

# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

COMITE MARITIME INTERNATIONAL

NO. 1 - JANUARY / APRIL 2004

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## **NEWS FROM THE CMI**

### **THE VANCOUVER CONFERENCE OF THE CMI THE ELECTION OF JEAN-SERGE ROHART AS PRESIDENT OF THE CMI**

The first issue January/April 2004 of the CMI News Letter appears very late when the Vancouver Conference of the CMI has already taken place. A report of the Conference will appear in the next issue which will also contain the minutes of the meetings of the Executive Council and of the Assembly held in Vancouver.

We wish, however, to inform our readers that the Assembly has elected as new President of the CMI Jean-Serge Rohart and that all resolutions recommended by the Plenary, including the adoption of the York-Antwerp Rules 2004, were carried forward and adopted.

## **NEWS FROM THE NATIONAL ASSOCIATIONS**

### **NEWS FROM THE CANADIAN MARITIME LAW ASSOCIATION**

#### **The Origins of the CMLA Draft Convention on Offshore Units, Artificial Islands and Related Structures Used in the Exploration for and Exploitation of Petroleum and Seabed Mineral Resources**

##### *Introduction*

The CMI has had a continuing interest in the development of an international regime for offshore units. This interest has resulted in two draft offshore unit conventions, the Rio Draft of 1977 and Sydney Draft of 1994. Work on this subject has continued since 1994. In that year the CMI established an international working group which canvassed national maritime law associations

(“MLAs”) and identified a consensus, among those which responded, that a proposed convention cover: ownership, registration, liens and rights of arrest, civil and penal jurisdiction, general and pollution liability including limitation of liability, financial responsibility for liabilities, salvage, decommissioning and wreck removal, occupational safety, safety of operation and navigation, emergency response, and pollution prevention.

The Canadian Maritime Law Association (“CMLA”) has prepared a draft convention addressing these topics and presented it to the CMI offshore units working group where it remains for consideration. The CMLA is grateful to the CMI for the opportunity of having the draft offshore convention presented for publication. This draft reflects the viewpoint of the CMLA and several individual members of the international maritime law community, for whose contribution the CMLA is grateful.

#### *The Convention Development Process*

Following the adoption by the CMI of the Rio draft in 1977, an international offshore regime was overshadowed by other international maritime law issues. It came up for reconsideration in the early 1990s when the IMO requested the CMI to review the Rio Draft. The CMI established a working group under Frode Ringdal of the Norwegian Maritime Law Association.

That working group concluded that the basic structure of the Rio Draft, being an incorporation by reference of elements of other international conventions for the purpose of the application of those conventions to offshore craft, remained, with modifications, appropriate. They so submitted their recommendations, which were accepted by the CMI at its 1994 conference, which became known as the Sydney Draft.

In the course of preparatory work for the Sydney conference, the CMLA concluded that continuing the Rio Draft model of incorporation by reference could not produce a practical regime suitable for offshore units. The CMLA’s *Background Paper for International Convention Offshore Units, Artificial Islands and Related Structures Used in the Exploration for and Exploitation of Petroleum and Seabed Mineral Resources* has been published in the 1994 CMI Yearbook.

Following consideration of the Sydney Draft, and an invitation by the IMO Legal Committee for further study, the CMI established an international working group to consider the need for a draft offshore units convention. The working group, under the chairmanship of Richard Shaw of Great Britain, included representatives of the Australian, Canadian, Danish, Italian, Japanese, United Kingdom and United States MLAs and solicited comments from various other trade associations associated with the offshore industry. The working group sought the perspectives of the CMI member MLAs as to topics to be covered by a convention, and has based its work on the responses to the questionnaire, which had been distributed to all MLAs. This questionnaire and a compilation of responses may be found in the *CMI 1996 Yearbook I – Documents for the Centenary Conference*. This yearbook also includes a discussion paper of the Canadian

Maritime Law Association, which included elements of a draft convention.

The CMI Offshore Craft Committee’s further report is in the *CMI 1997 Yearbook II - Documents of the Centenary Conference*.

Since 1996, the international working group has met in Toronto, New Orleans, Houston, London, St. John’s Newfoundland and Singapore and has exchanged considerable correspondence among its members and other interested persons. A prominent P&I club in this sector has expressed interest in the offshore units convention concept, as facilitating risk management.

While the United States Maritime Law Association representatives on the international working group were initially supportive of a comprehensive international convention, the USMLA and various industry trade associations latterly have taken the position that the need for an offshore units convention has not been demonstrated and that the existing regimes of unilateral coastal state regulation and contractual allocation of risks through licensing and the commercial development process are adequate.

While the IMO Legal Committee removed consideration of an offshore units convention from its work program in 2002, the 2003 work program includes consideration of proposals from non governmental organizations for treaty development where a need has been demonstrated.

#### *The CMLA Position*

Canada suffered an offshore unit disaster with the loss of the *Ocean Ranger* and all 84 aboard off Newfoundland in 1982. The offshore industry has suffered subsequent serious accidents in all regions of operation, including the *Piper Alpha* with 167 killed, the *Glomar Java Sea* with 81 fatalities in 1983, the *Seacrest* with 91 fatalities in 1989, and the 1995 accident off Nigeria with 13 dead. Along with death and injuries is the great potential for environmental and property damage, as shown in the *IXTOC 1* wellhead release and the loss of the *P- 36* off Brazil in 2001. The CMLA remains of the view, for the reasons discussed in greater detail in its background papers published in 1994 and 1997, that a comprehensive international offshore units convention remains a desirable objective.

The CMLA agrees with the principles adopted by the CMI international working group for the development of a draft convention, as published in the 1996 CMI Yearbook, which are:

- compatibility with the United Nations Convention on the Law of the Sea (“UNCLOS”);
- the expansion of offshore unit offshore activities into areas of the world where there are no regional conventions emphasizes the need for general rules of uniform application;

- any offshore regime must reconcile potentially competing interests of states and interested parties including coastal states, flag states, domiciliary states of operators and offshore unit workers, and offshore industry investors, creditors, insurers and workers;
- offshore regime provisions should be consistent with other generally accepted international maritime conventions except where the liability and operating environments of the offshore industry are distinct or markedly different from the operation of mobile seagoing commercial vessels as to require distinct international rules;
- the principles of state sovereignty and economy of national economic development should be taken into account along with international obligations of states to the environment, to their citizens and the nationals of other states, to safety, to the need for compensation for personal injury and property damage and the need for appropriate international legal environment for an international industry;
- freely negotiated agreements between owners of operators of offshore units and other interested parties, including coastal states, should be respected subject to proper protection of the environment and relevant provisions of UNCLOS ;
- recognizing the rapid commercial and technological evolution of the international offshore industry, an international offshore regime should be flexible enough to accommodate future commercial and technological developments and rather than set out detailed prescriptive rules, focus on the objectives and standards; and
- coastal states should not unreasonably expose

neighbouring states to the risk of damage to their environment as a result of action or inaction with respect to offshore units.

