

Offshore activities – pollution liability and related issues.

Report to the ExCo and Assembly meetings to be held in London on November 8th and 9th, 2018.

In my Report to the ExCo meeting and Assembly carried out at Genoa, it was explained that the way towards an international convention on Transboundary Pollution caused by Offshore Activities through IMO Legal Committee has been closed.

Patrick Griggs reported that the Legal Committee adopted the Guidance Document and expressed the hope that it would prove useful and agreed that no further work by the Committee would be necessary on this issue.

That means that as far as the Legal Committee is concerned, there is, at this time, no interest in an international convention on the subject of transboundary pollution caused by Offshore installations.

We informed to the ExCo virtual meeting held in April, 2018, three different options to continue the way ahead,

(i) We reported that the International Union of Maritime Underwriters (IUMI) proposed in a public document dated March 17th, 2017, point 2, that a voluntary financial security system is likely to be most effective than a legal regulation. It should be taken into account that the Environmental Liability Directive (ELD) for the EC includes “*all waters under the jurisdiction of the Member States*” and mandating financial security. Considering that voluntary industry agreements like TOVALOP AND CRISTAL played an important role on the way towards the CLC/Fund Conventions in relation to hydrocarbons, it could be interesting to participate in the drafting of an industry voluntary agreement in respect of Offshore Activities. We contacted our common friend Ben Browne firstly and later IUMI’s Secretary General Mr. Lars Lange. Mr. Lange’s conclusion after discussing the issue was that IUMI feels that not necessarily lawyers and insurers should be at the forefront of any voluntary agreement, but that this has to involve the operators themselves with insurance only being one option for the transfer of risk and a very complex regulatory situation with the many parties involved. Consequently, we should discard this option for the moment.

(ii) We stated that if you read the approved Guidance Document you will note that it is not a draft convention. It does not provide a definition of transboundary pollution, or of the concerned Offshore Artifacts, or on limitation of liability

and how it would work. It is just a handful of nice principles (like polluter pays, jurisdiction in the country which suffered the pollution, etc.) but it could not even be considered a reasonable set of soft law, like the IMO Guidelines on Places of Refuge are. Consequently, any bilateral or regional agreement will need to be drafted and the IWG could assist on this work. We held an informal meeting with representatives of the Adriatic Countries and we were informed that once some political issues were dealt with, they will ask our assistance to draft an Adriatic Regional Convention on the issue. This has not happened yet.

(iii) We mentioned that the United Nations Environmental Program (UNEP) could be interested in the drafting of an International Convention on Transboundary Pollution generated by Offshore Activities. We have got an answer from UNEP but we are in a very preliminary stage which does not justify a meeting of our International Working Group in London in November 2018. We would like to thank the very valuable assistance of our Past President Karl-Johan Gombrii and of our President Stuart Hetherington in contacting UNEP.

For the moment, we will be briefing UNEP on the work carried out by the CMI and on our idea of drafting an international convention to rule liability for transboundary pollution. In case of progressing our negotiations with UNEP, and if they accept to work together with us, we will inform the Members of the International Working Group and we will convene in due time a meeting of the same.

Best Regards,

Jorge M. Radovich,

IWG Chair.