Course

Legal regulations of petroleum industry

Contents

Lex Petrolea

Types of modern international petroleum industry

Upstream

- Exploration & Production (E&P)
- Firms explore new hydrocarbon fields
- Discovered fields developed and petroleum produced

Midstream

- Transportation of oil and natural gas
- Shipping
- Pipelines
- LNG Terminals

Downstream

- Refinery processes crude oil to produce different products
- Petrochemical plants
- Polymers, Plastics and other products

Petroleum exploration and production

- Legal
- Technical
- Economic
- Financial
- Political
- Environmental

Actors of modern international petroleum industry

- Host governments
- NOCs (national oil companies) hold approximately 90 percent of the world's oil reserves
- IOCs (international oil companies - joint projects, ventures)
- Supermajor companies with stateownership
- Smaller independent companies
- Highly specialized service companies (rig operations, drilling, cementing, etc.)
- Industry associations

Principles of petroleum regulations

1. National sovereignty over natural resources
2. Energy and Resources Law is national law
3. No single treaty regulating petroleum exploration and production worldwide
4. Internationalization of domestic principles and rules
5. Oil and gas activities are regulated by contracts, property law, administrative law, taxation law, environmental law and competition law

National sovereignty

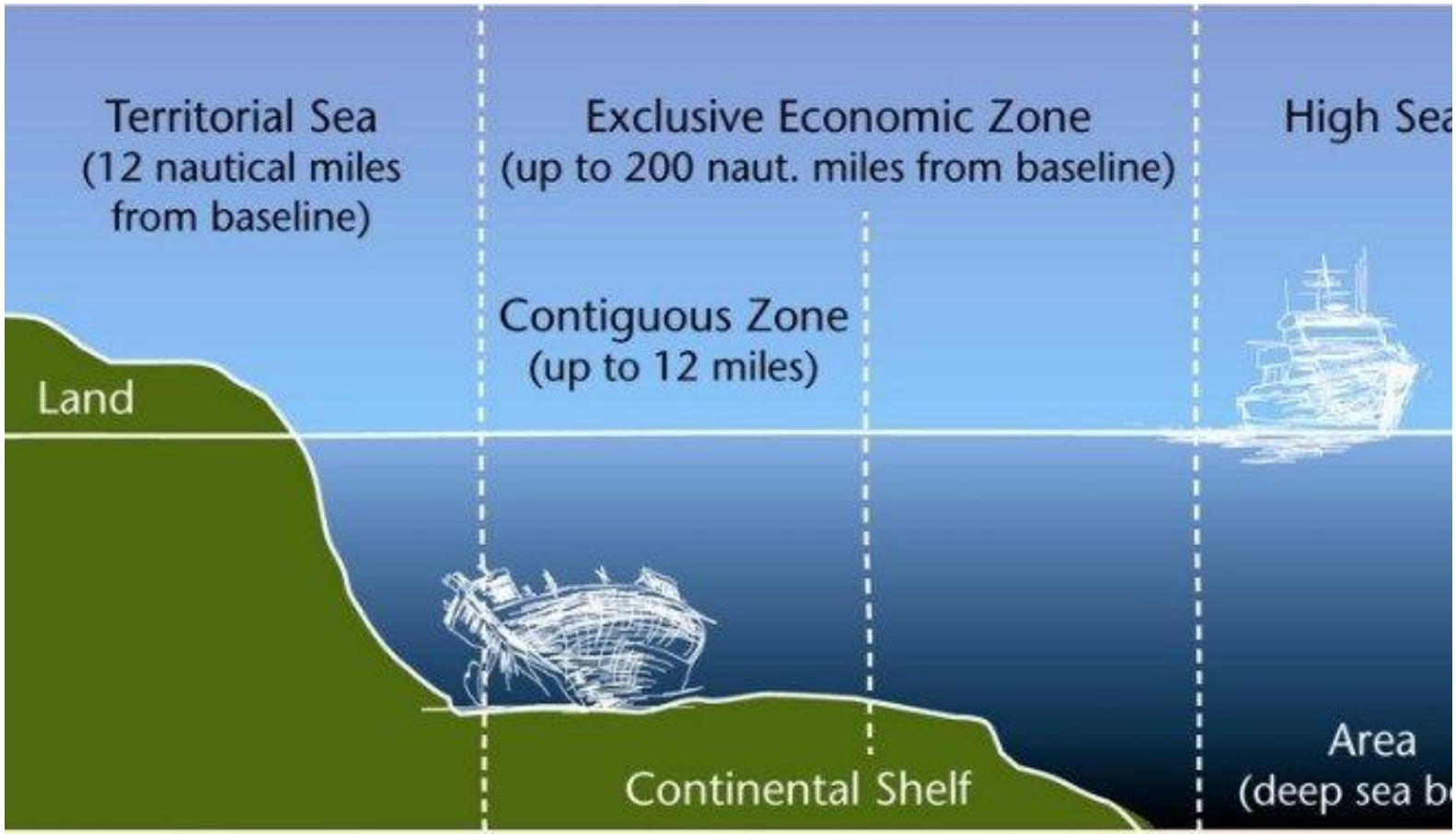
National rights

- to exploit its own resources
- to pursue its own energy, subsoil, environmental and developmental policies

National obligations

- to protect common interests
- not to damage of other states

National sovereignty



International regulations

Lex petrolea

A specific legal regime, or body of international norms which instruct or regulates the international petroleum industry (transnational petroleum law)

Regulate:

- Relationship between states
- Relationship between states (host governments) and companies
- Oil transporting
- Environmental and safety issues

The scope of Lex petrolea

1. Internationalized norms, rules and practices regardless geographical location
2. Norms, principles and standards of industry associations, IOCs and NOCs
3. Host governments contracts
4. Indigenous rights and environmental protection

International regulations

Areas of concern

- Transportation of oil and gas via vessels and pipelines
- Environmental impacts of oil and gas industry

(oil spills, marine oil pollution, movements of hazardous wastes and their disposal)

- Civil liability for environmental damage
- Arctic pole regime

International agreements

- 1958 Convention on the High Seas
- 1958 Convention on the Territorial Sea and the Contiguous Zone
- United Nations Convention on the Law of the Sea (UNCLOS), 1982
- International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL), 1954
- 1972 Stockholm Declaration of the United Nations Conference on the Human Environment

International agreements

- Convention on Long-Range Transboundary Air Pollution, 1979
- 1982 World Charter for Nature
- 1991 Convention on Environmental Impact Assessment in a Transboundary Context
- 1992 Rio Declaration on Environment and Development

Geneva Convention on the High Seas, 1958

- Codifies the rules of international law relating to the high seas
- Regulates activities in the ‘international waters’
- Gives the definitions of "high seas”, “flag state”
- States the principle of pollution prevention by the discharge of oil from ships or pipelines or from the dumping of radioactive waste
- Obligates the states to cooperate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above
- Regulates the usage of submarine cables and pipelines

International Organizations' role

INTERNATIONAL
MARITIME
ORGANIZATION

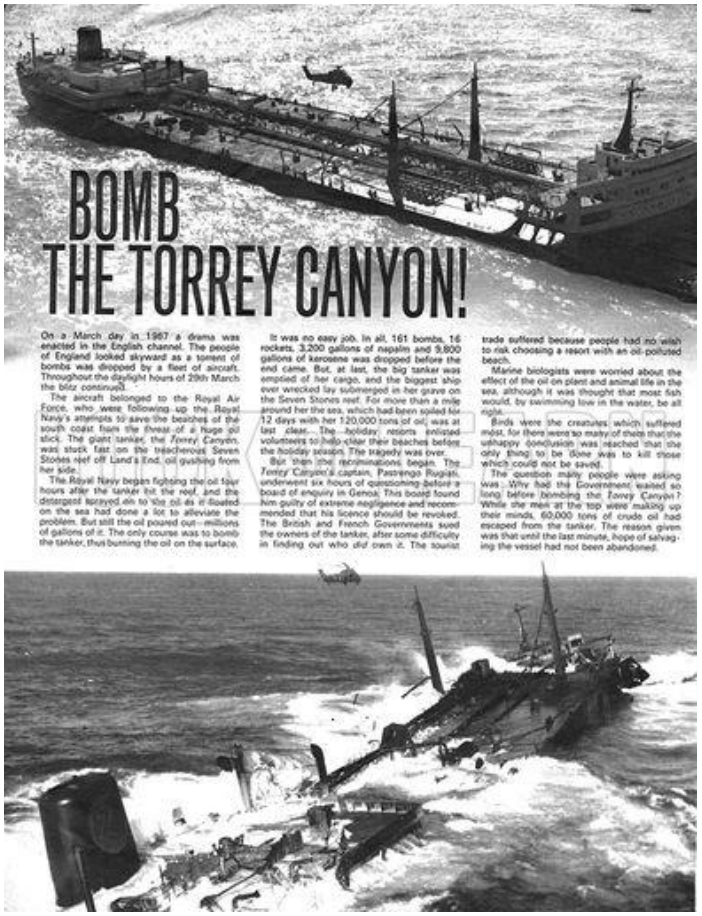
United Nations Convention of the Law of the Sea (UNLOSC), 1982

