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AN ACT TO INCORPORATE THE INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION, 1990 (OPRC CONVENTION) AND THE PROTOCOL OF 2000 TO THE INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND COORPORATION RELATING TO POLLUTION INCIDENTS BY HAZARDOUS AND NOXIOUS SUBSTANCES, 1990 (OPRC-HNS PROTOCOL) IN TO MALDIVIAN LEGAL SYSTEM

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

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DECLARATION

In accordance with the Regulations for the Degree of LLM in International Maritime Law, I, the undersigned, do hereby declare that the Legislative Drafting Project being presented with this declaration is my own personal work and that it has not been previously submitted, or is not concurrently being submitted in candidature for any other degree or diploma.

Aminath Zeeniya

DEDICATION

I dedicate this Legislative Drafting Project to my precious daughter *Aishath Zeek*, who is the joy of my life.

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I am highly indebted to my supervisor *Mr. Riyaz Hamza*, my reviewer, *Dr. Norman Martinez*. I am also thankful to all other lecturers, imli staffs for their continuous support throughout.

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1.1- Oil pollution and its main causes

It is well known fact that the world's oceans cover 71% of the planet and account for most of the biological diversity providing resources and life support for human society and driving the climate and hydrological cycles. 80% of the world trade and 60% of the tourism industry is ocean-dependent. Some 45% of the world's population lives within 150 kilometers of the coast – more than the entire population of the planet in 1950.[1]

Consequently, shipping is perhaps the most international of the world's industries, serving a huge proportion of global trade by carrying huge quantities of cargoes. The international character of the shipping industry and increasing amount of the use of marine transport and maritime traffic inevitably results in accidents at sea. In this regard, oil being the main energy source for decades, its transport is unavoidable for a simple reason that oil reserves are not uniformly distributed around the World and therefore necessitates oil importation to meet the oil requirements of many countries.

Maritime transportation has therefore become the main means of oil transportation. This could results in accidental oil spills. Spilled oil poses serious threats to fresh water and marine environments. It affects surface resources and a wide range of subsurface organisms that are linked in a complex food chain that includes human food resources.[2] Spilled oil can harm the environment in several ways, including the physical damages that directly impact wildlife and their habitats (such as coating birds or mammals with a layer of oil), and the toxicity of the oil itself, which can poison exposed organisms.[3] It also has economic consequences by damaging fisheries and mariculture, causing chronic urban and industrial contamination and interrupting recreational activities.[4]

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[1] Khalimonov, Oleg, Director, Marine Environment Division, IMO, Singapore; Journal of International and Comparative law, (1999), 3, also see http://law.nus.edu.sg/sybil/downloads/articles/SJICL-1999-2/SJICL-1999-370.pdf accessed 25th March 2013.

[2] http://www.epa.gov/osweroe1/content/learning/effects.htm accessed on 25th March 2013.

[3] Ibid

[4] http://www.itopf.com/marine-spills/effects/economic-impacts/ accessed on 25th March 2013.

During the 1970's, there has been a marked increase of public interest in the effects human activities are having on natural surroundings. One of the most significant is the ship and oil platform catastrophes, dumping thousands of tons of oil into the sea.[5]
The oil pollution prevention regime evolved as a reaction to a number of oil spills, which proved a constant proof of its inadequacy.[6] Until now, the world has experienced several major oil spills that can be described as environmental disasters.

One such disaster was the Liberian tanker *Torrey Canyon* accident which was one of the largest vessels in the world in 1967. On her fateful last voyage, it was carrying a cargo of 120,000 tons of crude oil from Kuwait to discharge at Milford Haven in Wales.[7] As a results of human error, the vessel struck the Pollard Rock on the Seven Stones Reef, midway between land's End and the Isles of Scilly. Soon it was apparent that thousands of oil was escaping into the sea from her ruptured tanks, and that the scale of pollution was to be without precedent anywhere in the world.[8]

Another incident includes the *Amoco Cadiz* accident off the coast of France in 1978. On 16th of March 1978, *Amoco Cadiz*, carrying 220,000 tons of crude oil from the Persian Gulf to Rotterdam, suffered a failure of her hydraulic steering gear off the Brittany coast. Repair attempts by the crew and salvage operations were unsuccessful. The vessel foundered and her entire cargo escaped, polluting over 180 miles of coastline in Brittany, in one of the most important tourist and fishing region in France.[9]

Moreover, in March 1989, the tanker *ExxonValdez*[10]grounded in Alaska's Prince William Sound. More than 10 million gallons of oil- about 20% of the ship's cargo spilled into the surrounding waters. More than 1,300 miles of shoreline, including America's most prestine wilderness area and one of its most sensitive ecosystems was affected in the worst oil spill disaster in the nation's history.[11] In response to this incident, the United

[5] Burubaker, Douglas; Marine pollution and international law, Belhave Press, London. 1993, p 10.
[6] Louka, Elli; International Environmental Law, Cambridge University Press, Cambridge, 2006, p 451.
[7] De la Rue, Collin and Anderson, Charles B; Shipping and the Environment, 2nd edition, Informa, London, 2009. p. 10.
[8] Ibid.
[9] Ibid, p.31.
[10] Burubaker, Douglas; Marine pollution and international law, Belhaven Press, London. 1993, p 10.
[11] De la Rue, Collin and Anderson, Charles B; Shipping and the Environment, 2nd edition, Informa, London, 2009. p. 55.

States made significant changes in its national legislation dealing with oil spills. It enacted the Oil Pollution Act of 1990 addressing issues of prevention, removal, response and compensation for oil pollution from vessels and facilities in United States navigable waters. It also made conforming amendments to some of the Statutes previously enacted.

