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The applicability of international labour Conventions offshore: an approach

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On the stormy evening of 27 March 1980, 123 lives were lost as the platform "Alexander L. Kielland" capsized over the Norwegian continental shelf.[1] In November 1979, 72 workers died in an oil rig disaster in the Gulf of Behai over the Chinese continental shelf.[2] Thirteen others had died when the "Ocean Express" rig sank in the Gulf of Mexico on 16 April 1976.[3] These grisly catastrophes serve to bring home the human dimension of an international problem—indeed, a doubly international problem, for not only is its pall felt in all of the many places around the world where the wealth of the marine subsoil is being sought and tapped, but also the questions of jurisdiction and responsibility which arise involve a host of multinational legal complexities, given the often differing nationality of the licensing State, the licensee rig owner, the flag of the rig and the crew members.

Occupational safety has been one of the central concerns of the International Labour Organisation since its inception. The Organisation has adopted a considerable number of international labour instruments on this subject, as well as on social security, wages and hours of work, freedom of association, freedom from discrimination and the right to bargain collectively—all issues which have given rise to social conflict, often bitter and paralysing, on offshore installations. Before considering briefly under what conditions the existing 152 international labour Conventions and 162 international labour Recommendations may be individually applicable offshore, the present article proposes to examine the preliminary question of the extent to which—legally speaking—ILO instruments ratified by governments may give rise to obligations on the part of these governments in respect of offshore installations or, put another way, the bases and degree of international responsibility in labour matters with regard to

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offshore installations. This, in turn, raises the wider question of the extra-territorial application of ratified ILO Conventions.

While all these lines of inquiry evoke interesting problems for legal theorists, we must be careful not to lose sight of the fact that the real issues involved are of a practical social and economic nature and must be approached in this perspective. As the late Director-General, Wilfred Jenks, said,

> The debate on the value and significance of ILO standards poses in a particular context two of the broadest and most vital questions of public policy which confront the modern world: the place of law in the reconciliation of conflicting economic interests, the adjustment of social tensions and the conduct of industrial relations; and the place of law in world affairs. These are not questions of legal principle for lawyers; they are practical questions for statesmen and men of affairs. They involve policy, the relationship of policy to dialogue and administration, and the place of law in giving effect to policy and providing a framework for dialogue and administration.[4]

This framework is, however, not always easy to define, the more so when, as is so often the case in rapidly developing areas of the law, it has one stanchion firmly planted in the past while the other is somewhere in the mists of the future.

Traditionally it was rare for workers to be employed outside the territory in which their employers were based and special rules of national and international law were evolved to deal with their particular status on a case-by-case basis (e.g. seafarers). In the modern world, however, the mobility of workers, on the one hand, and the complexity of employment relationships, the mutual obligations of which government is defining and regulating to an ever greater extent, on the other, have stretched the traditional rules to the breaking point so that there is an often chaotic overlay of laws, regulations and obligations applying potentially to the same worker or employer. Nowhere is this more evident than in connection with offshore installations.

The position under the ILO Constitution

To what extent are the uniquely international solutions contained in international labour instruments applicable in law to the offshore situation? The first inquiry must, of course, be addressed to those provisions of the ILO Constitution which define the obligations attaching to ILO instruments. Two provisions are of particular importance. The first is article 19 (5) *(d)*, which states that, in the case of a Convention,

> if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention.

The definition of the ratifying State's obligation is thus not expressed in terms of geography. The implication is simply that the ratifying State must

use the means within its power to make the ratified international standards effective. There is, however, clearly a limit to a given State's effective control and this is usually expressed by the notions of territoriality or jurisdiction. The relevance of the latter concept to obligations under the terms of the ILO Constitution has been described as follows:

> As was pointed out on another occasion by a Commission of Inquiry set up in accordance with article 26 of the Constitution, "the obligations resulting from ratification of an international labour Convention, like all such obligations arising under general international Conventions, are limited to matters arising within the jurisdiction of the party to the Convention upon which the obligation rests". This principle is expressly recognised in the English wording of article 24 of the Constitution and article 3, paragraph 2 *(f)*, of the Standing Orders [adopted by the Governing Body concerning the procedure for discussion of representations], which indicates that the representation must allege that the Member has failed to secure the effective observance "within its jurisdiction" of a Convention to which it is a party.[5]