It is important to note that a number of offshore industry representatives and IMO delegates have expressed a distinct lack of enthusiasm, and even hostility in some quarters, for the work of the CMI international working group. In view of this, the CMI Executive Council did not feel that a case had been made out for pursuing this project in that the role of the CMI is to achieve uniformity of maritime law where there is a need and wish for such uniformity. At the same time, it should be said that our esteemed CMI Past President Francesco Berlingieri has commented that the work done on the subject of offshore units should be published and made available to all those who may have an interest in it.

With that in mind, the Canadian Maritime Law Association presents the draft convention for the record and for consideration by the international maritime community in the hope the actual text of a draft convention will assist in stimulating and focussing debate and further work on this subject. The development of international conventions has, sadly, often been founded by some disaster. It would be a welcome change if this particular convention arose out of a feeling of real need. The CMLA welcomes the comments of any interested persons. Comments may be addressed to CMLA Offshore Structures Committee at the contacts stated here, or, alternatively, to the current secretary of the CMLA as published in the CMI Yearbook.

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**CONVENTION ON OFFSHORE UNITS, ARTIFICIAL ISLANDS AND RELATED STRUCTURES  
USED IN THE EXPLORATION FOR AND EXPLOITATION OF PETROLEUM AND SEABED  
MINERAL RESOURCES, 200\_. (OUC 200\_)**

**May 2001 Draft**

WHEREAS the Parties to this Convention,

BELIEVE that maritime law should be universal for reasons of certainty and predictability, as well as for the facilitation of trade and for the avoidance of disputes and conflicts of laws;  
AND are therefore anxious to establish uniform rules for the regulation of certain matters, as hereinafter set forth, and protection of those engaged in offshore activities and for the protection and preservation of the marine environment, shipping and the Coastal States that are potentially affected by those offshore activities;  
AND believe that this would be best achieved through a Convention covering all offshore units

and structures in all modes of operation, including permanent artificial islands,  
RECOGNIZE the need to reconcile interests of States and participants in offshore activities;  
CONFIRM that the provisions of this Convention be consistent with the principles of the 1982 *United Nations Convention on the Law of the Sea*;  
AFFIRM the principles of State sovereignty and autonomy of national economic development consistently with the international obligations of States to avoid damage to the environment of other States;  
RECOGNIZE the desirability of facilitating the commercial and technological evolution of offshore activities, and

RECOGNIZING THAT Coastal States shall not unreasonably expose neighbouring States or the common high seas area to the risk of damage to their environment as the result of action or inaction with respect to Offshore Units, Artificial Islands and Related Appurtenances.

HAVE AGREED AS FOLLOWS:

#### ARTICLE I Definitions

1.1 For the purposes of this Convention:

(a) "Artificial Island" shall mean a permanent installation or structure rigidly affixed to the sea bed and used or intended for use for Economic Activities, including wellheads and associated equipment, but shall not include [pipelines] or installations formed from natural dredged materials or fill of natural origin.

(b) "Coastal State" shall mean the State Party which exercises rights under the *United Nations Convention on the Law of the Sea, 1982* ("UNCLOS") for the purpose of exploring for and exploiting the resources of the seabed and its subsoil in the area in or above which the Offshore Unit is situated.

(c) "Continental Shelf" has the meaning provided in UNCLOS.

(d) "Economic Activities" shall mean the exploration, exploitation, processing or storage of hydrocarbons and mineral resources of the seabed or its subsoil.

(e) "Exclusive Economic Zone" has the meaning provided in UNCLOS.

(f) "Licence" shall mean a licence, concession, permit or other authorization issued by a Coastal State for Economic Activities.

(g) "Licensee" shall include a holder of a licence or any person or corporation with a right to a licence.

(h) "Offshore Unit" shall mean any structure of whatever nature when not permanently fixed into the sea bed which

(i) is capable of moving or being moved while floating in or on water, whether or not attached to the sea bed during operations, and

(ii) is used or intended for use in Economic Activities; and

(iii) includes units used or intended for use in the accommodation of personnel and equipment related to the activities described in this paragraph.

(i) "Offshore Unit Worker" shall mean any person employed or engaged in contractual

activities in whatever capacity in the operation of an Offshore Unit or Artificial Island.

(j) "Offshore Unit Occupant" shall include any natural person onboard an Offshore Unit or Artificial Island for any lawful purpose, including an offshore unit worker.

(k) "Owner" shall include the owner, lessee and operator of an Offshore Unit or Artificial Island.

(l) "Pollutant" shall mean the escape of any substance or the application of any energy or process which is deleterious to the marine environment.

(m) "Petroleum" shall mean a hydrocarbon of natural origin.

(n) "Related Appurtenances" shall include structures or installations associated with Artificial Islands or Offshore Units and which are used or intended for use with respect to activities ancillary to Economic Activities or in related Offshore Occupant accommodation.

(o) "Territorial Sea" has the meaning provided in UNCLOS.

#### ARTICLE II Application

2.1 This Convention applies to all Offshore Units, Artificial Islands and Related Appurtenances used or intended for use in the Exclusive Economic Zone and adjacent seaward Continental Shelf to the extent a State Party may exercise functional jurisdiction over such Continental Shelf consistently with UNCLOS.

2.2 State Parties to this Convention may extend that application of this Convention or parts thereof to their Territorial Sea or internal waters.

2.3 This Convention extends to Artificial Islands or components thereof while in transit from a place of construction to an intended place of installation, in transit between intended places of installation, and while in the process of being salvaged or removed, until such time as their elements are brought into land territory or are otherwise lawfully disposed of.

2.4 [Possible extension of application of Convention to new technologies e.g. seabed aquaculture, offshore commercial satellite launch facility.]

#### ARTICLE III Ownership

3.1 Offshore Units, Artificial Islands and Related Appurtenances shall have ownership either in accordance with the law of the State Party in whose territorial waters they are located, or in accordance with this Convention.

3.2 Every Offshore Unit, Artificial Island and Related Appurtenances shall be owned by a

juristic entity or entities, being one or a combination of, a natural or legal person or by a State Party to this Convention.

