, Response and Co- operation

(OPRC), on hydrocarbon pollution, applies to critical situations affecting the platforms. Similarly, the new IMO "Anti-Fouling" Convention (2009) and the Hong Kong Convention on end-of-life ship recycling (2009) apply to offshore floating units.

In contrast, in terms of liability and compensation, oil platforms, floating or not, are not covered by international agreements such as the Convention on Civil Liability for Oil Pollution Damage (1992) or the 1992 Convention that established the International Oil Pollution Compensation Fund (IOPC). These agreements refer only to pollution relating to the transport of oil or its use as fuel by ships.

It is therefore clear that there are two main gaps in global international law, the first is located upstream: the absence of an international framework for the conditions under which oil exploration/exploitation is authorised and monitored; while the second is downstream: the absence of a global instrument relating to damage liability and compensation, as highlighted by Indonesia, even though the UNCLOS Article 235 (3) and the Rio Declaration of 1992 encouraged movement in this direction.

It is worth remembering that a "Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources" (CLEE) was drafted in London in 1976. It set out the principles of financially limited objective liability, compulsory insurance and the possibility to take action against the insurer; it was not accompanied by the creation of a fund.

This convention, however, was never ratified.

The United Nations Convention on the Law of the Sea establishes guidelines for all uses of the oceans' resources and establishes a comprehensive system of law and order throughout the world's oceans and seas. It affirms the idea that all issues pertaining to ocean space are intricately tied to one another and must be handled as a whole.

On November 16, 1994, twelve months following the date of the deposit of the sixty-first instrument of ratification or accession, the Convention came into effect in line with article

308. Today, it is the widely acknowledged system in charge of resolving all issues pertaining to the law of the sea.

The Convention regulates all areas of ocean space, including delimitation, environmental management, marine scientific research, and maritime transportation, economic and

5 . Note ISEMAR, *op. Cit.*

commercial activity, technological transfers, and the resolution of disagreements about maritime issues.

The following are some of the Convention's salient characteristics:

*Ships and aircraft of all nations are allowed "transit passage" through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage. Archipelagic States, made up of a group of islands, have sovereignty over their territorial sea and have the right to determine its breadth up to a limit not to exceed 12 nautical miles. The waters between the islands have been defined as archipelagic waters, in which States may create air and sea routes and all other States are granted the privilege of archipelagic transit through such authorised air and sea routes;

* Coastal States have control over marine science research and environmental protection and have sovereign rights in a 200 nautical mile Exclusive Commercial Zone (EEZ) with regard to natural resources and some economic activities;

* All other States are permitted to navigate and overfly the EEZ at will, as well as to erect pipelines and underwater lines;

* States that are landlocked or otherwise geographically disadvantaged have the right to participate fairly in the exploitation of an appropriate portion of the surplus of living resources found in coastal States' exclusive economic zones (EEZs) within the same region or subregion; highly migratory fish species and marine mammals are given special protection;

* Coastal States have sovereign rights over the continental shelf, which is the nation's portion of the seafloor, for exploration and exploitation; the shelf can reach out at least 200 nautical miles from the shore and farther under certain conditions;

* Coastal States contribute to the global community a portion of the profits made from resource extraction from any area of their shelf that extends beyond 200 miles;

* When the continental shelf reaches a distance of 200 miles or more, the Commission on the Limits of the Continental Shelf must advise States on the outer limits of the shelf;

