

“OFFSHORE ACTIVITY - NEW REGULATIONS AND CONTRACTS”

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PART I. New Regulations in the Offshore Industry.

By Violeta S. Radovich

A. New Regulations after the Montara and Deepwater Horizon incidents

Part one of the present document is devoted to the new regulations concerning offshore activities. In a previous article of the author written in 2010¹ a study was carried out regarding the application of each Convention to offshore units since at that moment there was no convention in force devoted on its totality to offshore units.

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¹ Radovich, Violeta. “International Legal Regime of Offshore Structures-Environmental Concerns”. Presentation in the Young CMI Session, 2010 Buenos Aires Colloquium. Document available at http://www.cmi2010buenosaires.com.ar/papers/Paper_2_Violeta_Radovich.pdf, visited in September 2012 and Violeta Radovich, 09/07/2012, “International Legal Regime of Offshore Structures-Environmental Concerns” in Maritime Law and Carriage Magazine, El Dial, document available at <http://www.eldial.com/nuovo/suplemaritimo.asp>. See “Introduction. Preliminary Questions”,

Now, in 2012 and mainly as a consequence of the Montara² and Deepwater Horizon incidents, two new instruments can be found at the European level, one which has already entered into force and another that is still a proposal for Regulation. Accordingly, the aim of part one of this document is to study these two new regulations; namely, i) the Protocol to the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution and ii) the Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities. Additionally, the author will also make some comments on the necessity of a compensation convention on trans-boundary damage arising from exploitation and exploration of offshore oil.

1. The turning point — the first Convention devoted to Offshore Units entries into force

On March 24th 2011 the Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil³ entered into force. It had been adopted on 14 October 1994, but only entered into force in 2011, undoubtedly as a consequence of the awareness caused by the Montara and Deepwater Horizon incidents.

We believe that the adoption of this Protocol is a turning point in the regulation of offshore units since it is the first instrument devoted on its totally to these units that has finally entered into force.

The general undertaking under this Protocol established in Article 3 states that the best available techniques, environmentally effective and economically appropriate shall be used to prevent, abate, combat and control pollution.

In addition to this, the Protocol establishes an Authorization system. The general principle states that all activities shall be subject to prior written authorization. Installations shall be build according to international standards and practice and operators shall have technical competence and financial capacity to carry out the activities required from them.

² The Montara well incident took place in the Timor Sea between Indonesia and Australia in 2009, when a blow-out from the Montara well, then being drilled by the rig “West Atlas” for a Thai-based oil exploration company, caused a substantial leak of crude oil. The rig was located in the Australian Exclusive Economic Zone, some 135 miles north west of the nearest coastline of the Australian mainland and a similar distance from the nearest coast of Indonesia.

³ Document available at http://195.97.36.231/dbases/webdocs/BCP/ProtocolOffshore94_eng.pdf, visited in September 2012.

Authorization, however, shall be refused under the Protocol if there are indications that the proposed activities are likely to cause significant adverse effects on the environment. The authorization may impose conditions regarding measures to reduce to the minimum risks of and damage due to pollution.

Furthermore, the Protocol establishes that when considering approval of the siting of the installation, the Contracting Party shall ensure that no detrimental effects will be caused to existing facilities, in particular to pipelines and cables.

An application for authorization shall include:

(a) A survey concerning the effects of the proposed activities on the environment. An environmental impact assessment might be required to be prepared;

(b) The precise definition of the geographical areas where the activity is envisaged, including safety zones;

(c) Particulars of the professional and technical qualifications of the candidate operator and personnel on the installation, as well as of the composition of the crew;

(d) The safety measures;

These shall be taken with regard to:

-Design,

-Construction,

-Placement,

-Equipment,

-Marking,

-Operation, and

-Maintenance of installations.

The competent authority shall require a certificate of safety and fitness issued by a recognized body in respect of production platforms, mobile offshore drilling units, offshore storage facilities, offshore loading systems and pipelines.

(e) The operator's contingency plan;

It shall be made in accordance with guidelines adopted by the competent international organization to combat accidental pollution.

Any event on the installations causing or likely to cause pollution shall be notified by operators in charge of installations.

(f) The monitoring procedures;

The operator shall be required to measure effects of the activities on the environment and to report on them periodically or upon request by the competent authority.

The competent authority shall establish, where appropriate, a national monitoring system.

