

JURISDICTION OF THE COASTAL STATE IN RELATION TO A FLOATING DRILLING RIG DEPENDING ON THE SITE (LOCATION) OF DRILLING OPERATIONS IN THE WORLD OCEAN

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Abstract: Equipment and technologies for exploration and development of offshore resources of hydrocarbons are among the most complex in the world and keep actively developing. Mineral resources located in more and more remote areas with severe natural and climatic conditions in different areas of the World Ocean characterized by different international legal status are involved in the development.

In offshore areas, for drilling of oil wells at the stage of geological exploration, license holders use the following artificial installations and structures: 1) artificial islands; 2) submersible drilling rigs; 3) self-elevating drilling rigs; 4) semi-submersible drilling rigs; 5) drilling vessels. However, it is the floating drilling rigs that currently represent modern technologies in the field of deep seabed mining of hydrocarbons.

In world practice, deepwater floating drilling rigs are legally qualified as “vessels”, and they are subject to the jurisdiction of the flag state. The goal of this article is to analyze the jurisdiction of coastal states in relation to floating drilling rigs in various water areas: the territorial sea, the contiguous zone, the exclusive economic zone, the continental shelf, and the high sea. The author considers the legal status of floating drilling rigs, their registration in the registers of ships under the “flag of convenience”, the jurisdiction of coastal states in various water areas, the problem of competition between the jurisdictions of the coastal state and the flag state, and the gaps in the laws on protection of the marine environment from oil pollution.

Keywords: energy law, facilities of offshore hydrocarbon fields, installation, structure, vessel, offshore oil platform, floating drilling rig.

I. Introduction

As the demand for oil grows, the need to discover new hydrocarbon fields also increases. It is already customary that oil platforms of

several hundred meters with the size of the largest onshore facilities are built, moved by water and installed in remote sea areas. Up to hundreds of wells can be drilled from such platforms

to open reservoir rocks in an area of several tens of square kilometers. The topsides of these platforms weigh up to hundreds of thousands of tons and contain a full range of equipment for drilling, production, preparation, storage, and shipment of oil as well as life support systems for their crews. Millions of tons of oil and billions of cubic meters of gas are transported from these installations and structures to the world markets [1, page 174].

Peculiarities of floating complexes for hydrocarbon extraction are expressed in the absence of support by the seabed. The most common type of the offshore drilling rigs are semi-submersible drilling rigs (SSDR) having the **mobility and stability advantages**, which makes them an ideal tool for deepwater drilling. The advantage of this type of installation is a good stability in relation to the drilling vessel.

The drilling rig is located on a platform, under which floatation tanks are fixed. Positioning at the drilling point is ensured using an anchor system or a dynamic positioning system. To increase the stability of the rig, the floatation tanks are submerged. However, longer time is needed to position the SSDR. Tugboats or carrying ships are usually used for transportation.

One of the problems is that the status of this property in international treaties is not clearly and unambiguously determined — whether the floating drilling rig belongs to the category of “vessels” or “artificial installations and structures”, which gives rise to numerous difficulties, primarily those related to competition between jurisdictions of the coastal state and the flag state. This problem will be discussed in more detail below. Here, we shall only note that the qualification of *Deepwater Horizon* floating drilling rig as the “vessel” and its registration in the register of ships “under the flag of convenience” clearly demonstrated vulnerable provisions of the international law.

II. Jurisdiction of the Coastal State in Various Areas of the World Ocean According to the UNCLOS

The law of the sea contains two competing principles: the right of free navigation is opposed to the powers of the coastal state to control its coastal waters [2].

The UNCLOS specifies five water areas, each of which has its own jurisdiction and differs in the scope of supervisory powers of the authorities of the coastal state or the flag state of the vessel to settle legal issues related to the activity of the marine vessels. Each sea area has its own rules for the passage of vessels and, accordingly, in each sea area, states, both the coastal and the shipping ones, have different rights and obligations: 1) territorial sea, 2) contiguous zone, 3) exclusive economic zone, 4) continental shelf, 5) high sea.

1. Territorial Sea and Contiguous Zone

Article 3 of the UNCLOS defines the “territorial sea” as a *belt set by a coastal state and extending at most twelve nautical miles from the baseline*. Within the boundaries of the territorial sea, the coastal state has sovereignty over the seabed and subsoil (paragraph 2, Article 2 of the UNCLOS). Moreover, paragraph 1 (f), Article 21 of the UNCLOS authorizes the coastal states in the area of the territorial sea to adopt laws and rules *on preservation of the coastal state’s environment as well as prevention and reduction of its pollution, and maintaining it under control*.