- * All States are entitled to the customary freedoms of navigation, overflight, scientific exploration, and high seas fishing; nevertheless, they are also required to adopt, or work together with other States to implement, measures to manage and protect living resources.
- * The territorial sea, exclusive economic zone, and continental shelf borders of islands are established in line with the laws governing land territory, although no economic zone or continental shelf would exist for rocks that could not support independent human habitation or economic life;
- * Cooperation in managing living resources, the environment, and research is envisaged between states bordering enclosed or semi-enclosed oceans.
- * Landlocked States are permitted free passage via the territories of transit States and have access to and from the sea;
- * States are responsible for damages caused by violations of their international duties to combat such pollution and are required to prevent and regulate maritime pollution;
- * All maritime scientific research within the Exclusive Economic Zone and on the continental shelf requires the approval of the inland State, although in most situations, they are required to do so when the study is to be performed for peaceful ends and meets certain requirements;
- * States have a duty to advance maritime technology development and transfer "on fair and reasonable terms and circumstances," taking into account all legitimate interests; States Parties are required to use peaceful ways to resolve any differences over how the Convention should be interpreted or applied;
 - * Disputes may be brought before the International Tribunal for the Law of the Sea, which was created in accordance with the Convention, the International Court of Justice, or arbitration. Conciliation is another option, and in some situations, capitulation might be required. Deep seabed mining cases fall under the sole authority of the Tribunal.

Chapter -3. Regional initiatives

In accordance with the encouragement of UNCLOS, certain maritime regions, or "regional seas" have taken the initiative to cooperate in the establishment of shared rules that go beyond the scope of the international framework as described above.

Examples of such initiatives include the OSPAR Convention, which has an advanced legal system⁷, the 1978 Kuwait Regional Convention and the 1992 Convention on the Baltic Sea Environment which all require participant states to fight against pollution resulting from offshore activities. Recently (2011), the Abidjan Convention on the protection of the West African marine environment has indicated concern for the risks associated with offshore operations on the African coast. Indeed, the risks related to current developments are particularly worrying since many of the countries involved have a very limited capacity to deal with pollution incidents or platform accidents. Consider for example that off the coast of Mauritania, where 30 years ago the Banc d'Arguin National Park was created, the entire EEZ has been divided into zones intended for oil exploitation. While the IUCN has set up an "Oil Panel" in this country, highlighting potential risks and regulatory deficiencies, one wonders what could constitute effective regulation for oil exploitations that could be authorized in waters as rich in biodiversity as those of the Western Sahara, a territory whose status remains uncertain in international law.

The Mediterranean is covered by the 1976 Barcelona Convention, which was revised in 1995 and is accompanied by seven protocols, including an "offshore" one that was signed in Madrid in 1994 and came into force in 2010 after ratification by six states. However, neighbouring European countries and the European Community have so far refrained from ratifying the Protocol because it is deemed too restrictive in certain provisions. The European Commission seems to want to break this negative attitude and to encourage the countries involved (France, Italy, Greece, Spain, Slovenia and Malta) to ratify the protocol.

This protocol may be regarded as very advanced and ambitious⁸.

offshore protocol does not only cover activities in, geographically speaking, the entire Mediterranean subsoil, but encompasses all exploration and exploitation activities and all installation types. It imposes specific obligations on parties in terms of permits, monitoring and a requirement to use the best available technology. States must also check on the technical and financial capacity of operators. The protocol is relatively advanced on the issue of liability,

⁷. See Luisa Rodriguez Lucas, 2008, "la Prevención de la contaminación por la explotación de hidrocarburos en el mar" - Tirant lo blanch Ed

.BirnieP.BoyleE.1992International Law and the Environment, Clarendon Press, 0-19876-282-8
3.BrexendorffA.2006Rohstoffe im Kaspischen Becken. Voelkerrechtliche Fragen der Foerderung und des Transports

von Erdoel und Erdgas, Peter Lang GmbH, 3-63154-968-7 Frankfurt am Main 4. Brubaker D. 1993 Marine Pollution and international law: principles and practice, Belhaven, 1-85293-273-2

- ⁸. See Evangelos Raftopoulos, 2010, "Sustainable Governance of Offshore Oil and Gas Development in the Mediterranean: Revitalizing the Dormant Mediterranean Offshore Protocol" - www.mepielan-ebulletin.gr
- Korsunskaya D. Reddall B. (.August 2011 Exxon, Rosneft tie up in Russian Arctic, In: U.S. (Reuters), 31.10.2011, Available from <http://www.reuters.com/article/2011/08/30/us-rosneft-exxon-idUSTRE77T2OM20110830>
19. Valencia M. .Ed 2001 Maritime Regime Building, Martinus Nijhoff Publishers, 9-04111-580-3 The Hague stating that parties shall make sure that operators are insured against risks and that they remain responsible for any environmental damage that their activities may cause.
- We can only hope that all Mediterranean countries eventually ratify this protocol, which is much needed given the development of oil platforms in the region (numbering 231 in 2010).