- Establishes the international legal order for the oceans
- 320 articles are divided into 17 parts, each dealing with a broad subject concerning the sea regime
- 19 annexes, each dealing with a specific marine issue
- Attempts to create a balance between marine environmental protection from ship-source pollution and the rights of navigation
- Regulates all sources of marine pollution
- Imposes obligations to prevent, reduce, and control ship-source pollution (on flag states only)
- Grants coastal states, in ice-covered areas, a general power to apply national standards to EEZ pollution control

International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL), 1954

- Creates room for the discharge of oil without restriction in an area outside a prohibited zone
- Requires ships and ports to be fitted with certain pollution prevention facilities
- Orders ships to carry an oil record book
- Not-too-effective tool for pollution prevention and control

Oil spills: Torrey Canyon



BOMB THE TORREY CANYON!

On a March day in 1967 a drama was enacted in the English channel. The people of England looked skyward as a torrent of bombs was dropped by a fleet of aircraft. Throughout the daylight hours of 29th March the blitz continued.

The aircraft belonged to the Royal Air Force, who were following up the Royal Navy's attempts to save the beaches of the south coast from the threat of a huge oil slick. The giant tanker, the *Torrey Canyon*, was stuck fast on the treacherous Seven Stones reef off Land's End, oil gushing from her side.

The Royal Navy began fighting the oil four hours after the tanker hit the reef, and the detergent sprayed on to the oil as it floated on the sea had done a lot to alleviate the problem. But still the oil poured out—millions of gallons of it. The only course was to bomb the tanker, thus burning the oil on the surface.

It was no easy job. In all, 161 bombs, 16 rockets, 3,200 gallons of napalm and 9,800 gallons of kerosene was dropped before the end came. But, at last, the big tanker was emptied of her cargo, and the biggest ship ever wrecked lay submerged in her grave on the Seven Stones reef. For more than a mile around her the sea, which had been soiled for 12 days with her 120,000 tons of oil, was at last clear. The holiday resorts enlisted volunteers to help clear their beaches before the holiday season. The tragedy was over.

But then the recriminations began. The *Torrey Canyon*'s captain, Pastrengo Rugiati, underwent six hours of questioning before a board of enquiry in Genoa. This board found him guilty of extreme negligence and recommended that his licence should be revoked. The British and French Governments sued the owners of the tanker, after some difficulty in finding out who *did* own it. The tourist trade suffered because people had no wish to risk choosing a resort with an oil-polluted beach.

Marine biologists were worried about the effect of the oil on plant and animal life in the sea, although it was thought that most fish would, by swimming low in the water, be all right.

Birds were the creatures which suffered most, for there were so many of these that the unhappy conclusion was reached that the only thing to be done was to kill those which could not be saved.

The question many people were asking was ..Why had the Government waited so long before bombing the *Torrey Canyon*? While the men at the top were making up their minds, 60,000 tons of crude oil had escaped from the tanker. The reason given was that until the last minute, hope of salvaging the vessel had not been abandoned.

International Convention for the Prevention of Pollution from Ships, 1973 and its 1978 Protocol (MARPOL 73/78)

- Concerns with the regulation of oil pollution (Annex I)
- Specifies certain standards for oil tankers
- Permits discharges of oil outside the special areas or beyond 50 nautical miles from land
- Introduces International Oil Pollution Prevention Certificates
- Requires ships to carry an oil discharge and monitoring control system
- Obligates state parties to cooperate in the detection of violations
- *The main convention on vessel-source pollution today*

Convention on Civil Liability for Oil Pollution Damage, 1969 (1992)

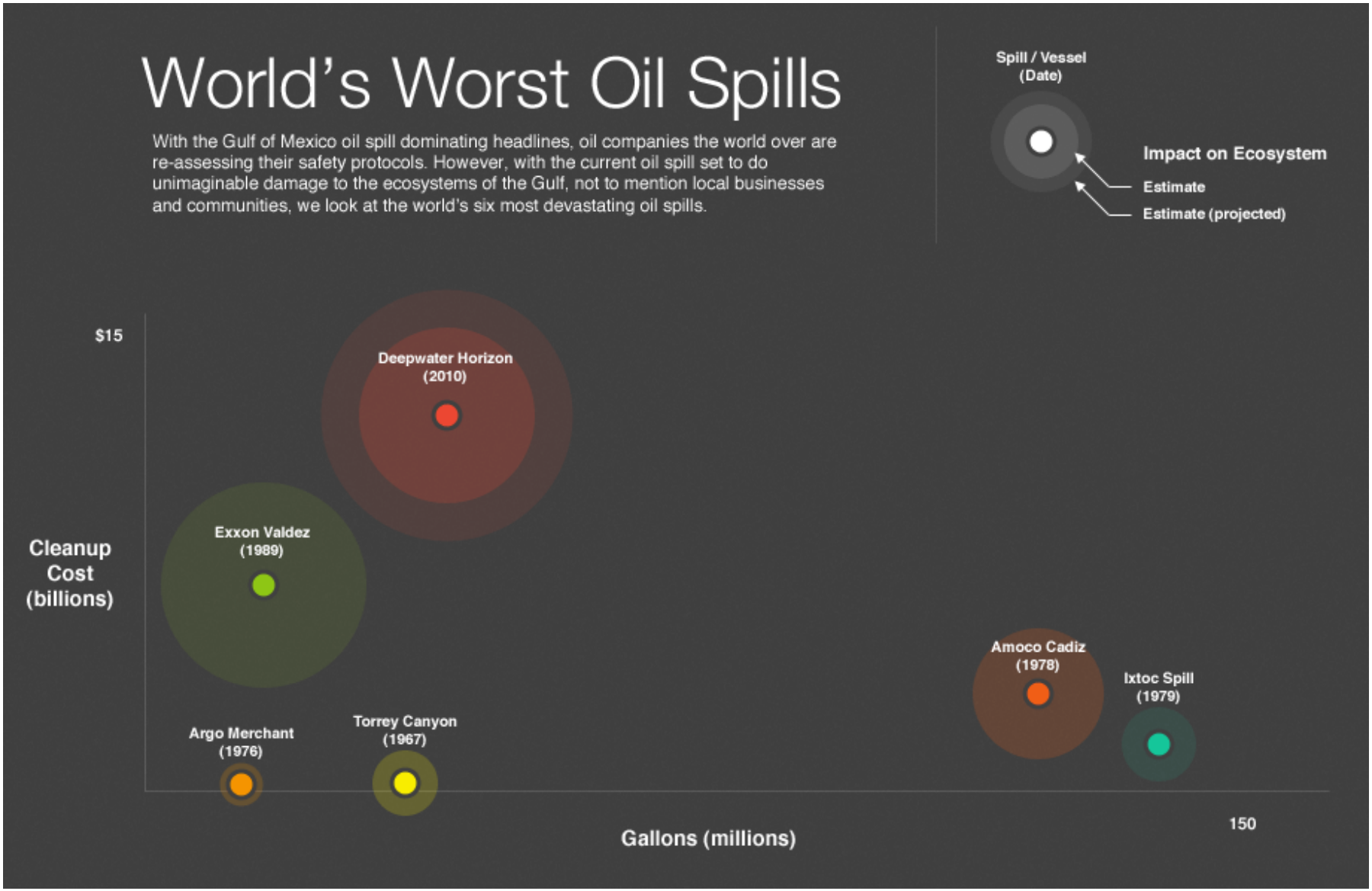
- Adopts uniform international rules and procedures for determining questions of liability
- Obligates the flag states to ensure that their vessels carry *insurance*
- Gives the right to port states to verify the validity and currency of the insurance
- Establishes strict liability
- Compensation for environmental deterioration is limited
- Cases are settled out of the court but by P&I Clubs

by Elena Gladun,
Tyumen State University

Civil liability

Failures

- Nations are not willing to create international regime for liability
- Companies are unable to recover damages
- Few treaties including provisions on liability
- Only 5 MEAs agreements on liability are in force
- Difficulties in evaluating damages and environmental harm

