

ANALYSIS OF INTERNATIONAL INSTRUMENTS IN RELATION TO VESSEL SOURCE MARINE POLLUTION WITH SPECIAL REFERENCE TO MARINE POLLUTION PREVENTION ACT OF SRI LANKA

S Thalakiriyawa

Faculty of Law, General Sir John Kotelawala Defence University, Sri Lanka
samith.thalakiriyawa@gmail.com

Abstract - This research is related to the Law of the Sea under the Public International Law concentrated to the Vessel source marine pollution. Although there are many types of marine pollution, this research is limited only to vessel source marine pollution by oil. Since marine pollution adversely affect to whole environment in terms of climate change, global warming and degradation of natural resources, it is expected to achieve the objectives through this research such as to identify the methods of vessel source marine pollution, to evaluate the effect to the environment, to determine the importance of prevention, to identify the stakeholders in prevention, to evaluate the existing laws, to identify the loopholes in the law and to recommend the steps to fill in the gaps in law.

Since the research is a doctrinal and library research, the methodology used here is Black letter methodology and as the research method, primary sources such as statutes like international treaties and conventions relating to law of the sea and marine pollution, Domestic acts relating to marine pollution including the constitution of Sri Lanka, Cases of International Court of Justice relating to vessel source marine pollution were used and also books by scholars in law of the sea, regulations and resolutions of International Maritime Organization (IMO), research articles, journal articles, web articles, blog articles, articles of international conferences relating to law of the sea were used as secondary sources.

This research recommends several recommendations such as to include provisions in the constitution of Sri Lanka for protection of marine environment even beyond the territorial waters, to revise the provisions of United Nations Convention of Law Of the Sea (UNCLOS) and The International Convention for the Prevention of Pollution of Ships (MARPOL) relating to innocent passage for

introduce new provisions without ambiguities, to establish a well-trained task force for encountering the emergencies relating to marine environment including oil spills and marine casualties, establish a special court or tribunal for matters relating to shipping, establish new ship yard facilities in Sri Lanka to repair ships which are found unseaworthy within maritime boundaries of Sri Lanka, claim the damages to marine environment from shipping agents and charterers when the ship owners refuses to pay.

Keywords - Marine Pollution, Shipping, State Controls
Abbreviations

IMO – International Maritime Organization

UNCLOS – United Nations Convention on the Law of the Sea

MARPOL – International Convention for Prevention of Marine Pollution of Ships

MEPA – Marine Environment Protection Authority

CEA – Central Environmental Authority

I. INTRODUCTION

This research is relating to Law of the Sea under the Public International Law and it is concentrated to the Vessel source marine pollution and narrowed down to an analysis of international instruments in relation to vessel source marine pollution by Oil with special reference to marine pollution prevention act of Sri Lanka.

Marine environment can be harmed by various types of pollution and however, the most common ways are from the land rather than ships. (Churchill RR, Lowe AV, 1983) The International Shipping industry is responsible for 90% of world trade and it provides the life blood to global economy. Since it is important and a vast growing

industry, the impact on the environment due to shipping should be evaluated. Types of pollution from ships include oil, chemicals, garbage sewage, air pollution, bunker fuel and the anti-fouling paint on a ship's hull and also old ships that are to be broken up or scrapped on beaches also can cause pollution unless great care is taken. Due to effective international regulations for preventing marine pollution by ships, those types of incidents are becoming much fewer than before. These regulations cover the ships' operations, designing and building with many safety requirements and a ship's captain and crew are required to have adequate training to prevent marine pollution from the vessel as well. . (Churchill RR, Lowe AV, 1983)

Marine pollution has not obtained a significant consideration by of public although it could adversely effects to whole environment in terms of Climate Change, global warming and degradation of natural resources. As an Island, Sri Lankan People used to consume fishery products obtained from the sea. But due to marine pollution those species become unconsumable as they consist of poisonous contents and heavy metals and this may cause for the cancers and some other serious illnesses & diseases after the consumption. (D Cormack, 1983) Thereby researcher conducted this research in vessel source marine pollution, evaluating the existing laws in Sri Lanka in order to prevent it while comparing the domestic law with the international laws in special reference to UNCLOS and MARPOL.

The research is limited only to vessel source marine pollution, limited only to release of oil by vessels, limited to United Nations Convention of Law of the Sea (UNCLOS) and International Convention for the Prevention of Pollution from Ships (MARPOL) in terms of International legal instruments, Limited to marine pollution prevention act of Sri Lanka in terms of domestic legal instruments and Limited only to the data obtained through books, journals, websites, paper articles and blogs.