3.3 Every State Party's law shall provide for and recognize ownership interests in Offshore Units, Artificial Islands or Related Appurtenances located in its Exclusive Economic Zone or seaward adjacent Continental Shelf.

3.4 Every State Party's law shall provide for and recognize rights of transfer of ownership or use of Offshore Units, Artificial Islands or Related Appurtenances.

3.5 All Offshore Units to which this Convention applies shall have a nationality.

#### **ARTICLE IV Registration**

4.1 This Article applies to all Offshore Units except those while in actual use in State Parties' territorial sea or internal waters.

4.2 State Parties shall by their national law, provide for the registration of ownership and mortgage interests in Offshore Units and their Related Appurtenances.

4.3 State Parties shall not permit the use in their Exclusive Economic Zones or seaward adjacent continental shelves of unregistered or 'Stateless' Offshore Units.

4.4 Proprietary rights in Offshore Units [and Related Appurtenances] shall be governed by this Convention and by the law of the State Party where they are registered.

4.5 Each State Party shall take necessary measures to ensure that Offshore Units it enters in its register have owners or operators who are effectively identifiable for the purpose of ensuring their full accountability.

4.6 Recognition and enforcement of rights of ownership and security interests shall be governed by the law of the flag State Party.

4.7 An International Register recording all Offshore Units to which this Convention applies may be established in accordance with Article 12. On its establishment, the Register shall record an Offshore Unit's identity, flag and owner. The Register shall also record mortgages and hypothecs on Offshore Units. The Register shall require, and be entitled to record, sufficient information concerning the identity of owners and holders of mortgages and hypothecs to enable their identity and domicile to be known.

4.8 Upon exercising their responsibilities under paragraph 4.2, the Registries of State Parties shall transmit all Registry information on Offshore Units under their flag to the International Register.

4.9 The International Register shall be located in [Aberdeen, United Kingdom].

#### **ARTICLE V**

#### **Mortgages, Liens and Creditors' Remedies**

##### **Mortgages**

5.1 An Offshore Unit [and Related Appurtenances] may form the subject of a security interest by way of mortgage or hypothec.

5.2 State Parties shall implement and administer Registries for mortgages or hypothecs of Offshore Units [and Related Appurtenances].

##### **Liens**

5.3 The following claims upon Offshore Units [and Related Appurtenances] shall be secured by maritime liens:

(a) loss of life or personal injury to Offshore Unit Occupants or arising from operation of Offshore Units [and Related Appurtenances];

(b) claims of Offshore Unit Workers for wages and social benefits;

(c) salvage;

(d) tortious or delictual physical loss, in direct connection with the operation or navigation of the Offshore Unit.

##### **Creditors' Remedies**

5.4 Liens under paragraph 5.3 shall have priority over registered mortgages or hypothecs.

5.5 Among themselves, registered mortgages or hypothecs shall have priority according to their time of registration.

5.6 Among themselves, liens recognized by this Convention shall have priority according to their listing in paragraph 5.3.

[except that claims secured by liens under paragraphs 5.3 (a) and (b), which arose before an occurrence giving rise to a claim for salvage shall rank below the claim secured by such lien for salvage]

5.7 Where a mortgagee, lien holder, or other creditor exercises possessory, sale or other remedies against an Offshore Unit, it shall assume the obligations of the Owner of such unit, as provided in this Convention, from the time of taking possession or control of the Offshore Unit.

5.8 Paragraph 5.7 shall not be interpreted as to impose liability upon such creditor for acts or omissions of the owners, or of persons for whose acts or omissions the owner is legally responsible, which occurred before the creditor exercised the remedies referred to in the preceding paragraph.

5.9 A person asserting a remedy arising from the rights provided for in this Article may assert that

right by means of arrest of an Offshore Unit only if, at the time of arrest, the Offshore Unit is not on location for the purpose of engaging in Economic Activities.

5.10 When an Offshore Unit is on location for the purpose of engaging in Economic Activities, a person may assert a remedy arising from the rights provided for in paragraphs 5.1 or 5.3 by a method other than arrest (“Alternate Remedy”).

5.11 Such Alternate Remedy may be one of

(a) a demand that the Owner post bail or security up to the lesser of the value of the claimant’s reasonably arguable best case or the value of the Offshore Unit; or

(b) the registration of a *lis pendens* or caution or similar registerable charge in the Flag State Party register of the Offshore Unit.

#### ARTICLE VI Civil Jurisdiction

6.1 Each State Party has a general right of regulation of Offshore Units, Artificial Islands and Related Appurtenances within its territorial waters, Exclusive Economic Zone and seaward adjacent Continental Shelf. These rights must be exercised with regard to the rights of other State Parties and the common area.

6.2 State Parties shall establish a competent and adequate administration for the purpose of carrying out their obligations under this Convention.

6.3 Each State Party shall ensure that its Courts possess the necessary jurisdiction to determine rights and claims arising from subjects covered by this Convention, including rights and claims arising from acts or omissions in the Territorial Sea, the Exclusive Economic Zone and seaward adjacent Continental Shelf.

6.4 Except as provided in paragraphs 6.5 and 6.6, Parties and legal persons engaged in the ownership or operation of Offshore Units, Artificial Islands and Appurtenances may contract or stipulate that rights and claims arising from subjects covered by this Convention, including rights and claims arising from acts or omissions in Territorial Sea, the Exclusive Economic Zone and seaward adjacent Continental Shelf may be determined by any Court established by any Party, or by an arbitral tribunal subject to the law of any Party.

6.5 A claimant may assert a right or claim in tort or delict arising from subjects covered by this Convention, including rights and claims arising from acts or omissions in territorial waters, the Exclusive Economic Zone and seaward adjacent Continental Shelf before a Court of competent jurisdiction in any of:

- i) the place of the accident;
- ii) the domicile of the claimant or of any person alleged to be responsible; and
- iii) any place where rights under paragraph 6.4 may be asserted.

6.6 Unless an Offshore Occupant or his or her dependants are entitled to benefits under a scheme of workers’ compensation under the law of the Offshore Occupant’s domicile, State Parties shall permit Offshore Occupants the choice of places in which to assert claims as provided in paragraph 6.5, notwithstanding any contract or stipulation by the Offshore Occupant to the contrary.

6.7 Each State Party shall confer on its Courts the jurisdiction to consolidate or coordinate the determination of claims commenced in the Courts of different State Parties, arising from the same accident or occurrence in respect of a matter covered by this Convention.

6.8 Any judgment given by a Court of a State Party in respect of or arising from a matter covered by this Convention, which is enforceable in the State Party of origin where it is no longer subject to ordinary forms of review, shall be recognized by any State Party except where the judgment was obtained by fraud or where the defendant was not given reasonable notice of the claim or a fair opportunity to present its case. A judgment recognized under this subparagraph shall be enforceable without the merits of the case being re-opened.

