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ANY OTHER BUSINESS

Proposal to add a new work programme item to address liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation

Submitted by Indonesia

SUMMARY

Executive summary: This document contains a proposal for a new, unplanned output, work programme item following the accident at the Montara well offshore oil platform, resulting in damage to the marine environment, and to the social and economic life of the communities along the coast of the Timor Sea, involving Indonesia and Australia

Strategic direction: 7.2

High-level action: 7.2.2

Planned output: No related provisions

Action to be taken: Paragraph 17

Related document: MEPC 60/22, paragraph 1.7

Background

1 At the opening session of MEPC 60 (22 to 26 March 2010), the Indonesian delegation made a general statement regarding an accident at the Montara offshore oil platform located in Australian waters resulting in a significant release of oil into the Timor Sea.

2 Following the MEPC report in document MEPC 60/22, and further to consultation with the Legal Affairs Division of IMO, it is considered that this subject is within the competence of the Legal Committee rather than the MEPC.

The accident and resulting damage

3 On 21 August 2009, a well on the Montara offshore oil platform located in the Australian Exclusive Economic Zone, at position 12° 41' South latitude and 124° 32' East longitude (see map at annex 1), blew out during the drilling of a new well on the platform. The rig and platform were immediately evacuated as gaseous hydrocarbons and oil were released uncontrolled into the air and sea. The rig and platform are understood to be owned and operated by PTTEP Australasia, a subsidiary of the PTT Exploration and Production Public Company Limited, a Thai-owned petroleum exploration and production company.

4 According to the Australian Maritime Safety Authority (AMSA) reports, by 30 August 2009, oil slicks and sheen had spread over 1,750 square miles of ocean, in an area characterized as a "marine life superhighway". This refers to the abundance of coral reefs and marine biodiversity hotspots in the region, in addition to a migration corridor for whales and turtles and other migratory species.

5 Following the accident, AMSA coordinated the spill response within its waters. Under the existing framework for bilateral co-operation on oil pollution preparedness response of 1996, the Australian Government also informed the Indonesian Government about the accident, including information on its efforts in responding to and mitigating the resulting oil pollution.

6 However, within days, oil slicks and sheen had extended across 5,800 square miles and had entered Indonesian waters. As a result, the spread of weathered light crude oil was discovered 38 miles to the southeast of Rote Island off Indonesia, the closest village to the Montara oil rigs.

7 Given that the spill was reported to have entered waters under Indonesia's jurisdiction, the National Oil Spill Response Team was deployed to observe and assess the impact of the oil spill on Indonesia's waters in the area and the marine ecosystem therein. The collection of samples and water quality monitoring have also been conducted, followed by laboratory analysis of those samples.

8 It is understood that data interpretation of oil spill source identification is not an easy task to accomplish. Because petroleum is a complex mixture of thousands of different organic fossil compounds, two refined oils of the same type can differ because of differences in the characteristics of their crude stocks and variations in refinery processes. Scientists are now able to develop methodologies to eliminate erroneous suspect sources as well as pinpointing the actual source in a complex oil pollution investigation in "the fingerprinting process".

9 Through laboratory studies by relevant institutions on tarball, sediment and oil sampling from the Montara platform in Australia, the Government of Indonesia has found that the oil spill from Montara wellhead has damaged the marine environment in Indonesia's waters in the Timor Sea. Furthermore, it has caused socio-economic damage to the coastal communities whose living depends on the sea and its living resources. The total catch of fishermen in Kupang, the closest Indonesian village to the affected area, has drastically decreased in the period following the Montara incident. A reduction in the production of seaweed in the affected coastal area during the period from September 2009 to January 2010 has also been observed.

10 There is now a need to determine and quantify the long-term damage to the marine ecosystem in the area; in particular, to the bounty of coral reefs and biodiversity, which serve to support the live circle of marine living resources and the migratory species living therein. Following the Montara accident, it is important that the affected countries in the region continue the monitoring and analysis of the long-term impact of the oil pollution. It is useful, for instance, to note the use of dispersants.

Limits of Liability

11 We are all aware that every offshore drilling company is obliged to have insurance in case of accidents, to cover marine environmental damage caused by oil drilling operations. This is usually determined in accordance with the regulatory limits set by national bodies which regulate offshore drilling in the respective country and may be, in certain cases, present in regional arrangements/agreements. However, insurance companies may have limitation of liability to cover the cost, and this may vary, according to national law, in the absence of a uniform international standard.

12 A similar accident occurred eight months later, namely, the explosion at Deepwater Horizon and the resulting oil spill in the Gulf of Mexico, involving BP, in the waters of the United States. A large company such as BP could, perhaps, find the necessary funds to cover all damages, including environmental damage and the socio-economic impact on people in the vicinity of the accident. It could be very different if the accident involved smaller companies, subject to different State authorities.