It must be recalled in this connection that the English wording of article 24 of the Constitution makes specific provision for a particular procedure if "any of the Members has failed to secure in any respect the effective observance *within its jurisdiction* of any Convention to which it is a party", while the French text is couched in rather more general terms ("... l'un quelconque des Membres n'aurait pas assuré d'une manière satisfaisante l'exécution d'une convention à laquelle ledit Membre a adhéré"). In the absence of any decision of the International Court of Justice which, pursuant to article 37 of the ILO Constitution, is the only body which can determine authoritatively any question or dispute relating to the interpretation of the Constitution, the only precedents purporting to resolve the apparent divergence of the English and French texts are those referred to above, but since these have the endorsement of the eminent members of the Committee and the Commission referred to in note 5, as well as of the Governing Body itself, it can only be assumed that they are a correct reflection of ILO constitutional practice.

The concept of "jurisdiction"

Reading articles 19 and 24 of the Constitution together, therefore, it may be concluded that a State which ratifies an international labour Convention is obliged to take such action as may be necessary to give effect to its terms within the State's jurisdiction and the first question is, then, does the ratifying State have jurisdiction enabling it to secure the effective observance of the Convention? Jurisdiction may be concurrent both geographically and with respect to subject-matter, the most common examples being that of a ship flying the flag of one country while in the port of another[6] and that of federal States where the federal authority regulates certain aspects of a given question while other aspects are left to the competent authorities of the constituent units. It is this feature of juris-

diction (to be non-exclusive in a territorial sense) which has made it so useful in the resolution of the manifold problems dealt with by the United Nations Conferences on the Law of the Sea.

Generally speaking a distinction can be made in the type of jurisdiction which States exercise over territorial waters, the continental shelf and contiguous zones. As regards territorial waters, the situation is fairly standard. As the name suggests, these expanses of ocean are treated as if they were the territory of the coastal State, whose law is therefore applicable to them in all of its parts. The only limitation which is generally recognised on the absolute control of a State over its territorial waters is that it is subject to a right of innocent passage for ships of other nations and that while the latter are sailing through territorial waters they carry with them, so to speak, the law of their flag State as regards matters occurring on board ship. Thus jurisdiction over terms and conditions of employment aboard fishing and research vessels, for instance, is vested in the State whose flag the ship flies on its mainmast and it is generally recognised that the State through whose territorial waters the vessel is passing has no jurisdiction over these terms and conditions. If, on the other hand, the vessel in question actually engages in fishing or research within the territorial waters of another State, it is no longer engaged in "innocent passage" and its activities are subject to a varying extent to the jurisdiction of the coastal State. This would still not normally extend to matters such as hours of work, social security and wages, but could do so in certain circumstances, e.g. if licence requirements dealt with such matters or if legislation made fishing rights subject to certain stipulations as to labour conditions.

As regards the continental shelf, which is the area of greatest interest in the "offshore" context, the situation is somewhat different and far less clearly defined. Generally speaking, coastal States have not hitherto claimed jurisdiction over the waters beyond their territorial sea (except for ecological purposes in some cases). They do, however, usually lay claim to the exercise of exclusive rights over that part of the ocean floor known as the continental shelf. The general principles are expressed in the Convention on the Continental Shelf:[7]

> The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources [Article 2, paragraph 1].
>
> The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters [Article 3].
>
> ... the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices. ... Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State [Article 5, paragraphs 2 and 4].

Of particular interest to the present inquiry is, of course, the mention of the "jurisdiction" of the coastal State over the installations and devices outside its territorial waters.[8]

What is the nature of this "jurisdiction"? The Convention is silent on the matter so it is useful to examine national practice. Leaving aside for the moment the question of what constitutes an "installation and device" (as opposed to a "ship"), it appears that different States have extended their jurisdiction over the continental shelf to varying degrees and for differing purposes.