Chapter 4- The Deficiencies of Regional Laws

Highly fragmented regional laws have many deficiencies: they are often chronically absent, particularly in Asia, or, where they do exist, they may be of very limited effectiveness (Abidjan and Nairobi Convention). Such circumstances can only encourage support for a comprehensive approach that aims to:

- Firstly establish a common set of obligations for states (and operators) covering the entire process of approval, monitoring, intervention, sanctions and liability regime.
- Second, to counterbalance the power of oil companies and their professional organizations with an international legal framework that creates obligations, including reporting, and allows the creation of an international convention secretariat. Such a framework based on an open and multi-stakeholder governance approach, would allow the participation of civil society and, in particular, NGOs involved in the protection of the marine environment. The fundamental intention is to introduce greater transparency and accountability into a subject that presently has many grey areas and which functions as a battlefield for the clash between the Horatti (oil companies) and Curiatti (states).

Chapter 5- The Challenged Role of the Comité Maritime International (CMI)

In 1977, the Comité Maritime International (CMI), an NGO for maritime law unification, proposed a draft convention on offshore mobile craft ("the Rio Draft") which was not approved by the IMO. The CMI, however, has continued to work on the issue.

The CMI considered a new project at its 1994 conference in Sydney ("the Sydney Draft"), establishing a working group for the "further study and development, where appropriate, of an international convention on Offshore Units". Noting that global oil and gas production had increased by 144% between 1980 and 1993, and taking the 1992 Rio Declaration into account, its Article 2 of the convention stipulating that states must ensure that activities under their jurisdiction or control do not cause damage to the environment, to other states or to areas beyond national jurisdiction. In addition, following on from the 1972 Stockholm Declaration, the Rio Declaration stressed the need for states to develop international regimes dealing with trans-boundary pollution and liability and compensation for environmental damage caused in or outside of areas under state jurisdiction.

Despite the political and moral force of the Rio Declaration, two years later in 1994 the IMO's Committee of the Marine Environment considered that there was no need to adopt a legal instrument for offshore installations.

In 1995 however, the IMO's Legal Committee encouraged the CMI to pursue an entirely new approach that would no longer distinguish between fixed and mobile platforms, thus answering the recurring question of the competence of the IMO through the choice of a comprehensive and positive approach. The CMI entrusted this exercise to the Canadian Maritime Law Association (CMLA), which raised the question of the appropriateness of such a convention, given:

- The international provisions already in place, as mentioned above. m The current development of national legislation.
- The reluctance of the oil industry, whose cooperation is desirable and probably indispensable.⁹

Finally, in March 1996 the CMLA issued a "Discussion Paper" pronouncing in favour of the preparation by the CMI of a global instrument for subsequent negotiation within the IMO framework. However, the International Association of Drilling Contractors and the Maritime Law Association of the United States quickly opposed the CMI's work on this

process¹⁰.

Nevertheless, the CMLA continued its work and in 2000 produced a comprehensive draft convention of 14 articles that was responsive to technological, legal and environmental

9 .AnianovaE.2006The International Maritime Organization- Tanker or Speedboat?, In: International Maritime Organizations and their Contribution towards a Sustainable Marine Development, Ehlers, P., Lagoni, R. (Eds.), 77103LIT Verlag, 3-82589-296-4

2.BirnieP.BoyleE.1992International Law and the Environment, Clarendon Press, 0-19876-282-8