13 The International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 1992) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND 1992) together provide the international liability and compensation regime for pollution damage resulting from spills of persistent oil from tankers, whether carried on board as cargo or in the bunkers. This regime has benefited many parties. Under CLC 1992, the owner of a tanker is liable to pay compensation up to a certain limit for oil pollution damage, following a release of persistent oil from its ship. If that amount does not cover all the admissible claims, further compensation is available from the IOPC Fund.

New work programme item and planned output for the next biennium (2012-2013)

14 In line with guidelines on work methods and organization of work of the Legal Committee, Indonesia invites the Committee to take into account the following:

Scope of proposal

- .1 There are no treaties addressing the consequences of trans-border pollution caused by offshore exploration and exploitation. Indonesia believes that developing an international instrument to address the question of liability and compensation in such cases is the best way of responding to similar problems occurring in the future.
- .2 In this connection, the Legal Committee is also requested to consider the possibility of establishing a supplementary fund regime. The main elements that could be included in the proposed liability and compensation regime for oil pollution damage resulting from offshore oil exploration and exploitation activities are listed in annex 2 to this document.

Need or compelling need

- .3 Indonesia believes that the occurrence of accidents, such as those at the Montara wellhead oil platform and the Deepwater Horizon oil rig, demonstrate that there is a compelling need to establish an international regime for liability and compensation for oil pollution damage from offshore drilling activities in connection with exploration and exploitation of oil.

Benefits which would accrue from the proposal

- .4 The primary benefit would be an internationally-agreed, uniform mechanism to address the consequences of oil pollution damage resulting from similar accidents. This may have the additional benefit of ensuring prompt and adequate compensation to the victims.

Priority and target completion date

- .5 This should be considered as a high-priority item, with a target completion date of 2013, with entry into force in 2015, or as soon as possible thereafter.

Is the subject of the proposal within the scope of IMO's objectives?

- .6 This proposal is relevant to IMO's instruments for the prevention, preparedness and response to pollution, which are primarily focused on addressing pollution from ships. However, there are certain provisions within both the International Convention for the Prevention of Pollution from Ships, 1973 as amended by the 1978 Protocol related thereto (MARPOL 73/78) and the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC 1990) that extend the application of these instruments to offshore oil platforms, highlighted in paragraph 15.

Do adequate international standards exist?

- .7 There are no internationally agreed standards addressing the consequences of transborder oil spill accidents caused by oil drilling platforms engaged in exploration and exploitation.

Do the benefits justify the proposed action?

- .8 IMO liability and compensation instruments are intended to ensure that cost for clean-up operation, pollution and other damage are adequately covered by financial security. It will be a substantial benefit for the potential claimants to have an international instrument in place, covering the cost of remedial action.

Estimated number of sessions needed to complete the work

- .9 Indonesia estimates that the Committee's consideration of the proposal could be completed in three sessions (from the ninety-seventh to the ninety-ninth sessions).

IMO instruments on Prevention, Preparedness and Response (PPR) to pollution covering offshore platforms

15 Chapter 7 of MARPOL 73/78, regulation 39, sets out special requirements for fixed or floating platforms. In particular, the regulation requires that fixed or floating platforms engaged in exploration shall comply with requirements of Annex I of MARPOL 73/78 applicable to ships of 400 GT and above, other than oil tankers, and:

- .1 be equipped as per requirements set out in regulations 12 (tanks for oil residue (sludge)) and 14 (equipment);
- .2 keep a record of all operations involving oil or oily mixture discharges; and
- .3 prohibit discharges into the sea of oil or oily mixtures, except when the oil content of the discharge without dilution does not exceed 15 ppm.

16 For preparedness and response purposes, OPRC 1990 provides that States Parties require that operators of offshore units under their jurisdiction:

