

The Legal Regime of Offshore Oil Rigs in International Law

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3 The Legal Status of Offshore Oil Rigs

3.1 Introduction

The issue of the legal status of offshore oil rigs is of fundamental importance¹ to offshore installations and oil rigs and as a basis for the discussion of other legal issues related to offshore installations and oil rigs from a number of practical points of view. Categorising offshore oil rigs as ships, artificial islands, offshore installations and structures, or including them in a separate category of their own, may have different legal consequences in each particular situation.

For example, if 'oil rigs' are considered 'ships' in international law then they are entitled to the rights of innocent passage; they have to fly under a flag and the flag States have jurisdiction over the oil rigs and people on board. By including oil rigs in the category of ships a number of regulations and provisions of many international conventions in relation to ships, such as provisions relating to marine pollution, arrest of ships, collision and salvage, will be applicable to oil rigs as well.

In the *Case Concerning Passage Through the Great Belt*² before the International Court of Justice, the issue of the legal status of oil rigs was raised and discussed in the Memorial and Counter-Memorial of Finland and Denmark. In fact a number of top European international lawyers spent months determining whether certain kinds of oil rigs and mobile oil drilling units, are ships for the purpose of innocent passage or not. The case was settled out of court in September 1992.³

Oil rigs may be included in other categories, such as artificial islands, or in a separate category of their own. Incorporating oil rigs in the category of 'artificial islands', or including artificial islands in the category of 'offshore installations', may not have a practical significance at this time due to the fact that the LOSC applies a similar legal regime to both. However, because of the rapid growth in the number of both oil rigs and artificial islands for various economic purposes, there are a number of international legal questions with respect to different legal matters such as the problems of jurisdiction and pollution in concert with the construction and use of oil rig and offshore artificial islands in the future.

In this chapter, the different approaches concerning the legal status of oil rigs will be discussed. Firstly, it will examine whether oil rigs, in both

domestic and international law, may be considered as ships. Following this, the legal status of artificial islands under the 1982 United Nations Convention on the Law of the Sea (LOSC), and the question as to whether oil rigs may be incorporated in the category of artificial islands, will be examined. Finally, oil rigs as a separate category of their own, and under the LOSC, will be discussed. In considering these issues, relevant international conventions, domestic legislation, international and domestic cases and State practice will be considered. At the conclusion of this discussion a preferred approach for classification of different types of artificial islands and offshore installations will be proposed.

3.2 Oil Rigs as ‘Ships’

Are oil rigs ships? This question is not new and is often asked both by those who have a connection with oil rigs professionally and those who are outside the industry, such as insurance companies and lawyers.⁴ The question is raised due to a number of practical consequences with respect to international and domestic legal matters. More importantly the question may be raised in relation to legal matters concerning the international law position.

The definition of ‘ship’ itself is not clear in either municipal and international law. There are various definitions of ‘ship’ based on the purpose applicable to the relevant statutes or conventions. However, it is difficult to give a precise definition which would be large enough to contain all the infinite varieties of maritime craft.⁵

The issue may be approached by reviewing dictionary definitions of a ‘ship’ or inferring the legal meaning of ‘ship’ from international conventions and the national laws of different countries. However, it might be appropriate to look in each case at the context in which the question of the legal status of oil rigs arises. Here, it is intended first to examine the definition of ‘ship’, and to find out what elements are common to ships. Then, certain situations in which the question of the legal situation of oil rigs as ships may arise will be dealt with under both municipal and international law.

3.2.1 Definition of ‘Ship’ in Municipal Law

In modern times, most definitions of ‘ship’ are given in various national legislation such as the Merchant Shipping Acts, the Acts concerning Nationality and Registration of Ships, Navigation Acts, Admiralty Acts, Fisheries Acts and Marine Pollution Prevention Acts. In national legislation there are various definitions used to describe the meaning of ‘ship’ and certain types of vessels, such as barges, tugs, pontoons, dredgers, lighters

and boats and offshore installations.⁶ Even in the statutes of one country, there may be different definitions for various types of ships.⁷

There are not many common elements in the definition of 'ship' in different municipal laws. However, in almost all legal systems, the ship is considered to be a movable chattel with certain qualifications such as tonnage,⁸ the ability to navigate,⁹ use for purpose of transportation¹⁰ and means of propulsion.¹¹

3.2.1.1 Common Sense For a long period of time the commonsense definition of 'ship' was employed in municipal laws and legislation. A writer with respect to the common sense definition of 'ship' says: 'a ship is a ship. What is more clear than that? Everyone knows what a ship is: something built by men, going in the water and carrying persons and goods'.¹² Common sense can only go so far, however. There will still be doubtful cases where presumption of common sense may differ.

3.2.1.2 Dictionary Definition of 'Ship' A dictionary definition of a 'ship' may be regarded as a good starting point before dealing with the term in a particular context.¹³ According to the *Oxford English Dictionary*,¹⁴ "a ship is a 'vessel having a bowsprit and three masts' ...".¹⁵ *Websters' Dictionary*¹⁶ defines a vessel as 'a usually hollow structure used on or in the water for purposes of navigation: a craft for navigation of the water; esp: a watercraft or structure with its equipment whether self propelled or not that is used or capable of being used as a means of transportation in navigation or commerce ...'.¹⁷

The *Oxford Dictionary's* definition is a technical traditional definition of 'ship'. Whereas, the *Websters'* definition seems to have a legal meaning similar to the definition of 'ship' in a number of national legislative enactments and international treaties. The dictionary definition of 'ship' is primarily based on the physical object itself which is described as a 'vessel' with a bowsprit and a few masts and then continues with a description of its purpose, ie, 'navigability' and 'capable of being used as a means of transportation'. Certain types of oil rigs may qualify for inclusion in the dictionary definition of 'ship' as will be discussed below.

3.2.1.3 Ships and Vessels It seems that 'vessel' may have either a broader or a narrower meaning than 'ship'.¹⁸ The term vessel constitutes a variety of maritime craft, while the term 'ship' is limited to a few species of the same genus.¹⁹ It has been said that although defining a ship as a species of the genus vessel may be based on sound reasoning, individual statutes can, by their wording, produce a different result.²⁰ According to Caron "the terms 'ship' and 'vessel' are generally regarded as equivalent, although 'ship' is the primary term used in treaties in this area".²¹

From an international perspective the terms 'ship' and 'vessel' are often used interchangeably. At the resumed ninth session of UNCLOS III (1980) a report by the Drafting Committee recommended that in the English and Russian versions of the Convention the terms 'ships' and 'vessels'²² should be defined as having the same meaning.²³ Although, these changes were not accepted by the Conference,²⁴ the LOSC uses the terms 'ship' and 'vessel' interchangeably.²⁵

For the purpose of this study the words 'vessel' and 'ship' are used interchangeably.

3.2.1.4 Navigation Navigation, or the ability to navigate, appears to be a principal element in the definition of a 'ship'. Navigation has been described as 'on the seas, at the ports, in the ponds and in the canals where the waters are salty and up to the limits of the maritime inscription, in the large and small rivers and canals up to the point (a ship) can proceed by the tide, or where there is no tide, up to the point that the ship can proceed'.²⁶ This definition has been criticised as being too wide and insufficient.²⁷ In *Steenman v Scofield* the term 'navigation' was judicially defined as the 'nautical art or science of conducting a ship from one place to another'.²⁸ It has been said that navigation does not necessarily mean independent navigation.²⁹ As such, a ship or other craft may be used in navigation by external forces such as by towing.³⁰ According to this definition those types of oil rigs which are not able to navigate independently but can be towed by other ships may be considered ships.

It is well established in both common law³¹ and civil law³² legal systems that a vessel that substantially goes to sea is a ship.³³ The Australian Navigation Act 1912 (Cth) defines 'ship' as any kind of vessel 'used in navigation'.³⁴ This definition followed the Merchant Shipping Act 1894 (Imp).³⁵ A ship in the Australian Shipping Registration Act 1981 (Cth) is defined as any kind of vessel 'capable of navigating the high seas'.³⁶ Technically, there may be some variance between the two terms, 'used in navigation' and 'capable of navigating', employed in Australian legislation. However, it is not clear whether this criterion is concerned with 'the abstract capability of navigating on the high seas or with the practice of actually navigating the oceans'.³⁷ Mobile oil rigs would fulfil both criteria.³⁸ They are designed to be capable of navigation and they are engaged in navigation as well.³⁹ However, an oil rig engages only incidentally in navigation in order to get to and from its site. This may create doubt about the fact that oil rigs can engage in navigation, in as much as it is very likely that 'engaged in navigation' means 'principally engaged'. The position in both national and international law is not clear. However, in most national cases the occasional use of rigs in navigation is considered as evidence of navigability.⁴⁰

3.2.1.5 Transportation It is sometimes necessary for a vessel to perform the function of transporting goods and persons. In *Presly v Healy Tibbits Construction Co*⁴¹ the US District Court of Maryland affirmed that a ship is involved in navigation if it performs the function of transporting people or things in commerce.⁴²

3.2.1.6 Means of Propulsion The means of propulsion of a vessel may be considered as the criterion to define 'ship'. The Australian Navigation Act 1912⁴³ and the Admiralty Act 1988⁴⁴ define a 'ship' as any kind of vessel used (or, according to the Admiralty Act, constructed for use) in navigation which is propelled or moved. These include within their definition an offshore industry mobile unit.⁴⁵ Article 8(3) of the Navigation Act defines an 'offshore industry mobile unit' in detail. It includes all types of mobile oil rigs.⁴⁶

3.2.1.7 Conclusion In the differing municipal laws, 'ship' has not been precisely defined. Municipal law has adopted a relatively broad definition of the words 'ship' and 'vessel'. The varying national legislation has provided a number of elements as characteristics of ships such as capability of navigation or usage as a means of transportation on water. Some legislation has expressly mentioned examples of a ship in their definition. Others have excluded certain water instruments. Navigation, however, is the most common characteristic of a ship in both national legislation and case law. However, the definition of 'navigation' is unclear.

3.2.2 'Mobile Oil Rigs' as 'Ships' in Municipal Law

Could a floating platform be considered as a ship? To answer whether the concept of a 'ship' or 'vessel' applies to oil rigs, we face two problems. The first issue is, as was stated previously, that there is no precise and adequate definition for 'ship' in national law. However, there are certain common elements in national law which can be found in the legislation and domestic cases. The second problem is that it is very difficult to align the existing common elements, contained in the definition of a 'ship', with a new item such as an oil rig.

From the point of view of the dictionary definition of 'ship', oil rigs, particularly fixed rigs, except in the case of a drilling ship, lack the essential shape of a conventional ship and certain elucidated dictionary characteristics such as 'hollow structure'. As to the significance of the word 'hollow', it may be stated that the hollow shape of a conventional ship enlists the double purpose of both performing flotation and creating a space in which to put the people and things being carried.⁴⁷ An oil rig has the first characteristic of hollowness, that of flotation, whether it be a jack-up or a semi-submersible,

however, a drilling unit does not have a space for the people and things being carried which constitutes the second requirement of hollowness.⁴⁸ The space in drilling units is placed on the upper side of the unit and the hollowness is below, and people and objects may be carried without the necessity of a hollow space.⁴⁹

A large number of the domestic legislative acts surveyed here provide broad criteria for the definition of 'ship' such as 'being seagoing', 'navigability', 'be used for the purpose of transportation' and 'means of propulsion'.

Mobile oil rigs may be considered to be seagoing and as having the ability to navigate. Certain types of drilling units, such as drilling ships, semi-submersibles and jack-up units normally go to sea or are capable of going to sea. Furthermore, a drilling unit, for the purpose of drilling, carries people, fuel, supplies and other necessary equipment. They move from one place to another, they pass straits and they are almost always placed at sea. This position has been held in a number of national cases.⁵⁰ The United States District Court for the Southern District of Texas tried to define a 'vessel' in order to determine if the SEDCO 135 rig was a vessel for the purpose of invoking the US Limitation of Liability Act.⁵¹ In defining a 'vessel' the court said:

Thus, as the law has evolved, several factors have emerged as indicia of whether a craft is a vessel under the Act. First, the craft must be built with the intent that it be used in navigation as a means of transportation. Second, the contrivance must not be permanently attached to the shore or seabed. Finally, the craft must be subject to the perils of the sea.⁵²

The court then found that, in comparing these factors to the craft in question, the SEDCO 135 semi submersible rig is a vessel under the Limitation Act.⁵³ The court added that, 'Structures which are nothing more than artificial islands permanently affixed to the seabed have also been held not to be vessels under the Limitation Act'.⁵⁴ In *Claborne McCarty v Service Contracting, Inc.*,⁵⁵ the United States District, Eastern District Court of Louisiana said: 'An invaluable aid in offshore oil exploration, a submersible drilling barge is a unique craft whose specialised function is the location and commercial production of oil reserve found beneath the surface of the water. By the very nature of their job this specialised craft must be capable of at least some degree of mobility on navigable waters and there is now simply no question but that such craft are 'vessels' within the import of both the Jones Act and General Maritime Law'.⁵⁶

¹ The exact meaning of the terms 'sea going' and 'navigability' is not clear from the definitions of 'ship' in different national laws. Whether these

terms relate to the abstract capability of navigation on the sea, to the practice of actually navigating the sea, to the construction purpose of being for navigation, or to the primary use of a vessel for navigation, has not been elucidated. In any event, except, for the last criterion, mobile oil rigs fulfil the conditions. They are capable of navigating, they are practically engaged in navigation, they have been designed for navigation and that is why they are mobile but navigation is not their primary purpose. However, the last criterion, which is not fulfilled by mobile oil rigs, is generally not required by municipal law courts as evidence of navigability. In most national cases, the occasional use of rigs in navigation is considered as evidence of navigability.⁵⁷ In *Qualls v Arctic Alaska Fisheries*⁵⁸ it was held that a vessel does not have to be actually plying the sea for it to be 'in navigation'.⁵⁹ It will be considered as being in navigation if it is engaged as an instrument of commerce or transportation in navigable waters.⁶⁰ In a case decided by the Pakistani High Court of Baluchistan⁶¹ a question arose as to whether, after a ship is delisted by the registry of the country whose flag she flies, and significantly dismantled, she can still be considered a ship. While considering the question it was held that not all floating structures in the water can be considered as a ship or vessel. It is required that the floating structure should be navigable and should be capable of encountering the perils of the sea and should have the characteristics of a vessel.⁶²

Mobile oil rigs are considered, by some,⁶³ to fulfil the criterion of transportation of goods and people as they are designed to transport drill rigs and other offshore equipment from place to place. On the contrary, it has been said that they would not be considered as vessels for the carriage of goods by sea because they are not intended for the carriage of goods but for the drilling of hydrocarbons in the seabed.⁶⁴ It seems that certain types of mobile oil rigs such as drilling ships fulfil the requirement of being engaged in transportation because they transport drill rigs, goods and oil rig workers. However, those types of oil rigs which are towed by ships may not be considered as being engaged in transportation because they are themselves transported rather than transporting things such as goods and people.