Ships are not the only the means of oil spills; disastrous oil spills also happens in the oil drilling wells and in other oil storage facilities. On June 3, 1979, the 2 mile deep exploratory well, *IXTOC I,* blew out in the Bahia de Campeche, 600 miles south of Texas in the Gulf of Mexico. The *IXTOC I* well continued to spill oil at a rate of 10,000 - 30,000 barrels per day until it was finally capped on March 23, 1980.[12]

These incidents served as the call for the formulation of a framework for the protection of the marine environment through a series of International Conventions to prevent oil spills as it is understood that oil pollution disasters can be best addressed by international co-operation. Such incidents acted as a catalyst to establish international rules and standards to regulate the marine transportation in an effective, safe and environment friendly way.

In this regard International Maritime Organization (IMO) introduced a series of measures to deal with accidental oil pollution through requirements designed to prevent tanker accidents and to minimize their consequences by adopting a series of marine environment protection conventions and regulations.

In 1973, the IMO adopted the International Convention for the Prevention of Pollution from Ships (MARPOL)[13] which has been amended by the Protocols of 1978 and 1997.[14] Consequently, an international regime under the auspices of IMO has been established to compensate for pollution damage caused by spills from oil tankers. The framework for the regime was originally the International Convention on Civil Liability for Oil Pollution Damage (CLC)[15] adopted in 1969 and the International Convention on the Establishment

[12] http://www.incidentnews.gov/incident/6250 accessed on 25th March 2013.
[13] International Convention for the Prevention of Pollution from Ships; adopted on 2nd November 1973; at IMO, London.
[14] http://www.imo.org/OurWork/Environment/PollutionPrevention/Pages/Default.aspx accessed on 25th March 2013.
[15] International Convention on Civil Liability for Oil Pollution Damage, adopted on 29th November 1969, at IMO; London.

of an International Fund for Compensation for Oil Pollution Damage[16] (Fund Convention) adopted in 1971. This old regime was amended by two protocols in 1992. The amended Conventions are known as the Civil Liability Convention 1992 (CLC 92) and Fund Convention 1992.

Degradation of the ocean environment continues on a global scale despite certain progress having been made during the last decades in some areas, on specific issues. However, statistics showed that MARPOL regime and other international instruments contributed to reducing pollution from ships.

Statistics showed that, 55% of the large spills recorded occurred in the 1970s, and this percentage has decreased each decade to 7% in the 2000s.[17] It has been recorded that from 1970 to 1979, 24.5 spills per year on average has occurred. And between 1980 and 1989, it reduced to 9.3 spills per year on average. The vast majority of spills are small (i.e. less than 7 tons) and the number of these oil spills are much higher, however, they make a relatively small contribution to the total quantity of oil spilled into the marine environment.[18]

1.2- Adoption of International Convention on Oil Pollution, Preparedness, Response and Co-operation, 1990 (OPRC Convention)

Spills will inevitably occur.[19] The major incidents that took place, explained the need for better international and national preparedness and response system in order to deal with oil pollution disasters. Although various International Conventions are adopted, they did not provide a strategic action plan in the event of oil pollution incident occur which is

[16] International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, adopted on 18th December 1992 at IMO, London.
[17] http://www.itopf.com/information-services/data-and-statistics/statistics/ accessed on 25th March 2013.
[18] Ibid.
[19] For example, in 1999, a Maltese 19666 gt tanker *Erika* broke into two and sank in the Bay of Biscay some 66 nautical miles off the coast of Brittany, France. And in 2002, Bahamas registered 42,820 gt tanker *Prestige*, was leaking oil while some 30 km off Cabo Finisterre, Galacia, Spain and whilst under tow away from the coast, the ship broke in two and sank and released oil estimated at about 13,800 tons. Another example includes, Explosion on the *Deepwater Horizon MC252* drilling platform in the Gulf of Mexico on April 20, 2010, caused the rig to sink and oil began leaking into the Gulf. Before it was finally capped in mid-July, almost 5 million barrels of oil were released into the Gulf.

essential in order to minimize the damage which may result from such an incident. Therefore, it is important to ensure that effective preparedness and response measures are in place that will ensure a timely and coordinated response to limit the adverse consequences of pollution incidents.

In July 1989, a conference of leading industrial nations in Paris called upon the IMO to develop further measures to prevent pollution from ships. This call was endorsed by the IMO Assembly in November of the same year and work began on a draft convention aimed at providing a global framework for international co-operation in combating major incidents or threats of marine pollution.[20] As a result of this, at the Diplomatic Conference held in November 1990 at IMO, London, the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990[21] (OPRC Convention) was adopted and came into force in on 13 May 1995. Similar to other IMO conventions, the Secretary General of IMO is made the depositary of the Convention.[22]

The OPRC Convention provides additional legal framework to prevent pollution from ships. With the adoption of OPRC Convention, oil pollution preparedness and response became a regular agenda item for the IMO. Further, IMO has developed guidelines, manuals, guidance documents and model courses to help built national and regional preparedness and response systems and train personnel.

1.3- Objective and scope of OPRC Convention

The main objectives of the OPRC Convention are to support and encourage States to establish and maintain an adequate system to overcome oil pollution aftermaths and to facilitate international cooperation and mutual assistance in preparing for and responding to major oil pollution incident thereby mitigating consequences of major oil pollution incidents. The Convention comes into play where oil pollution incidents occur which involves ships, offshore units, sea ports and terminal as well as oil handling facilities. The

[20] http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Oil-Pollution-Preparedness,-Response-and-Co-operation-%28OPRC%29.aspx accessed on 25th March 2013.
[21] 104 contracting States as of now (15th January 2013).
[22] Article 18 of OPRC Convention.

preamble of OPRC convention recognizes the "polluter pays" as a general principle of international environmental law.