It is expected to achieve the objectives such as; To identify the methods of vessel source marine pollution, To evaluate the effect to the environment, To determine the importance of prevention, To identify the stakeholders in prevention, To evaluate the existing laws and how the judicial decisions to prevent it, To identify the loop holes in the law and the areas which need to be developed and To recommend the steps to fill in the gaps in law including Marine Pollution Prevention Act.

II. RESEARCH METHOD & METHODOLOGY

The Methodology which is used in this research is Black letter Methodology as this was a Doctrinal and Library Research. Researcher selected this methodology because, it looks into legal rules, doctrines, principles and concepts. Researcher decided that, it would be beneficial for him as statutory materials, reports of committees and case reports can be used as tools and due to advantages such as less time consuming, provide adequate opportunities for analysis, help to find quick answers for legal problems and its helpfulness for the continuity, consistency and certainty of law as well as it would help to understand the loopholes, gaps, ambiguities, and inconsistencies in the substantive law easily.

Researcher used primary sources such as Statutes like International Treaties and Conventions relating to Law of the Sea and Marine Pollution, Domestic Acts (Sri Lanka) relating to marine pollution, Cases of International Court of Justice and secondary sources researcher used Books by Scholars in Law of the Sea, International Maritime Organization Regulations and Resolutions, Research Articles of International Research Conferences, Journal Articles, Web articles and Blog Articles, International Conference Articles in Shipping Industry, Marine Pollution, Environmental Law, Law of the Sea and Marine Law.

III. FINDINGS, ANALYSIS & DISCUSSION

A. International and Local Legal Mechanism to Prevent Vessel Source Marine Pollution

In the context of vessel source marine pollution, it can be identified that there are many international legal instruments such as UNCLOS and MARPOL for preventing the vessel source marine pollution and set various legal enforcements to regulate the global shipping industry with this regard and also there are some local legislations such as Marine Pollution Prevention Act No. 35 of 2008 to ratify those international treaties and conventions in to Sri Lanka Law.

Marine pollution prevention Act No. 35 of 2008 is the currently existing law related to Marine pollution in Sri Lanka. Emerging of this Act resulted from signing

the United Nations Convention on the Law of the sea (UNCLOS) and International Convention on the prevention of pollution from ship 1973 modified by 1978 and 1997 protocols (MARPOL) by Sri Lankan government as a Sovereign state.

Under the part XII of UNCLOS, it emphasizes the obligations of states to protect and preservation of marine environment including the measures of preventing reducing and controlling the marine pollution, global and regional cooperation of states for prevention of marine pollution, technical assistance, monitoring and environmental assessment, international rules and national legislations, enforcements, safeguard, responsibility and liability, sovereign immunity, obligations under other conventions on the protection and preservation of the marine environment.

MARPOL being the major international convention and most important global treaty for the prevention of pollution from the operations of ship, it regulates the design and equipment of ships, ensure proper system of certification and inspecting, states obligation to prevent marine pollution and provide facilities for the disposal of oil waste and chemicals.

Hence, Marine Pollution Prevention Act (Hereinafter referred as act) sets the legal background to national Jurisdiction for enforcement of UNCLOS and MARPOL, the act mentions that it is for prevention, control and reduction of the pollution of marine environment of Sri Lanka and thereby it is clear that there is a legal mechanism in Sri Lanka to prevent the vessel source marine pollution emerged through various international and local legal instruments.

B. State Responsibility and Obligation to Prevent Vessel Source Marine Pollution

According to concerned international legal instruments, States are obliged to protect the marine environment a signatory parties to those conventions. Because according to article 192 and 194 of part XII of UNCLOS mentions that states have the obligation to protect and preserve the marine environment without excluding rights to exploit natural resources of marine environment and states shall take measures to prevent, reduce and control pollution of marine environment and these measures shall minimize Pollution from vessels, prevent accidents and also deal with emergencies to ensure the safety of operations at sea. Even article 235 of UNCLOS mentions that States are

responsible for protection and preservation of marine environment and they should be liable as well as should ensure the proper and effective legal mechanism to claim damages caused by marine pollution in compliance to the existing international law.