In some national legislation mobile oil rigs which are not self propelled are expressly excluded from the definition of 'ship'.⁶⁵ However, in other legislation, all forms of mobile oil drilling rigs are covered by the definition of 'ship'. For example, the 1981 Australian Shipping Registration Act defines 'ship' as any kind of vessel capable of navigating the high seas including a structure that is able to float or be floated and is able to move or be moved as an entity from one place to another.⁶⁶

In the UK Continental Shelf Act 1964, in relation to the application of criminal and civil law on board oil installations, oil rigs are not treated in the same manner as ships. They are the subject of separate provisions.⁶⁷ Application of criminal and civil law on board oil rigs and the significance

of the UK Continental Shelf Act 1964, in light of the admiralty jurisdiction, will be discussed in chapters following.⁶⁸

In conclusion, it may be said that the various types of national legislation have taken significantly different approaches regarding the legal identification of oil rigs in diverse contexts depending on the required intention. This has provided a number of criteria which clearly may not apply unilaterally to the diversity of oil rigs. In some legislation mobile oil drilling rigs have expressly been considered ships for the purpose of national law.⁶⁹ In others, however, they have explicitly been excluded from the definition of 'ship'.⁷⁰ It may be said that generally not all types of mobile oil rigs may be defined as ships. Nevertheless, they have been treated like ships for several municipal law purposes.

3.2.3 Fixed Oil Rigs as Ships in Municipal Law

Although it is not clear if mobile oil drilling ships may be defined as ships in domestic law they have been treated as ships for certain domestic law purposes. However, it is obvious that fixed oil rigs for the purpose of exploration and exploitation of the natural resources of the sea may not be defined as ships.

Certain types of fixed oil rigs may be treated as ships for some legal purposes when they are towed for placement at sea or for dismantling in or out of the sea. According to Finnish legislation, 'ship means a vessel of any type whatsoever, including floating craft, whether self-propelled or towed by another vessel ...'.⁷¹ The same position is held by the 1974 Marine Pollution Control Law of Oman which included floating barges 'whether automotive or towed' in the definition of a 'vessel'.⁷²

Exceptionally, some legislation has expressly included fixed oil rigs in their definition of 'ship'. For example, Spanish legislation has included fixed platforms or structures at sea in its definition of 'ship' for the purpose of dumping from ships and aircraft.⁷³ It states that 'Ships and aircraft means water-borne or airborne craft of any type whatsoever. For the purpose of this Act, this expression includes air-cushion craft, floating craft, whether self-propelled or not, and fixed or floating platforms or other structures at sea, from which dumping can be carried out'.⁷⁴ A similar position is held by the Finnish Law on the Prevention of Pollution from Ships.⁷⁵

It can be concluded that fixed oil rigs will not normally be considered ships in the definition of 'vessel' in domestic law. They lack the dictionary definitions' requirements of a ship. They are neither constructed to be used in navigation nor are used in navigation. They are not self propelled and are not used for the purpose of transportation of goods and people at sea.

3.2.4 'Ships' and 'Oil Rigs' in International Law

In international law, as in national law, there is no clear-cut definition of the words 'ship' or 'vessel'. This is because, as we will see below, there are different definitions in the texts of international conventions with respect to the words 'ship' or 'vessel' according to the purposes of the particular conventions, treaties and international regulations. It is also not clear if all or some types of drilling ships are considered ships. Sometimes only some kinds of oil rigs have been treated as ships or vessels. In other cases, oil rigs are treated as artificial islands or as separate entities. Even from a technical point of view⁷⁶ there are no common standards for the description of a ship for juridical purposes. Different ships, crane vessels and drill ships are made for maritime purposes.⁷⁷

To render a definition for 'ship', it seems appropriate to examine the various definitions found in international conventions and the practice of states, in order to find a set of common regulations for the legal situation of ships in international law based on the existing conventions.

Various international conventions may clearly be applicable in many aspects of the different kinds of offshore oil rigs. Many international conventions which are applicable to ships, with or without a definition of 'ship', may affect the legal situation of drilling rigs to some extent. In international law, a question worth pondering is whether there is any particular situation in which certain legal rules regarding a ship could be applicable to certain offshore installations such as oil rigs. It seems that in a number of situations, an offshore oil rig may be treated as a ship for certain purposes.⁷⁸ It is intended to consider here a number of situations in which certain offshore installations may be treated as ships.

3.2.4.1 International Conventions Concerning Salvage Salvage, means 'a compensation allowed to persons by whose assistance a ship or its cargo has been saved, in whole or in part, from impending danger, or recovered from actual loss, in cases of shipwreck, derelict, or recapture'.⁷⁹ The question here is whether the concept of salvage is applicable to oil rigs. It is understood from international treaties that the subject of a salvage must be a ship or vessel.

The 1910 Convention for the Unification of Certain Rules of Law Respecting Assistance and Salvage at Sea,⁸⁰ does not define the word 'vessel'. However, it is said that the convention applies widely to boats regardless of their nature.⁸¹ The Convention sets out certain provisions for assistance and salvage of sea-going vessels in danger, of any things on board, of freight and passage money, and also services of the same nature rendered by sea-going vessels to vessels of inland navigation or vice versa.⁸² The Convention may apply to a pontoon, to a ship-gate and to other maritime engines. The word

'ship' may include all the varieties of vessels which float on the water involving the transport of persons or goods or employed for industrial, scientific, commercial and technical operations. It has also been said that certain objects such as floating derricks, elevators, dredgers and pile-driving frames ought to be considered vessels within the meaning of the Convention.⁸³ The 1910 Brussels Salvage Convention does not make any division between different types of seagoing vessels, probably leaving the task to municipal law.⁸⁴

The 1989 International Convention On Salvage⁸⁵ defined 'vessel' in Article 1(b) and has excluded fixed oil rigs and mobile rigs engaging in the exploration and exploitation of seabed minerals on location from the definition of 'vessel' in Article 3. The relevant provisions of the Convention concerning the definition of 'oil rigs' and 'ships' are discussed below.⁸⁶

It therefore seems that the application of the concept of salvage depends on the meaning of 'ship'. If an oil rig in a specific case is considered a ship then it would be susceptible to salvage.⁸⁷

This position has been affirmed in a number of domestic cases. According to Justice Bradley, in *Cope v Vallette Dry Dock Company*,⁸⁸ structures which are not used for the purpose of navigation are not the subjects of salvage service. He stated:

A fixed structure, such as this dry dock is not used for the purpose of navigation, is not a subject of salvage service, any more than is a wharf or a warehouse when projecting into or upon the water. The fact that it floats on the water does not make it a ship or vessel, and no structure that is not a ship or vessel is a subject of salvage. A ferry bridge is generally a floating structure, hinged or chained to a wharf. This might be the subject of salvage as well as a dry dock. A sailors' floating bethel or meeting house moored to a wharf, and kept in place by a paling of surrounding piles, is in the same category. It can hardly be contended that such a structure is susceptible of salvage service. A ship or vessel, used for navigation and commerce, though lying at a wharf, and temporarily made fast thereto, as well as her furniture and cargo, are maritime subjects and are capable of receiving salvage service.⁸⁹

3.2.4.2 International Conventions Related to Collisions A collision⁹⁰ is defined as a rough confrontation of one moving body with another.⁹¹ Although the term 'allision' seems to be more accurate in describing a rough contact between a moving vessel and a fixed object or a platform,⁹² if a drilling unit has an accidental contact with a ship or another drilling unit, it is also possible to use the term 'collision' for legal purposes.⁹³ However, it is intended here to discuss the application of international regulations concerning collisions in which an oil rig is involved.

The International Convention for the Unification of Certain Rules of Law with Respect to Collisions between Vessels, signed in Brussels on September 23, 1910,⁹⁴ refers to 'ship' and 'vessels' without giving any definition.⁹⁵ However, it excludes ships of war and government ships appropriated exclusively to public service.⁹⁶

The Inland Waters Collision Convention, Geneva 1930, which is applicable to sea going vessels and vessels in inland navigation,⁹⁷ includes a number of maritime craft such as sea gliders, rafts, ferries, dredgers, cranes, floating elevators, mobile sections of the ship and all machinery and floating equipment of an analogous nature.⁹⁸

The International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision, signed in Brussels on May 10, 1952,⁹⁹ applies to collision and to damages caused by improper manoeuvres, failures to manoeuvre, or non compliance with regulations, even when there has been no actual collision.¹⁰⁰ The Convention refers to an action for collision occurring between seagoing vessels, or between a seagoing vessel and inland navigation craft,¹⁰¹ and does not affect domestic laws concerning collisions involving warships or vessels owned by or in the service of a government.¹⁰²

The 1952 Civil Jurisdiction Convention does not apply when none of the vessels involved is seagoing¹⁰³ and the terms 'ship' and 'vessel' are not defined. Therefore, it seems that the Convention has left it to the courts to rule on what structures are 'vessels', and if any type of oil rigs may be treated as vessels for the purpose of the Convention. The Civil Jurisdiction Convention lacks wide support for certain reasons such as its exclusion of all government vessels and the lack of provisions concerning the recognition and enforcement of judgments.¹⁰⁴ Considering the inefficiency of the 1952 Civil Jurisdiction Convention, the Comité Maritime International (CMI) held a session at Rio de Janeiro in 1977 and framed a new Draft Convention on Civil Jurisdiction, Choice of Law, and Recognition and Enforcement of Judgment in Matters of Collision.¹⁰⁵ The Draft was submitted to the Intergovernmental Maritime Consultative Organisation (IMCO) following the Rio de Janeiro Conference; however, it was not taken up by the Legal Committee of the Organisation until 1991 and is not yet in force.¹⁰⁶ Similar to the 1910 Collision Convention and the 1952 Civil Jurisdiction Convention, the Draft Convention does not apply to collision cases in which there are objects other than seagoing vessels.¹⁰⁷ There was a suggestion that drilling rigs should be specifically included, or the terms 'vessel' or 'ship' should be defined broadly to include offshore structures such as oil rigs. However, it was decided to delete such a definition and leave it to the courts to rule on what could be considered as a vessel.¹⁰⁸

The 1952 Brussels Convention on Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation, also drafted by the CMI, was adopted as a result of the decision of the International Court of Justice in the

famous case of the *Lotus*.¹⁰⁹ The Convention refers to an 'action for collision occurring between seagoing vessels, or between seagoing vessels and inland navigation craft ...'.¹¹⁰ There is no definition of 'vessel' or 'ship' in the Convention.

The 1972 Regulations for Preventing Collision at Sea were formulated at the International Conference on Safety of Life at Sea, London, 1960. The Convention on the International Regulations for Preventing Collisions at Sea, was also agreed to at London on October 20, 1972, and came into effect in 1977.¹¹¹ According to Rule 1(a) of the Collision Regulations: 'These Rules shall apply to all vessels upon the high seas in all waters connected therewith navigable by seagoing vessels'. The word 'vessel' is defined in Rule 3(a) and includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water. It seems that the definition of 'vessel' includes non-displacement craft and seaplanes. Therefore, we may say that hovercraft, hydrofoils and seaplanes are considered 'vessels' subject to the Rules of the Collision Regulations. This means that a vessel, according to the Collision Regulations, has a broader meaning than a ship. The wide definition for 'vessel' seems to be beyond the definition of some domestic legislation such as the UK Merchant Ship Act of 1894.¹¹² However, the legal status of an oil rig is still not clear. It has been said that offshore mobile drilling units of any kind would seem to be 'water craft' and therefore fall within the definition in Rule 3(a) of the Collision Regulations.¹¹³ According to another opinion, only certain types of rigs, such as drilling ships, may be considered as 'vessels', while others would not fall within the definition offered by Rule 3(a) of the Collision Regulations.¹¹⁴

The 1910 Collision Convention,¹¹⁵ the 1952 Civil Jurisdiction Convention,¹¹⁶ the 1952 Penal Jurisdiction Convention,¹¹⁷ and the 1972 Collision Regulations¹¹⁸ are the only multilateral treaties which are specifically related to collision.¹¹⁹

Considering the various international conventions already mentioned, we conclude in this section that an oil rig, as stated by Professor O'Connell,¹²⁰ cannot be considered a ship for the purpose of collisions, according to international conventions, except in the case where the rig is also a drilling ship. However, it seems that most international conventions related to collision have intentionally failed to define the terms 'ship' and 'vessels' to enable the courts to decide each case individually.

3.2.4.3 ILO Conventions The 1926 International Labour Organisation (ILO) Convention Concerning Seamen's Articles of Agreement¹²¹ defined the term 'vessel' as any ship or boat of any nature whatsoever, whether publicly or privately owned, ordinarily engaged in maritime navigation.¹²²

The 1920 ILO Convention Concerning Unemployment Indemnity in Case

of Loss or Foundering of the Ship,¹²³ provides: “the term ‘vessel’ includes all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned”.¹²⁴

These definitions, as well as a number of other ILO Conventions’ similar definitions of ship, such as the definitions mentioned in the ILO 1921 Convention Concerning the Compulsory Medical Examination of Children and Young Persons Employed at Sea and the 1921 Convention Fixing the Minimum Age for Admission of Children to Employment at Sea (revised 1936)¹²⁵ include all types of ships and drilling rigs which are engaged in maritime navigation.¹²⁶ Therefore, offshore mobile drilling units of all kinds, including submersible and jack-up rigs, are considered vessels for the purpose of these Conventions. This wide definition, as well as a series of other ILO Conventions’ similar definitions, seems to be in line with the ILOs’ aim of protecting seamen and safeguarding their work and improving their working conditions.¹²⁷ During the time period when those ILO treaties were concluded people who worked at sea were those who worked on board ships. Oil rigs workers are only of recent origin. Indeed, the ILO has to take into consideration the status of oil rig workers in its new conventions. This can be done either by applying those regulations related to ships to oil rigs or by providing a new set of regulations specifically related to oil rig workers.