1.4- Main features of OPRC Convention

At the very beginning, the Convention provides that, all Parties undertake individually or jointly, to take all appropriate measures in accordance with the Convention to prepare and respond to oil pollution incidents.[23]

As any other IMO Convention, OPRC Convention also includes definitions of important words, and phrases such as oil, oil pollution incident, ships, offshore unit, seaport and oil handling facilities in the Article 2.

The Convention applies to all ships except for those exempted under the Convention.[24] In addition to that, the Convention also applies to offshore units, seaports and oil handling facilities.[25]

All Parties to the Convention are required to have an oil pollution emergency plan in their flag ships, as required by and in accordance with Regulation 26 of Annex 1 of the International Convention for the Prevention of Pollution from ships, 1973 as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78).[26] And these ships are subject to inspection by officers while in port or at an offshore terminal in accordance with Article 5 and 7 of MARPOL 73/78.[27]

Further the operators of offshore units, authorities or operators of such sea ports and oil handling facilities must possess oil pollution emergency plan and these emergency plans must be approved by competent national authorities and shall be coordinated with national system established under Article 6 of OPRC Convention.[28]

Under Article 4, the Parties to the OPRC Convention are given a quite specific procedure for reporting oil pollution incidents so that prompt action can be taken to mitigate the level of pollution. Whenever, a Party receives a report in accordance with Article 4, specific procedures are laid down for the Parties to act on such reports.[29]

At State level, Parties are also required to establish a national system for responding promptly and effectively to oil pollution incidents. This system shall include national

[23] Article 1 of OPRC Convention.
[24] Ibid.
[25] Ibid Article 2.
[26] Ibid Article 3(1) (a).
[27] Ibid Article 3 (1) (b).
[28] Ibid Article 3(2) and 3 (3).
[29] Ibid Article 5.

contingency plan for preparedness and response taking into consideration the developed by Marine Environment Protection Committee of IMO. It also specifies major elements to be addressed in national and regional contingency plans.[30]

To enlighten the central feature of the OPRC Convention, which is facilitating international co-operation and mutual assistance in preparing for and responding to oil pollution incident, the Parties agree to provide international co-operation in terms of advisory services, technical support, and equipment for the purpose of responding to an oil pollution incident and financial assistance in tackling such incidents.[31] Furthermore, reimbursements of costs for such assistance are based on the Annex to OPRC Convention, and it specifies the principles that need to be followed in this regard.

In addition, under Article 8 of OPRC Convention, Parties agree to provide co-operation in terms of exchanging research and development programs relating to oil pollution preparedness and response. It also provides technical support by providing assistance for those parties who need technical assistance by way of training, providing relevant technological equipments etc.[32]

The OPRC Convention entrusts the IMO, an active role to facilitate the operation and continuance of it and to achieve its objectives. It is given the functions of providing information services, education, training, technical assistance.[33]

1.5- Hazardous and Noxious Substances (HNS) pollution

Hazardous and Noxious Substance is a term used to describe a substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.[34] Whether a substance is classed as hazardous or noxious is largely determined by its inclusion in one or more lists found in a number of IMO Conventions and Codes designed to ensure maritime safety and prevention of pollution. If the chemical transported has properties like flammable, explosive, toxic, corrosive or reactive, it is likely to be considered as a 'hazardous and noxious substance'. However, radioactive and infectious substances are outside the scope of the HNS regime.[35]

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[30] Ibid Article 6.
[31] Ibid Article 7.
[32] Ibid Article 9.
[33] Ibid Article 12.
[34] http://www.itopf.com/marine-spills/about-hns/ accessed on 25th March 2013.
[35] Ibid.

It is estimated that approximately 37 million different chemicals used by man some 2000 are transported regularly by sea, either in bulk or in packaged form.[36]And the specific properties of the chemicals are used to classify the chemicals and provide guidance for their packaging and transportation in order to minimize risk of a hazard arising from their carriage by sea.[37] Therefore the probability of an incident occurring is inevitable.

The framework for preparedness and response for oil spills has involved over 40 years or more to provide a regime for improving safety that contributed to the gradual reduction of oil spills despite the carriage of oil by sea transport.[38] And during the same period, there was an increase in the transport of HNS as well but without a proper mechanism for its safety like oil.

A statistical study was conducted by United States by its Coast Guard over 1992 to 1996 states 423 hazardous substances spills from ships or port installations which showed an average of 85 spills per year and it amounted 7500 tones. And a second study was made over 13 years (1981 to 1994) among 10 largest and most important ports which reported 288 spills of hazardous substances which showed 22 incidents per year.[39]

Although, HNS spills occur at a much lower frequency than spills of oil, its consequences can be far more devastating than that of oil spills.[40]

1.6- Adoption of the Protocol of 2000 to the International Convention on Oil Pollution, Preparedness, Response and Co-operation relating to Pollution Incidents by Hazardous and Noxious Substances, 1990 (OPRC-HNS Protocol)

The OPRC-HNS Protocol[41] was adopted to fill the lacuna in the OPRC Convention as the latter focused purely on oil spills. The OPRC-HNS Protocol ensures that ships carrying HNS are covered by a regime similar to those already in existence for oil incidents.

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[36] http://www.itopf.com/information-services/publications/papers/documents/interspill09_hns.pdf accessed on 25th March 2013.
[37] Ibid.
[38] Ibid.
[39] http://www.itopf.com/information-services/publications/papers/documents/interspill09_hnsappendix.pdf accessed on 25th March 2013.
[40] http://www.itopf.com/marine-spills/about-hns/ accessed on 25th March 2013.
[41] 28 Contracting States as of now (31st October 2012).

As mentioned above, the aim of OPRC-HNS Protocol was to provide global framework for international co-operation in responding to major HNS spill incidents that pollutes marine environment. It was adopted by State Parties to the OPRC Convention at a Diplomatic Conference held at the IMO headquarters in March 2000 and entered into force in June 2007.