6.9 State Parties shall extend obligations of rescue of shipwrecked persons to Offshore Unit Occupants and other shipwrecked persons that an Offshore Unit or Artificial Island may accommodate in safety.

6.10 State Parties shall recognize obligations of safe treatment and transit to shore of unauthorized individuals found on Offshore Units, Artificial Islands and Related Appurtenances as are accorded to stowaways on board ships.

#### ARTICLE VII Penal Jurisdiction

7.1 This Article applies only to acts or omissions on or associated with Offshore Units and Related Appurtenances, of a nationality other than that of the Coastal State Party.

7.2 In this Article:

- (i) “Regulatory Offense” means a contravention, under a law of a Coastal State or the domiciliary law of the Owner, of operating or safety standards applying to an Offshore Unit, Artificial Island and Appurtenances.
- (ii) “Personal Offence” means a contravention

under a law of an Offshore Occupant's domicile, a law of a Coastal State or the domiciliary law of the Owner, of the bodily integrity or personal property of an Offshore Occupant.

(iii) "Public Order Offence" means a contravention under a law of an Offshore Occupant's domicile, a law of a Coastal State or the domiciliary law of the Owner, involving loss of life, bodily injury or property damage caused by persons other than Offshore Occupants.

7.3 The Coastal State has jurisdiction over Regulatory Offences.

7.4 Where their domestic law so provides for relevant offences, the Coastal State, the Owner's domiciliary State and the State of the Offshore Occupant's domicile each has jurisdiction over Personal Offences and Public Order Offences.

7.5 Where a Regulatory Offence, Personal Offence or Public Order Offence is believed to have been committed by an Offshore Occupant, the Coastal State shall afford the domiciliary State of the adversely affected Offshore Occupant the first opportunity of investigating the alleged offence and prosecuting the Offshore Occupant alleged to have committed such offence.

7.6 Where an Offshore Occupant is convicted for a Personal Offence or a Public Order Offence under the Owner's domiciliary law or the law of the Coastal State, the prosecuting State may not impose a more severe penalty than that provided by the law of the Offshore Occupant's domiciliary State.

7.7 Where an Owner, Licensee or Offshore Occupant is charged with a Regulatory Offence by the Coastal State or the Owner's domiciliary State, it shall be a defence that compliance with the law of the prosecuting State would necessarily result in a contravention of the law of the other State.

7.8 Where an Owner, Licensee or Offshore Occupant is convicted of a Regulatory Offence, Personal Offence or Public Order Offence, the person convicted shall not be prosecuted by a State other than the prosecuting State for an offence arising from the same acts or omissions upon which the first conviction was based.

#### **ARTICLE VIII** **Safety**

8.1 Where an Artificial Island or Related Appurtenances is operated in physical association with an Offshore Unit, the Coastal State shall require the Owner of the Artificial Island or Related Appurtenance to establish and maintain a quality assurance management and operations system for the Artificial Island or related appurtenances

compatible with ISM Code requirements applicable to the associated Offshore Unit.

8.2 Coastal State Parties shall ensure that the owners or operators of Artificial Islands and related appurtenances establish and maintain operational quality assurance systems appropriate to the type of structure and operations and compatible with generally accepted quality assurance standards.

8.3 The Offshore Unit flag state shall require that the operator of each Offshore Unit designate a single person to be in command of the Offshore Unit, with authority for navigation and safety purposes over all Offshore Unit Workers and Offshore Unit Occupants, to discontinue Economic Activities, to direct safety operations and to order Offshore Unit movement or evacuation without prior reference to the Offshore Unit Owner or Licensee or other management or governmental authority.

8.4 No disciplinary action shall be taken by the employer of a person in command against that person who exercises in good faith any authority under sub-article 8.3.

8.5 Coastal State Parties, by law or by terms of licences for the operation of Offshore Units Artificial Islands and Related Appurtenances, shall provide for standards of occupational health and safety for Offshore Unit Workers. Such standards shall be consistent with occupational health and safety practices generally accepted by the international technical community or as established by the International Labour Organization and shall include provision for:

- (i) a comprehensible common language of command;
- (ii) permissible hours of work and overtime;
- (iii) victualling and accommodation;
- (iv) protective clothing and equipment;
- (v) training and supervision;
- (vi) onboard medical resources;
- (vii) evacuation, medical treatment and repatriation of Offshore Unit Workers to injured Offshore Unit Workers' domicile;
- (viii) joint management/labour safety consultation; and
- (ix) rights to Offshore Unit Workers, of confidential communication with regulatory authorities.

The standards provided by subclauses (ii), (iii), (iv), (xi) and (xii) shall extend to Offshore Unit Occupants.

8.6 Coastal State Parties shall provide for appropriate standards of operation of offshore support craft when operated in association with Offshore Units and Artificial Islands engaged in

Economic Activities. These standards shall include provision for:

- (i) standby distances;
- (ii) collision avoidance;
- (iii) use of cranes;
- (iv) pollution prevention and control;
- (v) firefighting; and
- (vi) search and rescue.

8.7 Coastal State Parties shall provide for appropriate standards of operation of offshore support aircraft and helicopters when operated in association with Offshore Units and Artificial Islands engaged in Economic Activities. These standards shall include provision for:

- (a) pilot and aircrew training;
- (b) flight planning;
- (c) visibility standards;
- (d) firefighting and evacuation; and
- (e) search and rescue.

8.8 Coastal State Parties shall provide for appropriate standards of construction and operation of diving craft and equipment operated in association with Offshore Units and Artificial Islands engaged in Economic Activities. These standards shall include provision for:

- (a) material and operations quality assurance;
- (b) periodic inspection and maintenance;
- (c) operator training and qualifications; and
- (d) search and rescue.

8.9 Each State Party shall require that Owners of Offshore Units, Artificial Islands and Related Appurtenances establish and maintain an emergency response and search and rescue plan.

8.10 The emergency response and search and rescue plan shall contain provision for reporting, distress communications, firefighting, stability control, mustering, evacuation and use of survival craft and equipment.

8.11 Coastal State Parties shall establish and maintain search and rescue systems adequate to the extent and type of Economic Activities being carried on in their Territorial Sea, Exclusive Economic Zone or adjacent continental shelf.