3.2.4.4 International Conventions Related to Pollution at Sea The International Convention for the Prevention of Pollution of the Sea by Oil,¹²⁸ 1954, amended in 1962, 1969, and 1971, provides a wide definition of the word ‘ship’. For the purpose of the Convention, the term ship means any sea going vessel of any type whatsoever, including floating craft, whether self propelled or towed by another vessel, making a sea voyage.¹²⁹ A mobile oil rig, such as submersible, a semisubmersible or a drilling ship, may fall within this definition. However, there would be doubt as to whether it can then be described as ‘making a sea voyage’. It has been said that the definition would cover an oil rig being towed.¹³⁰ As a solution it may be said that an oil rig cannot be considered as a vessel which makes a sea voyage for the purposes of the Convention when it is on site, however, considered as such it may be when proceeding to or from the site.¹³¹

The International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, signed in London on December 29,¹³² 1972 in Article III(1)(a) defined ‘Dumping’ as: ‘(i) any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms, or other man-made structures at sea; (ii) any deliberate disposal at sea of vessels, aircraft, platforms or other man made structures at sea’. Article III(2) stated: ‘Vessels and aircraft means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self propelled or not’. Although all kinds of oil rigs are not included

in the definition of 'vessels' in the convention, they would all fall within the expression '... platforms or other man made structures at sea'.

The International Convention for the Prevention of Pollution from Ships, concluded in London on November 2, 1973,¹³³ with a view to replacing the 1954 Convention, defined a ship as: 'A vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air cushion vehicles, submersibles, floating craft and fixed or floating platforms'.¹³⁴ This Convention clearly applies to all kinds of oil rigs. The travaux préparatoires of the 1973 Convention reveal that there was some discussion as to whether fixed and floating platforms should be included within the definition of 'ship'.¹³⁵ The Government of Finland remarked that 'the extension of the word ship to cover all kinds of platforms, drilling rigs, etc, causes unnecessary confusion'.¹³⁶ A similar position was held by other governments such as Canada, which proposed an alternative text to excluding platforms engaged in the exploration, exploitation and associated processing of seabed natural resources when they are not in transit.¹³⁷ The question of whether fixed and floating platforms should be considered as a 'ship' for the purpose of the Convention was discussed on a number of occasions.¹³⁸ The proposals to delete 'fixed and floating platforms' from the definition of 'ship' were defeated at least five times.¹³⁹ Finally, at the Tenth Plenary Meeting the proposal for the deletion of the terms 'fixed or floating platforms' was rejected and the final text was adopted.¹⁴⁰

The International Convention on Civil Liability for Oil Pollution Damage, agreed to in London on November 29, 1969,¹⁴¹ at the International Legal Conference on Marine Pollution Damage, defines 'ship' as 'any seagoing vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo'.¹⁴² Therefore, it seems that this Convention is not applicable to oil rigs. Mobile oil rigs may carry people and certain oil related facilities but they are not constructed to carry oil in bulk as cargo.

The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, concluded at Brussels on December 18, 1971, was the result of a resolution made at the 1969 International Legal Conference on Marine Pollution Damage.¹⁴³ Article 1.2 provided that the word 'ship' was to have the same meaning as the definition given by Article 1.1 of the 1969 Civil Liability Convention.

The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, agreed to in London on November 29, 1969,¹⁴⁴ stated: 'Ship means: (a) any sea going vessel of any type whatsoever, and (b) any floating craft, with the exception of an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and subsoil thereof'.¹⁴⁵ Oil rigs, of whatever kind, are clearly excluded from the definition of 'ship' in this Convention by virtue of the exclusion of 'an installation or device engaged in the exploration and

exploitation of the resources of the seabed and the ocean floor and the subsoil thereof'. However, mobile drilling units on their way to or from their sites may be considered as floating craft and thereby included in the definition of 'ship' in the Convention.

Oil rigs fall within the scope of the definition of 'ship' provided for by the International Convention for the Prevention of Marine Pollution by Dumping from Ship and Aircraft which was signed in Oslo on February 15, 1972.¹⁴⁶ Article 19.2 of the Convention stated: 'Ship and aircraft means seagoing vessels and air born craft of any type whatsoever. This expression includes air cushion craft, floating craft whether self propelled or not, and fixed or floating platforms'.

The 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area¹⁴⁷ included both floating and fixed oil rigs in its definition of 'ship'. The Convention states that 'ship means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms'.¹⁴⁸

Article 2(3) 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation¹⁴⁹ provides that 'ship means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, and floating craft of any type'. Although this definition expressly includes submersible oil rigs and may include other types of floating platforms, the Convention by virtue of Article 2(3), does not cover fixed or floating offshore installations or structures engaged in gas or oil exploration, exploitation or production activities, or the loading or unloading of oil.¹⁵⁰

3.2.4.5 International Conventions Concerning the Arrest of Ships, the Law of the Flag, Registration of Ships, Bill of Sale, Bottomry and Piracy The right to arrest a ship is part of the national law of many countries¹⁵¹ and is recognised by international conventions. The International Convention relating to the Arrest of Seagoing Ships, signed in Brussels May 10, 1952,¹⁵² was agreed to in order to create uniformity in certain rules of law relating to the arrest of sea going ships.¹⁵³ Article 2 of the Brussels Convention provides that 'a ship flying the flag of one of the contracting States may be arrested in the jurisdiction of any of the contracting States in respect of any maritime claim, but in respect of no other claim'... Article 1 of the Convention defines the term 'maritime claim' as a claim arising out of one or more of a number of incidents, including damage caused by any ship either in collision or otherwise; salvage; general average; mortgage or hypothecation; loss of life or personal injury caused by any ship; agreement relating to the use or hire of any ship whether by charter party or otherwise; loss of or damage to goods including baggage carried in any ship; and disputes

as to the title to or ownership of any ship.

The Convention does not define the word 'ship' and therefore it seems that the question as what seems to be a ship is left to municipal law. Thus, to ascertain whether it is possible to arrest an oil rig, it is necessary to examine the relevant national laws in each particular case.

The 1982 LOSC provided a number of provisions with respect to arrest of ships.¹⁵⁴ Again the Convention neither defines a 'ship' nor makes it clear if oil rigs may be arrested for any purpose.

The survey of the practice of States,¹⁵⁵ undertaken by the Finnish team in the *Great Belt Case*, shows no sign of any arrest by those states which were the subject of the survey.¹⁵⁶ However, since almost all these States treat mobile drilling ships in a manner similar to ships for the purpose of passage through their straits, they may arrest mobile oil rigs as may be necessary to ensure compliance with the laws and regulations adapted by them in conformity with the regulations of international law concerning the arrest of ships. Nevertheless, one may say that the arrest, or detention of foreign mobile oil drilling rigs, is not in conformity with the 1982 LOSC, because the LOSC, although it fails to define 'ships', has made a clear distinction between ships and oil rigs by the creation of a separate category for 'offshore structures and installations'. However, since the LOSC does not provide any regulations with respect to the passage of oil rigs, their registration or whether they should sail under a flag or not, it is conceivable that the individual States may regulate the arrest of oil rigs in their territorial sea, continental shelf and the high seas.

The nationality of States is usually granted to vessels and ships by means of registration and by authorising vessels to fly the States' flag.¹⁵⁷ Vessels must fly a States' flag in order to enjoy its protection and to observe the order and safety of the open sea.¹⁵⁸ However, a flag is only one of the indications of the nationality of a ship. The nationality of a ship can be evidenced when it is accompanied by the ships' papers proving the normal registration of the ship in one of the ports of her flag-state.¹⁵⁹ States followed different rules concerning the sailing of vessels under their flags, and it is not necessary for a ship to have the same nationality and ownership.¹⁶⁰

In all cases, when the flag is the subject, relevant authorities refer to the flag of a 'ship'. The definition of 'ship', as was discussed before, is not clear. It may be said that the definition of a 'ship' does not appear to be relevant, and offshore oil rigs invariably should have a flag.¹⁶¹ The logic for this conclusion is that oil rigs must be registered for a variety of reasons including protection and jurisdiction. The concepts of flag and registry are so intrinsically linked that one could say the country of flag and registration are the same.¹⁶² Therefore, a drilling rig should be registered for it to have a flag.¹⁶³ However, the analogy with the law of flag could be questionable, particularly when it comes to the question of jurisdiction. Professor

O'Connell, in the case of jurisdiction over an offshore oil rig on the high seas, said: 'no law of flag is available and the personal law is the alternative to the *lex fori*' .¹⁶⁴ He added that if the oil rig is placed in territorial or internal waters then the *lex loci delicti* would be applied.¹⁶⁵ Therefore, applying the law of the flag to oil rigs, particularly when they are fixed on the seabed, for all legal purposes seems to be controversial.

It is a principle of international law that States must register the names of all private vessels carrying their flag.¹⁶⁶ According to the 1958 Geneva Convention on the High Seas each State must fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag.¹⁶⁷ This statement is repeated in Article 91 of 1982 LOSC. However, the term 'ship' is not defined in either Convention.

The 1986 UN Convention on the Conditions for Registration of Ships¹⁶⁸ defines a 'ship' as 'any self-propelled sea-going vessel used in the international seaborne trade for the transport of goods, passengers, or both with the exception of vessels of less than 500 gross registered tonnes'.¹⁶⁹ This definition, which is based on a functional approach rather than limiting the concept of a ship by reference to certain design characteristics, contains some of the essential elements of the normal description of 'ship' such as being self-propelled and sea-going. Although mobile oil rigs may have some of these elements, such as 'sea-going', they may not be considered ships if they are not used for the transport of goods or passengers.

Therefore it can be concluded that the relevant municipal laws should be considered in order to establish whether international law regulations regarding the registration of ships would apply to oil rigs. As a result of the Offshore Installation (Registration) Regulations, 1972,¹⁷⁰ under UK municipal law, all offshore installations must be registered with the Department of Energy. In countries such as Denmark, Mexico, Norway and the USA, mobile oil drilling rigs are commonly entered upon the same registers as ships.¹⁷¹

The issue of registration as it relates to fixed oil rigs is more controversial. In almost all international conventions, fixed oil platforms are excluded from the definition of 'ships'. Therefore, application of the same international regulations regarding the registration of ships to oil rigs is not appropriate. However, fixed oil rigs, particularly if they are erected on the high seas, need to be under the ownership or jurisdiction of a State for certain legal purposes, eg. protection. This issue will be discussed elsewhere in this study.¹⁷²

There are certain other topics which may concern offshore oil rigs in certain aspects such as 'bills of sale' and 'bottomry'.

A bill of sale has been defined as 'a document given with respect to the transfer of chattels, and is used in cases where possession is not intended to be given'.¹⁷³ A question may arise as to whether the transfer of an oil rig

requires a bill of sale or if it may be transferred without a bill of sale.¹⁷⁴ There is no unique answer to this question because it is not clear if oil rigs are also considered to be ships. It seems that the transfer and ownership of oil rigs would require a bill of sale only if they were legally considered ships.

Bottomry is a contract by which a shipowner borrows money for the purpose of a voyage using the ship as security.¹⁷⁵ It seems that the concept of bottomry is unlikely to apply to oil rigs as they are not used for the purpose of what is called 'voyage'.¹⁷⁶

Piracy, which means 'an unauthorised act of violence committed by a private vessel on the high seas against another vessel with intent to plunder',¹⁷⁷ is dealt with by Article 15 of the 1958 Geneva Convention on the High Seas and Article 101 of the LOSC.¹⁷⁸

Piracy by a warship, government ship or government aircraft and the definition of a 'pirate ship' or 'aircraft' is provided by Articles 102 and 103 of the LOSC. However, the term 'ship' is not defined by the Convention. In order to answer the question as to whether oil rigs may commit an act of piracy or an act of piracy may be committed against an oil rig, one would need to look at the definition of 'ship' in the relevant treaties or legislation. Besides international conventions, in the works of publicists¹⁷⁹ the significance of all the definitions is that in piracy a ship must be involved. None of these authorities have referred to the question whether oil rigs may commit an act of piracy or may be the subject of piracy.¹⁸⁰

3.2.4.6 The 1977 Draft International Convention on Offshore Mobile Craft

The draft International Convention on Offshore Mobile Craft, was adopted by the Comité Maritime International¹⁸¹ in September 1977.¹⁸² This convention was aimed at applying the regulations of existing maritime conventions on different maritime matters such as arrest, collisions, mortgages, oil pollution, and salvage to any maritime structure of whatever nature not permanently fixed into the seabed, and which are simply termed 'craft'. According to the convention the term craft means: 'Any marine structure of whatever nature not permanently fixed into the seabed which: (a) is capable of moving or being moved whilst floating in or on water, whether or not attached to the seabed during operations, and (b) is used or intended for use in the exploration, exploitation, processing, transport or storage of the mineral resources of the seabed or its subsoil or in ancillary activities'.¹⁸³ Articles 2, 3, 4, 5, 6, and 9 of the draft Convention relate to the various subjects, covered by international conventions, such as collision, salvage, arrest, limitation of liability, liens, and oil pollution. According to Article 11: 'If, under any of the conventions applicable pursuant to Articles 2, 3, 4, 5, 6 and 7 or the national rules pursuant to Article 8, nationality is a relevant factor, a craft shall be deemed to have the nationality of the State in which it is registered for title or, if not so registered, the State of its owner.'