3.BrexendorffA.2006Rohstoffe im Kaspischen Becken. Voelkerrechtliche Fragen der Foerderung und des Transports von Erdoel und Erdgas, Peter Lang GmbH, 3-63154-968-7Frankfurt am Main 4.BrubakerD.1993Marine Pollution and international law: principles and practice, Belhaven, 1-85293-273-2 developments. At the CMI Vancouver conference in June 2004, the offshore convention's working group noted the IMO's lack of interest in the initiative and the opposition of the Maritime Law Association of the United States. Due to this, the activities of the working group have been shelved. Ultimately, the project stalled as a consequence of opposition from industry and certain states, and a level of indifference or inability from the IMO. In this case, the IMO is chronically concerned about the question of the scope of its mandate which, in principle, only covers the issues of maritime navigation, and therefore transport, but not oil extraction.

Chapter 6 - New institutional perspectives

However, the issue now seems to have been resurrected.

Following Indonesia's abovementioned request for work on liability and compensation, in 2010 the IMO's Legal Committee established an informal advisory group that included 14 states, four professional organizations and the CMI. Environmental NGOs, however, were not included.

Similarly, the working group established by the G20 in response to Russia's initiative involves states only, and its work is not freely accessible. There is a risk that the work of the G20 (which makes decisions by consensus) will not produce a significant outcome. There is also a concern about the way a multi-stakeholder issue such as marine pollution is being addressed, without civil societies being party to the process. At this point, questions may be raised on what would be the most appropriate framework in which to revive the draft convention. Clearly, frameworks that are closed to civil societies, such as that of the G20, or heavily influenced by industry, such as that of the IMO, may not be optimal for the consideration of environmental issues. The IMO has only acted in response to major accidents (Torrey Canyon, Amoco Cadiz, Erika) in reaction to public turmoil, even though on a day-by-day basis it provides a valuable and essential contribution.

The UNEP can also play an important role, providing that it strengthens its expertise in the highly technical field of offshore oil.

We can also note that environmental NGOs, often the driving forces of international protection of the environment, have, with rare exceptions, showed little interest in this matter and that the CMI, which had made considerable progress, is now paralyzed.

The Rio +20 process may provide an opportunity to revive this project, which could be developed jointly by the IMO and UNEP, with a secretariat formed from both of these organizations.¹¹

¹¹DahmG.DelbrueckJ.WolfrumR.2002Voelkerrecht. Band I/2 (2nd ed.), Walter der Gruyter, 3-89949-023-1 7.DzurekD. J.SchofieldC.2001Parting the Red Sea: Boundaries Offshore Resources and Transit, IBRU, 1- 89764- 346-2

8. GautamD.2010Trans-Boundary Marine Oil Pollution and Its International Legal Aspects, In: Private Law: Rights, Duties and Conflicts, Kierkegaard, S.M. (Ed.), 980988IAITL, 978-8-79913-858-6Copenhagen

9.GavouneliM.1995Pollution from Offshore Installations, Graham and Trotman, 1-85966-186-6

10.GelbergL.1979Rechtsprobleme der Ostsee, Sample, 3-92165-406-8 It is hoped that the High Level Expert Meeting on the Sustainable Use of Oceans, to be held in Monaco from 28th to 30th November 2011, will provide an essential stimulus for the 2012 Rio conference.

Oil Pollution and International Law

After the Second World War not only the public interest in the environment increased in general. Concerns of coastal states about increasing ship-source marine pollution and oil spills started to grow as well. Some of the occurred incidents with tankers clearly demonstrated that oil spills in an environmentally or economically sensitive area could cause irreparable damage (Gold, 1998).

Oil pollution of the ocean comes from shipping activity and offshore oil production. Sea-bed activities on oil exploration and production constitute a relatively small part in the general amount of the pollution of marine environment with oil. The principal cause of marine pollution with oil is shipping. Traditionally shipping is considered to be “a polluting industry”. The world’s tanker fleet counts approximately 7 000 vessels with cargo capacities between 76 000 and 175 000 tons (Gennaro, 2004). Usual shipping operations, especially transportation of oil by tankers and accidents, result in the dumping of around 600 000 – 1 750 000 tons of oil into the ocean per year (Brubaker, 1993).