Brazil, for example, incorporates the shelf into its national territory:

> Express recognition is hereby taken that the underwater shelf, where it corresponds to the continental and insular territory of Brazil, is an integral part of that same territory, under the jurisdiction and exclusive dominion of the Federal Government.[9]

Ecuador, under the 1967 Constitution, takes "ownership":

> The continental shelf, and minerals and other substances that constitute deposits or concretions the composition of which differs from that of the subsoil, shall likewise belong to the State. This right of ownership shall also be inalienable and imprescriptible, but concessions may be granted for the appropriate exploration and exploitation of such minerals or substances in conformity with the law.[10]

France, without declaring the shelf to be its territory, extends to it the application of its laws by territorial fiction during such time as certain activities are being carried out there:

> Subject to the provisions of the present Act and of the regulations made thereunder, French laws and regulations apply on the installations and devices defined in section 3 during such time as the activities mentioned in section 2 [exploration and exploitation of natural mineral and living resources] are carried out thereon as if such installations and devices were situated on the territory of Metropolitan France. They are also applicable, with the same reservations, to the installations and devices themselves.[11]

The legislation of the USSR, on the other hand, takes a somewhat more limited position:

> The USSR exercises sovereign rights over the continental shelf adjacent to the outer limit of the territorial sea of the USSR for the purpose of exploring it and exploiting its natural resources,[12]

while Senegal and a number of other countries limit their claims to "rights of exploration and exploitation".[13]

Offshore obligations resulting from ratification

It now becomes necessary to consider to what extent these varying approaches to control of the continental shelf may affect a country's obligations under ratified international labour Conventions. If a State incorporates into its national territory contiguous areas so that the latter become an integral part of its national territory (leaving aside the question of whether other States dispute its right so to act), it would subsequently be

estopped from arguing that it had no obligation to give effect to international treaty obligations binding on it within the newly incorporated territory. Put more concretely, if pursuant to article 24 of the ILO Constitution quoted above, a representation were made to the International Labour Office by an industrial association of employers or of workers that the State in question had failed to secure effective observance of a ratified Convention in respect of conditions on offshore installations fixed to the continental shelf, the government concerned could not in law refute the allegations on the basis that its national law did not extend to the area in question,[14] when its legislation contained explicit provisions to the contrary. Other questions may arise, of course, such as whether the Convention by its own terms is applicable or whether the workplace is fixed to the shelf or merely floating above it (these issues will be dealt with subsequently) but the basic principle remains that if a State defines its territory (and thus explicitly or implicitly its "jurisdiction") as including the shelf, it must surely apply there, as in all other parts of its territory, the international labour Conventions otherwise applicable thereto which it has ratified.

The position is not necessarily the same with respect to a State affirming "ownership". One State may after all "own" land which is under the jurisdiction of another State (e.g. premises purchased abroad by governments for various purposes). In the case of the continental shelf, however, "ownership" does mean that the State claiming it sees itself as in a position to refuse to allow anyone else to operate offshore installations in the area without its permission. The corollary to this is that it can impose such conditions as it wishes upon those who seek to undertake these operations. Does this constitute "jurisdiction"? Certainly it means that the State in question *can* "take such action as may be necessary to make effective the provisions of such Convention" within the meaning of article 19 (5) *(d)* of the ILO Constitution quoted above. Given the "jurisdictional" rather than "territorial" approach of the constitutional provisions discussed, it could well be argued that the fact that a State has placed itself in a position to be able to apply international labour standards in respect of a certain area or activity suffices to require that it do so. The supervisory organs of the ILO have not yet expressed any opinion as to whether such a proposition should be considered consonant with the terms of the Constitution but this would seem to be at the very least a position defensible in logic and in law, the more so in the light of the legal vacuum which would otherwise result, a phenomenon which the law, like nature, abhors.

The soundest solution is probably to treat "ownership" in the same manner as "jurisdiction". It should first be ascertained how the State in question exercises the rights it claims. If, for example, it has established its jurisdiction over all exploration and exploitation activities then, under the terms of the ILO Constitution, it would be obliged to give effect to the Conventions which it has ratified in respect of such activities, either by legislation, standard leasing or concession conditions, or in any other

manner appropriate to national usage and the practice in the industry. This obligation would not, however, necessarily extend to the regulation of other activities over which it has not extended its jurisdiction, such as maintenance and repair work on submarine cables lying on the shelf outside territorial waters. The logical conclusion, and the one most consonant with the principle of international law which holds that terms imposing international obligations should be read restrictively rather than extensively,[15] is that in so far as a State exercises its "ownership" by imposing conditions on its lessees, licensees or concessionaries which are tantamount to bringing the latter's operations under the jurisdiction of the State in its capacity as landlord, then it may properly be treated for the purposes of the ILO Constitution as having extended its "jurisdiction" to the activities concerned and hence as having incurred an obligation to give effect to ratified Conventions in their respect.