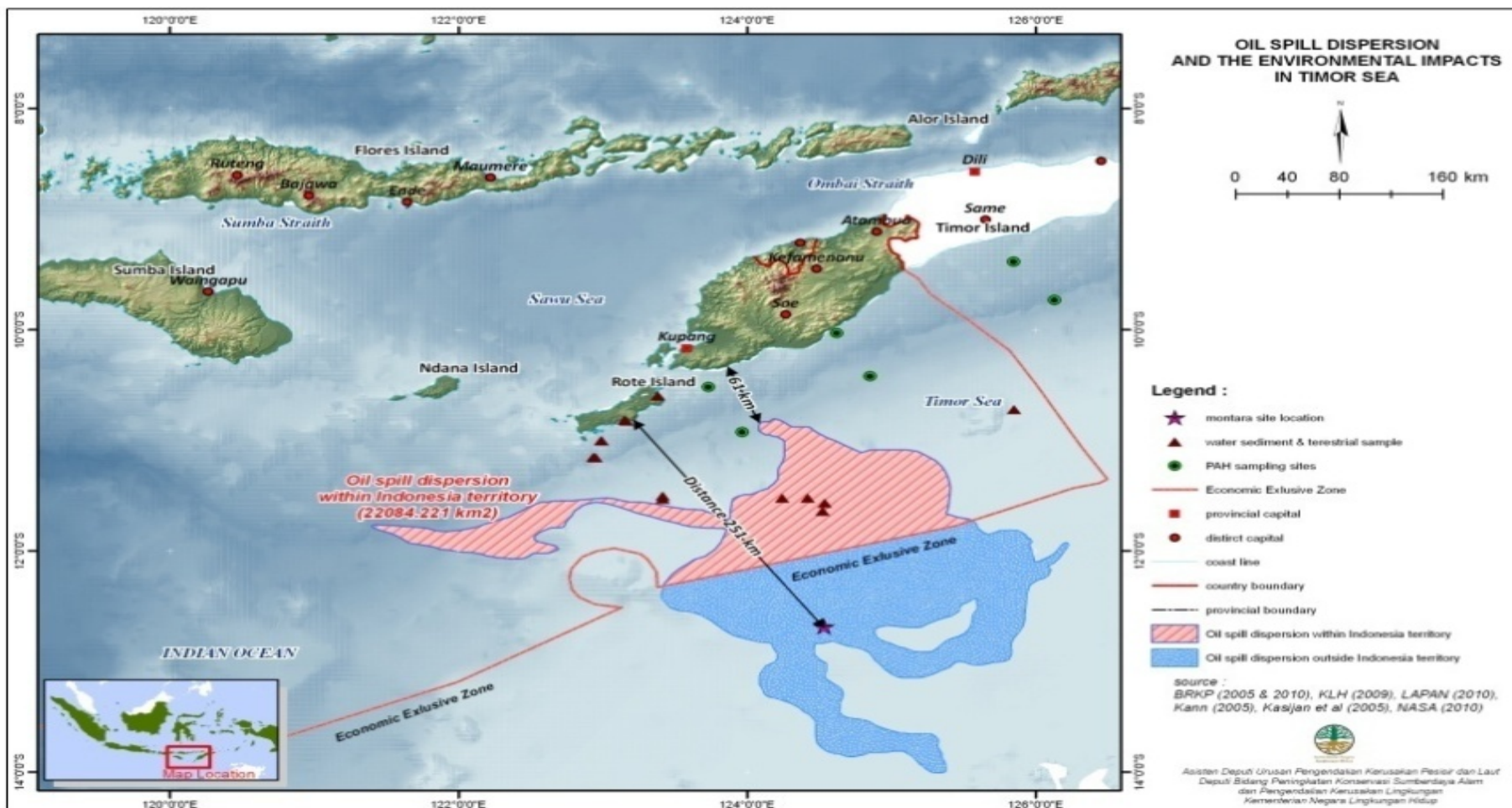
- .1 have oil pollution emergency plans, which are coordinated with the national system (article 3); and
- .2 report, without delay, any event on their offshore unit involving a discharge or probable discharge of oil (article 4).

Action requested of the Legal Committee

17 The Legal Committee is invited to consider the proposal in this document and agree to add a new work programme item and planned output to develop a new instrument to cover liability and oil pollution compensation for damage resulting from offshore oil exploration and exploitation activities.

ANNEX 1

MAP OF MONTARA OFFSHORE OIL PLATFORM AND OIL SPILL DISPERSION



ANNEX 2

ELEMENTS FOR A LIABILITY AND COMPENSATION REGIME FOR OIL POLLUTION DAMAGE RESULTING FROM OFF-SHORE OIL EXPLORATION AND EXPLOITATION

Strict liability of the owner/operator of an off-shore oil exploration and exploitation installation or facility or structure that is independent of fault.

The owner/operator must take out insurance. This requirement is aimed at ensuring that the owner/operator of an off-shore oil exploration and exploitation installation or facility or structure has available, at all times, the necessary financial resources to pay for any compensation that might be decided upon.

An insurance certificate attesting that insurance or other financial security is in force.

"Direct access": claims for compensation may be brought directly against insurers.

"Channelling of liability", which precludes claims for compensation being brought against individuals other than the owner/operator of the installation or facility or structures.

The burden-sharing arrangement between owner/operator interests and others to ensure a balance of obligations.