The draft convention came in for active consideration again by the IMO Legal Committee in 1990.¹⁸⁴ The Committee decided that the CMI should be required to determine whether the 1977 draft needs to be revised to include the recent developments.¹⁸⁵ At the 1994 CMI Conference in Sydney, a revised version of the 1977 Draft Convention was adopted, however, the Conference established a Working Group and a Committee for the further study and development of an international convention on offshore oil rigs.¹⁸⁶ At the 1977 Conference of the CMI, 'the Committee reported on the responses received from National Maritime Law Associations to a questionnaire distributed by the Working Group. Those responses indicated a broad majority support for further work on a broadly based international convention on Offshore Units'.¹⁸⁷

3.2.4.7 The 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Navigation The Convention for the Suppression of Unlawful Acts against the Safety of Navigation¹⁸⁸ and the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf¹⁸⁹ have defined both 'ship' and 'offshore unit' in separate sections. The relevant provisions of this Convention are discussed below.¹⁹⁰

3.2.4.8 The 1989 IMO Resolution No. A.671(16) The IMO Resolution 'A.671(16): Safety Zones and Safety of Navigation Around Offshore Installations and Structures', is similar to a number of post-1985 international treaties¹⁹¹ intended to make a distinction between ships and oil rigs. It further determines when and under what circumstances oil rigs may be treated as ships for the purpose of the Resolution.¹⁹²

3.2.4.9 The 1958 Geneva Conventions The 1958 Geneva Convention on the High Seas employs the term 'ship' instead of 'vessel', a term which is rarely used in an international convention.¹⁹³ However, it fails to provide a definition for 'ship' or 'vessel' for the purpose of the Convention. The International Law Commission abandoned its attempt to provide an interpretation of the term 'ship' in its 1955 session.¹⁹⁴ In the second session (1950), the Special Rapporteur, Mr Francois, proffered a report based on the definition given by Gidel¹⁹⁵ in order to clarify the meaning of 'ship'.

'... The floating docks, the seaplanes, and in general the floating islands are not assimilated to vessels... Dredgers must be assimilated to vessels as being capable of navigation. There are, possibly, doubts as to the floating cranes and the wrecks'.¹⁹⁶

Article 6 of the draft Convention, which was formulated after this report,

reads as follows: 'a ship is a device capable of traversing the sea, but not the airspace, with the equipment and crew appropriate to the purpose for which it is used'.¹⁹⁷ However, Article 6 of the draft Convention was deleted by the International Law Commission. This was considered to be a reasonable step taken to avoid further difficulties.¹⁹⁸ It appears that the word 'ship' in the 1958 Geneva Convention on the High Seas should be taken to include all types of ships whatever their size or purpose.¹⁹⁹

The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone uses the word ship on a number of occasions²⁰⁰ without giving any definition of the term 'ship'. The provisions of the 1958 Conventions and their travaux préparatoires do not indicate whether the concept of 'ship' includes most types of oil rigs. However, these were also not expressly excluded from the definition of 'ship'. However, the Geneva Conventions have provided certain provisions with respect to oil rigs which will be discussed later.²⁰¹

3.2.4.10 The 1982 LOSC The 1982 LOSC uses the terms 'ship' and 'vessel' interchangeably but does not define them.²⁰² Article 1 of the 1982 Convention entitled 'use of terms and scope', defines a number of terms but not 'ship'. In defining the term 'dumping', Article 1(5)(a)(i) states that dumping means 'any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea'. This definition illustrates that the Convention makes a distinction between 'vessels' and platforms or other man-made structures. The 1982 Convention, however, provides a number of provisions with respect to oil rigs, artificial islands and other structures which will be discussed below.²⁰³

3.2.4.11 Bilateral Treaties The approach taken in multilateral treaties in relation to the definition of 'ship' is followed almost in its entirety by bilateral treaties. Most bilateral treaties refer to the terms 'ship' or 'vessel' without defining them.²⁰⁴ However, a few treaties have presented a more precise definition of 'ships'. For example, the Agreement between the Government of the Kingdom of Denmark and the Government of the German Democratic Republic Concerning Salvage Operations in the Internal Waters and Territorial Seas of the Kingdom of Denmark and the German Democratic Republic²⁰⁵ provides that for the purpose of this Agreement 'ship means a vessel of any type which is used at sea, including hydrofoil boats, air cushion vehicles, submarines, floating vessels and fixed or floating platforms'.²⁰⁶

3.2.4.12 Conclusion It is apparent that giving a uniform and precise definition which would be valid for the whole field of the law of the sea concerned with matters relating to ships is extremely difficult. Perhaps it is good policy to give every piece of legislation or convention the discretion to

render its own description of 'ship' based on the specific purposes envisioned. However, the difficulties arising from such variegated definitions cannot be denied. It may be said that, similar to municipal law, there are a few common elements in the definitions provided in international conventions and in the practice of States. An obvious example of such a common element is the characteristic of 'being a seagoing vessel'. Nonetheless, the common elements of the definition of 'ship' are not clearly defined. Therefore, describing an oil rig as a seagoing vessel or a navigable craft may be a matter of controversy.

Until the late 1980s, international conventions used to employ the terms 'vessel' or 'ship' without further description or by giving a generalised definition without any significant indication as regards oil rigs. This was mainly based on the fact that oil platforms in the past were not as important in the law of the sea as they have become since the early 1980s. Since then, the treaty policy practice has been changed by a number of international conventions. The 1989 International Convention on Salvage, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Navigation, the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf, have tried to clearly define 'ships' and determine if oil rigs are ships or not.

It may be concluded that, in general, most types of oil rigs fail to meet the qualities essential to a ship as defined in most international conventions. Therefore, they may be incorporated into some other category, such as artificial islands or in a separate category of their own.

3.2.5 *Oil Rigs as Ships in the Practice of States*

State practice consists of treaty making practice, municipal legislation, decisions of domestic courts and the manner in which States, in fact, act. The first three categories, with respect to oil rigs, have already been discussed in detail. Turning now to state practice, we will consider how a number of States treat oil rigs in movement through their territorial waters relative to the rights of innocent passage.

In the case concerning *Passage Through the Great Belt (Finland v Denmark)*,²⁰⁷ a questionnaire was sent to a number of major straits States²⁰⁸ by the Finnish team, with respect to the treatment of the passage of oil rigs in straits and their territorial seas.²⁰⁹ In all cases mobile oil drilling rigs such as drill ships, semisubmersibles or jack-up barges were treated in exactly the same manner as merchant ships of conventional design.²¹⁰ No case was reported in which the permission of the coastal State was required for the mobile oil drilling rigs to pass through a strait or territorial waters.²¹¹ No

evidence was found that a single State would have contested the right of mere passage by mobile oil rigs. The Turkish reply to the questionnaire indicates that mobile oil drilling units are regarded as ships by Turkish law when they are self-propelled. However, it was stated that no mobile oil drilling rigs have passed through the Turkish straits during the past 20 years.²¹²

The actual practice of States confirms that mobile oil drilling rigs are considered ships for the purpose of innocent passage and navigation. This does not mean that the actual practice of States confirms that mobile oil drilling units are ships for all purposes.

3.2.6 Conclusion

To answer the question whether oil rigs are ships in international law, it was seen that different definitions of 'ship' and 'vessel' are given according to the different aims of the various conventions, treaties, international regulations and municipal laws. Furthermore, as was discussed above, there are no uniform rules, or common set of standards as to what objects may qualify for the juridical status of a ship in both municipal and international law. The actual practice of States in certain situations, such as registry and innocent passage, indicates that mobile oil rigs are treated like ships for legal purposes.

In both international and municipal law there are at least a few characteristics which pertain only to ships: moveability; seagoing ability; being used for transport of passengers and/or goods; navigability; and navigation. Some of these elements, such as seagoing and navigation, are to be found more frequently than others. In a number of situations, for instance, collisions, flag, registry, etc, as discussed above, an oil rig may be considered as a ship for certain legal purposes.

Drilling ships are considered by many municipal acts and treaties as ships. They have almost all the characteristics of a 'ship', including the dictionary qualifications, as they have a ship like shape and a hollow receptacle, capability of navigation and other required qualifications. However, there is some doubt concerning their qualifications as a ship when they are engaged only in drilling activities. Other types of mobile oil rigs may be treated as ships for certain legal purposes. Some types of oil rigs, such as fixed oil rigs, however, appear not to qualify for the juridical status of a ship in both domestic and international law. Nonetheless, they have been occasionally considered as a ship by certain national legislation and international treaties.

3.3 Oil Rigs as Artificial Islands

In order to determine the legal status of oil rigs, an alternative is to incorporate them into the category of artificial islands. The logic behind this classification is the fact that certain international conventions, such as the 1982 LOSC, have treated artificial islands and offshore installations with similar provisions, and certain other international treaties, as we will see here, have defined oil rigs as artificial islands. However, this may not be appropriate as artificial islands and oil rigs may each have their own international legal issues with respect to jurisdiction, pollution and other legal matters.

An artificial island can be described as an artificial deposit made from soil and rocks in the sea.²¹³ An island is a naturally-formed area of land, surrounded by water which is above water at high-tide.²¹⁴ An artificial island is a non-naturally formed structure, permanently attached to the seabed, surrounded by water and placed above water at high-tide.²¹⁵ It has been defined as a construction created by the dumping of natural substances such as sand, rocks and gravel on the seabed which cannot be removed without loss of its identity.²¹⁶

According to the LOSC artificial islands '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, the exclusive economic zone or the continental shelf ...'.²¹⁷

The doctrine that delimitation of the territorial sea cannot be affected by artificial islands was also accepted by the 1958 Geneva Convention on the Continental Shelf.²¹⁸ Although, a claim was made by some²¹⁹ that certain kinds of artificial islands did generate a territorial sea, it has been rejected by various publicists,²²⁰ by the Institute de Droit International²²¹ and by the practice of States.²²² The International Law Commission (ILC) in section (2) of its Commentary on Article 10 Concerning the Law of the Sea (1956), stated that an island is to be any part of land surrounded by water which usually is permanently above high-water.²²³ The Commission then provided that technical offshore installations, such as oil rigs, are not considered islands and have no territorial sea.²²⁴ However, the Commission proposed that a safety zone around offshore installations should be recognised 'in view of their extreme vulnerability'.²²⁵ The position of the ILC was endorsed in its entirety at the 1958 Geneva Conference.²²⁶ The legal logic behind this conclusion is the fact that the recognition of a territorial sea for artificial islands and oil rigs would endanger the freedom of the high seas.²²⁷ Considering the possibility of the construction of various artificial islands on the high seas by advanced technology, the recognition of a territorial sea for such islands would, undoubtedly, constitute a distinct limitation on the freedom of the high seas. Countries with advanced technological and

economic power could allocate a large part of the high seas to their territory through the construction of artificial structures on the high seas.

The legal status of artificial islands poses difficult questions since they are neither islands nor ships in international law. However, for some purposes, they may be incorporated into islands or considered as ships.²²⁸ International conventions and treaties do not define the term 'artificial islands'. The LOSC provides that 'in the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorise and regulate the construction, operation and use of: (a) artificial islands ...'.²²⁹ However, the Convention does not define the term, 'artificial island'. It seems difficult to elaborate a comprehensive definition of 'artificial islands', particularly because of the rapid changes brought about by modern technology and the multiple purposes for which artificial islands are used.²³⁰

Oil rigs, on the other hand, refer specifically to two types of installations; those resting on the sea floor and fixed there by means of piles or tubes driven into the sea floor, or fixed there by their own weight; and installations which are mobile being either self propelled or towed.²³¹ Depending on the circumstances, sometimes it is difficult to distinguish whether a specific artificial installation is in actuality an artificial island or an offshore installation. It would appear that the LOSC does not make any distinction as to the application of international law to artificial islands or offshore installations. In general, the Convention, has used both terms simultaneously.²³² Nevertheless, it can be understood from the provisions of Articles 56 and 60 of the LOSC that the category of 'artificial islands' is theoretically larger than that of 'offshore installations'. Artificial islands may be constructed for any purpose, while offshore installations are constructed only for the purpose of exploring and exploiting, conserving and managing, the natural resources whether living or non-living of the sea and the seabed and its subsoil and for other economic purposes. Offshore prisons, artificial reefs, and military installations are examples of artificial islands.

Several other conventions have also treated certain kinds of artificial islands and fixed oil rigs as the same for specific legal purposes. For instance, the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf²³³ states that "for the purpose of this Protocol, 'fixed platform' means an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes".²³⁴ The Protocol considers both an artificial island and an oil rig attached to the seabed for the purpose of exploration and exploitation of the natural resources of the sea as a 'fixed platform' and treats them as the same for the purpose of the suppression of unlawful acts against their safety.

In conclusion, it would appear inappropriate to include oil rigs in the

category of artificial islands. The legal status of artificial islands is not yet clarified in international law. In addition, there is no comprehensive definition for artificial islands in international conventions and treaties which would allow the formulation of a legal framework for artificial islands. Indeed, as it appears now, from an international legal perspective, there are more regulations and laws related to installations for the exploration and exploitation of the natural resources of the sea than there are for artificial islands. The many different aspects of oil rigs, as a part of installations for the exploration and exploitation of natural resources of the sea, including the safety of these installations, the rights and obligations of states, jurisdictional question, their removal and interference with international navigation, have all been the subject of international disputes and international law. Furthermore, the legal nature of the issues which arise from questions relating to oil rigs and artificial islands may, in many instances, be different. Therefore, it seems reasonable at this time to explore the international legal framework surrounding oil rigs, and the relevant practice in international law, instead of incorporating them into the category of artificial islands.

3.4 Oil Rigs as a Separate Category

In order to formulate a legal framework for oil rigs, another option would be to describe 'oil rigs' in a specific category of their own.²³⁵ This means that they are offshore installations for the purpose of the exploration and exploitation of oil and gas from the sea which are neither ships nor islands in international law. However, in particular cases, they might be considered either a ship, such as a drilling ship, or an artificial island, such as certain permanent installations for the storage of oil at sea.