(g) The plans for removal of installations;

Any installation which is abandoned or disused shall be removed, in order to ensure safety of navigation, taking into account the guidelines and standards adopted by the competent international organization. Such removal shall also have due regard to other legitimate uses of the sea, in particular fishing, the protection of the marine environment and the rights and duties of other Contracting Parties. All necessary measures shall be taken to prevent spillage or leakage from the site of the activities.

The competent authority shall require the operator to remove abandoned or disused pipelines or to clean them inside and abandon them or to clean them inside and bury them. Appropriate publicity shall be given to the depth, position and dimensions of any buried pipeline.

Where the operator fails to comply with these requirements, the competent authority shall undertake, at the operator's expense, such action or actions as may be necessary to remedy the operator's failure to act.

(h) Precautions for specially protected areas;

In addition to the measures referred to in the Protocol concerning Mediterranean Specially Protected Areas, the measures may include, inter alia:

- (a) Special restrictions or conditions when granting authorizations for such areas:
 - (i) The preparation and evaluation of environmental impact assessments;
 - (ii) The elaboration of special provisions in such areas concerning monitoring, removal of installations and prohibition of any discharge.
- (b) Intensified exchange of information among the parties.
 - (i) The insurance or other financial security to cover liability.

Meanwhile the Parties formulate appropriate rules, liability for damage caused by activities is imposed on operators, who shall be required to pay prompt and adequate compensation. Operators shall have insurance cover in order to ensure compensation.

Under Section V of the Protocol, entitled Cooperation, the Parties undertake to formulate and elaborate international rules, standards, recommended practices and procedures for achieving the aims of this Protocol.

Moreover, a general obligation is established in order to avoid trans-boundary pollution. Equal access to and treatment in administrative proceedings shall be granted to persons in other States who may be affected by pollution or other adverse effects resulting from proposed or existing operations.

Finally, the Parties shall interexchange information regarding measures taken, results achieved or difficulties encountered in the application of the Protocol.

Section III of the Protocol is devoted to wastes and harmful or noxious substances and materials, and distinguishes among oil and oily mixtures and drilling fluids and cuttings, sewage and garbage. The disposal of some substances is prohibited and others require a special permit. This constitutes an advance, since MARPOL does not apply to marine pollution directly resulting from offshore operations, ex. in connection with the use of oil-based drilling muds or leakage of oil during well testing, and water production.

2. The European Commission Proposal

The Proposal⁴ was delivered on October 27th 2011. It was preceded by an explanatory memorandum describing the grounds and objectives of the Proposal.

It is said that recent offshore oil and gas accidents and ‘near misses’⁵ reported worldwide, demand action. It is added that these accidents expose the disparity between the increasing complexity of operations and the inadequacies in the current risk-management practices. Moreover, it is stated that the incidents have highlighted the challenges that the regulators face in ensuring adequate oversight of offshore activities, and a lack of transparency and data sharing regarding the safety performance of the offshore industry.

Studies, stakeholder consultations and risk analysis conducted since 2010 have identified the main problems for the Union as:

1. The risk of a major offshore oil or gas accident occurring in Union waters is significant since most oil and gas is produced offshore, and the existing fragmented legislation and diverse regulatory and industry practices do not provide for all achievable reductions in the risks throughout the Union.
2. The existing regulatory framework and operating arrangements do not provide for the most effective emergency response to accidents whereby they occur in union waters, and the liabilities for clean-up and conventional damages are not fully clear.

Therefore, the general objectives of the proposal are to (i) reduce the risks of a major incident in Union waters, and (ii) to limit the consequences should such an accident nonetheless occur.

This regulation is consistent with the Energy Strategy for 2020 and is coherent with marine policy, notably the goal of achieving by 2020 the Good Environmental Status of the marine environment (Marine Strategy Framework Directive 2008/56/EC).

An on-line public consultation was carried out between 16 March and 20 May 2011 to ascertain the views of interested parties on the need for Union action in various policy fields.

⁴ Document available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0688:FIN:EN:PDF>, visited in September 2012.

⁵ Such as oil and gas leaks, failures of production process safety and drilling well control; failure due to invalid design change; high number of maintenance backlogs of safety critical element. Recent incidents examples: Gullfaks C in May 2010, Gannet F, 2011; both in the North Sea.

The European Union proposes to adopt the "Union Best Practice" which implies a holistic risk assessment for safety and environment, by which the level of risk management and emergency preparedness in the offshore industry will be raised. A Union-wide Offshore Authorities Group will be created and the Licensing and the Environmental Liability Directives (LED) reinforced by regulation. This option provides for greater transparency of industry and regulator performance.