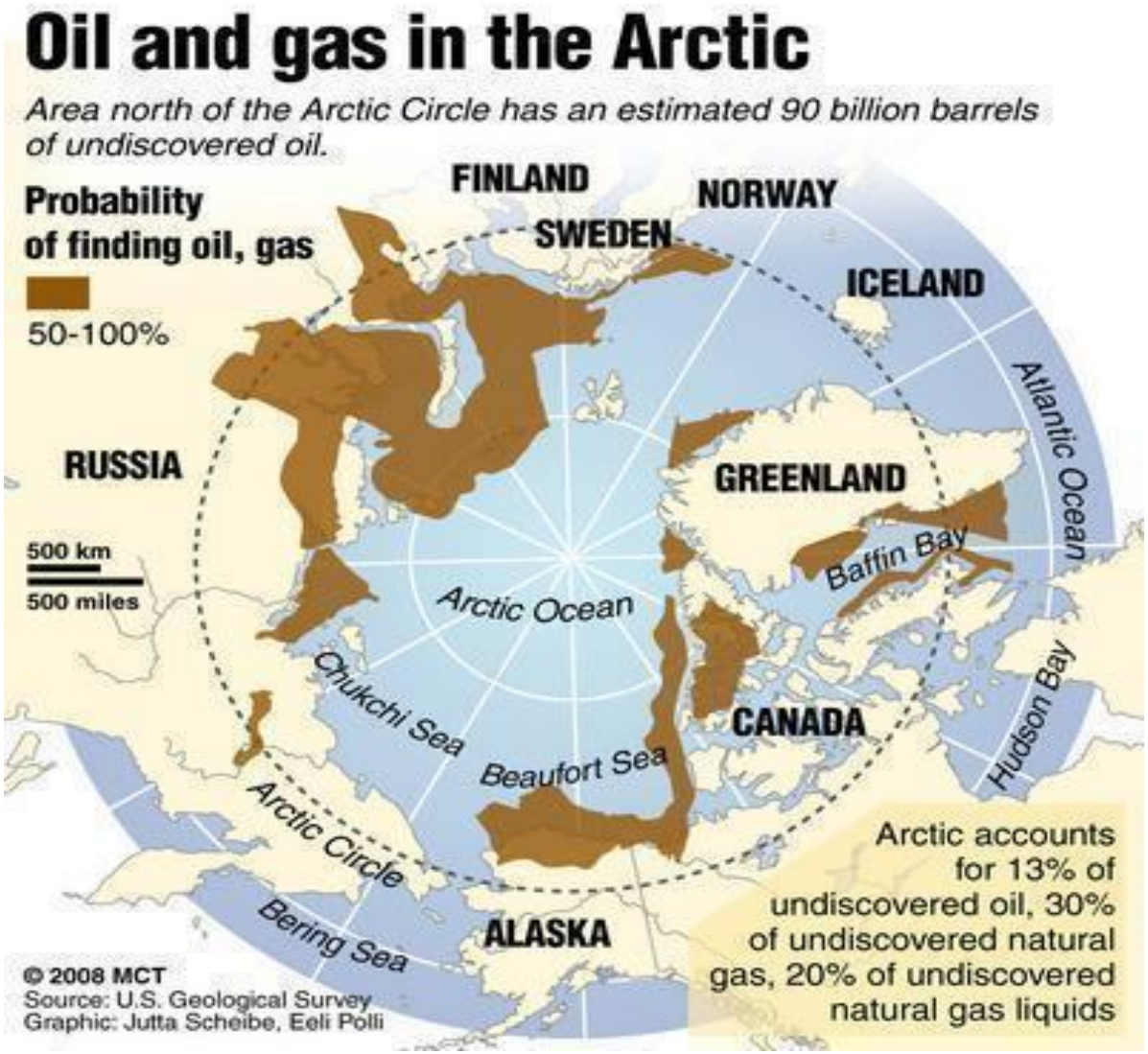

World's Worst Oil Spills
With the Gulf of Mexico oil spill dominating headlines, oil companies the world over are re-assessing their safety protocols. However, with the current oil spill set to do unimaginable damage to the ecosystems of the Gulf, not to mention local businesses and communities, we look at the world's six most devastating oil spills.
Spill / Vessel (Date)
Impact on Ecosystem
Estimate
Estimate (projected)
$15
Cleanup Cost (billions)
Deepwater Horizon (2010)
Exxon Valdez (1989)
Argo Merchant (1976)
Torrey Canyon (1967)
Amoco Cadiz (1978)
Ixtoc Spill (1979)
150
Gallons (millions)

Transportation of oil and gas via vessels and pipelines

International regulations

- Energy Charter Treaty, 1991
- Convention on the High Seas, 1958
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972
- Convention on the Conservation of Migratory Species of Wild Animals, 1979
- Convention on Environmental Impact Assessment in a Transboundary Context, 1991
- United Nations Convention on Biological Diversity, 1992
- Convention on Environmental Impact Assessment in a Transboundary Context , 1997
- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, 1998

Arctic pole regime



Arctic pole international regime

International regulations

- United Nations Convention on the Law of the Sea (UNCLOS), 1982
- Agreement between Norway and Russia on maritime delimitation
- Arctic countries national legislation

by Elena Gladun,
Tyumen State University

New approach to oil and gas industry

International and national legal regulations

+

National and international legal standards

+

Corporate management systems

+

Environmental management system

by Elena Gladun,
Tyumen State University

Corporate management systems

- **EMAS** - *Eco-Management and Audit Scheme*
- **ISO** - *International Organization for Standardization*
- **OHSAS** - *Occupational Health and Safety Management Systems*
- **BS** – *British Standards*

Contracts between Host Governments and IOCs

- No generally accepted model petroleum agreements
- Existence of common clauses (lex petrolea)
- Product sharing agreements (PSA), concession contracts, service agreements
- Aims of host governments (involvement of national oil companies in managerial decisions and control, development of their own technologies, training labor force, sustainable development)
- Aims of IOCs (access to resources, profitability, legal certainty)

Sakhalin II project

Common clauses of modern government contracts

- The ownership of petroleum produced
- Area and term of development
- Host country control over the rate and extent of exploration and production
- Option for the host country to participate in upstream/midstream/downstream operations
- The right of the host country to an equity percentage of the production
- Access to oil for the domestic or export market

Common clauses of modern government contracts (cntd)

- Revenue mechanisms (royalty, rentals, and taxes)
- Social benefits
- Environmental protection
- Stabilization clauses
- Adaptation clauses
- Dispute resolution clauses

Contractual systems for access to petroleum

Production-sharing contracts (PSCs)

IOC and host state enter into contract for the exploration and production of the host state's petroleum resources:

IOC assumes all risks in exchange for share of the petroleum produced

Terms determined by the legislation (sometimes are negotiated)

Petroleum licensing system

A system where a license is granted for a specific type of petroleum operations (usually exploration and production)

Petroleum licensing (LCS)

Definition

The act of giving licenses (geographical areas at land and/or sea) to a company or a joint venture allowing them to search for commercially feasible deposits for the extraction of petroleum

Petroleum licensing

Main characteristics

The state retains prerogative sovereign right to modify at any time those terms and conditions that are not negotiated but fixed in legislation (for example, taxation regime)

Type of dispute resolution

International arbitration is the major type of dispute resolution procedure for the international petroleum industry

The arbitrator must apply the substantive law identified in the parties arbitral agreement (as the law governing the contract)

Disputes

Two types

1. State investment disputes (btw IOCs and host government)
2. Disputes between oil companies

Disputes between joint ventures participants

- joint operating agreements
- unitization agreements
- farmout agreements
- sales and purchase agreements
- confidentiality agreements

Disputes (cntd)

Disputes between operators and service contractors

- drilling and well-service agreements
- seismic contracts
- construction contracts
- equipment and facilities contracts

Disputes (cntd)

Disputes on the continental shelf

- Delimitation (UK, Norway, Denmark 1940-1963)
- Extension of the continental shelf of the state (Norway, Canada, Russia)  the UN Commission on the Limits of the Continental Shelf

Lex petrolea (summarizing)