1.7- Objective and scope of OPRC-HNS Protocol

The primary objectives of OPRC-HNS Protocol are to encourage States to develop and maintain adequate national capability to deal with HNS incidents and to facilitate International Co-operation and mutual assistance for such incidents. It was introduced to extend the scope of the OPRC Convention and covers hazardous and noxious substances as mentioned in the Preamble of the Protocol.

1.8- Main features of OPRC-HNS Protocol

This Protocol follows the principles of OPRC Convention and ensures that ships carrying hazardous and noxious substances are covered by preparedness and response regimes similar to those already in existence for oil incidents.

The definition given for hazardous and noxious substances by the OPRC-HNS Protocol is any substance other than oil which if introduced into marine environment likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea[42].

General consensus is that chemicals that are flammable, explosive, toxic, corrosive, reactive, are likely to be considered as 'hazardous and noxious substance'. However, radioactive and infectious substances are excluded from the scope of the HNS regime.[43]

The effects of a chemical lost into the marine environment depend on a number of factors such as the toxicity of the material, the quantities involved and resulting concentrations in

[42] Article 2(2) of OPRC-HNS Protocol

[43] http://www.itopf.com/marine-spills/about-hns/ accessed on 25th March 2013.

the water column, the length of time biota are exposed to that concentration and the sensitivity of the organisms to the particular chemical.

Different definitions are provided in different legal instruments according to its needs and to suit its scope.The definition of HNS found in the OPRC-HNS Protocol is very broad. It allows most chemical and noxious substances to be taken into account. Consequently, any substance other than oil, if which introduced into the marine environment is likely to create hazard to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea are included.[44]

It should be noted that the definition of HNS as defined by the OPRC-HNS Protocol differs widely from the definition of HNS under the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, otherwise known as the HNS Convention.[45]

Under OPRC-HNS Protocol, ships are required to carry a shipboard pollution emergency plan to deal specifically with incidents involving hazardous and noxious substances.[46] State Parties are required to establish national systems for preparedness and response and it outlines the essentials for such a system.[47] It provides an international framework and guidelines for co-operation in dealing with major incidents or threats of marine pollution. Parties to the OPRC-HNS Protocol are required to establish measures for dealing with HNS pollution incidents, either nationally or in co-operation with other countries.[48]

Under Article 5, Parties agreed to co-operate and provide advisory services, technical support and equipment for the purpose of responding to a pollution incident. The reimbursements of such costs shall be based on the provisions of the Annex to the Protocol. [49] Similarly the OPRC-HNS Protocol also provides for the parties to co-operate in the promotion and exchange of results of research and development programs relating

[44] Article 2 (2) of OPRC-HNS Protocol.
[45] International Convention on Liability and Compensation for Damage in Connection with Carriage of Hazardous and Noxious Substances by Sea adopted on 3rd May 1996 at IMO, London. And the definition provided in article 1(5) for hazardous and noxious substances includes oil.
[46] Ibid Article 3.
[47] Ibid.
[48] Ibid Article 4.
[49] Ibid Article 5.

to the enhancement of the state of the art of preparedness for and response to pollution incidents.[50]

It also establishes a system for Technical Co-oporation and ensures technical support and training is being provided for those states in need.[51]

2- NEED FOR THE INCORPORATION OF THE OPRC CONVENTION AND OPRC-HNS PROTOCOL INTO THE MALDIVIAN LEGAL SYSTEM

2.1- Importance of OPRC Convention and OPRC-HNS Protocol to Maldives

The Republic of the Maldives is located in the Indian Ocean to the south west of Sri Lanka. It is comprised of 1,190 low lying coral reef islands stretched over 34,750 square miles of Indian Ocean of which dry land only constitutes 0.331% (115 square miles) of the country's total surface area.

The islands of Maldives form an archipelago of 26 major atolls (groups of neighboring coral islands) stretching 820 km north to south and 120 km east to west.[52] Out of 1190 islands, only 200 islands are inhabited, with 44 adapted as exclusive holiday resort islands.

These unique geographic and demographic characteristics pose major development challenges for the Maldives especially as the ocean occupies 99% of the territory. The health of our ocean and people are all linked together. We use the ocean for trade, fun, fishing and food gathering. Hence protecting and preserving the cleanliness of the marine environment always remains as a top priority as well as a huge challenge.

The Maldives economy entirely depends on the coastal and marine ecosystems as the asset base. The major two economic sectors are tourism and fisheries and therefore the value of costal ecosystem is immensely huge. Tourism being the single most important economic sector in the Maldives contributes over 33% of national Gross Domestic Product (GDP).[53] Tourism is based wholly on the health and attractiveness of Maldives's

[50] Ibid Article 6.
[51] Ibid Article 7.
[52] http://www.maldivesmission.com/maldives accessed on 25th March 2013.
[53] http://www.maldivesmission.eu/about-the-maldives/economy accessed on 25th March 2013.

coastal features. It is extremely important in terms of its contribution to Government revenues. Similarly, the fisheries sector is the Maldives biggest exporter and also the biggest source of employment. The fisheries sector also supports other industries such as boat building and maintenance.[54]

The Maldives' economic success story would not have been achieved but at the expense of the environment. The Maldives understands well the beauty but also the fragility of its natural environment and need to take a wide range of measures to protect and conserve its marine environment as both tourism and fisheries heavily depend of it.

For these reasons, oil spills can have a huge economic impact on the low lying Maldivian archipelago. It is known fact that, due to oil spills, available fishing resources can be killed as result of toxicity of oil. Such Interruption of fishery activities can have a significant economic impact on Maldives especially for the island community whose main source of income depends of fishing.

Further, Maldives depends almost exclusively on shipping to move its exports and almost all commodities are imported to the country from other countries. *Male*' being the capital of the country, is the only major port in the country and is used for export and import activities. Consequently, it depends on its sea lanes and port operations which create a continual risk of pollution to the marine environment.