In comparison to the previously studied Protocol, we may say that the main addition in this Regulation is that public participation is established in licensing procedures.

B. Compensation for Oil Pollution Damage Arising from Offshore Exploration and Exploitation

The Montara incident has highlighted the fact that there is no international convention in force governing compensation for oil pollution damage in such circumstances since the 1969 Civil Liability Convention for Oil Pollution Damage (CLC) and the 1992 Civil Liability and Fund Conventions do not apply to fixed offshore installations or to oil tankers that were converted into production platforms and they only apply where there is transport of oil to be loaded in another place. In this incident, prompt action by the Australian authorities prevented any of the leaking oil from coming ashore on the costs of Australia, but the Government of Indonesia reported to have claimed \$2.5. Billion for pollution damage suffered in its territory.

In relation to the Deepwater Horizon incident, claims in respect of trans-boundary damage have been filed in the US Federal Courts against BP and other defendants by three states of Mexico, claiming damages to fisheries and tourism, those claims have yet to be heard.

In this regard, we shall mention the UN/ECE Espoo Convention on EIA in a trans-boundary context, which is relevant as regards the assessment of projects likely to have trans-boundary effects. Its application is however, discretionary for some drilling operations.

The Government of Indonesia held a Conference in Bali on 21st to 23rd September 2011 to discuss whether an international compensation convention is needed regarding trans-boundary oil pollution damage arising from exploration and exploitation of offshore oil.

Richard Shaw⁶ commented in the Conference that perhaps the Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration and Exploitation of Sea Bed Mineral Resources adopted in 1976 (the CLEE Convention) has never entered into force because it contains alternative options for limited and unlimited liability. Another reason is the existence of a private agreement between certain European Governments and the major participants in the offshore industries called "OPOL" which provides for compensation now up to a maximum of US\$ 250 million⁷, to be payable by the operator of the rig causing pollution damage, with payment guaranteed by other participating companies. Of that sum, \$125 million is payable for remedial measures and \$125 million for pollution damage. This agreement only applies to the states the governments are parties to it, all of whom are in Europe, and does not apply in the Baltic or the Mediterranean Seas.

The perspective from the United States was provided by Professor Guether Handl⁸ from Tulane University, he said that one of the questions raised by the proposal of this Convention is whether the damage compensable will be limited to pure economic loss or to pure environmental loss, which may lead to difficulties with insurance coverage (limited or unlimited); subsidiary state liability (the state's role as insurer of last resort); and claims processing.

He maintained that there was room for residual legal liability on the state in whose territory or EEZ the accident occurred. The decision in the advisory opinion of ITLOS dated 1st February 2011 rejected such liability as a principle of present general international law, but clearly left the door open for the law to develop in this direction. Handl emphasised that the state was likely to be an insurer of last resort in cases where the damages suffered exceeded either the available insurance coverage of the operator, or indeed the legal limit of liability is applicable. He said that in the "Deepwater Horizon" case in New Orleans the judge had held that the "Deepwater Horizon" was a ship at all material times for the purpose of maritime law.

He also referred to the UNEP Guidelines on Environmental Damage⁹, which include a duty on states to develop methods of compensation for environmental damage, and urged that this should be part of global offshore regime. These guidelines have already accepted

⁶ See CMI News Letter No.3. Richard Shaw, "Trans-boundary oil pollution damage arising from exploration and exploitation of offshore oil. Do we need an international compensation convention?". Document available at <http://www.comitemaritime.org/Uploads/Newsletters/CMI%20News%202011-3.pdf>, visited September 2012, p.20.

⁷ As amended 1st October 2010. See www.opol.org.uk.

⁸ Ibid., p. 20..

⁹ Guidelines for the Development of National Legislation on Environmental Liability, Response Action and Compensation for Damage caused by Activities Dangerous to the Environment.

internationally the compensability of pure environmental loss and the principle of "unlimited liability-but limited financial guarantee".

Justice Steven Rares, Judge of the Federal Court of Australia, delivered a paper on the essential element which the proposed international convention should contain. He said that limitation of liability is a fact of business life, and was essential in order to obtain the support of the insurance community to the proposed instrument. In most cases involving the merchant ships this was the P&I Clubs, but in the case of offshore craft the markets are probably different. He added that liability insurers shall submit to the same jurisdiction.

