

International governance of offshore activities

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INTERNATIONAL LAW, as evidenced by the United Nations Convention on the Law of the Sea (UNCLOS) has long recognized that the sovereignty of the coastal State extends to offshore oil and gas exploration and development activities on its continental shelf.

UNCLOS does not prohibit coastal State governments from entering into binding international agreements regarding the governance of such activities. Concerns over relinquishment of sovereignty have, to date, precluded such agreements. This may be about to change.

One of the consequences of the tragic events of 11 September 2001 may be the first binding, international agreement regarding governance of fixed and floating offshore facilities.

Acting on a proposal prepared by the United States, the International Maritime Organization (IMO) has begun considering possible amendments to the International Convention on the Safety of Life at Sea (SOLAS).

If enacted, the proposed amendments would subject all manner of fixed and floating offshore platforms to, among other things, mandatory international requirements to prepare and obtain approval of security plans, designation of security officers, and training of personnel in security matters.

The proposed amendments were among a number of initiatives introduced by the United States at a special meeting of the IMO Maritime Safety Committee's Working Group on Maritime Security, which met in London from 11-15 February 2002. (The US government also funded the administrative costs of this special meeting.)

Following an accelerated schedule, the proposed amendments will receive further consideration during the regular meeting of the Maritime Safety Committee in May 2002, with the aim of finalizing them for adoption at a special diplomatic conference in December 2002.

The US did not identify specific underlying security concerns; rather it proposed a wide-ranging set of initiatives. Other initiatives proposed by the US included accelerated implementation and expanded coverage of ship automatic identification system requirements, improvements to seafarer identification documents, implementation of background checks, port vulnerability assessments, and point of origin examinations of inter-modal shipping containers.

Agreement has been reached for some of these proposed initiatives to be pursued in IMO or other organizations. Other potentially meaningful initiatives, for example, seafarer background checks, have already been determined to be politically unachievable.

It is evident that a number of legitimate security concerns are associated with maritime operations and demand international

solutions through the actions of the IMO and other international organizations.

Understandably, the focus of discussions has been on the specific initiatives suggested by the US rather than on developing effective means of responding to the underlying concerns. IMO's ability to quickly develop regulations under the SOLAS Convention provides IMO members with the opportunity to be seen as responsive, at least in part, to the US proposals.

Unfortunately, the proposed SOLAS amendments focus on documentation, not execution, and may have little impact on overall security concerns, particularly since there seem to be few concomitant obligations assumed by governments to support ship owner-developed security plans.

The continued growth in the use of classification societies as agents to implement and enforce IMO-developed requirements by IMO-member governments means they will incur minimal costs, even in the administration of the new requirements.

With more than 4,000 fixed oil and gas platforms on its continental shelf, the US is acknowledged as having the world's most extensive offshore infrastructure. The importance of the US suggesting that fixed and floating platforms be included in the proposed SOLAS amendments cannot be understated.

Other IMO members (most of whom are exclusively concerned with the operation of traditional ships) are understandably reluctant to challenge the US proposal for inclusion of fixed and floating offshore platforms.

Sadly, even those IMO members with considerable offshore oil and gas infrastructure rarely include individuals with expertise in the regulation of oil and gas activities in their delegations.

It is worth noting that the criteria generally used for determining entry into force of SOLAS requirements is one-third of the parties to the Convention representing at least 50% of the world's merchant ship tonnage. It is ironic that six nations with almost no offshore infrastructure

(Panama, Liberia, Greece, Malta, Bahamas, and Cyprus) provide the requisite tonnage to cause the proposed amendment, if adopted, to enter into force.

Some of the details of the proposed SOLAS amendments are themselves troubling. For example, the proposed definition of "fixed platform" is "an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes."



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Thus, it would include pipelines, many navigational aids and, lacking geographic boundaries, considerable port and water-front infrastructure.

DRILLING CONTRACTOR CONCERNS

Even if the IMO ultimately decides to exclude fixed and floating platforms from the SOLAS initiative, there will be lingering concerns for drilling contractors since some mobile offshore drilling units will likely continue to be included.

A particular concern for drilling contractors is the failure of the proposed amend-

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ments to distinguish between controls appropriate for MODUs in transit and those on location. The current proposal would leave the flag State responsible for administration of security plans governing personnel employed on the unit, even where the host coastal State requires the employment of indigenous labor.

Further, it would impose responsibilities on the MODU owner that would inevitably result in conflict with the oil company operators and their third-party contractors. Other concerns relate to lack of precision in the proposed requirements. For example, wording which requires ship owners to report “unlawful acts” (generally) rather than those acts threatening the security of the ship.

IADC CONCERNS

As with any legally binding instrument, the details are important. However, IADC fears that in the rush to produce results at IMO, legal precision is likely to be sacrificed to ambiguity in order to achieve consensus.

IADC has openly shared its concerns with many of the flag States and with the International Association of Oil and Gas Producers in an effort to influence the outcome of the future deliberations.

IADC, in its role as an accredited non-governmental observer, also intends to attend the IMO meetings where this initiative is discussed to represent the views of its members. In the US, the US Coast Guard

and other Federal Agencies are pursuing initiatives calling for the development and implementation of security plans. Some rely on existing legislative authority while others rely on new legislation.

Events of September 11th have likely changed the expected standard of due diligence. Regardless of new requirements from SOLAS or other legislation, a more robust security compliance program is necessary to mitigate potential future civil and criminal liabilities – as well as to meet customer expectations. ■