

Offshore activities – pollution liability and related issues.

At the CMI Beijing Conference it was decided that further work should be undertaken on this topic.

Background.

On August 21st 2009 a blow-out occurred on the Montara well situated in the Australian EEZ some 135 miles northwest of the nearest coastline of the Australian mainland and a similar distance from the nearest coast of Indonesia. Oil from the blow-out came ashore in Australia and in Indonesia.

Next, on April 20th 2010, the Deepwater Horizon drilling platform exploded in the Gulf of Mexico, killing 11 members of the crew and injuring others. This led to a protracted and sustained leak of 4 million barrels of oil into the waters of the Gulf.

These two incidents highlighted the fact that there is no international convention in force covering the issues of liability and compensation for such spills.

In April 2011 the Government of Indonesia submitted a paper to the IMO Legal Committee (LEG/14/1) in which, on the back of the Montara incident, it proposed a new work programme item to address issues of liability and compensation arising from transboundary oil pollution damage resulting from offshore oil exploration and exploitation. Apart from certain procedural hurdles the Legal Committee has concluded that there is no compelling need to develop an international convention on this subject and that the problem would best be resolved by means of regional and bilateral agreement between states. To this end the Indonesian Government has been encouraged to develop guidelines to assist states interested in negotiating such agreements.

The purpose of this questionnaire.

The CMI has offered to assist this project by collecting information about existing regional and bilateral agreements on transboundary oil pollution from offshore activities.

Research¹ reveals the existence of the following agreements on this subject:

1) 1992 Convention for the protection of the marine environment of the North-East Atlantic (the OSPAR Convention) to which Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, UK and the European Union are Contracting Parties. This Convention does *not* deal with issues of liability and compensation.

2) 1994 Protocol for the protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil (The Barcelona Convention). This Protocol came into force in 2011 but has not been widely ratified. The Protocol *does* deal with the issues of liability and compensation.

3) 1981 Convention (and 1985 Protocol) for co-operation in the protection and development of the marine and coastal environment of the West and Central African Region (The Abijan Convention) to which Angola, Benin, Cameroon, Cape Verde, Congo, Cote d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Namibia, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone and Togo are parties. (This Convention appears to be mostly to do with technical co-operation but does encourage states parties to enact national legislation to deal with issues of liability and compensation.)

4) 1975 Offshore Pollution Liability Agreement (OPOL), which is not an international convention but a private agreement between 16 operators in the offshore sector. This Agreement was initially an interim measure to provide a strict liability regime whilst awaiting the entry into force of a regional Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources (CLEE), a regional convention for the Baltic, North Sea and North Atlantic areas. The Convention was, however, never ratified by any of the nine states that participated in the Diplomatic Conference which adopted the Convention and it has never come into force. However, OPOL continues to operate and imposes strict liability on operators of offshore facilities and guaranteed payment of compensation up to a limit currently set at US \$ 250 million per

¹ See IDDRI "Towards an international regulation of offshore oil exploitation" Report of the experts workshop held in Paris Oceanographic Institute on March 30th 2012

incident. The parties to OPOL are 16 operators of offshore facilities within the jurisdiction of any of the “Designated States” to the Agreement which are UK, Denmark, Germany, France, Republic of Ireland, Netherlands, Norway, Isles of Man, Faroe Islands and Greenland.

The questions.

1) Is your country a party to any of the instruments listed under 1 to 3 above or, in the case of OPOL, are the offshore operators in your country parties to that agreement? If so please advise whether issues of liability and compensation are adequately addressed by the instrument itself or by any subsidiary national legislation.

2) If your country is not a party to any of the instruments listed under 1 to 3 above, is it party to any other form of regional or bilateral agreements which address the issues of liability and compensation? May we please have details of any such agreement.

3) Please identify the national regulations which are applied to offshore oil and gas exploration and exploitation operations by the authorities in your country?