MARPOL article 1 clearly states that parties to the convention are bound to prevent the marine pollution and act according to the convention in the cases of vessel source marine pollution. Therefore, In Sri Lankan context, by respecting to those international regulations set by those international conventions, The Marine Environment Protection Authority (MEPA) has been established under the marine pollution prevention act as the operational body to implement the marine pollution preventive mechanism in Sri Lanka.

C. Principle of State Control to Prevent Vessel Source Marine Pollution

States are bound to take required procedures to avoid the marine pollution through its local legal enforcement mechanisms. In regard to Sri Lankan context it is better to examine whether it has been taken such measures to prevent marine pollution, compliance with the international law specially which the UNCLOS and MARPOL has stated as the measures to prevent vessel source marine pollution by a State.

Under section 05 of UNCLOS, it discusses the principles of Port State Control, Flag State Control and Coastal State Control and it is mentioned in the section II of UNCLOS that States shall establish international rules and standards to prevent, reduce and control the vessel source marine pollution as well as to minimize the threat of accidents which might causes damages to marine environment and also they should give due publicity for such requirements to foreign vessels and relevant international organizations. In implementing those international standards and rules for prevention of vessel source marine pollution in Sri Lanka, article 6 of the act states that MEPA shall implement the provisions of act in effective and efficient manner by formulating and executing a scheme of works for prevention, reduction, controlling and managing of marine pollution arising out of ship based activity, conducting researches for the preservation of marine pollution, take every measure to preserve the territorial waters or any other maritime zone of Sri Lanka, providing adequate and effecting reception facilities, recommend adherence of International treaties to prevent marine pollution, formulating and implementing the national

oil pollution contingency plan, overseeing, regulating, supervising exploration of natural resources and also to create awareness to preserve marine environment.

Therefore it can be concluded that Sri Lanka has taken necessary measures to prevent the vessel source marine pollution through the marine pollution prevention act even going beyond the international standards.

Enforcement of international standards are implemented upon three principles respecting to the state sovereignty of parties to those international conventions. Those three principles are called as Flag State Control, Port State Control and Coastal State Control. Flag State Control is the implementation and enforcement of international standards by the state which a ship is registered. Port State Control refers to the implementation and enforcement of international standards of prevention of vessel source marine pollution by the state which a ship enters to its port. Coastal control refers that when a ship is sailing in the maritime zone of another state for the purpose of innocent passage that state has the obligations to implement and enforce international standards to preserve marine environment.

This enforcement of international standards on those three principles; Flag State Control, Port State Control, Coastal State Control has been established by the section 6 of part XII of UNCLOS and it has empowered the States to enforce laws to prevent vessel source marine pollution within their legal jurisdictions.

In article 217 of UNCLOS it supplementary mentions that Flag States shall guarantee compliance to the international standards to prevent marine pollution by vessels flying their flag or of their registry. The requirement of the international standards covers the matters relating to design, building, equipment and staffing of vessels and other certificates required and flag states are obliged to conduct immediate investigations and institute proceedings if a vessel under their control commits a violation of rules irrespective of where the violation occurred or where the pollution caused.

In the principle of Port State Control, article 218 of UNCLOS mentions that when a vessel is willingly within a port of a state, that state may commence inquiries and where the evidence permits, institute proceedings in respect of any release from that vessel outside in violation of rules and regulations to prevent marine pollution.

However article 216.2 of UNCLOS mentions that No state shall be obliged to institute proceedings when another state has already instituted proceedings under Flag, Port or Coastal State Control.

By adopting these international standards into local laws, the marine pollution prevention act has taken various measures to ensure the implementation of those international standards in Sri Lanka. Since Sri Lanka being an Island and located in a very strategically important geographical location for global shipping industry it can be identified that marine pollution prevention act has more concentrated on the principles of port state control and coastal state control rather than flag state control as there are few number of vessels sail flying the Sri Lankan flag under Sri Lankan registration.

Act state that, Where the authority has reason to believe or is informed that there is a grave or substantial discharge, escape of dumping of oil into sea or is imminent, the authority may order the owner, operator, master or agent of any ship to report its position to authority and may instruct to take such steps as may be necessary to control or to take part in the cleaning up of pollutant. Even Section 10, 11 and 12 of the act further states that it shall be lawful for the Authority to order to take such steps to prevent, mitigate, control and clean up any pollution and also Section 11 states that any authorized officer may detain any ship, if he has reasonable cause to believe that any oil, or other pollutant has been discharged from the ship and the ship deposits sum of money with the Authority to meet the liability. Therefore it is clear that Sri Lanka's marine pollution prevention act has ensured the implementation and enforcement of international standards under state control principles.