- Clauses in international agreements concerning oil and gas activities (common principles, regulations of the areas beyond the national jurisdiction, rules on transportation oil and gas and other transboundary activities, environmental regulations, liability regulations)
- Corporate management systems and standards
- Contracts between host governments and international companies
- Dispute resolution system

Regulations of the upstream petroleum sector in Russia

https://www.youtube.com/watch?v=l1HkB4EMj-4

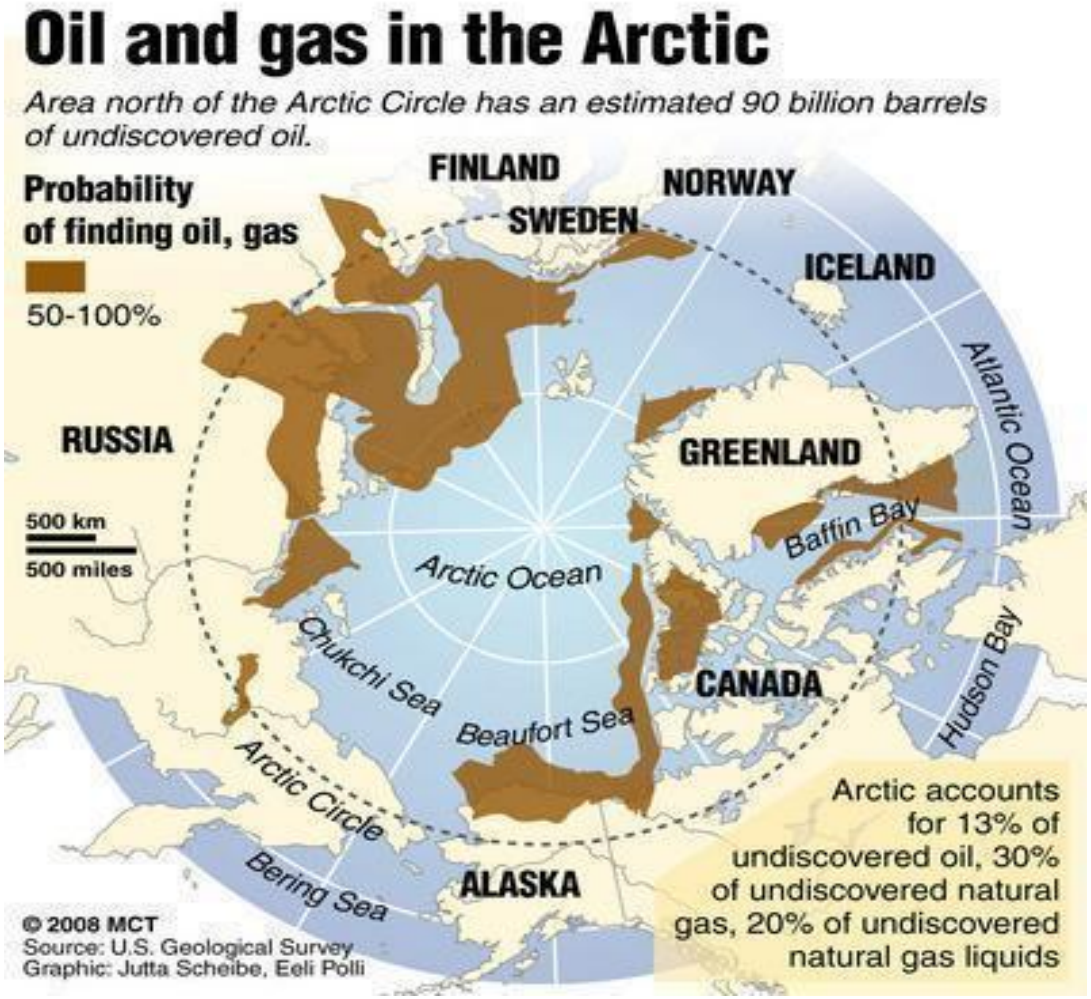
https://www.youtube.com/watch?v=VXYOOvGLzfI

Oil and gas reserves in Russia

Allocation of Russian oil and gas reserves

- Volga river (Central Russia, Tatarstan)
- Caspian sea
- Western Siberia
- Yamal Peninsula
- Offshore – Sakhalin islands
- Offshore – Barentz Sea, Sakhalin island
- Offshore – Black and Azov shelf

Russian continental shelf

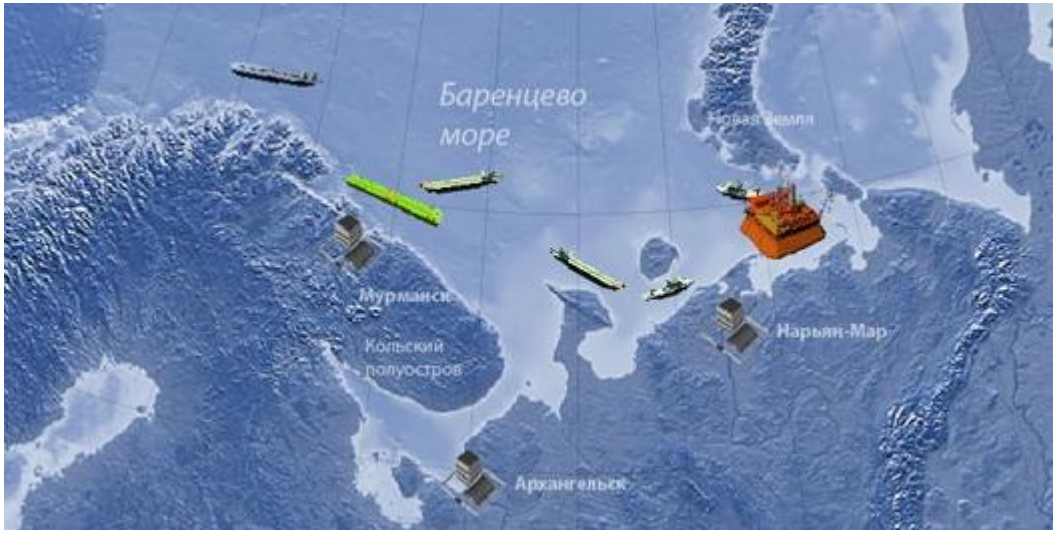


Large fields on the shelf

Shtokmanovskoye field

3,8 trln cubic meters of gas
54,3 mln tonnes of condensate

Prirazlomnoye field



Large fields on the shelf

Sakhalin Islands fields

Russian offshore strategy

Key facts

- Continental shelf of 6.2 mill. km2 of which 4 million are considered to be of potential interest for oil and gas production
- 1/3 of Russia's initial gas resources and 12 % of oil resources are located on the continental shelf
- The shelf could produce 95 million tons of oil and 320 BCM of natural gas by 2020 – compared by today's production of 5 mill tons of oil, exclusively from Sakhalin
- Since 1993, no serious exploration of continental shelf has been undertaken

Russian offshore strategy

Motivating factors

- The vast potential of the offshore resources
- Liquefied natural gas (LNG) becoming an increasingly interesting business prospect
- ‘Strategy for exploration and development of the oil and gas potential of the continental shelf of the Russian Federation until 2020’

Russian offshore strategy

Obstacles

- Harsh climate and difficult navigation climate
- Low level of exploration
- High investment risk
- High exploration and development costs due to remote locations
- Poorly developed infrastructure supporting production and transportation of offshore resources
- Unattractive and unstable fiscal regime
- Insufficiently developed legal framework, not adapted to the specifics of offshore activity
- Gazprom has secured control over promising fields in the Barents Sea
- Environmental constraints

Russian oil and gas industry model

- Federal government control over major oil and gas development sites
- Oil and gas resources are passed for development partially under a license (lease), partially without any contests and auctions
- A list of strategic fields (the state reserves the right to select the companies to be granted exploration and development licences)
- State-controlled companies are the key players
- The Federation and the regions jointly carry out possession, use and disposal of subsoil resources
- Tough conditions for access to the country's oil and gas resources for the regions

State's involvement in the Russian oil and gas sector

- The grant of access to resource through license system or PSA
- Development and improvement of subsoil legislation
- Federal subsoil use policy
- Subsoil use strategy
- Establishment of a common order for subsoil use
- Standards and rules
- Fund of geological information
- State expert review of mineral resources reserves
- Disposal of subsoil
- Limitations on subsoil use

Main legal instruments

- International conventions and agreements (UNCLOS 1982, Espoo Convention 1991, etc.)
- Constitution of the Russian Federation
- Subsoil Law 1992
- Federal Continental Shelf Law 1995
- Federal Exclusive Economic Zone Law 1998
- Federal Internal Sea Waters, Territorial Sea and Territorial Waters Law, 1998
- Water Code 2006
- Land Code 2001
- Civil laws
- Environmental laws