The delegate of Norway, supported by the representative of the International Association of Oil and Gas Producers, argued that there was no need for an international convention on this subject, since oil exploration is essentially local, and subject to local law. He said that the Norwegian legislation on offshore exploration (the Petroleum Act) provides for strict and unlimited liability on the operator, and contains very extensive rules regarding environmental impact, which have not seemed to have deterred the major players from undertaking oil exploration in Norwegian Waters. Norway was, he said, committed to high safety standards, but it sees oil exploration and exploitation as different from shipping, and more logically suited to national jurisdiction. He acknowledged, however, that without common safety standards, there might be a problem in getting countries to pay for high safety cover in parts of the world where standards are not so high. He concluded that Norway could agree to bring this subject to the IMO to start a discussion. That is clearly the first and important step. However, we must point out here that the IMO Council have maintained that offshore issues were outside the objects of the IMO according to its governing Convention and therefore the topic was not put on its work programme by the Legal Committee, which failed to treat the report presented by the CMI Sub-Committee on Offshore Units.

Shaw's conclusion is that it is preferable for there to be in place an international instrument setting minimum standards of best practice which can apply wherever in the world, as the two instruments we have previously studied. He says that the need for a compensation scheme for the victims of oil pollution from offshore activity is more debatable since major incidents in the industry are fortunately few and to date the victims claim have generally been met. But again, what happens in America? However he doubts whether the OPOL scheme could be adapted for a world-wide basis. The 16 companies which are member of OPOL guarantee each others' potential liabilities for pollution damage and clean-up costs. To apply comparable criteria on a world-wide basis would undoubtedly pose financial and diplomatic problems.

C. Conclusion

To sum up it could be said as regards the Protocol, that it complies with UNCLOS Articles 194 (1) and 208 (5) and constitutes an advancement in the main areas that we have highlighted in our previously cited article as main environmental concerns¹⁰. Namely, that an integrated and sustainable International Convention on offshore structures was necessary, that fixed platforms and rig structures shall also be taken into account, that all the activities, including erection of installations, shall be subject to prior written authorization after proving that constructions have been performed according to international standards and that the operator has the technical competence and the financial capacity to carry out the activities.

However, we believe that an important gap as regards offshore units is that the 1989 Salvage Convention only applies to mobile offshore drilling units when they are being transported, awaiting for instructions and being repaired or supplied. Therefore the Convention does not apply when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources (art.3). Furthermore, as the possible amendments to this Convention that are being studied by the CMI Sub-Committee on Salvage do not include the enlargement of the scope of application regarding offshore platforms, this point should be included by a convention devoted to offshore platforms.

We believe that now that a Protocol to a regional Convention has entered into force, the next necessary step is to approve a similar International Convention setting minimum standards of best practice.

As regards the need for a compensation scheme for the victims of oil pollution from offshore activity, we understand Mr. Shaw's view when he says that this is debatable since major incidents in the industry are fortunately few and to date the victims' claims have generally been met. But, what would happen if an incident occurs in a place whose government is not a party to OPOL, for instance in the American continent?

¹⁰ See Radovich, Violeta. *Op. Cit.*, p. 226. "Conclusions".

PART II. Contracts: A growing need for supply vessels in the offshore industry in South American countries: the BIMCO's Supplytime 2005 form, is it the answer?

By Javier Franco-Zárate

Logistics have become important in almost every single human enterprise. Nowadays, oceans are being explored for resources that are becoming sometimes not so common to find (or that cannot be found at all) at land. Thus, offshore units/platforms are being commonly deployed into oceans to carry out exploring (i.e. drilling) tasks in search for different types of resources at sea. However, said tasks, complex in nature, usually require different “support” vessels to be present during the operation. These vessels could have various responsibilities such as to carry the platform from a port to the “exploration area” or, once there, to assist the platform itself, its equipment and machinery, or even the employees thereby working with their logistic needs. Thus, special contracts are required to govern the relations between those who provide the vessel and those who have it at their disposal to carry out the required “services”. The BIMCO's SUPPLYTIME form is regarded as the industry's response to that need. However, given some of its particularities, some doubts have emerged as to whether such a contract could be deemed valid in some civil-law jurisdictions, particularly regarding the so called “knock-for-knock” liability regime thereby included. Thus, the aim of this note is to briefly comment on the main characteristics of the form, and to discuss on whether said provision (clause 14 of the form) could be considered valid as a matter of Colombian law.