Due to the use of pipelines for petroleum products, oil transportation with tankers decreased significantly (Gennaro, 2004). However, the incidents with this type of vessels and the occurred oil spills occur constantly. The last oil pollution incident, which gained publicity and attention of the mass media, happened in October 2011 off the New Zealand’s coast. The grounding off of the tanker “Rena” and the followed oil leaking caused the environmental disaster. This oil spill seriously damaged wildlife, including penguins, seals, dolphins, whales and rare sea birds (New Zealand oil spill ship captain charged, 2011).¹²

It must be stressed here that the oil spills and individual catastrophes are very spectacular, but the scientific research demonstrates that pollution from other sources damages the marine environment more. Furthermore, it should be noted that a small amount of oil is constantly seeping in the seas being assimilated into the ocean environment (Brubaker, 1993). Many

¹² Gennaro M. 2004 Oil Pollution Liability and Control under International Maritime Law: Market Incentives as an Alternative to Government Regulation. *Vanderbilt Journal of Transnational Law*, 37(1) January 2004, 265-298 0090-2594

12. Gold E. 1998 *Handbook on Marine Pollution* (2nd ed.), Assuranceforeningen Gard, 8-29034-411-2 13. Graham S. (.December 2003 Environmental Effects of Exxon Valdez Spill Still Being Felt, In: *Scientific American*, 31.10.2011, Available from:

14. <www.scientificamerican.com/article.cfm?id=environmental-effects-of>

15. Howard R. .September 2011 How Arctic oil could break new ground, In: *The Guardian*, 31.10.2011, Available from

16. <<http://www.guardian.co.uk/commentisfree/2011/sep/02/arctic-oil-exxonmobil-russian-deal>> 17. Eds I. T. O. P. F. .2002 International Oil Pollution Compensation Fund 1992, ITOPI, London chemicals carried at sea are intrinsically far more harmful to the marine environment. Although the impact of the oil pollution constitutes only a small part of a general pollution to the maritime environment, the consequences of oil spills and oil wastes are extremely damaging for marine landscape and ocean’s inhabitants.

Spilled oil is very toxic. It can be lethal to adult animals even in relatively low concentrations. It may also cause physiological or behavioral disruptions of species. Oil spills also cause death through the prevention of normal feeding, respiration and movement functions not only of ocean wildlife, but also of marine life at the sea shore. Particularly dangerous oil spills are for birds. Oil spill can lead sometime to the tainting of fish and shellfish. Sometimes one can feel the consequences of the oil spills through the oily taste or smell to the seafood. An oil spill directly damages not only animals, plants and corals, fisheries, but also affects human activity in the area of fisheries through damaging of fishing boats, fishing gear, floating fishing equipment.

It can be easily noted that maritime catastrophes of large scale lead to the development of the international law. For example, the “Titanic” (1912), “Torrey Canyon” (1967), “Amoco Cadiz” (1978), “Exxon Valdez” (1987) accidents served as a reason for the adoption of new safety and anti-pollution rules (Rosenne, 1998). As for oil pollution legislation, a series of tanker accidents occurred off the coast of North America in 1976-1977 (Özçayır, 2004) with “Sansinena”; “Oswego Peace”; “Olympic Games”; “Daphne”; “Grand Zenith”; “Barcola; Mary Ann”; “Universe Leader”, and several other tankers (although almost all of these disasters were caused by human error or negligence) accelerated adoption of the MARPOL convention and Protocol. The stranding of the “Argo Merchant” (Anianova, 2006), in December 1976 and an oil spill of 27 000 tonnes of the coast of Massachusetts resulted in the Conference of the International Maritime Organization on Tanker Safety and Pollution Prevention in February 1978 under the US lobby and adopted amendments on tanker design and operation incorporated in the Protocol of 1978 to the SOLAS Convention.¹³

It was scientifically confirmed that the marine environment may eventually recover from very serious oil pollution incidents. However, it does not mean that there is no shorter-term damage to the marine environment, coasts, people and property. Besides we should think not only about the today's interests, but consider "the interests of future generations" (Birmie & Boyle, 1992). One shouldn't forget that in such cases as oil pollution prevention on the level of the international legislation the most important aspect is a quick response in its time (Anianova, 2006).