Main legal instruments

Environmental laws

- Law on Environmental Protection 2002
- Environmental Impact Assessment Law 1995

Production Sharing Agreement Law 1995
Civil Code
Tax Code

Subsidiary laws

International instruments

- Article 77 of UNCLOS – Russia exercises sovereign rights over onshore and continental shelf for the purposes of exploring and exploiting its natural resources
- The Espoo Convention – binds Russia to notify and consult on major projects likely to have a significant environmental impact across boundaries (pipelines)
- MARPOL 73/78 – requires the certain design and technical characteristics

by Elena Gladun,
Tyumen State University

Environmental management programs

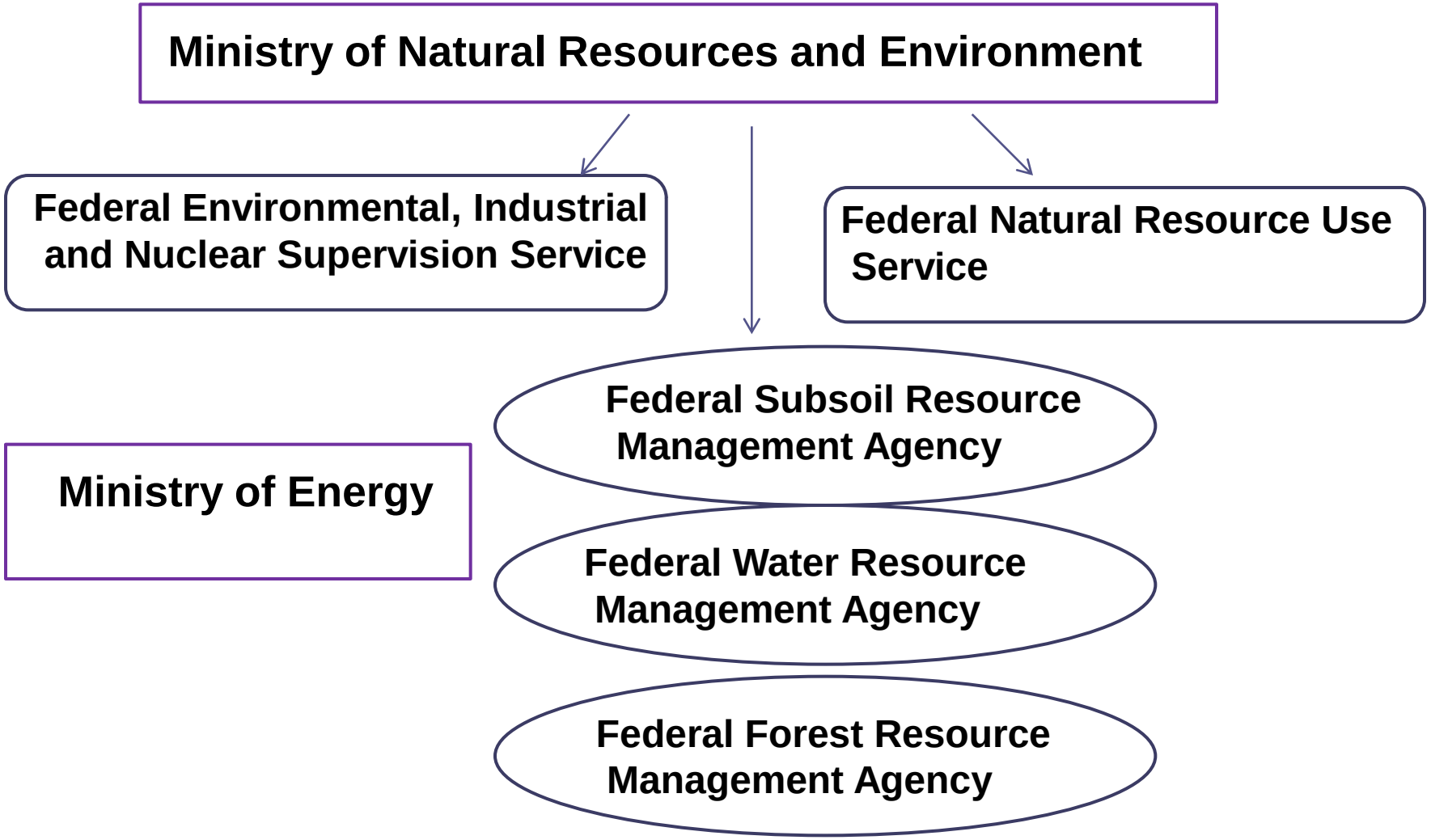
- **EMAS** - *Eco-Management and Audit Scheme*
- **ISO** - *International Organization for Standardization*
- **OHSAS** - *Occupational Health and Safety Management Systems*
- **BS** – *British Standards*

Domestic regulations

Exclusive sovereign rights over the continental shelf (Federal Continental Shelf Law) and land recourses

- federal bodies: authorize and regulate drilling on the shelf
- federal bodies: construct, authorize and regulate the erection, operation, and use of installations, structures, etc.
- federal and regional bodies: issue all licenses
- terminate, temporarily suspend, and limit the rights under the license

National authorities system



The right to use subsoil block

- Arises at the moment of receiving the license or PSA
- License is issued on the ground of a tender or an auction or without holding an auction
- Subsoil user engaged on the shelf can only be a company in which the state directly or indirectly controls more than 50 per cent of the total number of voting shares
- A company operating on the Russian shelf is required to have 5 years of work experience of shelf operations
- A subsoil block of federal reserves cannot be obtained by the foreign company

Production Sharing Agreement

- A contract between the Russian Federation and foreign investor(s)
- The state obtains the exclusive rights to prospect, explore, and produce hydrocarbons on the subsoil block and control the related work for a specific period
- The investors are hired as contractors, while the state retains the ownership
- The investors are obliged to carry the work at their own expense and risk
- The investors have the right to the production output

Subsoil Use

Legal-adminitsrative rules (licensing system)

Contractual system (PSA, service contracts)

Департамент по недропользованию по Центральному федеральному округу (Центрнедра)

(наименование органа, выдавшего лицензию)

ЛИЦЕНЗИЯ
на пользование недрами

М С К | 0 3 6 4 9 | В Э
серия | номер | вид лицензии

Выдана Закрытому акционерному обществу
(субъект предпринимательской деятельности, получивший лицензию)
Марэкс-М
(далее – "ЗАО "Марэкс-М")

в лице генерального директора управляющей организации ООО "Метанэкс Проперти Менеджмент" Захаревского Владимира Геннадьевича
(Ф.И.О. лица, представляющего субъект предпринимательской деятельности)

с целевым назначением и видами работ добыча полезных ископаемых для нужд питьевого и хозяйственно-бытового водоснабжения коттеджной застройки

Участок недр расположен вблизи д. Пчелка
(местонахождение участка недр)
Мытищинского района Московской области
(район, область, край, республика)

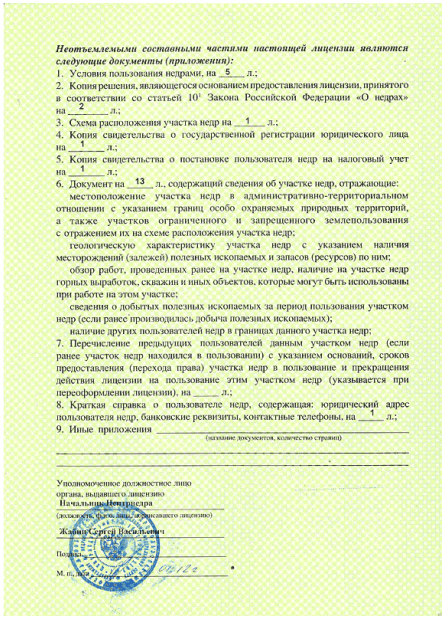
Описание границ участка недр, координаты угловых точек, копии топопланов, разрезов и др. приводятся в приложении 3, 6

Участок недр имеет статус горного отвода (№ прилож.)
(геологического или горного отвода)

Дата окончания действия лицензии 01.02.2022 г.
(число, месяц, год)

Место штампа государственной регистрации

РОСНЕДРА
ДЕПАРТАМЕНТ ПО НЕДРОПОЛЬЗОВАНИЮ ПО ЦЕНТРАЛЬНОМУ ФЕДЕРАЛЬНОМУ ОКРУГУ
ЗАРЕГИСТРИРОВАНО
"14" февраля 2012 г.
№ 77 [illegible] 03649 ВЭ