Let us suppose, however, that the State considers its "ownership" much more restrictively and that it limits itself to granting, for example, exploration rights or drilling rights, for a specified amount of money and a specified length of time, guaranteeing that in return for such payment it will not intervene or interfere with the grantee's operations nor will it let anyone else do so. In such a case not only does the State not extend its laws to the area or activities concerned, it specifically guarantees that it will not do so. Do membership in the ILO and the resulting obligation to observe all of the provisions of the ILO Constitution prevent a State from taking this approach? Put another way, is there an obligation under the ILO Constitution for member States to extend the application of ratified ILO Conventions to offshore installations whatever position the States themselves have taken with regard to their rights over the continental shelf?

Within its territory a State has legislative competence, so to speak, whether it wants it or not. If it ratifies an international labour Convention it must ensure its application, and while this does not mean, as the Committee of Experts on the Application of Conventions and Recommendations has pointed out on numerous occasions, that it must pass legislation provided that the terms of the instrument are otherwise applied as a result, for example, of collective agreements, arbitration awards or national practice, it does mean that in cases where such other means of application are not used, there is a residual obligation on governments to resort to legislation.

There does not seem to be any such presumption of legislative competence with respect to areas beyond the territorial waters of the State, however. By affirming ownership of the soil or certain rights connected with it, the State merely puts itself in a position of being necessarily one of the interested, and usually contracting, parties in any agreement or arrangement to exploit certain resources. This contractual, rather than jurisdictional, position is even clearer when, as in a number of cases,

"ownership" is vested not in the State but in the President[16] or the Minister of Energy.[17]

The International Court of Justice has given an authoritative statement on the nature of a coastal State's rights over the corresponding parts of the continental shelf:

> ... the most fundamental of all the rules of law relating to the continental shelf ... [is] that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the sea-bed and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared (and many States have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised. To echo the language of the Geneva Convention, it is "exclusive" in the sense that if the coastal State does not choose to explore or exploit the areas of the shelf appertaining to it, that is its own affair, but no one else may do so without its express consent.[18]

It may be deduced from this statement of "the most fundamental of all of the rules of law relating to the continental shelf" that a State's ownership consists of a group of "sovereign rights" which exist whether or not the State chooses to exercise them. The concept of sovereign rights is not, however, necessarily coextensive with the concept of "jurisdiction" and it would no doubt be carrying the meaning of the Court in the passage quoted above rather too far to argue that because every coastal State has *ipso facto* and *ab initio* sovereign rights for the purpose of exploring the sea-bed and exploiting its natural resources, it must consequently be obliged to ensure that all relevant international labour Conventions ratified by it are given effect in operations on its continental shelf. It must surely be a question of fact, for which the answer must in the first instance be sought in the constitutional order and national legislation of the State concerned, whether the latter has chosen to exercise its sovereign rights in such a manner as to constitute an extension of its jurisdiction.[19]

The position which seems most consonant with generally established principles of international law, the decisions of the International Court of Justice and the Constitution of the ILO is therefore the following: if the State treats the continental shelf as part of its national territory or if it has extended to the shelf all of its national legislation, it must ensure that effect is given on the shelf to such international labour standards as it has bound itself to apply; if the State limits its jurisdiction to certain activities, areas or operations, then it is only obliged to give effect to ratified Conventions in respect of such activities, areas or operations and it will be a question of fact in each case, for the supervisory organs of the ILO, amongst others, to appreciate whether a State must be deemed to have taken "jurisdiction" in a particular area. Clearly, if a State has claimed that its general or special labour legislation is applicable to offshore operations or if it incorporates its labour (or social security) legislation or parts of it into the lease/grant/

concession agreement, this would seem to constitute conclusive evidence of its having taken "jurisdiction" in the matter, since any modification in its labour law would apply *ipso jure* to operations pursuant to the agreement.