Moreover, although Maldives has no oil refinery and refined oil products are brought into the country for domestic consumption, there has been one medium size oil spill reported so far which occurred in *Male*' harbour. A Greek vessel *Elka* grounded at the mouth of the harbour in *Male*' in 1982. The quantity of oil it was carrying however very limited and the shipping company paid for the cleaning operations.[55] However, taking consideration that there is no proper oil spill reporting mechanism established and no studies made on this topic as such up to date, although no further significant oil spills is

[54] ibid
[55] http://www.unep.org/regionalseas/publications/reports/RSRS/pdfs/rsrs076.pdf accessed on 25th March 2013.

being recorded, it is inevitable that accidents which though not huge would have taken place which in some way which may have negative effects on the marine environment.[56]

Consequences of an oil spill can be far reaching. They are unpredictable events that may cause significant damages to the environment, especially for a coastal State. Maldives being a Coastal State, shall take the necessary measures to respond to oil spills in an effective manner to reduce and minimize the environmental, economic, and social impacts of oil spills. It is necessary to be proactive and take precautionary measures before a bigger catastrophe happens.

Similarly, HNS spills are equally if not more destructive than that caused by oil spills to the marine environment. Therefore taking into consideration the above reasons, the implementation of the OPRC Convention together with OPRC-HNS Protocol is essential to the Maldives.

In the efforts made to overcome marine pollution at a regional level, in the South Asian Region, regional mechanisms to protect the marine environment and to deal with the environmental problems are being put in place. To overcome the problems facing because of expansion of human populations, oil transport across the Arabian Sea, an action plan in March 1995 was adopted in which Maldives is a party. This Action plan's main objective was to protect the marine environment and related coastal ecosystems of the region[57]. In addition to that, South Asian Regional Oil and Chemical Spill Contingency Plan and associated memorandum of understanding were developed in association with the IMO for enhanced cooperation among five maritime countries of

[56] For example, Maldives National Defence Force (MNDF) Coast Guard has responded to a marine pollution incident near *Clubfaru* Resort involving an oil spillage. Upon receiving the call at around 1630hrs, a survey team of MNDF *Male*' Area Coast Guard was dispatched to the resort and conducted a survey. Moreover, work on containing the oil spill is being carried out from 2100hrs onwards. It is stated that the pollutant affected an area of about 200 feet of the beach near the main jetty and also around 100m between *Clubfaru* Resort and *Hulhumale* Island was also affected. The removal of oil is being carried out using an oil containment boom, pump and other equipment. The incident is also being surveyed by the Environment Protection Agency of the Maldives. – reported in 8 August 2012, reported in http://www.miadhu.com/2012/08/local-news/coast-guard-responds-to-a-marine-pollution-incident/ accessed on 25th March 2013.

[57] http://www.unep.org/regionalseas/programmes/nonunep/southasian/instruments/r_profile_sas.pdf accessed on 25th March 2013.

South Asia in the event of an Oil spill. Maldives signed the said MOU with Bangladesh and Pakistan. The signing of MOU by India and Sri Lanka are at an advanced stage.[58]

Further, Maldives in its journey to protect and preserve the marine environment in a broader international level, has already become a party to several International Conventions, formulated by the IMO, dealing specifically with ship related marine pollution matters. However, it is not a party to OPRC Convention and OPRC-HNS Protocol yet. Hence, it is recommended and is utmost importance to accede to OPRC Convention and OPRC-HNS Protocol, which will enable the country to make prompt response to such disasters which will benefit to the nation as a whole. It will open doors for international platform for corporation and assistance in responding such major pollution incidents and will act as a means for accessing relevant technical assistance, and acquire a network of research and development information in the concerned area.

By acceding to these International Instruments, Maldives can reaffirm its position in ensuring to minimize damage that may result from such oil and HNS spill incidents. Accession also will demonstrate its commitment to cooperate with international community in the protection of marine environment which is a common concern of mankind.

2.2- Why Maldives need to enact a Domestic Legislation

The national legal framework of Maldives, with regard to the prevention and preservation of marine environment is manifestly poor. Although Maldives has ratified several International Conventions related to marine pollution prevention from ships, so far, there is no comprehensive domestic legislation to deal with marine pollution.

According to Article 22 of the Constitution of Maldives, the State shall take necessary measures to prevent and preserve the environment.[59] In addition to this, under Article

[58] http://www.sacep.org/ accessed on 25th March 2013.

[59] Article 22 of Constitution states that "*the State has a fundamental duty to protect and preserve the natural environment, biodiversity, resources and beauty of the country for the benefit of present and future generations. The State shall undertake and promote desirable economic and social goals through ecologically balanced sustainable development and shall take measures necessary to foster conservation, prevent pollution, the extinction of any species and ecological degradation from any such goals*.".

67(h) also provides a duty to preserve and protect the natural environment, biodiversity, resources and beauty of the country and to abstain from all forms of pollution and ecological degradation.

However, since the 2008 Constitution came into force[60], there has been no new legislation enacted which will give a comprehensive guidance as for discharging those obligations.

The main legislation now in force is the *Environment Protection and Preservation Act of 1993*, which provides general obligations for the protection of marine environment to the Executive Branch of the Government and does not provide a comprehensive prevention mechanism for performing their obligations. There is no existing law which directly address on oil or HNS spills and does not define oil spill preparedness and response principles anywhere.

More specifically, responding strategy to pollution incidents is poor and professional and technical assistance is required. The allocation of responsibilities in these areas is essential. The Environment Protection Agency (EPA) under Ministry of Housing and Environment of the Maldives is the main Regulatory Authority, which has the mandate to protect the environment from pollution. However, it would not be wrong to say that EPA mainly focuses on land based pollution rather than ship based pollution.[61]

The other relevant Authorities responsible for protecting the marine environment, includes the Transport Authority under the Ministry of Transport and Communication which is responsible for dealing with sea transportation and maritime safety.