D. Status of Seaworthiness of the Ship to Prevent Vessel source marine pollution

Seaworthiness of a ship is a very important aspect in respect of all the operations of a vessel. Because whether it is a container Ship or Tanker or Cruise Ship or Car Carrier, the protection of its cargo and ship crew is based on the seaworthiness of the ship along with it ensures the safety of oceanic environment which can be damaged due to marine casualty or oil leakages. Thereby international standards relating to seaworthiness of a vessel has been emphasized by UNCLOS and MARPOL and those international conventions have been ratified and adopted by Sri Lanka.

UNCLOS has introduced the international laws and regulations with regard to seaworthiness of a ship to be implemented through the state control mechanism and in article 219 mentions that, To ensure the seaworthiness of a ship to avoid pollution marine environment, states shall take administrative measures to prevent the vessels from sailing when a vessel within one of their ports and violates the applicable rules and standards relating to seaworthiness of vessel and thereby threatens damage to the marine environment. Positively even article 220 of UNCLOS empowers the Coastal States to control and prevention of marine pollution causing by vessel due to unseaworthiness.

Article 4.1 of regulation 6 of MARPOL, states that the state of the ship and its equipment shall be retained to ensure that the ship in all respects will remain fit to proceed to sea without presenting an irrational threat of harm to the marine environment. In the MARPOL Article I of Protocol 1 (Provisions concerning reports on incidents involving harmful substances) states that the master or other person having charge of any ship involved in an incident shall report the particulars of such incident without delay and article III states that reports shall in any case include individuality of ship, time, type and position of incident, quantity and type of harmful substance involved and assistance and rescue measures. The International Oil Pollution Prevention Certificate shall be issued by administration of flag state to any oil tanker or any other ship which are involved in cruises to ports under the jurisdiction of other Parties to the Convention and in any case, the issued administration shall be responsible for the license. However in Regulation 8.4 mentions that No International Oil Pollution Prevention License shall be allotted to a ship which is entitled to fly the flag of a State which is not a Party of MARPOL. Even when a ship in a port of another party to MARPOL convention and if it is found that master or crew are not familiar with essential shipboard procedures relation to the prevention of pollution by oil, port state shall ensure that ship shall not sail until the situation has been brought to order in accordance with the requirements of this convention.

According to regulation 6 of MARPOL requires to conduct surveys of ships by officers of Administration and such Surveyors can require repairs to a ship and if a survey is carried out by a nominated surveyor on a request of a port state and decides that the condition of the ship or its equipment does not correspond significantly with the facts of the certificate or that ship is fit enough to proceed to sea without presenting an unreasoning threat of harm to the environment they shall immediately ensure that

corrective action is taken and shall in due course notify the administration and also if such remedial action is not taken the license should be withdrawn until the necessary arrangements are taken.

Every ship required to hold a valid inspection by officers and if there are clear ground to believe that the condition of ship or its equipment does not correspond substantially with the particulars of the certificate the party carrying out the inspection shall take actions to ensure that the ship shall not sail until the doubts get cleared. However if a party rejects a foreign ship entry to the ports on the ground that the ship does not comply with regulations, it shall be immediately inform to the consul or diplomatic representative of the flag state. By doing so, even the flag state also become aware and able to institute proceedings against the ship for not complying with the international standards with the intention of ensure the prevention of marine environment pollution.

In context of Sri Lankan Law relating to seaworthiness of a ship and the certifications, all the international standards established by UNCLOS and MARPOL have been ratified and going further, it has enacted the laws related even to the record books of oil, harmful substances or any other pollutants which will effect to every ship that enters to any maritime zone of Sri Lanka and it requires that Captain or the person in charge of ship shall record in the oil record book regarding the activities relating to oil cargo, transferals of oil cargo, discharge of oil cargo, the ballasting or washing of oil fuel tanks, dumping of any other oily deposits and oil release operations etc. and also it is stated in the section 22 of the act that authority or any other authorized officer may inspect the oil record books or record books relating to harmful substances or pollutants and if any ship fails to carry these record books shall be guilty of an offence.

E. Prevention of Marine Pollution in Maritime Casualties

Maritime casualties are one of major sources of vessel source marine pollution. Maritime casualty refers to crash of ships, stranding or other incident of navigation or other occurrence on board a ship or external to it resulting in material harm or imminent threat to vessel or cargo.