To the notions of territorial waters and continental shelf which have become fairly well defined in international law, the Third United Nations Conference on the Law of the Sea proposes to add that of the "exclusive economic zone". It is far too early to judge whether this concept will become so generally accepted as to constitute a principle of international law but there seems to be every likelihood that it could do so. It is of interest, therefore, to consider briefly the position in the light of the latest negotiating text being examined by the Conference, Article 56 of which, entitled "Rights, jurisdiction and duties of the coastal State in the exclusive economic zone", provides (in part):

> 1. In the exclusive economic zone, the coastal State has:
>
> *(a)* sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
>
> *(b)* jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment.[20]

It should be noted that the "sovereign rights" here defined are more extensive than those over the continental shelf (the negotiating text takes over verbatim the International Court of Justice's definition of the latter as quoted above[21]) since they extend also to the "superjacent waters" and generally to all activities connected with economic exploitation and exploration. It will be observed also that a distinction is drawn between the "sovereign rights" defined in subparagraph *(a)* and the "jurisdiction" recognised in subparagraph *(b)*. While it is no doubt premature to embark on any detailed consideration of what the impact of ratification of the Convention on the Law of the Sea might be on a State's obligations under the ILO Constitution (assuming that the Conference retains the provisions mentioned in the same form as that in which they appear in the latest negotiating text), it can at least be surmised that the same general principles as have been derived for application on the continental shelf would seem appropriate in respect of the exclusive economic zone with which it will, in many cases, be virtually coextensive.

Problem areas

A problem which arises in the case of the continental shelf but which would be of far less importance in respect of the exclusive economic zone (precisely because of the mention of "superjacent waters" and "activities

for [rather than *of*] exploitation", etc.) concerns the status of different types of installations, on the one hand, and of the same type of installation engaged in different operations, on the other. Some drilling platforms, for example, are fixed and rest firmly planted on the continental shelf, while others float above it. Even fixed platforms may be moved and this is necessarily the case before their installation on the particular site. To complicate matters even further there are "semi-mobile" and "semi-fixed" hybrids.

Using the approach outlined above, the first issue in such cases would have to be to determine whether the State purports to exercise "jurisdiction" over such platforms without making any distinction as to whether they are floating or fixed.[22] This issue will frequently be complicated by the fact that some other State may simultaneously claim to exercise jurisdiction, especially over a floating platform or one not yet fixed, because it is flying its flag or registered in its territory, either because of special legislation on the subject or because the floating object falls within the national definition of a ship. This matter may be of significance not only in the context of possible conflict of laws but even within the national framework, since the status of the workers may change substantially according to whether they are deemed to be "seafarers" or not.[23]

For countries which have incorporated the continental shelf within their national territory, the question has to be posed in somewhat different terms. The best analogy is no doubt that concerning the theory of fixtures on land for, as the International Court of Justice has pointed out,

> ... what is involved is no longer areas of sea, such as the contiguous zone, but stretches of submerged land; for the legal regime of the continental shelf is that of a soil and a subsoil, two words evocative of the land and not of the sea.[24]

While vessels or installations are sailing above the shelf, therefore, they would appear to have to be regarded as coming under the legal regime of the sea and it is very doubtful whether a State can be deemed to have extended its jurisdiction to them merely by dint of having incorporated the underlying continental shelf into its national territory. Once, however, these floating objects become attached to the "soil", whether temporarily or permanently, they may legitimately be considered to be "on" the territory of the State in question for the purposes of the application of national law. When there is no such attachment to the soil, further questions affecting jurisdiction, such as whether they are engaged in "passage" or in "innocent passage", will arise.[25] Little more can be done at this stage of legal reflection on such matters than to evoke the type of questions which should be considered.

The scope of particular Conventions

The first and main line of inquiry in this article has been with respect to the general principles which can be derived from international law and from the Constitution of the ILO on the question of the applicability of

ratified Conventions offshore. A second question of equal practical importance is whether the Conventions are applicable under their own terms.

There can be no general answer because virtually all international labour Conventions define their scope differently. It would be tedious to examine each instrument in turn but it may be useful to discuss some of them as examples of the issues involved.

The instruments of general purport in the area of occupational safety and health, such as the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977, usually contain very wide scope provisions without any limitation as to territoriality. The draft Occupational Safety and Health Convention, which was due to come up for second discussion and probably adoption at the 67th Session of the International Labour Conference (June 1981), and which could be of great significance as regards offshore operations, has a similarly wide scope.