A. BIMCO's SUPPLYTIME 2005 form, the model contract for “offshore services”

As a response to this growing demand of offshore services, the industry has introduced a form highly used in the market of the so-called “supply vessels”. This form, known as the BIMCO “SUPPLYTIME 2005”, has evolved from its original version produced in 1975¹¹, and it is now the standard contract to which both owners and charterers usually turn to provide certainty to their commercial agreements when support vessels are required to offshore operations.

¹¹ Rainey, Simon. *The Law of the Tug and Tow and Offshore contracts*, Informa, London, 2011, p. 225.

B. Most relevant features of the BIMCO's Supplytime 2005 form

A complete revision of the form is outside the scope of the present note. However, the following points could be highlighted:

- The contract is basically drafted as a species of a time charter¹². Thus, the charterer will have the vessel to his disposal to use it within the limits of the contract, for an agreed period of time, in exchange of payment of hire¹³.
- A concept of “*offshore unit*” is provided by the form. In fact, it is defined as “(...) *any vessel, offshore installation, structure and/or mobile unit used in offshore exploration, construction, pipelaying or repair, exploitation or production*”.
- The form states that the vessel is to be employed in lawful “offshore activities”, and restricted to the services agreed in the contract¹⁴.
- Owners are supposed to pay for “*provisions, crew wages, repairs and maintainance (...)*” as well as some other charges referred to the “*operational management of the ship*”¹⁵, whereas charterers are requested to pay “*fuel, lubricants, water, port charges and pilotage*”¹⁶.
- Perhaps the core of the form is the “*knock-for-knock*” liability provision contained in clause 14. According to it, as a general formula¹⁷, each party is supposed to bear (and consequently, to hold its counterparty “harmless”) for any loss of or damage to its own property and that of its “group” members, or for personal injury or death of any member of its “group”, “*arising or in any way connected*” with the performance of the charter¹⁸. That is supposed to be the case even if the cause of the said loss to or damage of, injury or death, is the “*act, neglect, or default*” of its counterparty¹⁹.

Required modifications of the vessel for the service(s) to be rendered under the contract (i.e. structural alterations or additional equipment) are supposed to be allowed to the charterer, but such modifications must be removed before the vessel is returned to the owner at the end of the contract period²⁰.

¹² Rainey, Simon. Op. Cit., p. 226.

¹³ Wilson, John. *Carriage of Goods by Sea*, Pearson Longman, 2008, Dorchester, p. 83.

¹⁴ Clause 6, Supplytime 2005 form.

¹⁵ BIMCO, Explanatory Notes, p. 6.

¹⁶ *Ib.*, p. 7.

¹⁷ However, there are some exceptions. As the BIMCO Explanatory Notes states “*Clause 14 (a) and (b) sets out the Owners’ and the Charterer’s liability in a knock-for-knock liability regime. This means that each party pays the claims of its own group following an accident*” p. 14.

¹⁸ Clause 14, Supplytime 2005 form.

¹⁹ *Ib.*

²⁰ Clause 4, Supplytime 2005 form.

C. “Knock-for-Knock” provisions – Validity in South American “civil-law” jurisdictions like the Republic of Colombia?

The so-called “*knock-for-knock*” provision on liability was supposed to be the most important change from its predecessor, namely, the “SUPPLYTIME 89”, and it was adopted following the path set forth by the “Towcon” and “Towhire” forms²¹.

As commented briefly above, according to clause 14 (b) (i) charterers are not to be responsible (some events excluded) for loss of or damage to property of any member of the “Owners’ Group” (as well as for personal injury or death of any member of said group) arising out “*or in any way connected*” to the service performed under the contract, regardless of whether an “*act, neglect or default*” (emphasis added) on the part of the Charterers’ Group could have been deemed to be the cause of said damage, loss, injury or death²².

Equivalently, under clause 14 (b) (ii) of the form, the Owners’ Group is not to be held responsible for loss of, damage to, “*or any liability arising out of anything towed by the Vessel, any cargo laden upon or carried by the Vessel or her tow*”, as well as to Charterers’ property (“*whether owned or chartered*”), including “*offshore units*”, as well as regarding injury or death of any member of the Charterer’s Group, even if such is the result of the “*act, neglect or default*” (emphasis added) of the Owners’ Group²³.