¹³ Korsunskaya D. Reddall B. (.August 2011 Exxon, Rosneft tie up in Russian Arctic, In: U.S. (Reuters), 31.10.2011, Available from <<http://www.reuters.com/article/2011/08/30/us-rosneft-exxon-idUSTRE77T2OM20110830>> 19. Valencia M. .Ed 2001 Maritime Regime Building, Martinus Nijhoff Publishers, 9-04111-580-3 The Hague 20. Mehr Sicherheit fuer Tanker 2003 HANSA, 91518

21. New Zealand oil spill ship captain charged (12 October 2011 In: BBC News, 31.10.2011, Available from <<http://www.bbc.co.uk/news/world-asia-pacific-15268314>>

Conclusion

In conclusion, what reasons exist today to justify the adoption of a comprehensive convention on offshore oil exploitation? The main grounds for doing so, as described above in greater detail, are:

- The scale of the environmental risks associated with oil exploitation in deep and ultra- deep waters.
- The major deficiencies in the international legal system (control of permits, monitoring and accountability), global or regional.
- The fact that there are major governance problems in many regions, such as West Africa, and that only a few countries are capable of exerting control in the appropriate locations, verifying the impacts, responding to incidents or conducting inspections.

A convention system will enable the creation of a secretariat and structures for cooperation, as well as the launch of projects and mobilization of financial resources, thus forming a body with a sufficient technical ability to rival that of the oil industry.

Although it was scientifically proved that many chemicals carried at sea are intrinsically far more harmful to the marine environment, the impact of oil upon the ocean and its ecosystem is very dangerous. The spillage of even few tons of oil into sea causes a thin film on the water surface, what is deadly for marine life (Gautam, 2010).

Since the middle of the XX century not only numerous international legislative measures were adopted in the area of oil pollution prevention for the marine environment, but also national laws and regulations. This new legislation reflected not only the development of the legal position on the certain issues, but also the new developments in construction technology like, for example, improved tank stripping pumps, the load-on-top system, and other technological advances. All these preventive measures considerably reduced both vessel- source and offshore oil development pollution.

Beside the main legal documents on oil pollution and marine environment protection, general principles of international environmental law are also applicable to the cases of oil pollution. Such soft concepts as the «precautionary principle» and «polluter pays principle» could be applied (Salter & Ford, 2001). Besides these principles being a substantive element of sustainable development are reflected in conventions on liability and compensation in case of pollution (e.g. CLC, FUND etc.)

References:

1. Yoder C. 1985 The Canadian regulation of offshore installations, The University of Calgary, 0-91926-918-4 Canada
2. Zhu L. 2006 Do we need a Global Organization for the Protection of the Marine Environment, In: International Maritime Organizations and their Contribution towards a Sustainable Marine Development, Ehlers, P., Lagoni, R. (Eds.), 157180 LIT Verlag, 3-82589-296-4
3. Sokolova N. 2005 Zashchita i sohranenie morskoy sredy kak uslovie osuschestvleniya svobod otkrytogo morya. Morskoe pravo i praktika, 12032
4. Clark R. B. 1989 Marine Pollution (2nd ed.), Clarendon Pr., 0-19854-263-1
5. 6. Dahm G. Delbrueck J. Wolfrum R. 2002 Voelkerrecht. Band I/2 (2nd ed.), Walter der Gruyter, 3-89949-023-1
6. 7. Dzurek D. J. Schofield C. 2001 Parting the Red Sea: Boundaries Offshore Resources and Transit, IBRU, 1-89764-346-2
7. 8. Gautam D. 2010 Trans-Boundary Marine Oil Pollution and Its International Legal Aspects, In: Private Law: Rights,