Неотъемлемыми составными частями настоящей лицензии являются следующие документы (приложения):

1. Условия пользования недрами, на 5 л.;
2. Копия решения, являющегося основанием предоставления лицензии, принятого в соответствии со статьей 10[1] Закона Российской Федерации «О недрах» на 2 л.;
3. Схема расположения участка недр на 1 л.;
4. Копия свидетельства о государственной регистрации юридического лица на 1 л.;
5. Копия свидетельства о постановке пользователя недр на налоговый учет на 1 л.;
6. Документ на 13 л., содержащий сведения об участке недр, отражающие:
   местоположение участка недр в административно-территориальном отношении с указанием границ особо охраняемых природных территорий, а также участков ограниченного и запрещенного землепользования с отражением их на схеме расположения участка недр;
   геологическую характеристику участка недр с указанием наличия месторождений (залежей) полезных ископаемых и запасов (ресурсов) по ним;
   обзор работ, проведенных ранее на участке недр, наличие на участке недр горных выработок, скважин и иных объектов, которые могут быть использованы при работе на этом участке;
   сведения о добытых полезных ископаемых за период пользования участком недр (если ранее производилась добыча полезных ископаемых);
   наличие других пользователей недр в границах данного участка недр;
7. Перечисление предыдущих пользователей данным участком недр (если ранее участок недр находился в пользовании) с указанием оснований, сроков предоставления (перехода права) участка недр в пользование и прекращения действия лицензии на пользование этим участком недр (указывается при переоформлении лицензии), на _____ л.;
8. Краткая справка о пользователе недр, содержащая: юридический адрес пользователя недр, банковские реквизиты, контактные телефоны, на 1 л.;
9. Иные приложения _____
(название документов, количество страниц)

Уполномоченное должностное лицо
органа, выдавшего лицензию
Начальник Центрнедра
(должность, Ф.И.О. лица, выдавшего лицензию)
Жданов Сергей Иосифович
Подпись
М. п.

Licensing System

Licensing system is regulated under the Subsoil Law

- Document confirming the right of the owner to license a specifically defined block of subsoil (stated period of time, requirements and conditions)
- Subsoil users tender payments (subsoil tax, royalties, rentals, charges for the right to use the water)

Licensing System

Types of licenses

- For geological study of subsoil *(up to 5 years)*
- Extraction of mineral resources *(up to 20 years)*
- Construction and exploitation of underground facilities
- Formation of specially protected sites
- Joint licenses *(up to 25 years)*

Licensing System

Granting of licenses

- Through competitive tenders
- Through auctions
- Without any competitive tenders

Information in the license

Information about the environmental security:

- information about the company
- information about the subsoil block
- the environmental monitoring organization
- agreement on mitigation and compensation for inflicted harm to resources
- preventive measures and damage control
- insurance
- liquidation of installations and constructions upon completion of the work
- agreement on investments into community development

Federal Environmental, Industrial and Nuclear Supervision Service

Conducts:

- State mining control
- Monitoring and compliance control
- Coordination of subsoil technical projects

Environmental regulation framework

Federal Law On Environmental Protection:

- Sets forth fundamental legal principles for environmental protection
- Preserve favorable environment, biological diversity and natural resources for the future generations
- Grants authorities to public executive bodies
- Sets forth the system of standards and general requirements to industries
- Establishes quality limits, limits of admissible exposure, to the environment and other limits

Environmental regulation framework

Federal Law On Environmental Impact Assessment:

- All oil and gas projects are allowed through the system of EIA

Federal Law On Specially Protected Natural Areas

Federal Law on the Guarantees of Indigenous Rights

Safety regulation framework

Federal Safety Law:

- regulates environmental, manufacturing, raw materials, energy and other fields of safety
- sets the standards, norms, and rules on safe work practices in the area of subsoil use
- the leadership of a company carries personal responsibility to provide for a safe working environment
- defines the legal, economic, and social basis for the safe operation and management of hazardous production facilities

Safety regulation framework

The Oil and Gas Industry safety Rules:

- Establish requirements for industry safety
- Company is obliged to develop plans for identifying and liquidating consequences from accidents
- Company is obliged to develop plans for the prevention of oil spills

Regulations of petroleum exploration and production

Canadian case

Becoming a petroleum country

1. One of the world-leading petroleum producers (oil and gas)
2. Having extensive coastline, lays claim to significant offshore resources (including in the Arctic)
3. Most offshore resources are in the Atlantic Ocean
4. Development of unconventional resources (shale)

Ownership and control

1. Canada has a federal system of government → many issues are about division of powers, property and control
2. Onshore petroleum reserves are typically owned by the province in which they are located → each province has constitutional jurisdiction over most petroleum activities
3. Offshore resources are owned by the Federal Government
4. Under the Constitution Act 1876 Federal Parliament regulates trade and commerce, sea coast and fisheries, Indian issues

Ownership and control

Natural Resources Amendments

1. Exclusive legislative jurisdiction of each provincial government extends to making laws on 'exploration of non-renewable resources in the province' Offshore resources are owned by the Federal Government
2. Exclusive legislative jurisdiction of Federal Parliament to 'raise money by any mode of taxation'
3. Result – petroleum activities are regulated by both level of government

Numerous agreements between the Federal Government and provinces

Legal regime for petroleum activities

United Nations Convention on the Law of the Sea (UNCLOS) 1982

1. Divides maritime zone into 'territorial sea', 'contiguous zone' and 'continental shelf'
2. Canada takes several steps to assert jurisdiction in respect to its offshore (submissions to the Commission on the Limits of the Continental Shelf)

Oceans Act

1. Non-discriminatory criteria
2. Limitations of the UK commercial interests

Legal regime for petroleum activities

Canada Petroleum Resource Act

1. Gives all definitions
2. Regulates license granting

Canada Oil and Gas Drilling and Production Regulations

Canada Oil and Gas Operations Act

1. Criteria for licensing
2. Approvals by relevant bodies

National Energy Board

Canada – Nova Scotia Offshore Petroleum Board

Aboriginal rights

1. Aboriginal rights are protected under the Constitutional Act 1982
2. Indigenous peoples have a pack of rights and titles over lands and resources
3. Governments have an obligation to consult with aboriginal peoples
4. Specific settlement agreements with aboriginal peoples

Agreements

1. Grant aboriginal rights and property over resources
2. Environmental protection
3. Preservation of their way of life and heritage

Regulations of petroleum exploration and production

Norwegian case

Becoming a petroleum country

1. In the early 1972
2. Norwegian authorities receive and application from the American oil company for an exploration license
3. There became a need to establish a legal regime and policy
4. The Government proclaimed sovereignty to the Norwegian continental shelf (Continental Shelf Treaty)
5. The process of clarifying the borders of the Norwegian continental shelf took 45 years (up to 1965)

Becoming a petroleum country

1. 1st Norwegian licensing round was announced in April 1965
2. 78 blocks in the North Sea were awarded to oil companies
3. The first major discovery was made in December 1969
4. Production commenced in 1971
5. A number of major discoveries were made the same year
6. Since 1980 the activity moved to the North
7. The petroleum activity became the largest (23% of GDP)
8. 24 % of EU gas consumption in 2013
9. Extensive infrastructure for processing and transportation

Revenue system

1. In 2000 a new system for managing the state revenue from petroleum activity was introduced
2. All revenue is channeled to a special fund – Government Special Fund Global
3. Only up to 4% can be spent annually to cover state expenses
4. Petroleum resources is a tool to develop the whole society

Legal framework for offshore activities

Extensive legal regulation and administration are developed

1. The jurisdiction over shelf areas are exercised under UNCLOS (articles 77-81)
2. It's also the regulated by international treaties on protection of the environment (OSPAR - *Convention for the Protection of the marine Environment of the North-East Atlantic*)
3. Agreement on European Economic Area

Legal framework for offshore activities

Agreement on European Economic Area

1. Bans any discrimination based on nationality
2. Establishes free movement of capital, goods and labor

EU Directives

1. Coordinate procurement process
2. Authorization for the prospection, exploration and production of hydrocarbons
3. Regulate procedures and criteria for granting licenses
4. Common rules for internal gas market

Legal framework for offshore activities

Constitution of Norway

1. Divides the powers between the Parliament and the King
2. The Ministry of Petroleum and Energy

Petroleum Act

1. The right to the natural resources
2. Types of licensing
3. Resource management
4. Field development
5. Liability for pollution damage, etc.