8.12 Each State Party shall require that the Master or other person in charge of an Offshore Unit or Artificial Island report to a designated authority:

- a) any death or serious injury of an Offshore Unit Occupant;
- b) the sinking or destruction of an Offshore Unit or Artificial Island;
- c) any uncontrolled loss of stability of an Offshore Unit;
- d) any outbreak of fire on an Offshore Unit, Artificial Island or related appurtenance;
- e) any collision or grounding involving an

Offshore Unit, Artificial Island or related appurtenance ;

- f) any structural failure of an Offshore Unit, Artificial Island or related appurtenance; and
- g) any situation or condition, which, if left unattended, could induce an accident or incident of the type described.

8.13 Coastal State Parties shall establish and maintain accident investigation services to review reports made pursuant to sub-article 8.12, and where appropriate to investigate reported occurrences. Where a reported occurrence involves an Offshore Unit of a flag other than that of the Coastal State, or Offshore Unit Occupants other than residents of the Coastal State, the Offshore Unit flag State and the States of the Offshore Unit Occupants domicile shall be entitled to designate observers to participate in the investigation and have access to information gained from the investigation. The report of the Coastal State shall be publicized.

8.14 Coastal State Parties shall ensure, through conditions of license, provision of insurance or evidence of financial responsibility, or assumption of responsibilities by domestic non-governmental organizations or governmental entities, that Owners have administrative and financial resources appropriate to the effective implementation of standards and activities for which they are responsible under his Article.

8.15 An Offshore Unit flag state or a Coastal State may delegate administration of any operation or standard provided for in this Article to Licensees, Offshore Unit Owners or non-governmental entities. Such delegation does not relieve state parties to this Convention of their responsibilities of compliance with this Article.

8.16 State Parties shall ensure that delegated authorities under this Article have sufficient technical expertise and financial resources to adequately discharge such administration.

## **ARTICLE IX** **Salvage**

9.1 This Article applies to Offshore Units, Artificial Islands and Related Appurtenances, and components thereof, while afloat or being carried by water during any period of transit or while on location other than while engaged in Economic Activities.

9.2 In this Article,

- (i) 'hazard to navigation' means any obstruction above the seabed to ships exercising rights of innocent passage in territorial waters and any ships navigating or operating in the Exclusive Economic Zone or adjacent seaward Continental Shelf.

- (ii) 'discharge of pollutant' means the discharge or emission of persistent oil or any substance or energy which has or is likely to have a deleterious effect upon the aquatic or shore biota of the Territorial Sea, Exclusive Economic Zone or adjacent Continental Shelf of any party, or of the common area.

9.3 Each State Party shall require that Owners or Operators of Offshore Units, Artificial Islands and Related Appurtenances have an emergency salvage plan.

9.4 The emergency salvage plan shall contain provision for response to uncontrolled discharges or emissions of pollutants from natural or artificial reservoirs with which the operation of the Offshore Unit, Artificial Island or Related Appurtenances is associated.

9.5 Each State Party shall require that the Master or other person in charge of an Offshore Unit, Artificial Island or Related Appurtenance under its jurisdiction report without delay any event involving a hazard to navigation or a discharge or probable discharge of a pollutant to:

- a) any Coastal State in whose territorial waters, Exclusive Economic Zone or adjacent seaward Continental Shelf the event occurs;
- b) any Party grantor of any applicable License; and
- c) any Party in which the Offshore Unit is registered.

9.6 Each State Party shall establish a national system for responding promptly and effectively to such reports of hazards to navigation or discharges or probable discharges of pollutants consistently with the requirements of Article 60 of UNCLOS.

9.7 The Salvage Convention is extended to Offshore Units, Artificial Islands and Related Appurtenances while on location and not engaged in Economic Activities.

#### **ARTICLE X Removal**

10.1 This Article applies to Offshore Units, Artificial Islands and Related Appurtenances located in navigable waters through which rights of innocent passage may be exercised, in the Exclusive Economic Zone or on the adjacent seaward Continental Shelf.

10.2 In this Article, "hazard to navigation" means any obstruction above the seabed to ships exercising rights of innocent passage in territorial waters and any ships navigating or operating in the Exclusive Economic Zone or adjacent seaward Continental Shelf.

10.3 Each State Party shall require that Owners or Operators of Offshore Units, Artificial Islands

and Related Appurtenances have a plan for:

- a) ensuring the continued safety of navigation and protection of the marine environment in the surrounding waters once use or operations cease; or
- b) their removal or partial removal to permit safety of navigation and protection of the marine environment.

10.4 Each State Party shall establish a national system for responding to any Offshore Unit, Artificial Island or Related Appurtenances under its jurisdiction, which becomes abandoned or derelict and which may involve a hazard to navigation or a discharge or probable discharge of pollutants.

10.5 Where an Offshore Unit, Artificial Island or Related Appurtenances is abandoned or derelict and a hazard to navigation or the marine environment, each State Party shall take reasonable measures to mark, alter or remove any Offshore Unit, Artificial Island or Related Appurtenances within that Party's jurisdiction so that it ceases to be a hazard to navigation or to the marine environment.

#### **ARTICLE XI Pollution**

##### **Definition**

11.1 In this Article, "Pollution Damage" means loss or damage caused outside an Offshore Unit, Artificial Island and Related Appurtenances or outside a natural reservoir or other geologic formation, by the discharge of a pollutant and includes the costs of preventive measures and further loss or damage caused by preventive measures.

##### **Application**

11.2 This Article applies to Pollution Damage caused by or arising from the emission or discharge of pollutants from Offshore Units, Artificial Islands and Related Appurtenances at any time and to emissions or discharges from natural reservoirs or other geological formations only during the course of Economic Activities and which are caused by or arise from such Economic Activities.

11.3 This Article applies to pollution damage caused by or arising from the emission or discharge of pollutants from ships, except survey, standby and supply vessels, while engaged in Economic Activities.

##### **Liability**

11.4 Liability for pollution damage caused by or arising from the emission or discharge of pollutants from Offshore Units, Artificial Islands or Related Appurtenances shall attach to the Owner.

11.5 The Licensee shall be liable for pollution damage caused by or arising from the emission or discharge of pollutants from natural reservoirs or other geologic formations.

11.6 Where an Offshore Unit, Artificial Island or Related Appurtenances has more than one Owner, they shall be jointly and severally liable.

11.7 No liability for pollution damage shall attach to an Owner or Licensee if it proves that the damage resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character.

11.8 Rights of compensation under this Article shall be extinguished unless legal proceedings are brought within two years from the date when the pollution damage occurred. In no case shall legal proceedings be brought after six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

11.9 If the Owner or Licensee proves that the pollution damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the Owner or Licensee may be exonerated wholly or partly from his liability to such person.