In addition, the Coast Guard of Maldives National Defence Force has the mandate for the oil pollution response in the country. It has in house oil spill contingency plan and a limited amount of oil spill combat equipment. However, it is only sufficient for responding to small oil spills. There is no comprehensive plan to respond oil spill as such.[62]

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[60] Constitution came into force on 7th of August 2008.

[61] http://epa.gov.mv/index.php?option=com_content&view=article&id=88&Itemid=18 accessed on 25th March 2013.

[62] International Tanker owners pollution federation Limited (ITOPF 2010).

Certainly, these lacunae clearly need to be filled through a detailed national legal framework so that the Maldives could respond to oil and HNS spills in case of an emergency. Having a specific Legislation and a comprehensive legal framework directly addressing such can be of importance to a country which is threatened to be incapable of responding to such a catastrophe in itself. A legislation which can allocate and identify responsible authorities and their duties are necessary thus establishing a clear separation of responsibilities of each of them. Similarly prior Contingency plan for oil and chemical spills with the ability to expand them according to seriousness of such incidents are vital, so prompt assistance can be sort on time.

For the above reasons, it is important that Maldives shall incorporate the legal framework envisaged in the OPRC Convention and OPRC-HNS Protocol as early as it can. For this, as mentioned earlier, the initial action shall be to accede to the Convention and its Protocol itself. However, the completion of accession procedure for the OPRC Convention and OPRC-HNS Protocol does not mean that it will have the automatic implementation effect on Maldives Legal system. They need to be domesticated into the legal system of the Maldives.

Maldives is a dualist county. Under Article 93 (a) of Constitution of Maldives, the Executive in the name of the State can enter in to treaties, but upon approval by the Legislature (Parliament) and such shall come into force in accordance with the decision of the Parliament. And according to Article 93(b) of the Constitution of Maldives, domestication of such a treaty is required for citizens to act in compliance with such. Therefore, a new legislation has to be enacted to incorporate any Convention into Maldivian Legal system.

2.3- Legislative process in Maldives

The legislative authority is vested in the People's *Majlis*[63] (Parliament). Its powers include the enactment of legislations with regard to any matter, or the amendment or repeal of any law, which is not inconsistent with any tenet of Islam.[64]

[63] Article 70(a) of Constitution of Maldives.
[64] Ibid 70 (b) (2).

A bill can be submitted to the Parliament in two ways. A bill can be submitted as a Government bill or as by member of the Parliament as a private member bill. For the purpose of this project, it is assumed that, to incorporate the OPRC Convention and OPRC-HNS Protocol, the drafting bill will be submitted as a Government bill as, it is the Executive who would be acceding to the Convention on behalf of the State in any circumstance.

Although Attorney General is responsible for the legislative tasks of the Government as a whole, it is the usual practice of the Government; bills are drafted by the relevant Ministry or Department of the Government. For example, if the bill is on environment, the drafting is carried out by Ministry of housing and environment. They carry out this function either with the assistance of in house environmental experts/lawyers or by hiring international legal consultants in the field. The relevant stakeholders are met and discussions are held and their suggestions and comments are being gathered and incorporated in the final draft bill. When the final draft is done, it shall be sent to the Attorney General for comments and further improvement is undertaken there. The Attorney General will then forward the draft bill including a brief reasoning to the President's Office where it is submitted to the *Majlis* as per Rules of Procedure of the *Majlis*.

Then the bill will go through the normal process in the legislative chamber according to the rules of procedure of the Parliament. Once Parliament deliberates on the bill and endorses it, it is sent to the President for his assent.[65] A bill passed by the Parliament shall become a law once it assented by the President and published in the Government Gazette or on such later date following publication stipulated in the Act.[66]

Accordingly, the proposed bill will have to follow the same procedure until its publication in the Government Gazette.

3- EXPLANATION OF THE DRAFT TEXT

[65] Ibid 92
[66] Ibid

This explanatory memorandum explains the Draft Bill in two different ways. First, a brief and general explanation of the overall purpose and policies of the Draft Bill and then a short summary of 11 Parts of the Draft Bill.

3.1- Overall purpose and policies of the Draft Bill

Since the purpose of this Draft Bill is to provide a legal national framework for oil and HNS pollution preparedness, response and co-operation by incorporating the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 and the Protocol of 2000 to the International Convention on Oil Pollution, Preparedness, Response and Co-operation relating to Pollution Incidents by Hazardous and Noxious Substances, the bill is drafted in a way that flows from preparedness, response and co-operation whenever incidents happen.

To work the system established by the Draft Bill, a specialised Centre as a focal governmental authority has been created which has the main responsibility of implementing the system for oil and HNS pollution prevention, preparedness, response and co-operation envisaged in the Draft Bill.

The Centre is created to work under the Transport Authority so as it is being monitored by the Minister of Transport and Communication and all administrative staff of the Centre are kept as Civil Servants keeping in mind that the financial burden of employing staffs in independent separate legal entities who have corporate status. This will minimise the administrative costs in the operation of Centre for the Government.

3.2- Summary of the Parts of the Draft Bill

The Bill consists of eleven Parts. Part I makes preliminary Sections such as Section for interpretations. For the purpose of proper functioning of the system established under the Act, stakeholders have been identified and accordingly, additional definitions have been included for the purpose of interpretation. Further in Part I, Section for the scope of the application has been included in relation to Article 2 of both the OPRC Convention and OPRC-HNS Protocol. As both Convention and Protocol does not apply to certain vessels

such as warships, naval auxiliary etc, a provision has been included to provide exemption for such.