The 1958 Geneva Convention on the Continental Shelf and the 1982 LOSC provide certain regulations concerning special aspects relating to installations for the purpose of the exploration and exploitation of the natural resources of the sea. The 1958 Geneva Convention on the Continental Shelf has, more or less, created a separate legal category for maritime structures which are neither ships nor islands. According to Article 5(2) of the Continental Shelf Convention '... 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 establish safety zones around such installations and devices and to take in those zones measures necessary for their protection'. The Convention does not define the term 'installation and other devices'. It does provide that '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'.²³⁶

An attempt was made elsewhere to create a separate legal category for offshore installations for the purpose of the exploration and exploitation of the mineral resources of the sea.²³⁷ During the preparation for the Draft Convention on Ocean Data Acquisition Systems, Aids and Devices (ODAS) it was proposed that '... platforms and installations for the exploration and exploitation of the continental shelf ...' must be covered by the same legal status contemplated for ODAS.²³⁸ Therefore, offshore installations were considered neither artificial islands nor ships. However, this sentence was finally deleted from the final definition of ODAS in the Draft Convention.²³⁹

The Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration and Exploitation of Seabed Mineral Resources, adopted in London on December 17, 1976²⁴⁰ referred to offshore installations as a separate category and provided a detailed definition of the term 'installation'. Under this Convention the operator of an 'offshore continental shelf installation' causing pollution incurs strict liability for the damage and remedial measures taken, with the exceptions of damage resulting from war, an act of God, an abandoned well more than 5 years after it was abandoned, or from an intentional or negligent act done by the person suffering damage.²⁴¹ Article 1.2 of the Convention describes 'Installation' as:

(a) any well or other facility, whether fixed or mobile, which is used for the purpose of exploring for, producing, treating, storing or transmitting or regaining control of the flow of crude oil from the seabed or its subsoil; (b) any well which has been used for the purpose of exploring for, producing or regaining control of the flow of crude oil from the seabed or its subsoil and which has been abandoned; (c) any well which is used for the purpose of exploring for, producing or regaining control of the flow of gas or natural gas liquids from the seabed or its subsoil ...; (d) any well which is used for the purpose of exploring for any mineral resources other than crude oil, gas or natural gas liquids ...; (e) any facility which is normally used for storing crude oil from the seabed or its subsoil; (i) where a well or a number of wells is directly connected to a platform or similar facility, the well or wells together with such platform or facility shall constitute one installation; and (ii) a ship as defined in the International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on 29 November 1969 shall not be considered to be an installation.

This definition includes all types of both mobile and fixed oil rigs. It expressly excludes ships from the scope of the term 'installation'.

In the recent decade, a trend has been created in both national legislation and international treaties to define and describe the 'legal situation of oil platforms' as a separate category. For example, the South Korean Marine

Pollution Act, as amended, 30 December 1989²⁴² in Article 2(5) defines 'ship' as a 'vessel of any type operating for navigation in the ocean'. Certain types of oil rigs, such as drilling ships, may still fall within the category of vessel. However, the Act in the same Article, Sub-section 7, defines 'offshore facility' as 'a structure constructed in the sea areas or by connecting the sea areas ...'. Although the second definition, Article 2(7), may only include certain types of oil rigs which are fixed to the seabed, it demonstrates that the legislation considered a separate category for certain offshore facilities including certain types of oil rigs.

The 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation²⁴³ has created a separate category for oil rigs beside the category of ships. 'Ship' and 'offshore unit' are defined in two separate sub-sections of Article 2 of the Convention. According to Article 2(3): "'Ship' means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, and floating craft of any type". Article 2(4) of the Convention defines "'offshore unit' as any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil". Although, the definition of 'ship' in Section 3 of the Article includes different kinds of oil rigs such as drilling ships and submersibles, defining 'offshore units' in a separate section illustrates that the Convention has firstly drawn a line between oil rigs and ships and secondly, it has placed oil rigs in a separate category being neither a ship nor an artificial island. Therefore, it might be said that, in view of the Convention, oil rigs have been considered to be a separate category. However, certain floating rigs may be treated as ships when they are not engaged in the exploration and exploitation of oil and gas, for certain legal purposes. The definition of 'offshore unit' in Article 2(4) was originally proposed in the Draft Convention as follows: 'Offshore Platform' means any fixed or floating offshore platform engaged in gas or oil exploration and exploitation[or production] activities [or loading or unloading oil] [in areas subject to the jurisdiction of parties].²⁴⁴

The Drafting Committee amended that definition by deleting the last part of the definition. The definition then read:

'Offshore platform' means any fixed or floating offshore platform engaged in gas or oil exploration, exploitation or production activities, or loading or unloading oil.²⁴⁵

In the final draft, which was accepted by the Convention, in the current text of Article 2(4), the category was changed from 'offshore platform' to 'offshore unit', perhaps to include those offshore structures which may not be considered platforms such as offshore oil storage facilities and even drilling ships when they are engaged in the exploration and exploitation of oil and gas.²⁴⁶

The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Navigation²⁴⁷ defines 'ship' as 'a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any floating craft'.²⁴⁸ The Convention draws a line between a vessel of any type which may include some kinds of mobile oil rigs, such as submersibles, and oil rigs which are 'permanently fixed' to the seabed such as installations for the purpose of the exploration and exploitation of the natural resources of the sea attached to the seabed. The latter is covered by the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.²⁴⁹ Article 1(3) of the Protocol defines 'fixed platform' as 'an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes'.

The term 'fixed platform' as defined in the Protocol, and the term 'ship' as defined in the Convention, may still be confused. It is not clear if a fixed oil rig towed to a place to be attached to the seabed in order to engage in the exploration and exploitation of the natural resources of the sea would be considered to be a ship or a 'fixed platform'. The definition of 'ship' in Article 1 of the Convention remained unchanged from the proposal in the Draft prepared by the Ad Hoc Preparatory Committee.²⁵⁰ However, it was the subject of some comments given by the delegations of a number of countries. The Australian delegation, arguing that the term 'fixed platform' had to be defined more clearly, proposed that the preferred form of Draft Article 1 should read as follows: "For the purpose of the Convention 'ship' means a vessel of any type whatsoever (other than a fixed platform within the meaning of the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf), not permanently attached to the seabed, including a dynamically supported craft, submersible, or any other floating craft or structure, whether capable of navigating under its own power or not".²⁵¹ The Malaysian delegate commented on Article 1 of the Draft Convention as follows: "... the use of the word 'permanently' may possibly give rise to some problems of interpretation. For example, jack up rigs may not 'permanently' be attached to the seabed, but are attached to the seabed. However, they may be moved from place to place. They are nevertheless considered to be platforms".²⁵² Finally, the words 'permanently attached' were retained in the definition of 'ship' in both Articles 1 of the Convention and Article 1(3) of the Protocol.

The Convention and Protocol treat oil rigs operating on location, but not permanently attached to the seabed, as ships. This position is unprecedented in treaty practice in international law. The generally accepted position in international treaties has been to regard oil rigs as ships when they were navigating from one drilling location to another or when they were carrying rigs and other offshore facilities, but not when they were operating on

location.

The 1988 Convention and its Protocol have clearly made a distinction between the terms 'ship' and 'fixed platform'. The category of fixed platform includes fixed oil rigs and artificial islands for the purpose of the exploration or exploitation of the resources of the sea and other economic purposes. Therefore, the Convention has made a separate legal category for certain kinds of oil rigs.

The 1989 International Convention On Salvage²⁵³ defines a 'vessel' for the purpose of the Convention as 'any ship or craft, or any structure capable of navigation'.²⁵⁴ The word 'any' before the word 'structure' makes it clear that offshore structures are considered as vessels for the purpose of the Convention if they are capable of navigation. However, the Convention provides some specific provisions in relation to oil rigs in Article 3 which is entitled 'Platforms and Drilling Units'. According to Article 3, 'this Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration or production of seabed mineral resources'. The last part of Article 3, which makes the Conventions' provisions inapplicable to a situation where oil platforms and drilling units are engaged in the exploration or production of seabed mineral resources, shows that oil rigs are not excluded absolutely from the application of the Convention. In other words the Convention does not apply to fixed oil rigs. However, if mobile offshore drilling units which are on location are engaged in the exploration and exploitation of seabed mineral resources, they are also excluded from the application of the Convention even if they are capable of navigation, subject to 1(b). Nonetheless, it can be said that if mobile offshore oil rigs, which are not on location, are engaged in exploration and exploitation activities, they may be subject to the provisions of the Convention. For example, drilling units which are passing through a strait, or moving towards specific destinations without engaging in the exploration and exploitation of the natural resources of the sea, are still subject to the provisions of the Convention. The Convention has clearly placed oil rigs into a separate legal category as platforms and drilling units.

In its preamble, the IMO Resolution A.671(16): Safety Zones and Safety of Navigation Around Offshore Installations and Structures, states:

Being aware that safety zone regulations are applied by coastal States to protect mobile offshore drilling units on station, production platforms, units and ancillary equipment referred to herein as installations or structures.

In describing mobile offshore drilling units the Resolution, again in its preamble, further provides:

For the purpose of this resolution mobile offshore drilling units (MODUs) used for exploratory drilling operations offshore are considered to be vessels when they are engaged in transit and not engaged in a drilling operation, but are considered to be installations or structures when engaged in a drilling operation.

The IMO Resolution considered only those offshore mobile drilling units which are used for exploratory purposes as vessels when they engaged in transit. Therefore, other types of oil rigs, including fixed oil rigs, and those mobile rigs which are engaged in drilling operations and the exploitation of oil and gas, are considered to be in a separate category as offshore 'installations or structures'.

Although incorporating oil rigs into their own category in both domestic and international law is of recent origin, it has been previously considered in a few examples of legislation and case law. In the UK Continental Shelf Act 1964, in relation to the application of the criminal and civil law on board oil installations, oil rigs were subject to their own separate provisions, different from those relating to a ship.²⁵⁵

In *Merchants' Marine Insurance Co Ltd v North of England Protecting and Indemnity Association*²⁵⁶ a number of important points were made in relation to the legal status of a pontoon. That argument may be applicable to other sea objects such as oil rigs as well. In this case, an indemnity was claimed against the liability incurred for damages arising out of a collision between the steamer Fernhill with a pontoon crane in the River Charente. Mr Justice Roche, said:

In my judgment, having regard to the facts relating to this pontoon, this pontoon is not a 'ship' or vessel but is another movable thing. . . in my view the primary purpose for which this pontoon is designed and adapted is to float and to lift, and not to navigate. Whatever other qualities are attached to a ship or vessel, the adaptability for navigation, and its usage for that purpose, is in my judgment one of the most essential elements.²⁵⁷

Finally, as was stated above, the 1982 LOSC placed oil rigs in a separate category from both ships and artificial islands. The LOSC considered oil rigs as installations and structures for the purpose of the exploration and exploitation of the natural resources of the sea and other economic purposes.²⁵⁸

3.5 Oil Rigs Under the 1982 LOSC

The 1982 LOSC provided certain rules and regulations in relation to artificial

islands, offshore installations and structures for the purpose of the exploration and exploitation of the natural resources of the sea and other economic purposes.²⁵⁹ The Convention used various expressions to describe ‘artificial islands, installations and structures’ in a number of Articles. In addition to using ‘artificial islands, installations and structures’²⁶⁰ it also referred to ‘installation’,²⁶¹ ‘installations and devices’,²⁶² and ‘installations, structures and other devices’.²⁶³ However, it did not define the terms ‘artificial islands’, ‘installations’ and ‘structures’.

During the negotiation of the Convention in the UNCLOS III (1973–1982) at the resumed ninth session in 1980, the Drafting Committee reported that it was considering the inclusion of a new subparagraph in Article 1 of the Convention which would read as follows: “‘installations’ includes artificial islands and structures”.²⁶⁴ This proposed change was not accepted by the Conference.²⁶⁵ A similar approach was taken to define the term ‘installations’ during the negotiations regarding Article 60 at the 1973 session of the Seabed Committee. The United States of America prepared a draft article which included provisions on offshore installations with the intention to define the term ‘installations’.²⁶⁶ The United States’ proposal Article 5 (a) read:

For the purpose of this chapter, the term ‘installations’ refers to all offshore facilities, installations, or devices other than those which are mobile in their normal mode of operation at sea.²⁶⁷

However, this proposal, similar in nature to the attempt to define ‘installation’ in Article 1, was not accepted by the Conference. There is currently an inconsistency in the use of the different expressions used to refer to installations in the LOSC. Nevertheless, Articles 60 and 80, which include the main body of provisions regarding oil installations, have made a distinction between offshore installations for the purpose of the exploration and exploitation of the natural resources of the sea and other economic purposes, primarily oil rigs, and artificial islands. Nonetheless, the exact meaning of each category is still unclear. Certain kinds of installations for some economic purposes, such as an offshore hotel, may be considered either an artificial island or a structure for the purpose of tourism. The Convention has resolved the problem by applying a similar legal regime to both artificial islands and offshore installations and structures. However, considering the significant increase in the number of both artificial islands and other offshore installations, and the complex legal issues which may arise with respect to each category, a different legal regime is required. There is no doubt that the legal issues concerning an offshore one hundred storey hotel, and an offshore oil rig in relation to such legal matters as jurisdiction and pollution, would not be the same or of a similar nature. Therefore, it is appropriate that

domestic legislation and international conventions take this into consideration and separate and clearly define the terms 'artificial islands' and 'offshore installations'. Further, it would be adequate if offshore oil rigs and other offshore installations could be separated and put into two categories each with their own legal provisions. This means that ultimately there should be three categories: 'artificial islands'; 'offshore installations for the purpose of the exploration and exploitation of the natural resources of the sea other than oil and gas'; and, 'oil rigs', which are offshore installations for the purpose of the exploration and exploitation of oil and gas.

According to Article 11 of the Convention 'For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Offshore installations and artificial islands shall not be considered as permanent harbour works'. The first sentence is a copy of Article 8 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. The second sentence was added to the provisions of the LOSC in UNCLOS III at the third session in 1975.²⁶⁸ The reasoning behind the new provisions was to make a clear distinction between offshore loading and unloading points, and permanent harbour works.²⁶⁹ The expression mentioned in the second sentence does not apply to offshore installations, which lie outside the territorial waters, and are subject to Articles 60 and 80.²⁷⁰ However, it does apply to installations which are used for the purposes of ports for large vessels unable to enter harbours and are linked to shore facilities by pipelines.²⁷¹

The rights, jurisdiction and duties of the coastal State in the exclusive economic zone in relation to offshore installations is set forth in Articles 56 and 60 of the Convention. According to Article 56, in the exclusive economic zone the coastal State has sovereign rights for the purpose of exploring and exploiting the waters superjacent to the seabed and of the seabed and its subsoil and jurisdiction over the establishment and use of artificial islands, installations and structures.²⁷²

Article 60, which is entitled 'Artificial islands, installations and structures in the exclusive economic zone', provides that, 'in the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorise and regulate the construction, operation and use of: (a) artificial islands; (b) installations and structures for the purpose provided for in Article 56 and other economic purposes'.²⁷³ The coastal State has jurisdiction over artificial islands, offshore installations and structures with regard to customs, fiscal, health, safety and immigration laws and regulations.²⁷⁴ This jurisdiction, subject to Article 60, is related to installations in the exclusive economic zone. However, coastal and land-locked States have the right to construct offshore installations in the high seas as well.²⁷⁵ The coastal State can establish reasonable safety zones around offshore installations to ensure

the safety both of navigation and of the installations.²⁷⁶ 'The breadth of the safety zone shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them'²⁷⁷ Offshore installations, however, do not possess the status of islands.²⁷⁸ The LOSC has also provided certain regulations concerning environmental problems,²⁷⁹ interference to international navigation²⁸⁰ and conflict with other marine biota such as fishing²⁸¹ in relation to the offshore installations which will be discussed in the next few chapters.

