

## IFLOS - 2019 WORKSHOP: GLOBAL VS. REGIONAL OCEAN GOVERNANCE

**CASE** On July 20, 2018 at 9:56 p.m. a fire broke out on the Gold Mine Platform located offshore of La Española (a Caribbean Island State). After the explosion, a representative of the Shelle Texaca Group stated that abnormal pressure had accumulated inside the marine riser and as it came up it "expanded rapidly and ignited." At the time of the incident, there were 25 crew on board and fortunately, all of them survived. The explosion was followed by a fire that engulfed the platform, and it sank the next day. In the morning of July 22, 2018 a Coast Guard official said that oil was leaking from the rig at the rate of about 4,000 barrels (170,000 US gallons; 750,000 litres) of crude per day. Attempts to contain the flow failed. Experts consider that this will turn out to be one of the biggest oil spills in the Caribbean and it even may produce transboundary pollution. However, this seems to be the tip of the iceberg only.

In recent years the offshore hydrocarbon industries has launched several projects and started operation of several rigs in the area. There are fears among islanders regarding the harmful input of drilling cuttings (contaminated with drilling muds) resulting from the drilling of exploration and production wells, "produced water" (the water contaminated with hydrocarbons that come up from wells, either of natural origin or through having been injected to enhance hydrocarbons recovery), and various chemicals that are used and discharged offshore in the course of exploration and exploitation of the seabed, which can be harmful to marine life under certain circumstances, is the used chemicals are not controlled.

Extensive damage to marine and wildlife habitats and fishing areas has been reported in recent months and it is estimated that this newest spill could have a dramatic impact on the tourism industry in the Caribbean region. Unfortunately, local legislation contains hardly any rules for offshore drilling activities and there is an absence of rules regarding compensation for transboundary pollution damages.

An urgent meeting of Ministers of Caribbean States has been called.

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THIS IS A GROUP  
ACTIVITY

THE CLASS WILL BE  
DIVIDED INTO 4  
GROUPS

You have received a call from the Minister of Foreign Affairs of your country, who will attend the meeting and who has heard that there is a group of experts on the subject attending this year's IFLOS Summer Academy in Hamburg.

She is aware that the latest studies on ocean governance have reported there is a regulatory gap at the global and regional level when it comes to regulations for the offshore hydrocarbon industries.

She is also aware that SDG 14 Conservation and sustainability of the



oceans, seas and marine resources for sustainable development includes, among its targets, the prevention and significant reduction of marine pollution of all kinds. She will run for the Presidency of her country this year and a cutting edge proposal on this topic would help her tremendously in her campaign.

She needs your help in developing a document that will contrast two scenarios, the global approach and the regional approach and that looks at prevention, responsibility and liability issues, and transboundary pollution.

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#### GROUPS

##### **GROUPS 1 & 3**

Will work on a document containing draft guidance for international convention(s) on prevention, liability and compensation issues connected with pollution damage resulting from offshore exploration and exploitation activities

##### **GROUPS 2 & 4**

Will work on a document containing draft guidance for regional convention(s) on prevention, liability and compensation issues connected with pollution damage resulting from offshore exploration and exploitation activities

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#### CONSIDER THE FOLLOWING ITEMS IN YOUR PROPOSALS

- 1.- Advantages and disadvantages of developing international convention(s) (global approach) vs. regional convention(s) (regional approach).
- 2.- Provide a list of norms and principles of ocean governance which could be included when considering and negotiating international agreements or regional arrangements.

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#### RELEVANT INFORMATION

The first initiative to develop a Convention to regulate pollution damage resulting from exploitation of the seabed took place when the United Kingdom (UK) decided to convene a Diplomatic Conference to adopt the Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources, known for its acronym in English as CLEE. The Convention applies to pollution damages caused by contamination from the escape or discharge of oil from an installation, meaning any well or other facility, whether fixed or mobile, used for the purpose of exploring for, producing, treating, storing, transmitting or regaining control of the flow of crude oil from the seabed and its subsoil. According to the Convention, the operator of the installation shall be liable for any pollution damage resulting from an incident which occurs beyond the coastal low-water line at an installation under the jurisdiction of a Contracting State. Operators shall be entitled to limit their liability and are required to maintain insurance coverage (liability) for pollution damage. The Convention provides a single level of compensation. A second tier, as the one provided by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, which is fed by contributions from the oil industry, was not foreseen. The CLEE never entered into force. Among the causes for its failure, it is said that it was due to the lack of a competent international organization to serve as Secretary of the Convention and

the last-minute inclusion of an article reserving States the ability to set higher liability limits or no limits, which could result in possible exposure to greater liability limits than originally planned for the industry.

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#### DISCUSSIONS AT IMO

The Indonesian delegation brought to the attention of the International Maritime Organization (IMO) the existence of trans-border pollution damages to Indonesia caused by a well blow-out at the Montara offshore oil platform located in the waters of Australia in 2009.

During the discussions a few delegations expressed that the Convention on the International Maritime Organization confines the Organization's pollution prevention activities to vessel-source pollution and not to offshore platforms, and that the issue of transboundary pollution damage arising from offshore oil activities would be better addressed through bilateral or regional agreements. Other delegations were in favour of advancing the work for a new Convention.

In this regard, a number of conventions adopted within the IMO, whose main objective is the prevention of marine pollution activities, have extended their scope of application to sources other than vessels, such as platforms, facilities or man-made structures at sea.

Such is the case of the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL Convention 73/78), which extends the scope of application of its provisions to fixed or floating platforms and requiring the later to have tanks for oil residues and to keep a record of all operations of allowed discharges, in other words, those with a dilution of oil that do not exceed 15 parts per million.

Meanwhile, the International Convention on Oil Pollution Preparedness, Response and Co-Operation (OPRC), sets out the actions to be taken after the occurrence of a discharge or leakage of oil, which requires offshore unit operators to have emergency plans in case of oil pollution and to promptly notify authorities of all discharge incidents produced in these facilities.

However, IMO member States decided that there was not a compelling need to develop such an instrument and accorded to develop a guidance document to assist States interested in pursuing bilateral or regional agreements.

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#### REGIONAL CONVENTIONS

There are several conventions at the regional level, especially among several European countries, for regulating pollution from activities in the marine environment that include among the sources of pollution those derived from seabed activities.

The 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic, known as OSPAR for its acronym, contains rules for the prevention and elimination of pollution of the marine environment and is primarily aimed at safeguarding human health, preserving marine ecosystems and when practicable, restoring marine areas that have been adversely affected.

OSPAR contains Annex III, On the Prevention and Elimination of

Pollution from Offshore Sources, which prohibits any dumping of waste from the offshore installations and states that the use on, or the discharge or emission from, offshore sources of substances which may reach and affect the maritime area shall be strictly subject to authorization or regulation by the competent authorities.

Meanwhile, the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean Sea against Pollution, known as the Barcelona Convention, obliges the Contracting Parties to take appropriate measures to prevent, reduce, combat and to the fullest extent possible eliminate pollution from the Mediterranean Sea.

The Convention has a 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 (Mediterranean Offshore Protocol). It contains rules relating to the granting of authorizations, removal of abandoned and obsolete facilities, utilization and disposal of hazardous substances, the safety of the facilities, and the development of contingency plans and pollution monitoring. In terms of liabilities and compensation, it includes the obligation of the Parties to formulate and adopt appropriate rules and procedures for the determination of liability and compensation for damages.