Part II makes provisions in respect of the establishment of the National Centre for the oil and HNS pollution prevention which brings the object and purpose of the Convention and Protocol implementation in the light of Article 6 of the Convention and Article 4 of the Protocol respectively. The Centre is established under Section 5(1) of the bill and the Centre works on it own, technically the bill has been formulated in a way that the Ministerial responsibility is respected and its work is monitored by the Transport Authority. This Part makes provisions with regards to the Centre's budget and its objectives.

Part II and Part III are closely related because the Centre established under Part II shall run only on the directions given by the Committee.

Part III makes provision for the formation of National Oil and HNS Pollution Prevention Committee which has a primary responsibility of formulating policies and contingency plans provided in the Article 3 of the Convention and the Protocol. Part III of the bill also makes provisions for the composition of the committee, its functions and provisions relating the conduct of the Committee.

Part IV deals with the administrative arm of the Centre established under Part II. It has provisions for the management of the Centre. The Part makes provisions on duties of the persons responsible for the management of the Centre and these include Director-General who is the administrative head of the Centre and is also supported by other staffs.

Part V deals with the functions and responsibilities of the Centre. Some of the obligations mentioned in Article 6, 7, 8 and 9 of the Convention have been domesticated making them as functions of the Centre in Section 27 (pre-positioned equipments and training), section 28 (development plans and communication capabilities), section 29 (international arrangements), section 30 (Exchange of research and development programs), section 31 (Technical co-operation) and section 32 (Arrival and utilization of ships, aircrafts and others). Section 26 is included by creating special functions for the Centre.

Part VI is entitled as system for oil and HNS pollution preparedness which is designed to provide a precautionary system so that Maldives will be ready to face such prior the occurrence of any oil and HNS pollution incident. It creates an obligation on the Committee to make national oil and HNS pollution risk assessment in every 5 years which will bring a more robust approach to minimize and control of such incidents. This Part also creates obligations on certain stakeholders to have emergency plans such as;

- National Contingency plan (NCP)
- Shipboard emergency plan
- On site emergency plan

Part VII basically incorporates the Article 4 of the Convention and Article 3 of the Protocol by providing a reporting procedure.

Part VIII deals with a system for oil and HNS pollution response upon receipt of pollution report. The pollution incidents are categorized in to different tier level depending on their seriousness. Then after the incident had been identified based on the Tier level, the actions to be taken upon receiving oil or HNS pollution report is provided in this Part. This covers the Article 5 of the Convention and 3 of the Protocol.

Part IX establishes a fund to make the system work in a more financially viable way although the Annex of Convention and Protocol makes provisions for ready financial assistance in emergencies. It also makes provisions for vessel covered under the bill to make a contribution which shall be determined by the Centre.

Part X makes provisions creating offences under the Act and imposes punishments which will be a deterrent for violating the provisions of the Act and the obligations will be taken seriously. In addition, competent court has been identified for such offences.

Part XI provides miscellaneous provisions such as inspection, administration and enforcement of this Act.

Finally, it shall be noted that, although the purpose of this Draft Bill is to domesticate the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 and Protocol of 2000 to the International Convention on Preparedness, Response and Co-operation relating to Pollution Incidents by Hazardous and Noxious Substances and it is the practice of the Government of Maldives to domesticate International Conventions by merely enacting a domestic legislation having similar provisions as that of the relevant Convention. In the same manner the Draft Bill do not include a separate provision giving the Convention force of law in the country but rather provides a domestic legislation incorporating the provisions of the Convention and the Protocol.

PART V

FUNCTIONS AND RESPONSIBILITIES OF THE NATIONAL CENTRE FOR THE OIL AND HNS POLLUTION PREVENTION

PART VI

SYSTEM FOR OIL AND HNS POLLUTION PREPAREDNESS

PART VII

OIL AND HNS POLLUTION REPORTING PROCEDURE

PART VIII

SYSTEM FOR OIL AND HNS POLLUTION RESPONSE UPON RECIEPT OF REPORT

PART IX

ESTABLISHMENT OF OIL AND HNS PULLUTION PREVENTION FUND

PART X

OFFENCES AND PANELTIES

PART XI

MISCELLANIOUS PROVISIONS

PART I

PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as *Oil and Hazardous & Noxious Substances Pollution Preparedness, Response and Co-operation Act 2013*.

interpretation

2. In this Act, unless the context requires otherwise, the following terms and phrases shall be interpreted as follows.

(1) "Transport Authority" means Transport Authority established under Ministry of Transport and Communication on 24 February 2009 by the President of the Republic of Maldives.

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(2) "Convention" means the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (OPRC Convention) and the Protocol on Preparedness, Response and Co-operation to Pollution by Hazardous and Noxious Substances 2000 (OPRC-HNS Protocol).

(3) 'Centre' means the National Centre for the Oil and HNS Pollution Prevention established under Section 5(1) of this Act.

(4) "Criminal Court" means the Court established under law number 22/2010 of Maldives.

(5) "Committee" means the Committee formed under Section 8 of this Act.

(6) "Public Finance Act" means the law number 3/2006 of Maldives and regulations under it.

(7) "Fund" means the Oil and HNS pollution Prevention Fund established under Section 43 of this Act.

(8) "Organization" means International Maritime Organization.

(9) "Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products.

(10) "Hazardous and Noxious Substances" means any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea. And the abbreviation "HNS" shall mean the same.

(11) "Shipboard emergency Plan" means the plan mentioned in Section 35 of this Act.

(12) "On-site emergency Plan" means the plan mentioned in section 36 of this Act.

(13) "Minister" means the Minister of Transport and Communication of Maldives.

(14) "National Contingency Plan" means National Oil and HNS Pollution Response Contingency Plan mentioned in Section 34 of this Act. And the abbreviation 'NCP' shall mean the same.

(15) "Oil or HNS incident" means an occurrence or series of occurrences having same origin, which results or may result in a discharge of oil or discharge or release or emission of HNS and which may poses or

may pose a threat to the marine environment or to the coastline or related interests of Maldives or any other State, and which requires emergency action or other immediate response.

