CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976
- recent interpretation by the Mexican Supreme Court of Justice -

This presentation deals with a collision case that is currently pending for resolution by the Mexican Supreme Court of Justice. Because this is an on-going case the names of the vessel and the rig have been omitted.

The facts occurred in Mexican waters of the Gulf of Mexico, particularly in the Cantarell area, in Campeche, which is the major oil field in Mexico.

Early in 2010 a supply vessel owned by a Mexican entity collided with one of the oil drilling rigs located in the Cantarell area. No personal injury was reported by neither of the parties.

I. Limitation Proceedings.

Following the collision the vessel's interests filed a liability limitation proceeding with the District Court in the state of Tabasco, based on the Mexican Navigation Law and the Convention on Limitation of Liability for Maritime Claims, 1976.

In order to approve the constitution of the limitation fund the court summoned the potential creditors. However, the rig's interests, as the main creditor, did not submit in time the required documentation to be considered as creditor in the limitation proceedings. Accordingly, the rig's interests were not admitted to the proceedings. The court eventually declared that there were no creditors recognized under the limitation fund constituted by the vessel's interests.

Following an unsuccessful appeal, the rig's interests filed a further appeal with the District Court under the argument that the vessel's interests are not entitled to the limitation of liability under the Convention on Limitation of Liability for Maritime Claims, 1976, when there is a rig involved in the collision (Article 15, section 5(b)).

The case was called by the authority of the Mexican Supreme Court of Justice as the appeal proceeding involved the interpretation of an international Convention applicable in Mexican territory.

The Article of the Convention subject to interpretation is Article 15, section 5(b), which read as follows[1]:

CHAPTER IV: SCOPE OF APPLICATION

Article 15

1. This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure

[1] Mexico is not part to the 1996 Protocol.

the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State. Nevertheless, each State Party may exclude wholly or partially from the application of this Convention any person referred to in Article 1 who at the time when the rules of this Convention are invoked before the Courts of that State does not have his habitual residence in a State Party or does not have his principal place of business in a State Party or any ship in relation to which the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the flag of a State Party.

2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

(a) according to the law of that State, ships intended for navigation on inland waterways

(b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

3. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to claims arising in cases in which interests of persons who are nationals of other States Parties are in no way involved.

4. The Courts of a State Party shall not apply this Convention to ships constructed for, or adapted to, and engaged in, drilling:

(a) when that State has established under its national legislation a higher limit of liability than that otherwise provided for in Article 6; or

(b) when that State has become party to an international convention regulating the system of liability in respect of such ships.

In a case to which sub-paragraph (a) applies that State Party shall inform the depositary accordingly.

5. This Convention shall not apply to:

(a) air-cushion vehicles;

(b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

Early this year 2013, the First Chamber of the Supreme Court of Justice of Mexico ruled by 3 votes out of 5 that the arguments presented by the rig's interests are valid in the sense that the vessel is not allowed to limit her liability when the collided object is a floating platform constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

Regretfully, the First Chamber of the Supreme Court of Justice did not understand the spirit of the Convention neither the interpretation nor application of their dispositions internationally.

The First Chamber of the Mexican Supreme Court of Justice ruled that the liability limitation proceedings filed by the vessel's interests shall be dismissed as it was also ruled that the Convention is not applicable and therefore the limitation proceedings shouldn't have been admitted by the District Court.

In response to this resolution the vessel's interests filed the necessary appeals along with a motion before the Supreme Court of Justice. The objective of the motion is that the Supreme Court resolves the case in a plenary session. As of this date the motion has not been admitted.

II. Legal Discussion

The main discussion in the present case is to determine whether under Mexican law Article 15, section 5(b) of the Convention means that (i) platforms cannot limit their liability when they result liable in a maritime casualty or (ii) when the damage is caused to the rig the vessel causing the damage cannot limit her liability against the rig.

The main controversy is to determine whether or not the right to limit liability in maritime casualties and claims is valid when a rig has been damaged during a maritime casualty.

According to the interpretation of article 15, section 5(b) of the Convention made by the First Chamber of the Supreme Court, the rigs are excluded from the application of the Convention and consequently any casualty involving a rig excludes the right of the vessel to limit liability. The First Chamber stated that the Convention is not applicable when there is a rig/platform involved, neither to limit the rig's liability (actively) nor to limit the liability of the vessel against the rig (passively).