11.10 No claim for compensation for pollution damage shall be made against the Owner or Licensee otherwise than in accordance with this Convention.

11.11 No claim for compensation for pollution damage under this Convention or otherwise may be made against the servants or agents of the Owner or Licensee.

11.12 A Licensee liable for pollution damage under this Article shall not have any right of recourse.

#### **ARTICLE XII Apportionment of Liability**

12.1 This Article applies to any occurrence which may give rise to civil liability which is causally related to:

- (a) Economic Activities;
- (b) the movement of Offshore Units, Artificial Islands and Related Appurtenances by water or to or from a location where Economic Activities are intended to take place or have taken place;
- (c) the presence of an Offshore Unit Worker or Offshore Unit Occupant on or in the proximity of an Offshore Unit, Artificial Island or Related Appurtenances; and
- (d) a failure or neglect to comply with or perform any duty under this Convention.

12.2 Where loss is caused by the fault or neglect of two or more persons, their liability is proportionate to the degree to which they are respectively at fault or negligent, and if it is not possible to determine different degrees of fault or neglect, their liability is equal.

12.3 Persons that are at fault or neglect are jointly and severally liable to the persons suffering the loss, but, as between themselves, they are liable to make contribution to each other or to indemnify each other in the degree to which they are respectively at fault or negligent.

12.4 A person who is entitled to claim contribution or indemnity under this Article from another person that is or may be liable in respect of a loss may do so

- (a) by proceedings under Article V of this Convention;
- (b) by adding the other person as a party to a proceeding pending before a Court or tribunal of competent jurisdiction;
- (c) by commencing a proceeding in a Court or tribunal of competent jurisdiction;
- (d) if the other person has settled with the person suffering the loss, by commencing or continuing a proceeding before a Court or tribunal of competent jurisdiction.

12.5 No claim may be made under sub-article 12.4 (d) later than one year after the date of judgment in the proceeding or the date of the settlement agreement.

12.6 The Court or tribunal before which a proceeding is commenced or continued under sub-article 12.4 (d) may adjust or deny the amount awarded if it is not satisfied that the settlement was reasonable.

12.7 The rights conferred by this Article on a person that is found liable or settles a claim are subject to any existing contract, consistent with the duties and obligations under this Convention, between the person claiming and a person from whom contribution or indemnity is claimed.

#### **ARTICLE XIII Limitation of Liability**

##### **Application**

13.1 This Article does not apply to:

- a) claims subject to any international convention or national legislation respecting nuclear damage; and
- b) claims by Offshore Occupants or their heirs or dependants, where the law of domicile of the Offshore Occupant or their heirs or dependants do not permit employers or owners or occupiers to limit their liability;

13.2 The Owner or Licensee of an Offshore Unit,

Artificial Island or Related Appurtenances, and persons for whose acts or omissions they are responsible, may limit their liability as set out in this Article.

13.3 The following claims are subject to limitation of liability:

- i) claims in respect of loss of life or personal injury or loss of or damage to property occurring in direct connection with the operation of the Offshore Unit, Artificial Island or Related Appurtenances;
- ii) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the Offshore Unit, Artificial Island or Related Appurtenances; and
- iii) claims, other than under contract, in respect of the raising, removal, destruction or rendering harmless of the Offshore Unit, Artificial Island or Related Appurtenances.

13.4 A person shall not be entitled to limit its liability if it is proved that the loss resulted from personal act or omission, committed with intent to cause such loss, or recklessly and with the knowledge that such loss would probably result.

13.5 The limits of liability for claims arising on any distinct location, shall be calculated as follows:

[Units of Account per mass ton or deadweight ton]

[ A. for Pollution damage ]

[ B. for non-Pollution damage ]

13.6 Where the claim in respect of which limitation is asserted arises from the operation of two or more Offshore Units or Artificial Islands, the limit of liability is calculated on the basis of their combined mass tonnage or deadweight tonnage.

13.7 The limit of liability shall apply to the aggregate of claims which arise on any distinct occasion.

## **THE LIMITATION FUND**

### **Constitution of the fund**

13.8 Any person alleged to be liable may constitute a fund with the Court or other competent authority of any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in paragraph 13.5 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

13.9 A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

13.10 A fund constituted by one of the persons mentioned in paragraph 13.2 or their insurer shall be deemed constituted by all persons stipulated in that paragraph.

### **Distribution of the fund**

13.11 Subject to the provisions of paragraphs 5.3 and 5.6 of Article V and of paragraph 13.14, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

13.12 If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

13.13 Such subrogation rights in respect of claims provided for in paragraph 13.12 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

13.14 Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 13.12 and 13.13 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

### **Bar to other actions**

13.15 Where a limitation fund has been constituted in accordance with this Article, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

13.16 After a limitation fund has been constituted in accordance with this Article, any Offshore Unit or Related Appurtenance, belonging to a person on behalf of whom the fund has been constituted, which has been arrested within the jurisdiction of a State Party for a claim

which may be raised against the fund, or any security given, may be released or alternate remedy discharged by Order of the Court or other competent authority of such State. However, such release or discharge shall always be ordered if the limitation fund has been constituted in the State where the arrest is made.

13.17 The rules of paragraphs 13.15 and 13.16 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

### **Governing law**

13.18 Subject to the provisions of this Article, the rules relating to the constitution and distributions of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

## **ARTICLE XIV Financial Responsibility**

14.1 To cover its liability under this Convention, each Owner of an Offshore Unit shall be required to have and maintain insurance or other financial security of such type and on such terms as the flag state Party of the Offshore Unit shall specify, provided that the amount shall not be less than the greater of the limitation funds calculated in accordance with Article 13.5 in respect of the Offshore Unit.

14.2 To cover its liability under this Convention each Owner of an Artificial Island or related appurtenance shall be required to have and maintain insurance or other financial security of such type and on such terms as the grantor of the License in respect of the Artificial Island or Related Appurtenances as the grantor of the License shall specify, provided that the amount shall not be less than the greater of the limitation funds calculated in accordance with Article 13.5 in respect of the Artificial Island or Related Appurtenances.

14.3 To assist in the discharge of its obligations under this Convention, each Licensee shall be required to have and maintain insurance or other financial security of such type and on such terms as the grantor of the License shall specify, provided that the amount shall not be less than the cumulative amount of the limitation funds established by this Convention in respect of each Offshore Unit, Artificial Island or Related Appurtenances covered by the License.