It is worth mentioning that the “Owners’ Group” and the “Charterers’ Group” concepts were amended in the 2005 version to clearly include several type of contractors and sub-contractors usually involved in this type of operations²⁴. Thus, now the “Charterers’ Group” is deemed to cover “*co-venturers and customers (having a contractual relationship with the Charterers, always with respect to the job or project on which the vessel is employed)*”²⁵.

Although Courts in Common Law jurisdictions seems to recognize the validity of the “knock-for-knock” regime even in cases of “deliberate” or “radical” breaches, as Simon Rainey QC comments in the light of decision of Mr. Justice Flaux in *AztraZeneca UK Ltd. v. Albemarle International Corp. (AstraZeneca)*²⁶, it is uncertain as to whether said clauses (namely, that contained in clause 14 of the SUPPLYTIME 2005) would be deemed as valid in some civil-law

²¹ Rainey, Simon. *The Law of the Tug and Tow and Offshore contracts*, Informa, London, 2011, p. 225.

²² See Clause 14 (b) (i), Supplytime 2005 form.

²³ See Clause 14 (b) (ii), Supplytime 2005 form

²⁴ Rainey, Simon, Op. Cit., p. 260.

²⁵ Ibid.

²⁶ Rainey, Simon. *Turning Turtle on Knock-for-Knock?*, in Standard Bulletin, The Standard, 2011, p. 13. Document available at http://www.standard-club.com/docs/16180Standard_OffshoreBulletin_10.11_AW_PF10.pdf, visited in September 2012.

(i.e. South American) jurisdictions like Colombia, at least regarding such type of “deliberate” breaches.

Indeed, in many civil-law jurisdictions it is admitted that the so-called “contractual” civil liability of a debtor could be modified by the parties by means of an agreement intended to do so²⁷. Classic civil-law authors have traditionally recognized this possibility, clarifying however that such an exemption provision could not go as to allow the debtor to intentionally breach the contract²⁸. In fact, those classic authors have commented that such an agreement will not be authorized by law since it will be deemed to go against “good customs”²⁹, and thus, would not be valid.

Following this classic doctrine, allowance of intentional breach of the parties’ obligations under a contract (i.e. by means of wilful misconduct of a party) is considered in Colombian law – in general - to be null and void³⁰. Thus, it seems that at least in some civil-law jurisdictions like Colombia, it is still to a certain extent doubtful whether provisions such as the “*knock-for-knock*” liability regime contained in clause 14 of the SUPPLYTIME 2005 form would be valid (i.e. in case of a deliberate breach of one party to the contract) to a local judge. In fact, it is worth noting that the clause states that each group is supposed to bear its damages to or losses of, even if said event arises of the “act” (without any qualification) of its counterparty. Thus, since the clause is purporting to present an apportionment of liability between the parties – before that actually occurs – and it could arguably go as to include “deliberate” breaches, it seems that a Colombian judge could discard such a provision in a given case in which he finds that it could be allowing a debtor to “intentionally” not to fulfil his obligations under the contract. Moreover, since the concept of “gross negligence” is locally assimilated by the law to the one of “wilful misconduct”³¹, it could be that a local judge could also reach a similar conclusion, not only in cases of “deliberate breaches”, but also if he finds that the conduct of the party involved was such as to be deemed as a negligence that even a careless person would have in their own business³².

D. Conclusion

²⁷ In Colombia, this would be valid due to Art. 1604 Colombian Civil Code.

²⁸ Joserand, Louis. *Teoría General de las Obligaciones*, Tome II, Vol. I, Ed. Jurídicas Europa – América, Bosch y Cía, 1950, p. 502, 503.

²⁹ Enneccerus, Ludwig; Kipp, Theodor; Wolff, Martin. *Derecho de Obligaciones*, Tome II, Vol. I, Bosch, 1933, P. 223. It should be borne in mind that in civil-law countries both “public order” and “good customs” are supposed to be the limits of the autonomy parties are granted when drafting the contract.

³⁰ Art. 1522 Colombian Civil Code.

³¹ Art. 64 Colombian Civil Code.

³² *Ib.*

Legal developments in the field of the offshore industry are yet to come in many South American jurisdictions like Colombia. It is to see then what would be the outcome in cases in which local judges would be required to deal with provisions like the “knock-for-knock” apportionment of liability that is the basis of the SUPPLYTIME 2005 form. In fact, that would be the case since those clauses could be deemed to go as to contractually allow one party to intentionally or deliberately cause the damage to its counterparty, which could not be allowed under local law in some civil-law jurisdictions, like it seems to be the case of Colombia.