According to article 12 of MARPOL it is a duty of every flag state to conduct investigations on any maritime casualty of its ships if such casualty has created a major damaging effect upon the marine environment and under this provision it ensures the passing of responsibility to

the flag states to take every measures to prevent maritime casualties by imposing manning, operational and navigational regulations to the ships flying their flag.

The Marine Pollution Prevention Act empowers the MEPA to take all the actions to prevent marine pollution caused due to any maritime casualty within any maritime zone of Sri Lanka and to direct the owner, master, charterer or any salvor to take such urgent and immediate measures in respect of the ship or cargo or any oil on board the ship for preventing, mitigating or eliminating pollution or the threat of pollution. Even the authority has the powers to sink or destruct a ship and undertake operations of loading, unloading or discharge of any oil to prevent a threat of marine pollution of any maritime zone in Sri Lanka. However the authority or any authorized person is excluded from liability for any act done or purported to be done in good faith.

Therefore it is obvious that marine pollution prevention act has empowered the MEPA in every aspect to prevent the marine environment pollution caused by maritime casualty within any maritime zone of Sri Lanka.

IV. RECOMMENDATIONS

In this study, researcher was able to understand many loopholes in the existing domestic legal framework relating to prevention of marine environment pollution from vessel sources in enforcement and implementation mechanisms. Thereby in this chapter researcher expects to elaborate those identified loopholes and recommend possible remedies to fill those gaps.

The first loophole was identified in constitution of Sri Lanka. There was no provisions with regard to defense of marine environment as it was limited only to territorial waters. Thereby researcher recommends to include provisions relating to the marine environment which is located even beyond territorial waters.

In UNCLOS and MARPOL, the provisions relating to innocent passage was not well dealt in the marine pollution prevention act and it mentions only that state should not make undue delays to ships. Thereby it is recommended to effective and comprehensive provisions without ambiguities.

Concerning the response to marine pollution due to casualties, it could be identified that act has not considered

to establish a special task force to act in emergency like oil spills under marine environment protection authority and currently such operations are done by Navy and NARA Institute under the guidance of authority. Thereby researcher recommends to include new provisions to present act or pass a new act for establishing such a brigade with trained personnel to respond those incidents quickly. Considering the enforcements of existing law, it could be identified that, though there are provisions to institute proceedings, there is a problem of lack of knowledgeable judges and lawyers in these shipping matters and marine law. Thereby researcher recommends to establish a special court or tribunal for such matters as currently implemented through high courts of articular areas.

According to existing law, when there is a problem in ship with its seaworthiness, it will not allowed to sail due to port state controls until it get repaired. But such repairing facilities are rare in Sri Lankan harbors and therefore researcher recommends to establish those ship yard facilities.

In a marine pollution incident, laws are permitting to detain a ship until the owner pays damages or compensations. But this practice is sometimes time consuming and not practicable as rich ship owners abandon such ships without paying and there by researcher recommend to make new laws to charge those fines from the Shipping agent in this country or Charterer of that ship who chartered that ship to this country. By doing this at least they tend to ensure sea worthiness, appropriateness and standard before they obtain the agency or charter from vessels.

V. CONCLUSSION

In this research, researcher could emphasize the importance and requirement of implementation of preventive measures to protect the marine environment from vessel sources marine pollution.

Through his research he has explained various methods of vessel source marine pollution, the effect to the environment from it, roles of various stake holders such as flag state, port state and coastal state and how they act to prevent this vessel source marine pollution, current legal framework and mechanism to protect marine environment and the loopholes of those existing laws. As well as he has been able to present practical remedial solutions for his identified issues as his recommendations to fill the gaps in current existing law.

PROCEEDINGS

Thereby it is obvious and certain that he has clearly proved his research hypothesis that “International legal Instruments has not completely implemented in Sri Lanka in relation to the vessel source marine pollution”.

References

Bodansky D (1991) Protecting the Marine Environment from Vessel Source Pollution: UNCLOS III and Beyond, Barkley

Churchill RR, Lowe AV (1983) The Law of the sea, Manchester University Press, 241-248
Constitution of Sri Lanka (1978)

Cormack D (1983) Response to oil and chemical marine pollution, Applied Science Publishers of London and New York, 5-19

Marine Pollution Prevention Act No.35 (2008)

The International Convention for the Prevention of Pollution of Ships (1973)

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

PROOF