Nor do the basic human rights instruments which have been adopted by the International Labour Conference in the areas of forced labour, discrimination and trade union rights[26] contain anything in their terms which would derogate from the general principles of applicability defined above. The Freedom of Association and Protection of the Right to Organise Convention, 1948, for instance, provides in its first Article that:

> Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions

and goes on to define the rights of "workers and employers, *without distinction whatsoever*". There is thus no territorial distinction and for this reason the instrument is as applicable on ships and aircraft as on land. Nothing in its terms would make it inapplicable offshore.

Similarly, in the field of social security, the Employment Injury Benefits Convention, 1964, contains nothing which would restrict its extra-territorial effect:

> National legislation concerning employment injury benefits shall protect all employees, including apprentices, in the public and private sectors, including co-operatives ... [Article 4 (1)]

but it does permit any Member ratifying it to exclude from its application "seafarers" by a declaration accompanying its ratification. If a State has made such a declaration upon ratification, the issue will arise as to whether workers on offshore installations, or certain categories of such workers, may properly fall within the category of "seafarers" both under the terms of the Convention itself and pursuant to national legislation on the subject.

A very different question arises under the provisions of the Equality of Treatment (Social Security) Convention, 1962, not because of any limitation of its scope as such but because of the nature of the basic obligation which the instrument imposes:

Each Member for which this Convention is in force shall grant *within its territory* to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals ... [Article 3 (1)].

The decisive issue here will be whether the State considers its continental shelf to be its "territory" or not. If it does so, it will presumably be obliged to recognise the rights of foreign offshore workers as being the same as if they were working on its mainland. If, on the other hand, it has not incorporated the shelf into its territory but has merely extended its "jurisdiction" to the area, there will be grounds for arguing that it is under no obligation to extend equality of treatment to offshore workers outside its territorial waters.

A similar, but in a sense even more complex, problem is posed by the terms of the Minimum Age Convention, 1973, according to Article 2 (1) of which

Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work *within its territory and on means of transport registered in its territory* ... .

While this is undoubtedly one of the central provisions of the instrument, other Articles of great importance do not contain what might be termed a "territorial limitation", e.g. Article 3 (1):

The minimum age for admission to *any type of employment or work* which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

In respect of provisions such as the latter there seem to be no grounds for assuming that offshore installations would not be included in their scope in so far as the jurisdictional test is satisfied. As regards the requirements of provisions such as Article 2 (1), however, not only may the question of what is "territory" be put, but also that of whether a particular type of offshore installation may be properly described as a "means of transport" (which is not otherwise defined in the instrument itself), as well as of what constitutes "registration".

It must be remembered also that until the fairly recent burgeoning of offshore activities it was quite normal that these should not have been in the minds of the drafters of international labour instruments, so that mention or otherwise of territoriality was directed at some quite different purpose, such as avoiding the imposition on national social security institutions, for example, of obligations to make certain payments abroad, i.e. within the territory of some other State. Whatever the position under earlier instruments, depending upon the interpretation which the supervisory organs of the ILO place upon their wording, it is clear that future sessions of the International Labour Conference should be aware that the mention of "territory" may ultimately result in disparities of treatment for offshore workers active in different parts of the world.

The conclusions reached in the present paper cannot claim to be anything more than speculative. Not only has the International Court of

Justice, which under the terms of the ILO Constitution is the only body empowered to give an authoritative interpretation thereof, not had cause to consider any of the issues raised above, even the Committee of Experts on the Application of Conventions and Recommendations of the ILO itself has not yet had occasion to formulate any general principles. Nevertheless, the matter is one which can only be of increasing practical importance as offshore activities diversify and multiply, and the need for internationally acceptable solutions in relation to such activities has received most eloquent recognition by the Law of the Sea Conference process itself, which has gone on in spite of daunting complications and disheartening setbacks, sustained by the conviction that it is only through international regulation that any lasting progress can be achieved. Similarly, international labour standards may be one of the best guarantees for offshore workers that, in addition to the solitude, separation and danger which they have to endure, they are not subjected to labour conditions which are worse than those of their colleagues elsewhere; and such standards may provide governments with a significant tool to promote participation and co-operation, especially in safety matters, so that the appalling disasters that afflict the offshore sector can be more easily avoided.