However, the main problem is that the laws of the coastal state do not apply to the standards of design and construction of foreign vessels as well as to crew designation and equipment of foreign vessels (paragraph 2, Article 21 of the UNCLOS).

The UNCLOS sets some restrictions on the powers of the coastal state, especially with regard to the right of foreign vessels to an innocent passage.

The contiguous zone (the first zone from the coast in international waters) may be 3 to 24 nautical miles wide, counting from the baseline, and within this zone, the coastal states have an exclusive *jurisdiction over customs, tax (fiscal), immigration, and health legislation*. Regulation of this water area is also limited by the right of foreign vessels to an innocent passage.

2. Exclusive Economic Zone

The coastal state within the exclusive economic zone has sovereign rights to explore, operate, store and manage hydrocarbon

resources (paragraph 1 (a), Article 56 of the UNCLOS).

Moreover, within this zone, the coastal state has limited jurisdiction with respect to protection and preservation of the marine environment, creation and use of artificial islands, installations and structures (Article 56 of the UNCLOS).

At the same time, in the exclusive economic zone, the coastal state has “*the exclusive right to construct as well as to permit and regulate creation, operation and use of these structures*” (paragraph 1, Article 60 of the UNCLOS). However, it cannot *require vessels* operating in its exclusive economic zone to *comply with special design and construction standards*. Article 58 of the UNCLOS confers jurisdiction over vessels in the exclusive economic zone to the flag state.

3. Continental Shelf

According to paragraph 1, Article 77 of the UNCLOS, the coastal state exercises sovereign rights over the continental shelf for the purposes of exploration and development of mineral resources of the seabed and its subsoil. However, even if the coastal state does not explore the continental shelf or develop its natural resources, no one can do this without the express consent of the coastal state (paragraph 2, Article 77 of the UNCLOS).

4. High Sea

This zone exists as a “common international space that is accessible for use for legitimate purposes by any state and their nationals”. On the high sea, the vessels have the right of free navigation and can engage in legitimate activities without interference from other states. The state, in which the vessel is registered, in its turn, has exclusive jurisdiction over it, while this vessel is on the high sea. Any state has, among other things, the following freedoms on the high sea: *navigation, construction of artificial islands and other installations (paragraph 1, Article 87 of the UNCLOS)*.

Therefore, the coastal states have different scopes of rights in relation to the sea areas. However, when it comes to oil drilling rigs, it becomes clear that if the floating drilling rig is classified as a vessel, the jurisdiction of the coastal state is significantly narrowed.

One of the most obvious reasons for the uncertainty of the legal status of the floating drilling rigs is related to the absence of a clear terminology in the international law.

III. Whether the Floating Drilling Rig Has the Features of the “Vessel”, the Problem of Registration of the Drilling Rigs under the “Flag of Convenience”

The question arises whether it is possible to classify the floating drilling rig as the marine vessel or whether it belongs to the category of “installations and structures”. Laws do not answer this question.

The problem is that in the UNCLOS the terms “platform” and “structure” are used separately and, moreover, apart from the terms “vessel” and “ship”, which are used interchangeably in all its provisions [2]. This situation is complicated by the fact that the UNCLOS does not contain definitions of the above terms. Therefore, the question arises as to which of the above-mentioned categories the floating drilling rig pertains.

In the world practice, deepwater mobile drilling rigs are legally qualified as “vessels” and are subject to the jurisdiction of the flag state. In the law of the sea, the nationality of the vessel and the right to sail under the national flag are dependent on the state registration of the vessel.

It is obvious that the floating drilling rig belongs to the category of vessels for the purpose of state registration in the register of ships.

However, the qualification of the floating drilling rigs as vessels gives rise to a conflict of jurisdictions between the coastal state and the flag state, which was clearly demonstrated by the major accident that occurred at *Deepwater Horizon* drilling rig installed in the exclusive economic zone of the United States of America.

The flag state is primarily responsible for compliance with the standards of construction, design, equipment and manning of the vessel. Here we come to the problem of possible registration of offshore oil platforms in the state registers of ships under the “flag of convenience” [4].