Pollution Control Act, Act on Biodiversity, Marine Resource Act

Authorities for offshore activities

The Ministry of Petroleum and Energy

1. Petroleum policy
2. Governing the petroleum sector
3. Budget decisions

Norwegian Petroleum Directorate

1. Gathering an analyzing data
2. Resource management
3. Coordination of follow-up petroleum activities

Petroleum Safety Authority

1. Technical and operational safety
2. Emergency preparedness
3. Working environment

Regulations of petroleum exploration and production

UK case

Becoming a petroleum country

1. Production of hydrocarbons began in 1975
2. The peak production was in 1999 for oil and 2000 for gas
3. Oil and gas reserves are in the North sea area (UK continental shelf - UKCS)
4. There are also some promising but technologically challenging resources in outer shelf
5. There were state oil company (BNOC, Anglo-Persian Oil Company) but they became private
6. Some major IOCs with UK capital are working worldwide

Revenue system

Essential feature – to license private parties to exploration and production in return for fees, royalties and taxes

3 main components of the UK offshore tax

- Corporation tax
- Supplementary charge to corporation tax
- Petroleum revenue tax

Ownership and control

1. Earlier – landowner follows the ownership of minerals
2. Problem – landowners claiming mineral rights or compensation for them
3. Consequence – initial licensing regime simply ingored the issue of ownership and gave the state the right to prevent hydrocarbon operations without a license
4. In 1934 – property in petroleum was vested in the Crown (*Petroleum Production Act 1934*)
5. Continental Shelf Act 1964 extended the property to minerals to the continental shelf

Legal regime for offshore activities

Petroleum Act 1998

1. Empowers Secretary of State to grant licenses as she/he thinks fit (the same with terms, conditions, financial considertaion)
2. The consent of the Treasury is needed

EU Hydrocarbon Licensing Directive

1. Non-discriminatory criteria
2. Limitations of the UK commercial interests

Forms of license

Exploration license

1. Non-exclusive license for 3 years
2. The Ministry of Petroleum and Energy

Production license

1. 4 year term
2. Allows exploratory drilling and development work
3. Government retains some control over the pace of development
4. Exclusive rights over the licensed area in relation to all phases

* The promote license was introduced after the consultation with the industry in 2003

Frontier license (for new west deposits)

Key clauses in production license

Model clause

1. The work program approval by the Department of Energy and Climate Change
2. Special conditions are set by the Department
3. The consent before selling the license or disposing ownership
4. Provide any information the Department requires

Health, Safety and Environment (HSE)

1. The regulations were briefly covered in the petroleum license
2. Petroleum Code of Practice (instructive document and notwithstanding the many other parties involved in the industry)
3. In 1965 the Sea Germ drilling rig collapsed with loss of 13 lives → recommended of a new code of statutory authority with credible sanctions → Mineral Working Act 1971
4. In 1988 Piper Alpha disaster with loss of 167 lives →

the State took responsibility for the achievement of offshore health and safety

Health, Safety and Environment (HSE)

1. In 2010 Gulf of Mexico disaster → existing regulations were reviewed not only by the relevant authorities of the UK, but also EU
2. EU Offshore Safety Directive which member states must transpose by July 2015 and apply by July 2018
3. HSE responsibility remained with Department of Trade and Industry (UK)
4. Environment and health responsibility is guided not by state regulations but by international regulations

- to avoid harmful methods of working
- to produce an Oil Pollution Emergency Plan (submitted to the Department)
- discharging petroleum and chemicals control

Essential court cases

Disputes on petroleum related activities

CASE 1
Burmah Oil Company Ltd v. Lord Advocate

Burmah Oil Company brought an action against the UK government, represented by the Lord Advocate. The case was decided ultimately in the House of Lords. The case is an important decision in British constitutional law and had unusual legal outcome at the time.

CASE 1
Burmah Oil Company Ltd v. Lord Advocate

Decision: the UK government was considered liable to compensate the claimant. Although the damage was lawful during war, it was classed as the requisitioning of the claimant's property, therefore compensation should be paid

Very quickly after this case, Parliament legislated with retrospective effect in the *War Damage Act 1965* to prevent any other similar claims. It retroactively exempts UK from liability in respect of damage to, or destruction of, property caused by acts lawfully done by the state during a war in which it is engaged.

CASE 2
Kuwait v. Iraq

By September 1995, Kuwait filed a $385 million claim to the UN Security Council against Iraq for compensation for environmental damage due to Iraq's occupation of Kuwait. More specifically, Kuwait submitted five claims to the United Nations for environmental damages covering health, costal areas, maritime environment, ground water resources, and desert environmental damages.

CASE 2
Kuwait v. Iraq

Decision: The Security Council Resolutions reaffirms Iraq's liability for any direct loss or damage resulting from the invasion, "including environmental damage and the depletion of natural resources as a result of its unlawful invasion and occupation of Kuwait" and called for the creation of a fund, with resources from Iraq's petroleum revenues, and a commission to administer the fund and disburse the awards. The UN Compensation Commission (UNCC) was established in December 1996 an award of $610 million to Kuwait for the costs of extinguishing the oil well fires set by retreating Iraqi troops, and cleaning up the residue.

CASE 3
Hanousek v. United States

Decision: The case was tried by the United States Court of Appeal under the *Clean Water Act* (domestic USA act). Despite not being present at the scene during operations *White Pass and Yukon Route* Roadmaster Edward Hanousek and President Paul Taylor were both held responsible for the spill and convicted. Hanousek and Paul Taylor were also charged with providing false information to the officials who investigated the accident.

CASE 3
Hanousek v. United States

Decision: Hanousek was convicted of negligently discharging a harmful quantity of oil into a navigable water. The court imposed a sentence of six months of imprisonment, six months in a halfway house and six months of supervised release, as well as a fine of $5,000.

CASE 4
Bowoto v. Chevron Corp.

With the assistance of several nonprofit organizations a group of victims and the relatives of some of those killed in the attacks filed suit against *ChevronTexaco Corporation* to US District Court of California in 1999.

The lawsuit alleged that *Chevron* failed to take the necessary precautions to prevent the explosion and failed to adequately control it with available technology. Prior to the lawsuit, Nigeria's National Oil Spill Detection and Response Agency recomemded a fine of $3 billion dollars against *Chevron*. Also the plaintiffs alleged that the *Chevron* subsidiary backed the military action.

CASE 4
Bowoto v. Chevron Corp.

Decision: The suit was decided on December 1, 2008, when nine jurors unanimously agreed *Chevron* was not liable for any of the numerous allegations, thus it was a complete defense verdict for *Chevron*.

The court found that the plaintiffs did not provide enough evidence that the two incidents underlying this litigation or *Chevron's* treatment of the local communities had any impact.

CASE 5
United Kingdom v. Iran *(The Anglo-Iranian Oil Co. case)*

The UK alleged that the Iranian oil nationalization act of 1951 was counter to a convention agreed upon by the *Anglo-Persian Oil Company* (now *BP*) and the Imperial Government of Persia (now Iran) in 1933.

On 26 May 1951, the UK took Iran to the International Court of Justice, demanding that the 1933 agreement be upheld and that Iran pay damages and compensation for disrupting the UK-incorporated company's profits.

CASE 5
United Kingdom v. Iran *(The Anglo-Iranian Oil Co. case)*

Decision: In1952, the ICJ decided that it did not have jurisdiction over this case because there is not treaty or convention signed between Iran and the UK that has been signed since 1932. (The Iranian government signed and ratified the declaration of compulsory jurisdiction for the ICJ in 1932). Finally, the UK was not a party to the original agreement between the *Anglo-Iranian Oil Co.* and Iran. Therefore the ICJ cannot have jurisdiction over this case.

CASE 6
Shell Offshore Inc. v. Greenpeace Inc.

Shell has invested significant amounts of time and money in its search for oil in the Chukchi Sea, a stretch of ocean off the northwest coast of Alaska. *Greenpeace* regards *Shell's* efforts as dangerous and environmentally irresponsible. As a result, it has engaged in several direct-action protests in an effort to impede Shell's exploration activities.

Greenpeace activists unlawfully boarded several ships employed by *Shell* in its offshore drilling operations. In response, *Shell* filed suit in the District of Alaska. It sought a preliminary injunction to prevent *Greenpeace* from interfering with its vessels during the Arctic drilling season.

