INTERNATIONAL STANDARDS
FOR OFFSHORE DRILLING

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The Regulation of Continental Shelf Development
Panel 3, June 21, 2012
Outline

• Role of International Organizations
  – LOS Convention requirements
  – IMO actions pre-2010
    • Pollution prevention from seabed activities
    • Liability and compensation
  – IMO actions since 2010

• Regional efforts, including Arctic Council

• Role of States

• Conclusions and recommendations
LOS Convention - International Organizations

• Article 208(5) requires States, acting especially through competent international organizations or diplomatic conference,

• to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment referred to in paragraph 1 of article 208,

• i.e., sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, located on their continental shelf or in their EEZ.
IMO’s Position

• MODU Code does not include requirements for the drilling of subsea wells or the procedures for their control.
• Such drilling operations are subject to control by the coastal State.
• First stated in 1979, repeated in 1989 and 2009
IMO Pre-2010 (1)

• Pollution prevention
  – MODU Codes (1979, 1989, 2009)
  – MARPOL 73/78 regulation I/21
  – Resolutions A.671(16) and A.672(16), 1989
  – OPRC
  – MEPC resolution 139(53), 2005
  – MSC-MEPC circular 9, 2010
IMO Pre-2010 (2)

• Liability and compensation
• With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds. LOSC article 235(3)
  – 1971 Fund Convention
  – 1996 HNS Convention and 2010 Protocol
  – 2001 Bunkers Convention
IMO Post-2010

• Nothing on pollution prevention
• Focus on liability and compensation
  – LEG 97, 98, 99
  – Indonesia vs. Brazil
IMO Future Work

• Adopt standards and/or recommended practices and procedures re safety of drilling operations
• Meet requirements of article 235(3) on liability and compensation
Regional Efforts

- Convention for the Protection of Marine Environment of the North East Atlantic, 1992 (OSPAR)
- Convention for the Protection of the Mediterranean Sea against Pollution, 1976 (Barcelona Convention) and 1994 and 1995 Protocols
- Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992
Arctic Council

- Arctic Offshore Oil and Gas Guidelines, 2009
- Possible new project
Role of States - LOS Convention

• Article 192: States have the obligation to protect and preserve the marine environment.
• Article 194(3): the measures taken by States
  – shall include, inter alia, those designed to minimize to the fullest possible extent:
  – * * * *
  – (c) pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.
Role of States - LOS Convention
Article 208 – National Legislation

• Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

• States shall take other measures as may be necessary to prevent, reduce and control such pollution.

• Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.
Role of States - LOS Convention
Article 214 - Enforcement

• States shall enforce their laws and regulations adopted in accordance with article 208.

• States shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction.
Role of States - LOS Convention Article 235 Responsibility and Liability

• States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.

• States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

• With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.
Conclusion

• In the absence of applicable international rules and standards, States are unable to meet fully their obligations under articles 208 and 214 to adopt and enforce “laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with sea-bed activities subject to their jurisdiction” which “shall be no less effective that international rules, standards and recommended practices and procedures.”
Recommendations (1)

• IMO Member States and the industry must agree to act through the IMO to meet the obligations under the international law of the sea “to establish global rules, standards and recommended practices” to prevent, reduce and control pollution from sea-bed activities subject to national jurisdiction.

• IMO Member States must come to a definitive conclusion as to the IMO’s legal competence to undertake these activities.
Recommendations (2)

- IMO should undertake a work item, probably through the Maritime Safety Committee, to establish safety standards for the operation of offshore drilling rigs engaged in exploration and exploitation of offshore hydrocarbon resources, taking into account the work already done in the regional context.

- IMO Legal Committee consider development of a regime of liability and compensation for transboundary pollution damage from offshore oil exploration and exploitation activities, taking into account the work already done.