This is because, based on the reciprocity principle, the First Chamber understands that both parties, vessel owners and rigs, should have the same rights to limit their liability arising from a maritime casualty. The First Chamber considered unfair that only the vessel owner has the benefit to limit their liability while if the rig causes the damage it wouldn't be allowed to limit. Following this reasoning, the First Chamber considers that the Convention makes an unlawful difference that affects directly the rig owner and goes against the principle of justice to be treated equally under the same circumstances.

Regardless of which side one could take, the First Chamber is not considering that the circumstances for the rigs and for the vessels are not the same and that the great difference existing between them caused that under international maritime regulations rigs and vessels have separate and particular treatment.

The First Chamber disregarded that international treaties should be interpreted according to its own uniformity and that there is an international practice and principles that cannot be omitted. For a correct and consistent interpretation of the Convention, the following, among other documents, should have been considered:

- The Travaux Préparatoires of the LLMC Convention of 1976 and its Protocol, 1996
- Jurisprudence on Maritime Conventions issued by the International Maritime Commission, specifically about the LLMC 1976.
- Britannia News Conventions "Convention on Limitation of Liability for Maritime Claims". (The Britannia Steam Ship Insurance Association P&I).
- Marsden, "Collision at Sea", 13 ed., Sweet & Maxwell, London, 2003.
- "Western Regent" (2005), 2 Loyd´s Rep 359.

These documents provide an overview of the correct interpretation of the LLMC Convention, 1976. They state that the owner of the vessel is legally entitled to limit liability regardless that the damaged object is a rig or another maritime object.

Based on the foregoing, it is clear that the exception established in Article 15, section 5(b), is applicable only in case that rigs with specs described in such Article intend to limit their liability. In other words, floating platforms built with the purpose of exploring and exploiting the natural resources of the seabed or subsoil are not entitled to limit their liability under the Convention.

A Minister's view

One of the ministers that did not agree with the final resolution issued by the First Chamber gave a particular dissenting vote to the resolution under the following considerations:

Civil liability arising from maritime casualties must be understood from the perspective that there is a need to limit the amount and/or the extent of the indemnity payable as consequence of the damages caused at sea upon consideration that the risk of damage is particularly high and costs are substantial.

Considering the risk and hazards of the sea adventures, the maritime industry foresees the existence of the right to limit liability in favour of the owners of vessels when any damage or loss arises as consequence of their merchant activities at sea. This maritime risk provides the answer to why the right to limit liability is granted to the owners of the vessels and excludes those who cannot meet seaworthy conditions such as the air-cushion vehicles and floating platforms and rigs.

Indeed, vessels are permanently exposed to causing damages unlike other naval devices (floating platforms and air-cushion vehicles) that just float in the water and which activity is not precisely risky with respect to causing damage to third parties, considering the low incidence (and even amount) of casualties in which they hit other objects.

This is also evidenced by the wording of the Travaux Préparatoires of the LLMC, 1976, that considered the seaworthy of the maritime devices as the main characteristic that determine what has to be considered as "vessel" and in consequence, who will have the right to limit liability. The discussions in such Travaux Préparatorires excluded the rigs,

floating platforms and air-cushion vehicles from the right to limit liability on the basis that they do not comply with the seaworthiness and sea-going condition. All these considerations have been also documented in doctrine.

Accordingly, Article 15, section 5(b) of the LLMC, 1976, excludes rigs from its scope which means that the application of the Convention does not trigger when the damages are caused by the platform and this does not affect the *reciprocity* principle argued by the First Chamber since such *reciprocity* does not exist between individuals or entities which circumstances are different.

Consequently, and according to the opinion of the Minister, the resolution of the First Chamber of the Supreme Court of Justice is inexact since it implies a refusal to grant the right to limit liability to the ship owner.

Current status of legal proceedings

The Supreme Court of Justice is currently analyzing a motion for reconsideration filed against the resolution that denies owner's right to limit its liability and consequently the right to constitute the fund. If admitted, the motion for reconsideration will be resolved by a plenary session. There will be no possibility for further appeals against this resolution.

Whatever the outcome is the final resolution will constitute a precedent that lower courts will not –yet- be forced to apply in similar cases. Under Mexican law it will require 4 more resolutions, uninterrupted and in the same direction, to become a binding criteria.