CASE 6
Shell Offshore Inc. v. Greenpeace Inc.

Decision 1: In 2012 the district court granted *Shell's* request. The resulting injunction established safety zones around each of the vessels in *Shell's* Arctic drilling fleet, which *Greenpeace* was prohibited from entering. *Greenpeace* appealed . While the appeal was pending, the Arctic drilling season ended and the preliminary injunction expired.

Decision 2: In 2015 (as in 2012) the preliminary injunction established safety zones around each of Shell's contracted vessels and around all helideck-equipped ships; banned Greenpeace from engaging in specified actions affecting Shell's systems and facilities.

CASE 6
Shell Offshore Inc. v. Greenpeace Inc.

Decision 2 (cntd): Greenpeace activists suspended themselves from St. John's Bridge over the Willamette River in Portland, Oregon. As stated in an email to supporters, the activists' purpose was to block one of Shell's contracted vessels, the Fennica, from leaving the Portland harbor. Shell moved the district court to enforce the injunction. After an emergency hearing, the district court entered a preliminary order of civil contempt imposed sanctions “so long as [Greenpeace] activists continue to hang from the St. John's Bridge in Portland.”

CASE 6
Shell Offshore Inc. v. Greenpeace Inc.

Decision 2 (cntd): The sanctions were structured as a progressively increasing schedule of fines against Greenpeace: $2,500 for each hour in contempt during the first day; $5,000 per hour during the second day; $7,500 per hour during the third day; and $10,000 per hour thereafter. Shell contends that Greenpeace activists remained suspended from the bridge for seven hours in violation of the Contempt Order.

In September 2015, Shell announced that it would cease exploration in offshore Alaska for the foreseeable future.

CASE 7
Deepwater Horizon case

Civil and criminal proceedings stemming from the explosion of *Deepwater Horizon* and massive oil spill in the Gulf of Mexico began shortly after the incident in April 2010 and have continued since then. They have included an extensive claims settlement process under *Clean Water Act* lawsuit brought by the U.S. Department of Justice and other parties (fishermen, hotel operators, landowners, rental companies, restaurants and seafood processors).

CASE 7
Deepwater Horizon case

Over 130 lawsuits relating to the spill had been filed against *BP*, *Transocean*, *Cameron International Corporation*, and *Halliburton Energy Services* .

Before litigation *BP* spent $ 3,5 mln. for cleaning up and compensations .

BP and *Transocean* wanted the cases to be heard in Houston, seen as friendly to the oil business, but the plaintiffs requested the case be heard in Louisiana, Mississippi or Florida.

The preliminary investigation said that the company may be subject to $18 billion in penalties in addition to the $28 billion already paid out in claims and cleanup costs. Such penalties are far larger than the $3.5 billion *BP* had allotted to the case.

CASE 7
Deepwater Horizon case

In April 2011, *BP* filed $40 billion in lawsuits against rig owner *Transocean*, cementer *Halliburton* and blowout preventer manufacturer *Cameron International*. The oil firm alleged failed safety systems and irresponsible behaviour of contractors had led to the explosion, including claims that *Halliburton* failed to properly use modelling software to analyze safe drilling conditions.

CASE 7
Deepwater Horizon case

Decision: In September 2014, a U.S. District Court ruled that *BP* was primarily responsible for the oil spill because of its gross negligence and reckless conduct.

In July 2015, *BP* agreed to pay $18.7 billion in fines, the largest corporate settlement in US history.

BP also agreed to plead guilty to 11 felony counts related to the deaths of the 11 workers. The Justice Department also filed criminal charges against one *BP* employee in April 2012 and against three *BP* employees in November 2012.

CASE 8
Ecuador v. Texaco

This attempt by a class of Ecuadorians to obtain compensation from *Chevron* for the devastation its predecessor, *Texaco*, wreaked on the Ecuadorian rainforest has been ongoing for over twenty years, and compensation is nowhere in sight.

Maria Aguinda, the original plaintiff in the class action against *Texaco*, was in her late teens when *Texaco* began its operations. She is now sixty-four years old. Compensation in her lifetime is unlikely.

CASE 8
Ecuador v. Texaco

Decision 1: In February 2001, an Ecuadorean court ordered *Chevron* to pay $5.9bn in damages. *Chevron* said the decision was a "glaring example of the politicization and corruption of Ecuador's judiciary". It said it would continue to seek recourse through proceedings outside Ecuador.

Decision 2: A U.S. court ruled the case should be heard in Ecuador. A new action was begun in Ecuador in 2003.

CASE 8
Ecuador v. Texaco

Decision 3: In February 2012 an Ecuadorian appeals court has upheld a ruling that *Chevron* should pay damages totalling $18.2bn over Amazon oil pollution. *Chevron Inc*. says it has no intention of apologizing for the environmental damage to Amazon rain forest for which an Ecuadorean court ruled it responsible. Attorneys for both sides have said that if had *Chevron* apologized, its legal liability of $18 billion would have been cut to $9.5 billion.

Decision 4: In a separate case, International arbitrators have ordered the Ecuadorean government to pay $96m to *Chevron* because Ecuador's courts had violated international law as a result of delays in resolving commercial disputes involving *Texaco*.

CASE 8
Ecuador v. Texaco

Decision 5: On March 4, 2014, the U.S. District Court for the Southern District of New York ruled that the $9.5 billion Ecuadorian judgment was the product of fraud and racketeering activity, finding it unenforceable.

CASE 9
Amoco Cadiz case

The suit was brought by the government of France, as well as private French citizens and businesses, against the *Amoco Oil Company* when one of Amoco's supertankers, the Amoco Cadiz, ran aground in the North Sea and dumped millions of gallons of oil on the Brittany coast in 1978.

The litigation continued in the United States courts for thirteen years. In the end of a legal battle, the court held both *Amoco International and Standard Oil Co*. responsible. (The two mentioned oil companies were not the registered owners of the tanker.)

CASE 9
Amoco Cadiz case

Decision: The French government presented claims totalling US$2 billion.

In legal proceedings in Chicago (US) the owners of the tug were held to have been completely blameless while France was awarded US$120 million from the American oil company *Amoco* in 1990.

When the case reached the Seventh Circuit in 1992, the court awarded the plaintiffs $65 million in damages and $148 million in prejudgment interest.

CASE 10
Arctic Sunrise case

Since the *Arctic Sunrise* was flying the Dutch flag, the Netherlands filed a case at the International Tribunal for the Law of the Sea which argued the release of the crew and ship until both parties can resolve the conflict. Russia ignored the ITLOS ruling, but eventually released the crew as part of a general amnesty adopted by the State Duma after two months of detention. The *Arctic Sunrise* itself was released from Russian detainment in June 2014.

CASE 10
Arctic Sunrise case

Decision: On 14 August 2015 the International Permanent Court of Arbitration unanimously ruled that Russia had acted in breach of the *UN Convention on the Law of the Sea* and has to compensate the Dutch government (flag state of the ship) for damages to the ship. The tribunal ruled that actions of *Greenpeace* could not be labelled as piracy or hooliganism; reasons Russia had given for capturing the ship. Russia, a partner of the permanent court of arbitration, responded by stating it does not recognize the authority of the court in this case.

CASE 11
Keystone XL pipeline case

The *TransCanada* company took the unusual step of suing to the US court through the *North American Free Trade Agreement*, calling the decision of Obama's administration "arbitrary and unjustified." The Canadian business also filed a lawsuit in Houston asking that the decision be overturned.

CASE 11
Keystone XL pipeline case

Decision: The case filed by *TransCanada* at the Houston division of the United States District Court did not seek compensation. Instead, the company was seeking to have Mr. Obama's decision reversed on the grounds that he exceeded his constitutional powers.

After accounting for the consolidation of cases, the United States has faced 12 challenges under *NAFTA*, all from Canadian companies, and won them all. All of them failed, several on procedural grounds. Canada, however, had lost cases brought by American companies.

"The rules themselves are so vague by design that practically every case is a crap shoot," said Robert Stumberg, an international law professor at Georgetown University.

Conclusion

Legal regulation of multinational corporations is difficult because they are not under the control of any one jurisdiction. Rather, they are subject to multiple legal systems, including the country of their corporate headquarters as well as the countries in which they operate. There is no international oversight body to regulate multinational corporations, or an international forum in which suit may be brought against multinational corporations. It can be difficult for domestic courts to hold multinational corporations responsible for jurisdictional reasons or because the particular government lacks the legal infrastructure to impose liability.