14.4 An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security,

before two months have elapsed from the date on which notice of its termination is given to the competent public authority of the Flag State Party or Party grantor of the License. The foregoing provision shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

14.5 Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the Owner or Licensee's liability for pollution damage. In such case the liability of the defendant shall be limited to the amount specified in accordance with paragraph 13.5 irrespective of the fact that the pollution damage occurred as a result of an act or omission by the Owner or Licensee himself, done deliberately with actual knowledge that pollution damage would result. The defendant may further avail himself of the defences, other than the bankruptcy or winding-up of the Owner or Licensee, which the Owner or Licensee himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the Owner or Licensee himself, but the defendant may not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the Owner or Licensee against him. The defendant shall in any event have the right to require the Owner or Licensee to be joined in the proceedings.

14.6 Any sums provided by insurance or by other financial security maintained in accordance with paragraph 14.1 and 14.2 shall be available in the first place for the satisfaction of claims under this Convention.

14.7 Where the Owner or Licensee is a State Party, the Owner or Licensee shall not be required to maintain insurance or other financial security to cover its liability.

## **ARTICLE XV Administration and Revision**

15.1 A Committee composed of a representative of each State Party is hereby established.

15.2 Within three months of the deposit of the final instrument of ratification or accession by which this Convention shall come into effect, the Committee shall meet to consider the establishment and procedures for the financing and administration of the International Register for Offshore Units authorized under Article IV.

15.3 The Committee may, by consensus or by vote of at least two thirds of State Party representatives present, recommend a procedure or procedures for the financing and administration of such International Register, and to make

recommendations with respect to such other matters related to this Convention as the Parties may requisition in accordance with this Article.

15.4 If the recommendation respecting the financing and administration of the International Register is accepted under this Article, the Committee shall meet at least annually to consider the continued administration, financing or dissolution of the International Register.

15.5 At the request of the International Maritime Organization, or of the International Labour Organization, or at the request of at least one third of the parties to this Convention received by [IMO or depository government] within any six month period, the Committee shall meet to consider the adoption of standards or guidelines with respect to Article VIII.

15.6 At the request of at least one third of the Parties to this Convention received by [ IMO or Depository Government ] within any six month

period, the Committee shall meet to consider matters respecting the amendment of this Convention submitted for consideration by Parties.

15.7 The recommendations of the Committee shall be notified by [IMO or Depository Government] to all State Parties. A State Party, which, within six months of such notification, has not notified [ IMO or Depository Government ] that it is unable to accept such recommendation, shall be deemed to have accepted it.

15.8 A recommendation of the Committee shall become binding on State Parties if the recommendation has been achieved by consensus or is adopted unanimously, or has been accepted by at least two thirds of the State Parties.

#### ARTICLE XVI ET SEQ

[provisions on signature, ratification, acceptance, approval, accession, coming into effect denunciation and depository authority]

## COMMENTARY ON MAY 2001 DRAFT OUC CONVENTION

### Preamble

The preamble is intended to set out basic principles from which the convention is developed.

### Definitions

“artificial island” installations formed from natural dredged materials or fill of natural origin are excluded from operation of the convention as:

- these are more likely to be found in the internal or territorial waters of states; and
- while UNCLOS does not permit creation of artificial islands for the purpose of manipulating maritime boundaries, the creation of an artificial island from natural materials is more likely to attract the application of domestic law relating to real property or immovables

Pipelines are excluded from operation of the OUC convention, as it is considered that existing provisions of UNCLOS sufficiently covers pipeline operation. Wellheads are covered, as they, rather than pipelines, are a critical link for operational risk management and the liability regime.

“Economic activities” – these are restricted to activities associated with hydrocarbons and mineral resources in view of the express preferences of national maritime law associations.

“coastal state” “continental shelf” “exclusive

economic zone” “territorial sea” – the UNCLOS definitions are adopted to ensure consistency of application.

“License” “licensee” – this definition is cast broadly to reflect the wide range of rights of exploitation granted by coastal states, and to ensure the OUC convention is applied to the substance of offshore economic activities regardless of the form that concessions of use may take.

“Offshore Unit” – this definition is intended to be functional so as to include emerging future technologies as they are developed

“offshore unit worker” “offshore unit occupant” these persons are defined distinctively as the OUC convention applies in distinct ways to their distinctive status

“Owner” – this broad definition is intended to ensure that the obligations and benefits of the OUC convention applies to those in effective functional control, regardless of the form of use or operation.

“Pollutant” – this definition is intended to cover the broad range of substances chemicals and processes which may be undertaken on offshore units and artificial islands.

### Application

2.1 With the exception of artificial islands or components in transit, the OUC is intended to

have the same geographic scope of application as UNCLOS.

2.2 A voluntary right extension of application of the OUC to territorial sea or internal waters is intended to facilitate general adoption of the OUC.

2.3 It is considered that the existing international legal regime covering ships would apply to offshore units while in transit. However, it is much less likely that an artificial island or a component (such as the caisson foundation of a gravity based structure) would be regarded as a ship. Therefore the OUC is intended to apply to artificial islands throughout the time of their functional existence, to ensure the objectives of safe operation and removal are met.

2.4 Provision should be made for the extension of the OUC to new forms of economic activities such as seabed aquaculture, tourist accommodations and other future technologies

### **Ownership**

3.1 This clause is intended to facilitate application of the OUC to territorial waters by those states parties which require maritime activities in territorial waters to be undertaken by domestic flag vessels only. Outside of territorial and internal waters, the OUC does not require offshore units or artificial islands to fly the flag of coastal state, as long as they have some nationality.

3.2, 3.3 In view of the significant legal incidents of offshore unit and artificial island operation, it is critically necessary to avoid the operation of "stateless" offshore units. As a corollary, states parties are required to recognize ownership interests and rights to transfer and use of offshore units and artificial islands

### **Registration**

4.1- 4.3 are a corollary to article 3 and intended to carry it into effect.

4.5 This paragraph is derived from the 1986 United Nations registration of ships convention and is intended to ensure obligations under the OUC may be enforced effectively

4.6 This provision is analogous to the registration and mortgaging of ships

4.7 Considerable interest was expressed by some national maritime law associations for an international register of offshore units. This is functionally an optional clause, for the establishment, financing and continuation of the international register is subject to the provision of the committee of states parties under article 15.

### **Mortgages, Liens and Creditors' Remedies**

5.1, 5.2 are intended to facilitate the financing of offshore units and to minimize conflicts of laws issues

5.3 This draft article was the subject of considerable discussion. As persons having an operational or business relationship with offshore units are generally commercially sophisticated, and therefore may manage risk by voluntary contractual means, it was not thought appropriate to grant recognition of any maritime liens *ex contractu*. Exceptions are the maritime liens granted to offshore unit occupants for loss of life or personal injury and for wages and social benefits, where equal bargaining power cannot be assumed. Claims arising from employment of offshore unit occupants have a given rise to significant conflict of laws issues. These are also addressed in article 6.