The convenient features of the concept of the “flag of convenience” are: ownership of the “vessel” by foreigners, easy access to the register, low tax rates, absence of administrative mechanisms

for introduction of new rules, and absence of pressure on the companies [5].

While managing the oil platform under the “flag of convenience”, the owners of the installation evade strict legal regulation. Large multinational corporations that own oil platforms usually have more financial resources and more powers than the state, under the flag of which they register their platforms.

Therefore, the flag state has extremely weak incentive to ensure compliance with the laws and even tighten the regulatory control. The location of the flag state in relation to the area where the oil platform operates also contributes to the lack of incentives to ensure full regulatory control.

The state registration of *Deepwater Horizon* drilling rig as a “vessel” and under the “flag of convenience” is an example of problems that have arisen in connection with the **competition of jurisdictions**.

Problem of Competition of Jurisdictions Exemplified by *Deepwater Horizon* Semi-Submersible Drilling Rig

Deepwater Horizon rig pertained to the deep-water semi-submersible type of drilling rigs with a dynamic positioning system capable of operating at a depth up to 3 km. The rig was built at shipbuilding plants in South Korea, owned by Transocean, a Swiss company, and leased to British Petroleum, a British oil company.

The owner of the oil platform registered the drilling rig in the Republic of the Marshall Islands, which was its flag state. Herewith, the installation was mounted and performed drilling operations in the US exclusive economic zone.

Registration of the floating drilling rig in the state register of ships of the Republic of the Marshall Islands made it possible to avoid regulation and state control over the safety and technical conditions of the offshore installation by the United States of America.

On April 20, 2010, an accidental release of hydrocarbons from a damaged wellhead located at a depth of 5,000 feet below the ocean level occurred, which led to a subsequent explosion at the drilling rig. During the explosion, *Deepwater Horizon* rig was drilling a wildcat well some 66 km off the coast of Louisiana in the Gulf of Mexico. As a result of the accident, 11 people died.

The accidental oil spill continued for three months; the well was abandoned on a permanent basis on September 19, 2010. According to estimates, over three months, the oil spill formed an oil slick with the area of 176,120 sq. km [6].

The majority adheres to the position that the problems arose due to the fact that the oil drilling rig was primarily regulated by the laws of the flag state of the Marshall Islands, in the exclusive economic zone of which it was not actually installed. It was the authorities of the Marshall Islands that were ultimately held responsible for complying with international safety standards and performance of necessary inspections [7].

Registration of the drilling rig in the Marshall Islands gave rise to many problems. Workers on the drilling rig said that this was one of the factors that affected the emergence of the “confusing organizational command system”, the understaffing and the lack of regular safety inspections by the coastal state, which eventually became evident on the day of the accident. The senior rig technician stated that for many years this has made it possible to reduce the number of employees.

Moreover, the license for the drilling rig allowed Transocean Ltd. “to install oil drilling expert in the office on the rig — the so-called drilling rig manager — and give it more powers as compared to the powers of the captain of a marine vessel, which eventually became fatal on the day of the accident. It was the BP manager and not the drilling rig captain, who had the powers to make decisions concerning operation of the floating drilling rig (vessel) [7].

IV. Laws on Protection of the Marine Environment from Oil Pollution

Most international treaties governing pollution of the marine environment by oil are currently applied to tankers and other vessels, but do not apply to the oil drilling rigs [9].

The current international legal instruments in this field include: the UNCLOS, the Convention for the Prevention of Pollution from Ships of 1973 amended by the Protocol of 1978 (more commonly known as MARPOL 73/78) [9], the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972 (London Convention) [10], and

the International Convention on Civil Liability for Oil Pollution Damage of 1969 as amended by the Protocol of 1992 [11].

Each of these documents assumes that member states adopt relevant laws and ensure their observation in accordance with the goals of international conventions.

Article 192 of the UNCLOS, for example, requires that regardless of the type and source of pollution, the coastal states should “protect and preserve the marine environment”. In accordance with paragraph 1, Article 208 of the UNCLOS, the states shall “adopt laws and regulations to prevent, reduce and keep under control pollution of the marine environment caused by or associated with activities on the seabed under their jurisdiction, and artificial islands, installations and structures under their jurisdiction in accordance with Articles 60 and 80 of the UNCLOS”. These rules adopted by the state shall be “no less efficient than international rules, standards, recommended practices and procedures” (paragraph 3, Article 208 of the UNCLOS). However, to ensure efficiency of these provisions, they shall be implemented in national laws and secured by their observance by coastal states and flag states.