Article 60, which is the main part of the LOSC, concerned with oil rigs, is based on the provisions of Article 5 of the 1958 Geneva Convention on the Continental Shelf.²⁸² The provisions of Article 5 of the Continental Shelf Convention refer to 'installations and other devices' for the purpose of the exploration of the continental shelf and its natural resources.²⁸³ The Article does not refer to artificial islands and obviously does not define the terms 'installations and other devices'. Furthermore, the Continental Shelf Convention does not make any difference between oil rigs and artificial islands.

It seems that the LOSC, similar to the Geneva Convention on the Continental Shelf, has, more or less, created a distinct legal category of offshore installations for the purpose of exploration and exploitation of the natural resources of the sea in which they do not possess the status of islands, and they remain under the jurisdiction of the coastal State. However, these installations do not have a territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf. Oil rigs are the main body of offshore installations for the purpose of the exploration and exploitation of the natural resources of the sea.

3.6 Conclusion

In international law, an offshore oil rig may be considered as a ship in certain instances. Oil rigs are also constructed in various forms, ie. floating, fixed or both. Some of these, such as drilling ships, have more of the characteristics of a ship than others. However, various international conventions, treaties, regulations and municipal laws have provided different definitions of 'ship' based on different purposes. Therefore, there is not a unified definition of 'ship' in international law.

In order to clarify the legal status of oil rigs, an alternative approach would be to include them in the category of artificial islands. However, the

legal status of artificial islands is not clear either. Furthermore, artificial islands and oil rigs may be established for different purposes and each has its own functions. Therefore this may give rise to different legal issues. Moreover, in recent years, various artificial islands have been created or are in the process of establishment, such as floating hotels and sea cities, which apparently have a completely different legal nature in comparison to oil rigs. Finally, international conventions and national legislation have rarely considered oil rigs as artificial islands although they may have applied similar legal regimes to both.

The 1958 Geneva Convention on the Continental Shelf and the 1982 LOSC have to some extent created a separate legal category for offshore installations and structures for the purposes of exploration and exploitation of natural resources of the sea, and other economic purposes, which are considered neither ships nor islands. Offshore oil rigs are the main instance of installations and structures for the purpose of exploration and exploitation of natural resources of the sea subject to the 1982 LOSC. This approach has been rightly followed by domestic legislation and international treaties in recent years, in attempts to describe oil rigs, distinguishing them from ships and vessels. However, the LOSC does not make any distinction between offshore oil rigs and other offshore installations and treats them as one and the same.

It is proposed that, considering the significant increase in the number of both artificial islands and all kinds of offshore installations, and keeping in mind the various complicated legal issues which may arise from the construction and use of either of these two categories, as well as the category of 'ships', it is necessary for both international treaties and national legislation to clearly define 'ships', 'artificial islands' and 'offshore installations'. Furthermore, the term 'offshore installations' should, in the future, be divided into two separate categories: the category of 'offshore installations for the purpose of exploration and exploitation of natural resources of the sea other than oil and gas and for other economic purposes;' and, the category of 'oil rigs'. This will facilitate the resolution of serious legal issues arising from the growing use of artificial islands, offshore installations and oil rigs.

Notes

1. The same question could be raised concerning the situation of artificial islands and other offshore installations. This has been discussed by N Papadakis. See N Papadakis, *The International Legal Regime of Artificial Islands*, Sijthoff (1977) pp 89-115. See also DHN Johnson, 'Artificial Islands' (1961) 41 *LQR* 230-215; CJ Colombos, *The International Law of the Sea*, Longman (1967) pp 125-127; and

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- Council of Europe, 'Report on the Legal Status of Artificial Islands Built on the High Seas' Consultative Assembly Doc 3054, 1971.
2. *Passage through the Great Belt (Finland. v Denmark)*, 1991 ICJ, ILR (1994) vol 94 at 446.
 3. In this case, Finland filed an application against Denmark in the International Court of Justice arguing that a Danish plan to build a high-level bridge over the main navigational channel of the Great Belt Strait would make it impossible for drill ships and oil rigs which had deep draughts and required a clearance of more than 65 metres to enter and leave the Baltic. Finland further contended that the Great Belt was a strait used for international navigation and that there was a right of free passage through it for all vessels including mobile offshore drilling rigs. On the other hand, Denmark denied that the right of passage would apply to oil rigs, as it did not consider them to be ships. For a commentary on this case see M Koskenniemi, 'Case Concerning Passage Through the Great Belt' (1996) 27 *ODIL* 255.
 4. M Summerskill, *Oil Rigs: Law and Insurance*, Stevens & Sons (1979) p 12.
 5. See H Meyer, *The Nationality of Ships*, University of Chicago Press (1967) p 15, in which the author says: 'water-tight definitions do not exist even for ships ...'.
 6. See for example, Australia: 1968-1973 Continental Shelf (Living Natural Resources Act), Art 5(1), 1989 Prevention of Collisions, Marine Order No 5, Rules 3(a), 1981 Shipping Registration Act, Section 3(1); Canada: 1934 Admiralty Act, 2(i), 1932 Fisheries Act, 2(f), 1953 Coastal Fisheries Protection Act, 2(d); Cook Islands: 1977 Territorial Sea and Exclusive Economic Zone Act, 2(1); Denmark: 1972 Custom Act, Chap 2, Art. 3(1); Ethiopia: 1953 Maritime Proclamation No 137, 6(b); Finland: 1983 Law on the Prevention of Pollution from Ships, Art. 1; France: 1976 Loi N 76-600 (on pollution), Art. 1(2); Greece: 1910 Act on Maritime Commerce, Art. 226, Law of Private Maritime Law, Law 3816/1958, Art 1; Ireland, 1959 Maritime Jurisdiction Act, Sec 1, 1937 Sea Fisheries Act, Sec 1; Italy: 1940 Legge N 1424, Art. 34; Japan: 1970 Marine Pollution Prevention Law, Art. 3; Korea (South): 1989 Marine Pollution Act, as amended, Arts. 2(5) and 2(7), 1987 Marine Accidents Inquiry Act, as amended, Art. 2(3), 1986 Ocean Traffic Safety Law, Sec 1; Libya: 1953 Marine Code, Art. 1; Malta: 1977 Marine Pollution Act No XII, Sec 2(1); Morocco: 1919-1953 Code de Commerce Maritime, Art. 2; New Zealand: 1977 Act No 125, Tokelau Territorial Sea and Exclusive Economic Zone, Sec 2 (Interpretation); Norway: 1966 Custom Act, Arts. 1(2) and 1(3); Poland: 1961 Maritime Code Act, Art. 3(2); Romania: 1972 Decree on Civil Navigation, No 443, Arts. 7,8 and 9; South Africa: 1991 Public Health Act, Sec 70; Spain: 1977 Act No 21(Dumping from Ship or Aircraft) Art 1(3); Tonga: 1970 Continental Shelf Act, Sec (6); United Kingdom: 1984 Merchant Shipping Act, Art. 742, 1968 Fisheries Act Art 19(1), 1964 Fisheries Limits Act, Art. 3(1), 1956 Administration of Justice Act, Sec 8(1); USA: 1977 Navigation Rules Act, Sec 2, 1975 Public Law 93-627, Sec (19); Venezuela: 1944 Shipping Act, Art. 19; Western Samoa: 1977 Exclusive Economic Zone Act, Sec 2 (interpretation). See the Memorial of the

Government of the Republic of Finland, filed with the LCJ in the case, Passage through the Great Belt, 1991 (hereinafter the Memorial of Finland), Maps and Annexes, Annex 80.

7. For example, within the legal system of the United Kingdom, a boat propelled by oars is not considered a ship according to section 742 of the Merchant Shipping Act, 1894, UK. However, it is a 'ship' within the definition of the Shipbuilding Industry Act, 1967, UK.
8. The following legislation makes the tonnage part of the definition of a ship or classifies different types of ships according to the tonnage: Argentina: National Coastal Merchant Shipping Act, No 12980, 1944; Greece: Decree of 14 November 1836 Concerning Merchant Shipping, and Commercial Code (amendment) Act No 3717 of 1910; Japan: Shipping Act of 1899, amended to 1954 and Ordinance No 24 of 12 June 1899 (as amended); Liberia: Maritime Code of 18 December 1948 as amended 22 December 1949 and Maritime Regulations, to and including 15 May 1953; Norway: Shipping Act of 20 July 1893 and Ships Registration Act of 4 May 1901; UK: Merchant Shipping Act of 25 August 1894; USA: United States Code (1952) and Code of Federal Regulations (1953). See United Nations Legislative Series, Laws Concerning the Nationality of Ships (1955), Document ST/ LEG/ SER/ B/5/Add.1.
9. See the Australian *Navigation Act* 1912 (Cth), section 6; the Australian *Shipping Registration Act* 1981(Cth), section 3(1); the Canadian Admiralty Act 1934 section 2(I); and the United Kingdom Merchant Shipping Act, 1894, section 742.
10. Many merchant shipping acts require that a ship must be able to transport passengers and goods. See: Italy, Shipping Code of 30 March 1942 and Regulation No 328 of 15 February 1952; Finland Shipping Act No 167 of 9 June 1939; Panama, Law No 8 of 12 January 1925, Establishing Procedure for the Nationalisation and Measurement of Vessel, and Prescribing other Measures.
11. According to the Argentina National Coastal Merchant Shipping Act, Art 55 (1) a ship is a vessel 'made of wood, iron, or other material, which floats and is capable, when propelled and directed by suitable internal or external mechanism, of transporting by water persons or objects or of being used as a store or in commercial or industrial operations'.
12. See G Lazaratos, 'The Definition of Ship in National and International Law' (1969) 22 *RHDI* 57 at 58.
13. M Summerskill, note *supra*, p 13.
14. The *Oxford English Dictionary*, Clarendon Press (1933, reprinted 1961 and 1970) vol 9.
15. *Ibid*, p 704.
16. *Websters' Third New International Dictionary*, G & C Merriam Company Publishers (1966).
17. *Ibid*, p 2547.
18. In English statutes the word 'ship' is regarded both as wider or narrower than the

expression vessel. See the Merchant Shipping Act 1894, UK, section 240 and the Crown Proceeding Act, 1947, section 30. In US statutes the term 'vessel' has a wider definition (46 US Code Chapter 23, Shipping Act 1916, UK, (section.801). In Australian legislation the term 'vessel' is considered to be broader than 'ship' (the Shipping Registration Act 1981, section 3910 and the Merchant Shipping Act, 1894, Australia, section 742).

19. G Lazaratos, note *supra*, at 64.
20. M Summerskill, note *supra*, p 13.
21. DD Caron, Ship, Nationality and Status, in R Bernhardt, 11 Encyclopedia of Public International Law, Elsevier Science Publisher (1989) 289 at 29.
22. The words 'ship' and 'vessel' correspond to a single word in Spanish, *buque*, and in French, *navire*. However, in Arabic two words, *Safinah* and *Folk*, are used to describe both ship and vessel.
23. The following paragraph was proposed to be inserted in Art 1 of the LOSC: (8) "'Ship' and 'vessels' have the same meaning". See, A/CONF 62/L.57/Rev 1 (1980), section VII, 'Other recommendations ...', para (b), at 126, and Informal Paper 14 (1980, mimeo), at 1 (Drafting Committee) as discussed by SN Nandan and S Rosenne, *United Nations Convention on the Law of the Sea 1982, a Commentary*, Martinus Nijhoff Publishers (1993) vol II, p 36.
24. SN Nandan and S Rosenne, *ibid*.
25. See, for example, LOSC, Arts 1(1)(5)(b), 90-99, 248(b), 248(d), 249(1)(a) and 292.
26. A Wahl, *Droit Maritime* (1924) p 12, as discussed in G Lazaratos, note *supra* at 66.
27. G Lazaratos, *ibid* at 68, in which the author argues that in *Mayor of Southport v Morris*, [1893] 1 QB, 359, 'when an electric launch of 3 tones burthen, operated on an artificial lake (on the foreshore), half a mile long and 180 yards wide, and used for carrying up to 40 passengers, was the subject of litigation in a British court, it was not found to be a ship, since its movements were not navigation in the proper sense'.
28. *Steedman v Scofield* [1992] 2 Lloyds' Rep 163 at 166.
29. M Davies and A Dickey, *Shipping Law*, LBC Information Services (2 1995) p 8.
30. *St John Pilot Commissioners and the Attorney-General for the Dominion of Canada v Cumberland Railway & Coal Co* [1910] AC 208 at 218.
31. See *Exp Ferguson*, [1871] LP6 QB 280.
32. See the German, *Bundesgerichtshof*, 1952 NJW 1135 (cited in the Memorial of Finland, note *supra*, at 152).
33. See the Memorial of Finland, *ibid* at 152.
34. Section 6.
35. Section 742.
36. Section 3(1).
37. The Memorial of Finland, note *supra*, at 153.
38. *Ibid* at 154.
39. *Ibid*.
40. See note *infra*.