### **Creditors remedies**

5.4-5.6 reflect generally regimes common to liens and mortgages of ships. There was less consensus whether a reversal of priorities in time with respect to salvage claims is necessary or desirable to encourage salvage operations of offshore units.

5.7, 5.8 As the operation of an offshore unit has a far greater risk potential than, for example, an insolvent owner's bulk carrier secured in a harbor, it is desirable to control the scope of remedies exercised by secured creditors.

5.9-5.11 These subarticles are similarly intended to reflect a balance between creditors rights and the necessity of the safe operation of active offshore units.

### **Civil jurisdiction**

6.1 is intended to reflect general UNCLOS policies

6.2, 6.3 A consistent theme of the OUC convention is the necessity for states parties to properly administer it

6.4 Apart from offshore unit occupants and tort victims, the offshore industry should be entitled to contractual freedom in choice of law and choice of forum.

6.5-6.8 Similarly to international conventions on carriage of goods by sea and for a civil liability for a pollution, a clear set of rules for jurisdictions in which claims may be commenced is desirable. If the domiciliary state of an offshore unit occupant has a system of workers compensation, the offshore unit operator should not have to deal with forum shopping by an injured worker.

6.9-6.1 2 There have been examples of persons fleeing coastal areas beset by strife attempting to seek refuge aboard offshore units. These persons and stowaways have rights of physical protection under international humanitarian law.

### **Penal Jurisdiction**

7.1 Where the nationality of offshore unit or related appurtenances is the same as that of the coastal state, there is little potential for conflicts of law in penal jurisdiction, a particularly as the OUC requires states parties to have an effective regulatory administration.

7.2 Penal offenses are classified into three categories as they attract different priorities and interests of the coastal state, the law of the offshore unit's flag and the domiciliary country of the offshore unit occupant.

7.5 While states parties may have differing a domestic policy interests in jurisdiction over penal offenses, this paragraph is intended to give the domiciliary state first opportunity to investigate and prosecute personal or public order offenses, while permitting the coastal state to act if the domiciliary state declines to do so.

7.7, 7.8 These paragraphs are intended to avoid double jeopardy and explicitly recognize the defense of compulsory compliance.

### **Safety**

8.1 Because offshore units are explicitly subject to the ISM Code, there are safety concerns if an offshore unit is operated in conjunction with and artificial island or related appurtenances which themselves are not subject to SOLAS. This paragraph is not intended to compel application of the entire ISM code to a functionally associated artificial island or related appurtenance, as long as there is compatibility between the quality assurance system in use on the associated structures and the offshore unit.

8.2 This paragraph is goal oriented and intended to permit owners flexibility to adopt new technology and operational methods.

8.3, 8.4 These paragraphs reflect findings and recommendations of the *OCEAN RANGER* and *PIPER ALPHA* inquiries and are intended to ensure that the single person in command can take proper emergency measures without delays associated in obtaining clearances or fear of employment retribution.

8.5 This paragraph is intended to ensure the coastal state has a basic regulatory or monitoring regime in place for a offshore unit workers and

occupants. Flexibility in the method of achieving that these goals is permitted. For example, a coastal state may adopt industry standards, recognize other flag state standards, or develop its own.

8.6, 8.7, 8.8 These paragraphs are intended to ensure that coastal states address these safety issues. Flexibility in the method of implementing these standards is permitted.

8.9-8.12 These paragraphs reflect findings and recommendations of the *OCEAN RANGER* inquiry.

8.13 These requirements are analogous to the protocols established by ICAO for investigation of aviation accidents involving aircraft or persons of one country involving an occurrence in another.

8.16 While administrative and operational flexibility is desirable, it should not be abused to evade effective administration.

### **Salvage**

9.1-9.6 The initial clauses are intended to apply OPRC principles to offshore units and artificial islands.

9.7 The exclusion of the operation of the Salvage Convention to offshore units, arose in part from industry concerns over the dangers of intervention by salvors inexperienced in offshore unit characteristics. These considerations do not apply where the offshore unit is not engaged in economic activities.

### **Removal**

10.1 The application of the OUC is extended to the navigable waters in the territorial sea, because the UNCLOS rights of innocent passage presuppose a safe navigating environment. If the coastal state obtains economic benefits from permitting all offshore units or artificial islands to operate in navigable waters, its obligation to ensure the safety of such waters from artificial structures should be acknowledged.

### **Pollution**

This article is an adaptation of the CLEE convention with the optional clause deleted.

### **Apportionment of Liability**

While historical admiralty law rules and the collision convention recognize apportionment of fault, in collisions between ships, not all countries domestic laws provide for similar apportionment of liability concerning wrongs not related to shipboard activities or involving structures which are not ships. This article is derived from part 2 of the *Canadian Marine Liability Act*, and is intended to

provide for a general apportionment regime which works consistently over all waterborne operational aspects of the offshore industry.

#### **Limitation of liability**

These articles follow the 1976 Limitation Convention

#### **Administration and revision**

This article provides a mechanism for the voluntary establishments, maintenance, and winding up of international offshore units registry, and for future amendment said to the OUC with a similar deemed acceptance regime to that of SOLAS.

## **NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS**

### **NEWS FROM UNCITRAL**

#### **THE THIRTEEN SESSION OF THE WORKING GROUP III (TRANSPORT LAW)**

The Report of the Working Group on the work of its thirteen session, held in New York, 3-14 May

2004, is available on the UNCITRAL website.

## **RATIFICATION AND DENUNCIATION OF INTERNATIONAL CONVENTIONS**

### **INSTRUMENTS OF RATIFICATION OF AND ACCESSION TO THE FOLLOWING CONVENTIONS HAVE BEEN DEPOSITED WITH THE DEPOSITARY:\***

- **International Convention on Oil Pollution Preparedness, response and co-operation, 1990**  
*Jordan: 14 April 2004*
  
- **Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969**  
*Kuwait: 16 April 2004*
  
- **International Convention on Maritime Liens and Mortgages, 1993**  
*Ecuador: 16 March 2004*  
*Nigeria: 5 March 2004*  
The Convention will enter into force on 5 September 2004
  
- **Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976**  
*France: 7 January 2004*  
*Malta: 13 February 2004*  
The Protocol entered into force on 13 May 2004
  
- **International Convention on Arrest of Ships, 1999**  
*Algeria: 7 May 2004*

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\* The dates indicated are the dates of deposit of the instrument..