1. MARPOL

The **MARPOL** is the main set of rules relating to the pollution of the marine environment by oil as a result of operation of vessels or emergency situations associated with them. The **MARPOL** also includes provisions governing the vessel design and operation standards.

However, the provisions of the **MARPOL** cannot effectively regulate the operation of oil installations despite the fact that the necessary provisions are provided for in this Convention — for the purposes of the **MARPOL**, the “vessel” means a vessel of any type operated in the marine environment including fixed or floating platforms (paragraph 4, Article 2). Therefore, the Convention shall **cover oil platforms of all types**.

Paragraph 2, Article 9 of the **MARPOL** specifies that any provisions of the **MARPOL** that conflict with the provisions of the UNCLOS with respect to the legal positions of any state relating to environmental and the law of the sea, and the limits of jurisdiction of the coastal state and the flag state shall be recognized as not enforceable.

However, if the floating drilling rig is registered in the register of ships not under the flag of the coastal state, provisions of the **MARPOL** that control the vessel design and construction standards are actually not applicable as they come into conflict with Article 94 of the UNCLOS, which does not allow the coastal states to establish special standards of design, construction, equipment, and suitability **for vessels** in the exclusive economic zone of the coastal state [12].

2. International Convention on Civil Liability for Oil Pollution Damage of 1969

The goal of this Convention is to ensure sufficient compensation to persons who suffer damage as a result of pollution caused by oil leakage and discharge from vessels. The provisions of this Convention apply to floating facilities of any type carrying oil as cargo [13].

The Convention provides for liability of a ship-owner, irrespective of fault, and establishes a certain amount of compensation. However, the provisions of this Convention may be applicable to the floating drilling rigs only if they are actually on the sea (herewith, it will be necessary to prove that the drilling rig belongs to the category of “vessels” and not “artificial structure, installation”). At the same time, the main purpose of the floating drilling rig is to perform drilling operations in the license area and not “actual transportation of oil in bulk as cargo” as required by the Convention.

3. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972

Even if it is assumed the floating drilling rig is a “vessel” [14], the provisions of this Convention apply **only to the intentional (deliberate) waste dumping**.

Conclusions:

Ensuring safe operation of the floating drilling rigs is associated with the uncertainty of their legal status. The possibility to qualify a floating drilling rig as a vessel and its registration in registers of ships under the “flag of convenience” actually deprive the coastal states of exclusive jurisdiction over these installations.

As a result, the coastal state cannot fully exert state control over the safety and technical condition of the drilling rigs. To a large extent, the uncertainty of the legal status of the floating drilling rigs is determined by the fact that they are given insufficient attention in existing international conventions on the law of the sea.

Herewith, the purpose of the floating drilling rig is to develop and explore subsoil resources of the seabed, to perform drilling operations in the licensed area, which is associated with high

industrial and environmental risks. Upon installation at the field of hydrocarbons and fixing to the oil wellhead, it does not have any features of a “vessel”.

Most international treaties governing the pollution of the marine environment by oil are currently applied to tankers and other vessels, but do not cover oil rigs.

In this regard, the legal research carried out by scientists on various aspects of the legal framework of energy facilities including the ones in the oil sector, becomes extremely actual [15]. ■

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11. It was concluded in Brussels on November 29, 1969. The Protocol of 1992 on Amendment of the International Convention on Civil Liability for Oil Pollution Damage of 1969 (as amended on November 1, 2003).
12. According to the provisions of Article 94 of the UNCLOS, in accordance with its internal law, every state exercises jurisdiction and control over vessels flying its flag. With respect to the vessels flying its national flag, every state shall take measures required to ensure safety on the sea, in particular with regard to the design, equipment, manning of the vessels, and inspections.
13. Article 1 of the Protocol of 1992 gives the following definition of the vessel: “the vessel means any marine vessel and a marine floating craft of any type constructed or adapted for transportation of oil in bulk as cargo, provided the vessel capable of transporting oil and other goods is considered to be a vessel only when it actually transports oil in bulk as cargo as well as during any cruise following such transportation unless it is proved that there were no oil remaining after such transportation of oil in bulk on board”.
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