41. [1988] AMC 1894.
42. *Ibid.*
43. Section 6(1).
44. Section 3(1).
45. The Australian Navigation Act 1912, S 6(1) (definition of ship (c)) and the Australian Admiralty Act 1988 S (3) (definition of ship (c)).
46. Art 8(3) of the Act provides: 'a reference in this Act to an offshore industry mobile unit shall be read as a reference to: ... (b) a structure (not being a vessel) that:
 - (i) is able to float or be floated;
 - (ii) is able to move or be moved as an entity from one place to another; and
 - (iii) is used or intended for use wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of any or all of the following, namely:
 - (A) the continental shelf of Australia;
 - (B) the seabed of the Australian coastal sea; and
 - (C) the subsoil of that seabed;by drilling the seabed or its sub-soil, or by obtaining substantial quantities of material from the seabed or its sub-soil, with equipment that is on or forms part of the structure; or(D) a barge or like vessel fitted with living quarters for more than 12 persons and used or intended for use wholly or primarily in connection with the construction, maintenance or repair of offshore industry fixed structures'.
47. M Summerskill, note *supra*, p 14.
48. *Ibid.*
49. *Ibid.*
50. See for example, *In re Seafarers' International Union of Canada v Crosbie Offshore Services Ltd* [1982] DIR 135 (3rd 485 FCA); *Offshore Co v Robinson* [1959] AMC 1260 (5 Circuit); *In re Complaint of Sedco Inc* [1982] AMC 1461, 21ILM (1982) 318.
51. See 46 USC ss 183-89.
52. District Court for the Southern District of Texas Memorandum and Order in the Matter of the Complaint of SEDCO, Inc, 21 ILM (1982) 318 at 337.
53. *Ibid.*
54. *Ibid* at 335.
55. [1971] AMC 90.
56. [1971] AMC 90 at 90-91, see also, *Gianfala v Texas Company* [1955] AMC, 350 US 897 [1960]; *Marine Drilling Co v Autin* [1966] AMC 2013; *Producer Drilling Co v Gray* [1966] AMC 1260; and *Offshore Co v Robinson* 1959] AMC 2049.
57. See for example, *Potton-Tully Transportation Company v Turner* [1920] 269 F. 334 (6 Cir); *Marine Craft Constructors Ltd v Erland Blomqvist (Engineers) Ltd* [1953] 1 Lloyd's Rep 514; *Cook v Dredging & Construction Co Ltd* [1958] Lloyd's Rep 334; *The Queen v St John Shipbuilding & Dry Doc Co* [1981] 126 DLR (3d) 353,362 (FCA); *In re Great Lakes Transit Corporation*, 53 F2d 1022, [1931] AMC 1740.

58. [1911] AMC 582.
59. *Ibid.*
60. *Ibid.*
61. *The Ashar*, *KLR 1985* notes 37 quoted in, A Georghadjis, et al, *Arrest of Ship* (1988).
62. *The Ashar*, *KLR 1985* notes 37 p 53.
63. The Memorial of Finland, note *supra*, at 155. See also the *Sedco* case, (1982) AMC 1461, 1474.
64. The Counter Memorial of the Kingdom of the Denmark, filed with the ICJ in May 1992 in the *Case Passage through the Great Belt (Finland v Denmark)* (hereinafter the Counter Memorial of Denmark) vol 1 p 212.
65. Venezuela Shipping Act 1944, Art 19.
66. The Australian 1981 Shipping Registration Act, section 3(1) (definition of ship (b)).
67. According to section 3 (1) of the Act: 'Any act or omission which: (a) takes place on, under or above an installation in a designed area or any waters within 500 metres of such installation; and (b) would, if taking place in any part of the UK, constitute an offence under the law in force in that part, shall be treated for the purpose of that law as taking place in that part'. For a detailed discussion of the definition of 'ship' in the United Kingdom see K Rohrmann, *Offshore Oil and Gas Exploration and Production Installations: Law and Insurance*, Institute Universitaire de Hautes Etudes Internationales (1990), Annex II, p 133.
68. See Chapter 4 below.
69. See for example, Australia: 1981 Shipping Registration Act, Section 3(1)(b), 1988 Admiralty Act, Section 3(1)(c); Finland: 1983 Law on the Prevention of Pollution from Ships, Art. 1; Spain: 1977 Act No 21 (Dumping from Ships or Aircraft), Art 1(3).
70. See, South Korea: 1989 Marine Pollution Prevention Act, Art. 2(5) and 2(7); Romania: 1972 Decree on Civil Navigation, No 443, Art. 8.
71. Order No 710, 1972, UNLS, National Legislation and Treaties Related to the Law of the Sea, ST/LEG/SER.B/18 (1976) 195.
72. UNLS, National Legislation and Treaties Related to the Law of the Sea, ST/LEG/SER.B/18 (1976) 76. See also the US Navigation Rules, Rules 3(q)(vi) US.
73. Spain Act No 21 (Dumping from Ships or Aircraft), 1977, United Nations Legislative Series, National Legislation and Treaties Related to the Law of the Sea, ST/LEG/SER.B/19 (1980).
74. Art 1(3).
75. 1983 Law on the Prevention of Pollution from Ships, as amended, Art. 1, Finland.
76. See generally, R Taggart, *Ship Design Construction*, Society of Naval Architects and Marine Engineers (1980).
77. See Chapter 2 above.
78. M Summerskill, note *supra*, p 16.
79. HC Black, *Law Dictionary*, (6 1990) p1340. For different definitions of the term 'salvage' see *Edmund L Cope v Vallette Dry Dock Company* [1886] US 119 at 501, per Justice Bradley; for a discussion of salvage from Australian law perspective

- see M White 'Salvage, Towage, Wreck and Pilotage' in MWD White, *Australian Maritime Law*, Federation Press (2000) 223.
80. It was signed at Brussels on September 23 1910; for the history and scope of the Convention see IH Wildeboer, *The Brussels Salvage Convention*, Sijthoff (1965).
 81. See generally, *ibid*.
 82. See Art 1.
 83. IH Wildeboer, note *supra*, p 16.
 84. *Ibid*, p 12.
 85. 1996 UKTS93.
 86. See this Chapter, Section 3.4.
 87. See *Watson v RCA Victor Co Inc* [1934] 50 LILR 77.
 88. *Edmund L Cope v Vallette Dry Dock Company* [1886] US 119 at 502.
 89. *Ibid*, per Justice Bradley.
 90. For the historical development of legal rules and the current legal situation of collisions see: IA Shearer, 'Collisions at Sea' (1989) in *Encyclopedia of Public International Law* vol 11 pp 63-65; CJ Colombos, *The International Law of the Sea* (6 1967) pp 339-345; S Mankabady, *Collision at Sea: a Guide to the Legal Consequences*, North Holland Publishing Company (1978) pp 6-8; and JC Smith, 'Comparative Aspects of Commonwealth and US Law Since the Collision Convention' (1983) 57 *Tul. LR* 1092.
 91. Blacks' Law Dictionary, West Publishing Co (1979) defined the term 'collision', as used in maritime law, as 'The act of ships or vessels striking together'.
 92. The word 'allision' is defined in Blacks' Law Dictionary, West Publishing Co (1979), p 69 as 'the running of one vessel into or against another, as distinguished from a collision, ie., the running of two vessels against each other. But this distinction is not very carefully observed'. The term 'allision' has been used in a broader sense to incorporate the contacts of moving vessels not only with stationary vessels or other floating structures, but also with piers, wharves, bridges and other offshore installations. See *Georgia Ports Authority v The Atlantics Towing Co*, [1985] AMC 332 (s d Ga 1983) and *Matter of Exxon Shipping Co*, 869 F.2d 943, 1989 AMC 1422 (5 Cir 1989) as discussed in NJ Healy and JC Sweeney, 'Basic Principles of the Law of Collision' (1991) 22 *JMLC* 359 at 359.
 93. DP O'Connell, *The International Law of the Sea*, Clarendon Press (IA Shearer ed 1984) vol II p 874; see also *Hough v Head* [1885] 52 LT 861 at 864, per J Grove.
 94. International Convention for the Unification of Certain Rules of Law with Respect to Collision Between Vessels, Sept 23, 1910; Art 1 of the Convention provides that 'Where a collision occurs between seagoing vessels or between seagoing vessels and vessels of inland navigation, the compensation due for damages caused to the vessels, or to any things or persons on board thereof, shall be settled in accordance with the following provisions, in whatever waters the collision takes place'.
 95. Although, as we will see below, a number of pre 1950s international conventions have defined the words 'ship' and 'vessel', the common approach before the 1950s was to refer to 'ship' and 'vessel' without defining them. See, for example, Convention for the Unification of Certain Rules relating to the Limitation of Liability

- of Owners of Seagoing Vessels, Brussels, 25 August 1924, Arts. 1-13; Convention for the Unification of Certain Rules relating to the Immunity of State-owned Vessels, Brussels, 10 April 1926, Arts. 1-5; Convention on the International Regime of Maritime Ports, Geneva, 9 December 1923, Preamble; Convention on Traffic in Opium and Drugs, Geneva, 19 February 1925, Art 15(1).
96. International Convention for the Unification of Certain Rules of Law with Respect to Collision Between Vessels, Brussels, September 23rd, 1910, Art 11.
 97. Art 13 of the Convention.
 98. Art 11 of the Convention.
 99. International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of *Collision*, May 10, 1952, 439 UNTS 217 [hereinafter cited as Civil Jurisdiction Convention].
 100. Art 4.
 101. Art 1.
 102. Art 7.
 103. Art 1(1) (b).
 104. See the report of the CMI (the Comité Maritime International) International Subcommittee on Collision, vol III, 1977 CMI Documentation 138 p 154.
 105. Vol II, 1977 CMI Documentation 104. For a detailed discussion of the Draft Conventions' provisions see NJ Healy and JC Sweeney, 'Basic Principles of the Law of Collision' (1991) 22 *JMLC* 359 at 378-380.
 106. NJ Healy and JC Sweeney, *ibid*.
 107. The 1952 Civil Convention, Art. 1(1) (b); the 1977 Draft Convention, Art 9.
 108. NJ Healy and JC Sweeney, note *supra*, at 379.
 109. *France v Turkey (the Lotus)*, PCIJ, Ser A, No 10 (1927) 169.
 110. The International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation, Brussels, May 10, 1952, Art 1.
 111. 1972, 28 UST 3459.
 112. See note *supra*.
 113. M Summerskill, note *supra*, p 26, in which the author says: "Offshore mobile drilling units, of whatever kind, would seem to be 'water craft' in any event; though it might be questioned whether they can properly be described as 'used or capable of being used as a means of transportation on water'. It does not appear to be essential, in order to satisfy the requirement as to transportation, that commercial cargoes should be carried. A drilling unit can transport, or carry, persons, equipment, specimens of oil, and supplies, and is thus capable of being used as a means of transportation, even if that is not its main task".
 114. S Mankabady, note *supra*, pp 97-98.
 115. Note *supra*.
 116. Note *supra*.
 117. Note *supra*.
 118. Note *supra*.

119. However, there are a number of other international conventions which may play important roles in some collision cases. These are: 1977 Draft International Convention on Offshore Mobile Craft, adapted by the CMI at Rio de Janeiro in September, 1977; 1976 Convention on Limitation of Liability for Marine Claim, IMCO No 77.04E; 1957 International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships, 6 Benedict, Admiralty, Doc 5-2, at 5-11; 1924 Convention, International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 51 Stat 233, TS 931, 120 LNTS 155, at 1-2.; 1926 International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Vessels, 176 LNTS 199, at 8-33; 1970 Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 6A Benedict, Admiralty, Doc 9-38; 1926 Convention on Maritime Liens and Mortgages, International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgage, 120 LNTS 187, at 8-17, and 1952 International Convention Relating to the Arrest of Sea going Ships, May 10, 1952, 439 UNTS 193.
120. DP O'Connell, note *supra*, vol II p 890.
121. Signed in Geneva, 24 June 1926, 38 UNTS 295.
122. Art 2(a).
123. Convention 8/1920 of the ILO, available in N Singh, *International Convention on Merchant Shipping*, Stevens & Sons (1983) vol 3, pp 2128-2130.
124. Art 1(2) of the Convention.
125. ILO 1921 Convention Concerning the Compulsory Medical Examination of Children and Young Persons Employed at Sea, Art. 1 38 UNTS 217; 1936 ILO Convention Fixing the Minimum Age for Admission of Children to Employment at Sea (revised 1936) Art. 1 40 UNTS 205.
126. See also, ILO 1921 Convention Fixing the Minimum Age for the Admission of Young Persons to Employment as Trimmers or Stokers, art. 1, 38 UNTS 203.
127. For historical development, the role, and functions of the ILO see generally, VA Leary, 'Labor', in CC Joyner, *The United Nations and International Law*, Cambridge University Press (1997) 208; JG Stark, 'Implementation and Enforcement of ILO Conventions and Standards' (1990) 64 *ALJ* 511; N Valticos, *International Labour Law*, Kluwer (1979); DE Smikahl, 'Selected Bibliography on ILO Conventions' (1984) 6 *Comparative Labor Law* 227. The complete text of ILO conventions and recommendations pre-1981 are published in ILO, *International Labour Conventions and Recommendations 1919-1981*.
128. Agreed in London on May 12, 1954, 9 ILM (1970) 1.
129. Art 1(1).
130. DP O'Connell, note *supra*, vol II p 750.
131. M Summerskill, note *supra*, p 45.
132. 1046 UNTS 120.
133. International Convention for the Prevention of Pollution from Ships, 1973, 12 International Legal Materials 1319. The Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships provided that the 1978 Protocol would merge with the 1973 Convention into one final instrument.

The Conventions 1973/78 entered into force on 2 October 1983. Additionally, the 1984 Amendments entered into force 7 January 1986, and the 1985 Amendments to the Protocol entered into force on 6 April 1987; see D Brubaker, *Marine Pollution and International Law*, Belhaven Press (1993) p 139.

134. The International Convention for the Prevention of Pollution from Ships, 1973, Art 2(4).
135. The Memorial of Finland note *supra*, Map and Annexes, pp 274-275.
136. IMO Doc MP/CONF/8/7, 3 July 1973.
137. IMO Doc MP/CONF/C.1/WP 5, 10 October 1973.
138. The Memorial of Finland note *supra*, Map and Annexes, p 275.
139. *Ibid.*
140. *Ibid.*
141. 9 ILM (1970) 45.
142. The International Convention on Civil Liability for Oil Pollution Damage (or Civil Liability Convention), 29 November 1969, Art 1.1.
143. International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971, 11 ILM (1971) 284. Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (not in force), 15 *JMLC* pp 623-633. D Brubaker, note *supra*, p 172.
144. 9 ILM (1970) 25. Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil (1973), 16 ILM (1970) 1103.
145. The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, agreed to in London on November 29, 1969, Art 2.2
146. The International Convention on the Prevention of Marine Pollution by Dumping from Ships and Aircraft, 1972, 11 ILM (1972) 262.
147. Convention on the Protection of the Marine Environment of the Baltic Sea Area, Helsinki, 22 March 1974, 13 ILM (1974) 546.
148. Convention on the Protection of the Marine Environment of the Baltic Sea Area, Annex IV, Reg. 3(1).
149. Signed in London in 30 November 1990, 30 ILM (1991) 733.
150. Art 2(4).
151. See generally C Hill et al, *Arrest of Ships* (1985); J Theunis et al, *Arrest of Ships-2, Belgium, The Netherlands, India, Yugoslavia*, (1986); M Ganado et al, *Arrest of Ships-3, Malta, Panama, Sweden, United Arab Emirates*, (1987); Kaw Vun-Ping, *Arrest of Ship-4, People Republic of China, Nigeria, Oman, Scotland*, (1987); M Hafizullah et al, *Arrest of Ships-5, Bangladesh, Finland, Saudi Arabia, South Africa* (1987); A Philip, *Arrest of Ships-6, Denmark, Greece, Hong Kong, Kuwait, Qatar* (1987); A Georghadijis et al, *Arrest of Ships-7, Cyprus, Egypt, Pakistan, Poland*, (1988); and AD McArdle, *International Ship Arrest: a Practical Guide*, (1988). See also WP Verstrepren 'Arrest and Judicial Sale of Ship in Belgium' (1995) LMCLQ 131.
152. International Convention Relating to the Arrest of Sea going Ships, May 10, 1952, 439 UNTS 193.