Duties and Conflicts, Kierkegaard, S.M. (Ed.), 980988IAITL, 978-8-79913-858-6Copenhagen

8. 9.GavouneliM.1995Pollution from Offshore Installations, Graham and Trotman, 1- 85966-186-6
9. 10.GelbergL.1979Rechtsprobleme der Ostsee, Sample, 3-92165-406-8
10. 11.GennaroM.2004Oil Pollution Liability and Control under International Maritime Law: Market Incentives as an Alternative to Government Regulation. Vanderbilt Journal of Transnational Law, 371January 2004), 2652980090-2594
11. 12.GoldE.1998Handbook on Marine Pollution (2nd ed.), Assuranceforeningen Gard, 8-29034-411-2
12. 13.GrahamS. (.December2003Environmental Effects of Exxon Valdez Spill Still Being Felt, In: Scientific American, 31.10.2011, Available from:
13. 14.<www.scientificamerican.com/article.cfm?id=environmental-effects-of>
14. 15.HowardR. .September2011How Arctic oil could break new ground, In: The Guardian, 31.10.2011, Available from
15. 16.<http://www.guardian.co.uk/commentisfree/2011/sep/02/arctic-oil-exxonmobil- russian-deal>
16. 17.EdsI. T. O. P. F. .2002International Oil Pollution Compensation Fund 1992, ITOPI, London
17. 18.KorsunskayaD.ReddallB. (.August2011Exxon, Rosneft tie up in Russian Arctic, In: U.S. (Reuters), 31.10.2011, Available from <http://www.reuters.com/article/2011/08/30/us-rosneft-exxon- idUSTRE77T2OM20110830>
18. 19.ValenciaM. .Ed2001Maritime Regime Building, Martinus Nijhoff Publishers, 9- 04111-580-3The Hague

List of Statues:

1. Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992.
2. Convention for the Protection of the Marine Environment of the North-East Atlantic, 1992.
3. Declaration of the United Nations Conference on the Human Environment, 1972.
4. Action Plan for the Human Environment, 1972.
5. Convention on the Continental Shelf, 1958. United Nations, Treaty Series. Vol. 499. P. 311.
6. Convention on the High Seas, 1958. United Nations, Treaty Series. Vol. 450. P. 11, p. 82.
7. United Nations Convention on the Law of the Sea, 1982.
8. Agenda 21. http://www.un.org/esa/dsd/agenda21/res_agenda21_00.shtml
9. International Convention for the Prevention of Marine Pollution from Ships, 1973, United Nations, Treaty Series. Vol. 1340. P. 184 (as modified by Protocol, 1978, United Nations, Treaty Series. Vol. 1340. P. 61).
10. International Convention for the Prevention of Pollution of the Sea by Oil, 1954. United Nations, Treaty Series. Vol. 327. P. 3.
11. International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969. United Nations, Treaty Series. Vol. 970. P. 211.
12. Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances Other Than Oil, 1973. United Nations, Treaty Series. Vol. 1313. P. 4.
13. International Convention on Civil Liability for Oil Pollution Damage, 1969. United Nations, Treaty Series. Vol. 973. P. 3.
14. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. http://www.iopcfund.org/npdf/Text%20of%20Conventions_e.pdf
15. Amendments of the Limitation Amounts in the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969.
16. Resolution LEG.1(82), 18 October 2000. Amendments of the Limitation Amounts in the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969.
17. Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969. http://www.iopcfund.org/npdf/Text%20of%20Conventions_e.pdf; Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. http://www.iopcfund.org/npdf/Text%20of%20Conventions_e.pdf
18. IMO Resolution, 18 October 2000. Adoption of Amendments of the Limits of Compensation in the Protocol of 1992 to

Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. http://www.iopcfund.org/npdf/Text%20of%20Conventions_e.pdf

19. Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution , 1969. International Legal Materials. Vol. 8, 1969. P. 497.