Notes

[1] Official figure given by the Norwegian Minister of Local Government and Labour to the Storting on 30 April 1980.

[2] *The Times* (London), 24 July 1980.

[3] *New York Times*, 17 Apr. 1976.

[4] In an address to the Industrial Society, London, on 8 October 1969 as reprinted in ILO: *Social policy in a changing world* (Geneva, 1976), pp. 86–87.

[5] ILO: *Report of the Committee appointed by the Governing Body to consider the representation presented by the World Federation of Trade Unions under article 24 of the Constitution alleging non-observance of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), by the Federal Republic of Germany, Italy, the Netherlands and Denmark* (Geneva, 1978; doc. GB.205/8/7), para. 12; "Report of the Commission appointed under article 26 of the Constitution of the International Labour Organisation to examine the complaint filed by the Government of Ghana concerning the observance by the Government of Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105)", in *Official Bulletin* (Geneva, ILO), Apr. 1962, Supplement II, para. 720. This view is also consonant with accepted canons of interpretation of treaties for which two or more languages are equally authentic: "Where one text is open to several interpretations, and the other to only one, preference is to be given to the latter" (D. P. O'Connell: *International law* (London, Stevens and Sons, 2nd ed., 1970), Vol. I, p. 258 and authorities there cited).

[6] In this respect the Merchant Shipping (Minimum Standards) Convention, 1976, represents a significant development in the definition of jurisdiction for the purposes of the application of social legislation.

[7] Done at Geneva on 29 April 1958; see *Treaty Series* (New York, United Nations), Vol. 499 (1964), pp. 312 ff.

[8] While the principles contained in the Convention seem to have enjoyed general recognition, it cannot be maintained that they necessarily represent rules of customary international law. The International Court of Justice has expressly reserved its opinion on the matter; see International Court of Justice: *North Sea continental shelf cases*, Reports of Judgments, Advisory Opinions and Orders, 1969, para. 60.

[9] Decree No. 28.840 of 8 November 1950; see "National legislation and treaties relating to the territorial sea, the contiguous zone, the continental shelf, the high seas and to fishing and conservation of the living resources of the sea", in *United Nations Legislative Series* (New York, 1970; ST/LEG/SER.B/15), p. 338. Cf. also Guatemala, article 3 of the Constitution, ibid., p. 86; and Mexico, article 42 of the Constitution, ibid., p. 380.

[10] Article 55 of the Constitution, ibid., p. 350. Cf. also Kuwait, preambular paragraph 1 of the oil concession agreement dated 15 January 1961 between the Ruler of Kuwait and Kuwait Shell Petroleum Development Co. Ltd., ibid., p. 374; and Venezuela, Act of 27 July 1956 concerning the territorial sea, continental shelf, fishery protection and air space, ibid., p. 472.

[11] Act No. 68-1181 of 30 December 1968 concerning the exploration of the continental shelf and the exploitation of its natural resources, in *Journal officiel de la République française*, No. 307, 31 Dec. 1968, pp. 12404 ff., section 5; also reproduced in *United Nations Legislative Series*, op. cit., pp. 356-357. Cf. United Kingdom, Continental Shelf Act, 1964, section 3, ibid., p. 446; United States, Outer Continental Shelf Lands Act of 7 August 1953, section 1331, ibid., p. 462.

[12] Decree of the Presidium of the Supreme Soviet of the USSR, 6 February 1968, section 1, ibid., pp. 441-442. Cf. also Denmark, Royal Decree of 7 June 1963 concerning the exercise of Danish sovereignty over the continental shelf, ibid., p. 344, and Act No. 259 of 9 June 1971 concerning the continental shelf [Greenland] (as amended in 1972); see "National legislation and treaties relating to the law of the sea", in *United Nations Legislative Series* (New York, 1974; ST/LEG/SER.B/16), p. 139; Federal Republic of Germany, Declaration of 20 January 1964 by the Federal Government, ibid. (1970), p. 351; Iceland, Act of 24 March 1969 regarding the sovereign rights of the Icelandic State over the continental shelf around Iceland, ibid., p. 364; Iraq, Official proclamation of 23 November 1957, ibid., pp. 368-369; Norway, Royal Decree of 31 May 1963 relating to the sovereignty of Norway over the sea-bed and subsoil outside the Norwegian coast, ibid., p. 393, and section 1 of the Act of 21 June 1963 relating to the exploration and exploitation of submarine natural resources, ibid., p. 393; Philippines, Proclamation No. 370 of 20 March 1968 by the President of the Philippines, ibid., p. 422; Yugoslavia, Law of 22 May 1965 on Yugoslavia's marginal seas, contiguous zone and continental shelf, section 21, ibid., p. 473.