153. See F Berlingieri, 'The Scope of Application of the 1952 Brussels Convention on the Arrest of Ships' (1991) 22 *JMLC* 405.
154. LOSC, Arts 28(2), 28(3), 73(1), 73(4), 97(3), 105, 109(4), 111(6), 111(7) and 111(8).
155. See Section 3.2.5 below.
156. *Ibid.*
157. RR Churchill and AV Lowe, *The Law of the Sea*, Manchester University Press (1999) p 257.
158. R Jennings and A Watts, *Oppenheims' International Law* (9 1992), vol 1, pp 731-732.
159. CJ Colombos, note *supra*, p 291.
160. R Jennings and A Watts, *ibid*, vol 1, pp 731-739. The Permanent Court of Arbitration in the case of *Muscat Dhows*, in which France authorised the Sultan of Muscats' subjects to sail under the French flag, held that, 'generally speaking it belongs to every sovereign to decide to whom he will accord the right to fly his flag and to prescribe the rules governing such grants ... therefore the granting of the French flag to subjects of His Highness the Sultan of Muscat in itself constitutes no attack on the independence of the Sultan ... nevertheless a sovereign may be limited by treaties in the exercise of this right'; see Decision of the Permanent Court of Arbitration in the matter of *Muscat Dhows*, (1908, 2 *AJIL* at 924). The 1958 Convention on the High Seas, in principle, has accepted this approach providing that 'Every state, whether coastal or not, has the right to sail ships under its flag on the high seas' (Art 4). The Convention added that 'each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag' (Art 5). However, 'There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag' (Art 5). Not all publicists agree that the flag State and State of nationality are synonymous. (DHN Johnson, *the Nationality of Ship* (1959) 8 *Indian Yearbook of International Affairs*, pp 3-15; DP O'Connell, note *supra* vol II pp 750-770). However, the 1982 Law of the Sea Convention (Art 90-91), like the 1986 UN Convention on Conditions for Registration of Ships (Art 4 and 11), considers the flag of State and State of registration as being similar.
161. M Summerskill, note *supra*, p 29.
162. *Ibid.*
163. *Ibid.*
164. DP O'Connell, note *supra*, vol II, p 905.
165. *Ibid.*
166. R Jennings and A Watts, note *supra*, vol 1, p 734.
167. Art 5(1).
168. The Convention was concluded under the auspices of UNCTAD, Geneva, 7 February 1986, (1987) 26 *ILM* 1229.
169. Art 2.
170. The Regulation was made under the Mineral Working (Offshore Installation) Act 1971, UK.

171. The Memorial of Finland, note *supra*, p 158.
172. See Chapter 4 below.
173. *Johnson v Diprose* [1893] 1 QB 512 at 515, per Lord Esher MR.
174. M Summerskill, note *supra*, p.20.
175. *Ibid.*
176. *Ibid.*
177. R Jennings and A Watts, note *supra* vol 1, p 746.
178. Art 101 of the LOSC provides:
Piracy consists of any of the following acts:
 - (a) Any illegal acts of violence or detention, or any act of depredation, committed for a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, persons or property in a place outside the jurisdiction of any State;
 - (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).
179. R Jennings and A Watts, note *supra* vol 1, pp 746-75; DP O'Connell, *International Law*, Stevens & Sons (1970), vol 2 pp 657-663; DP O'Connell, note *supra*, vol II pp 966-983; IA Shearer, *Starks' International Law*, Butterworths (1994) pp 247-250; and BH Dubner, *The Law of International Sea Piracy*, Martinus Nijhoff (1980).
180. *Ibid.*
181. The CIM was established in Antwerp in 1897. It is a non-governmental body which consists of the maritime law associations of many countries.
182. The draft Convention was adopted at Rio de Janeiro. It was then transmitted to the Intergovernmental Maritime Consultative Organisation (IMCO) for appropriate action because it was thought that the IMCO, currently known as the IMO, may adopt the draft.
183. Art 1, the draft International Convention on Offshore Mobile Craft, 1977.
184. M White, 'Offshore Craft and Structures: a Proposed International Convention' (1999) 18 *AMPLJ* 21 at 21.
185. *Ibid.*
186. *Ibid* at 22.
187. *Ibid.*
188. The Convention was signed in Rome, 10 March 1988, 27 ILM (1988) 672.
189. Signed in Rome, 10 March 1988, 27 ILM (1988) 685.
190. See chapter 5 below.
191. Such as the 1989 International Convention on Salvage, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Navigation, the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation and the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.
192. See chapter 5 below.

193. G Lazaratos, note *supra* at 83.
194. DP O'Connell, note *supra*, vol II p 750.
195. Gidel in a section entitled 'definition of a sea going vessel from the perspective of public international law' defines a 'surface sea going vessel' as 'not only any floating object but all structures with any dimensions or designation which are capable of moving in maritime spaces ...' '*n'est pas seulement tout engin flottant, mais tout engin, quelles que soient ses dimensions et sa denomination, apte à se mouvoir dans les espaces maritimes...*', G Gidel, *Le Droit International Public De La Mer*, Topos Verlag Vaduz (1981), vol I p 70.
196. UN Doc A/CN.4/17, p 10.
197. See YILC (1955) vol I p 10, it is also discussed in G Lazaratos, *ibid* at 83-84 and DP O'Connell, note *supra*, vol II p 750.
198. DP O'Connell, *ibid*.
199. G Lazaratos, note *supra* at 84 and H Meyer, note *supra*, pp 17- 18.
200. See for example, Arts 14-23.
201. In chapters 4-8 below.
202. See this chapter, section 3.5 below.
203. *Ibid*; see also Chapters 5-8.
204. See, for example, Agreement on Maritime Transport between the Netherlands and China, 14 August 1976, 1021 UNTS 249; Panama Canal Treaty between United States of America and Panama, 7 September 1977, 1280 UNTS 3; Agreement on Maritime Transport between Spain and Equatorial Guinea, 5 December 1979, 1177 UNTS 213; and Agreement on Marine Transport between Finland and China, 27 January 1977, 1215 UNTS 65.
205. Signed in Berlin, 13 October 1976, UNLS, ST/LEG/SER.B/19, p 408.
206. Art 1.
207. *Passage through the Great Belt (Finland v Denmark)*, 1991 ICJ, 94 ILR (1994) 446.
208. The questionnaire was sent to eight states: Australia, Chile, South Korea, Malaysia, Argentina, Mexico, Singapore, and Turkey.
209. The Memorial of Finland, note *supra* Annex 36.
210. The Argentinian reply indicates that mobile offshore drilling units do not possess the juridical nature of vessels, however, in relation to their navigation in Argentinian territorial waters, marine pollution and the security of navigation, a regime similar to vessels will be followed. See the Memorial of Finland, *ibid*, Annex 36, Reply of October 1991 by the Ministry of Defence of Argentina to the Finnish Embassy in Buenos Aires.
211. It is understood, from the Australian reply, that if mobile oil drilling rigs are intended for use on the continental shelf of Australia then an advance notification is required in certain circumstances. See the Memorial of Finland, note *supra* Annex 36, Reply of 15 October 1991 by Australian Maritime Safety Authority to the Finnish Embassy in Canberra.
212. *Ibid*, Reply of 13 November 1991 by the Ministry of Foreign Affairs of Turkey to the Finnish Embassy in Ankara.

213. See AHA Soons, *Artificial Islands and Installations in International Law*, Occasional Paper Series, Law of the Sea Institute (1974), University of Rhode Island, Occasional Paper No 22, p 3.
214. LOSC, Art 121(1).
215. AHA Soons, note *supra*, p 2; see also RB Krueger (Rapporteur), *Artificial Islands and Offshore Installations*, in International Law Association Report, Committee on the Law of the Sea, 57th Conference, Madrid (1978) p 397.
216. AHA Soons, *ibid* and ED Brown, 'The Significance of a Possible EC EEZ for the Law Relating to Artificial Islands, Installations, and Structures, and to Cables and Pipelines, in the Exclusive Economic Zone' (1992) 23 *ODIL* 115 at 122.
217. Art 60(8).
218. Art 5(4).
219. By Sir Charles Russell in the Bering Sea Arbitration, as discussed by PC Jessup, *the Law of Territorial Waters and Maritime Jurisdiction*, GA Jennings Co Inc (1927) pp 69-70 and DW Bowett, *the Legal Regime of Islands in International Law*, Oceana Publications, (1979) pp 2-7.
220. Such as, PC Jessup, *ibid*.
221. *Annuaire*, 1913, p 409, 411 (report by Oppenheim) as discussed in DW Bowett, note *supra*.
222. See, DW Bowett, *ibid*, p 2.
223. YILC (1956) vol 2 p 270.
224. *Ibid*.
225. *Ibid*.
226. DW Bowett, note *supra*, p 4.
227. This notion was explained in a United States amendment at the 1958 Geneva Conference; see A/CONF 13/c.1/L.112, as discussed in DW Bowett, *ibid*.
228. See generally N Papadakis, note *supra*; DHN Johnson, note *supra*; CJ Colombos, note 1, *supra*, pp 126-127 and W Piphagen, 'International Legal Aspects of Artificial Islands' (1973) 4 *International Relations* 327.
229. Art 60 (1) (a).
230. A large number of different types of artificial islands are used for different purposes. For a detailed description of the kinds and usage of artificial islands see N Papadakis, note *supra*, pp 11-37 and CW Walker, 'Jurisdictional Problems Created by Artificial Islands' (1973) 10 *San Diego Law Review* 638 at 638-663.
231. For the types and physical nature of oil rigs see above, Chapter Two.
232. See the LOSC, 1982, Arts 11, 56(1) (b) (I), 60, 87(1) (d), and 208(1).
233. Signed in Rome, 10 March 1988, 27 *ILM* (1988) 685.
234. Art 1(3).
235. M Summerskill, note *supra*, p 16.
236. Art 5(4) of the 1958 Continental Shelf Convention.
237. N Papadakis, note *supra*, p 177.
238. Doc SC-72/CONF 85/8, Paris, 30 March 1972, at p 6, as discussed in *ibid*.
239. *Ibid*.

240. The Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration and Exploitation of Seabed Mineral Resources, 1976, New Direction in the Law of the Sea VI at 535 and 16 ILM (1977) 1450.
241. Art 3.
242. The text was provided by the Finnish Embassy in Seoul to the Finnish Legal Team in the case concerning *Passage through the Great Belt*. See the Memorial of Finland, note *supra* Maps And Annexes, p 290.
243. Signed in London on 30 November 1990, 30 ILM (1991) 733.
244. IMO Doc OP/PR/PM/2, 19 March 1990.
245. IMO Doc OP/PR/PM/WP 9/Rev 1, 17 May 1990.
246. The record of the Conference which accepted this Convention does not reveal any essential discussion of the definition of 'offshore units' and 'offshore platforms': the Memorial of Finland, note *supra*, Maps and Annexes, p 281.
247. The Convention was signed in Rome, 10 March 1988, 27 ILM (1988) 672.
248. Art 1.
249. Signed in Rome, 10 March 1988, 27 ILM (1988) 685.
250. IMO Doc SUA/CONF/3, 28 August 1987.
251. IMO Doc SUA/CONF/8, 20 January 1988.
252. IMO Doc SUA/CONF/7, 18 January 1988.
253. 1996 UKTS 93.
254. Art 1(b).
255. Art 3 (1).
256. [1926] L1LR 25 at 446.
257. [1926] L1LR 25 at 449.
258. Arts 56 and 60.
259. LOSC, Arts 11, 56, 60, 80, 87, 147, 194, 208, and 262.
260. Arts 56, 60, 80 and 208.
261. Art 147.
262. Art 194(3)(c)(d).
263. Art 209.
264. A/CONF 62/L.57/Rev 1 (1980), section IIV, 'Items under consideration,' para 1, XIV Off Rec 114, 119 (Chairman, Drafting Committee), as discussed in SN Nandan and S Rosenne, note *supra*, p 36.
265. SN Nandan and S Rosenne, *ibid*.
266. A/AC. 138/SC. II/L.27 and Corr. 1, Art 1, Paras 3 to 5, Art 2, Para (a), and Art 3, Para 2, reproduced in III SBS Report 1973, at 75, 76 (USA), as discussed in SN Nandan and S Rosenne, *ibid*, p 575.
267. *Ibid*.
268. C.2/Blue Paper No 4 (1975, mimeo.), Provisions 18. Reproduced in IV Platzoder 126, 128, as discussed in SN Nandan and S Rosenne, note *supra*, p 121.
269. SN Nandan and S Rosenne, *ibid*, p 121-122.
270. *Ibid*, p 122.
271. *Ibid*.
272. LOSC, Art 56 (1)(a) and (b)(i).

- 273. LOSC, Art 60 (1) (a) and (b).
- 274. LOSC, Art 60 (2).
- 275. LOSC, Art 87 (d).
- 276. LOSC, Art 60 (4).
- 277. LOSC, Art 60 (5).
- 278. LOSC, Art 60 (8).
- 279. LOSC, Arts 60(3) and 208(1).
- 280. LOSC, Art 60(7).
- 281. LOSC, Art 60(3).
- 282. LOSC, Art 5, para 2-6.
- 283. LOSC, Art 5(2).