[13] Act No. 61-51 of 21 June 1961 concerning the delimitation of the territorial waters, the contiguous zone and the continental shelf off the coast of Senegal, ibid., p. 431. Cf. also Finland, Law No. 149 concerning the continental shelf (5 March 1965), ibid., pp. 354-355; Italy, Act No. 613 of 21 July 1967, ibid., pp. 370-373; Ivory Coast, Decree No. 67-334 of 1 August 1967, section 3, ibid., p. 95; Malaysia, Continental Shelf Act, 1966 (28 July 1966), section 3; ibid., p. 376; Mauritania, Act No. 62.038 of 20 January 1962 enacting the Merchant Marine and Deep-Sea Fishing Code, as amended by Acts Nos. 63.148 of 19 July 1963 and 67.023 of 21 January 1967, Ch. V, section 2, ibid., p. 379; New Zealand, Continental Shelf Act, 1964, section 3, ibid., p. 389; Sweden, Act No. 314 of 3 June 1966 concerning the continental shelf, ibid., pp. 437-441.

[14] As to the applicability of the doctrine of estoppel in relation to international law obligations regarding the continental shelf, see International Court of Justice, op. cit., para. 30.

[15] As to the effects of this "presumption against derogation from sovereign freedom", see, for example, O'Connell, op. cit., Vol. I, pp. 256-257.

[16] As, for example, in Ghana, Mineral Act, 1962 (Act No. 126 of 14 June 1962); see *United Nations Legislative Series* (1970), p. 359.

[17] Cf. Ireland, Continental Shelf Act, 1968 (Act No. 14 of 11 June 1968), section 2 (1).

[18] International Court of Justice, op. cit., para. 19.

[19] In this connection it is interesting to note also that while the ILO does not permit ratification of international labour Conventions subject to reservations, it has, on certain occasions, recognised the validity of ratifications which exclude application of the Convention to certain parts of the national territory, even in the absence of a specific provision in the Convention envisaging such limitation. See, for example, the British Foreign Office's letter of 25 June 1949 to the ILO Director-General, transmitting the United Kingdom's ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948, and stating that it did not extend to Northern Ireland. This must be taken as an indication of the extent to which the International Labour Organisation is prepared to defer to a State's own determination of the limits of its "jurisdiction" at the time of ratification in respect of the

application of ratified Conventions. See *Official Bulletin*, 31 Dec. 1949, p. 397; and "Written statement of the International Labour Organisation", in International Court of Justice; *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory opinion of May 28th, 1951, Pleadings, Oral Arguments, Documents, pp. 230 and 271.

[20] United Nations, Third Conference on the Law of the Sea: *Draft Convention on the Law of the Sea* (Geneva, 1980; doc. A/CONF.62/WP.10/Rev. 3), p. 21.

[21] Ibid., Article 77, p. 32.

[22] E.g. France, Act No. 68–1181 cited above in note 11, sections 2, 3 and 5.

[23] Few countries have yet dealt with this question in their legislation. France has done so in respect of social security; see Act No. 68–1181 cited above, section 9, giving the worker an option. For an extensive discussion of the situation in the United Kingdom, see J. Kitchen: *Labour law and offshore oil* (London, Croom Helm, 1977), especially Ch. 2.

[24] International Court of Justice: *North Sea continental shelf cases*, op. cit., para. 96 *in fine*.

[25] For an attempted codification of the notions of "passage" and "innocent passage", see United Nations, Third Conference on the Law of the Sea, op. cit., Articles 17 to 32.

[26] Forced Labour Convention, 1930; Abolition of Forced Labour Convention, 1957; Freedom of Association and Protection of the Right to Organise Convention, 1948; Right to Organise and Collective Bargaining Convention, 1949; Discrimination (Employment and Occupation) Convention, 1958.