(16) "Sea ports and oil and HNS handling facilities" means those facilities where oil and HNS are loaded into or unloaded from ships which present a risk of an oil or HNS pollution incident.

(17) "Offshore units" means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities or loading or unloading of oil.

(18) "Ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersible, and floating craft of any type.

(19) 'Maldives" means the territory of the Maldives as defined in the Article 3 of the Constitution of the Republic of Maldives.

Scope of Application

3. Unless otherwise expressly provided, the provisions of the Act shall apply to;

(1) All ships entitled to fly under Maldivian flag;

(2) All foreign ships in the Maldives;

(3) All offshore units in the Maldives;

(4) All sea ports and Oil, HNS handling facilities in the Maldives; and

(5) All entities or persons whether public of private having a defined right or obligation under this Act;

Exemption

4. The provisions of this Act shall not apply to any warships, naval auxiliary or other ships owned or operated by a State and used for the time being only on government non commercial service in Maldives. Notwithstanding the aforesaid, such ships shall act in a manner consistent, as far as reasonable and practicable with this Act.

PART II

ESTABLISHMENT OF NATIONAL CENTRE FOR OIL AND HNS POLLUTION PREVENTION

Establishment of the Centre

5. (1) For the purpose of this Act, the National Centre for Oil and HNS Pollution Prevention is hereby established under the Transport Authority.

(2) The Centre shall be a regulatory body for the administration of oil and HNS preparedness, response and co-operation system established under this Act.

Budget of the Centre

6. (1) The Centre shall have an independent budget and its head office shall be located in Male' City and the Minister, if deemed necessary, may establish branches in different Atolls of the Maldives.

(2) The Director General shall in consultation with the Committee prepare a budget and submit it to the Transport Authority before the end of each financial year.

(3) No expenditure shall be made out of the budget of the Centre upon approval of the Committee and in accordance with the Public Finance Act.

(4) The Centre shall keep proper books of accounts in accordance with audit guidelines provided by the Office of the Auditor General.

Objectives of the Centre

7. (1) The objectives of the Centre shall be to co-ordinate and implement the national Oil and HNS preparedness, response and co-ordination system, as follows;

(a) Establish a viable national operational organization that ensures safe, timely, effective and appropriate response to oil and HNS pollution incidents.

(b) Establish a mechanism to monitor and assist or where expedient direct to response, including the capability to mobilize the necessary resources to protect the marine environment and cleanup to the best practical extent of the impacted site.

(c) Provide programme of activation, training and drill exercises to ensure readiness to oil and HNS pollution preparedness and response and the management and operational personnel.

(d) Provide support for research and development in the local development methods, materials and equipment for oil and HNS spill response.

(e) Establish agreements with neighbouring countries regarding the rapid movement of equipment, personnel and supplies into and out of Maldives for emergency oil and HNS spill response activities.

(f) Carryout such other activities as are necessary for the full discharge of its functions conferred in this Act.

PART III

FORMATION OF A NATIONAL OIL AND HNS POLLUTION PREVENTION COMMITTEE

Establishment of Committee

8. A National Oil and HNS Pollution Prevention Committee shall be formed under the Transport Authority which has the responsibility of formulating policies and provide coordinated advice and support to the Centre in the exercise of functions conferred upon the Centre under this Act.

Composition

9. (1) the Committee formed under Section 8 shall be comprised of the following members appointed by the Minister.

(a) A Chairperson;

(b) A representative from each of the following Government Institutions;

(i) Ministry of Environment and Energy
(ii) Ministry of Transport and Communication
(iii) Ministry of Economic Development
(iv) Maldives Coast Guard
(v) Ministry of Health
(vi) Ministry of Tourism
(vii) Environmental Protection Agency
(viii) Disaster Management Centre
(ix) Maldives Ports Limited

(c) In addition, a representative from the following stakeholders may be appointed by the Minister;

(i) Oil or Chemical trading companies in the Maldives
(ii) Fishing industry
(iii) Non-governmental organization mandated for marine environment protection
(iv) Any other sector as deemed necessary to have a representation in the Committee.

Tenure of office

10. The Chairperson and the members of the Committee shall each hold office for a period of 5 years from the date of appointment in the first instance and may be re-appointed for further period of 5 years. Members who have been removed from office according to Section 12 of this Act shall not be eligible for reappointment.

Resignation

11. A Member of the Committee may resign his membership by notice in writing addressed to the Minister and that member on the date of receipt of the notice by the Minister cease to be a member.

Cessation

12. (1) A Member of the Committee may at any time be removed by the Minister for inability of discharge the functions of his office whether arising from infirmity of mind or body or for misconduct or if the President is satisfied that it is not the interest of the Centre or the interest of public that member should continue office.

(2) A Member of the Committee cease to hold office;

(a) Upon his death;
(b) Upon his removal by the Minister under Subsection 1 of this Section.

(3) Where a so vacancy occurs in membership of the Committee, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor and such Member is eligible for reappointment.

Remuneration

13. The Chairperson and members shall be paid such remuneration, fees or other allowances as determined by the Minister on the advice of Minister of Finance and Treasury.

Functions of the Committee

14. The functions of the Committee include the following:

(1) The undertaking of risk assessments under section 33(1) of this Act;

(2) Developing and reviewing the National Oil and HNS Spill Contingency Plan (NCP) required under section 34 of this Act;

(3) Assisting in the establishment and maintenance of the inventory of oil and HNS pollution response equipments and its effective utilization;

(4) Ensuring the proper administration and utilization of Fund in accordance with this Act;

(5) The development and implementation of national training and exercise programs under Section 27(2) of this Act;

(6) Promoting effective participation in any bilateral and multilateral and regional oil or HNS spill contingency plan and related arrangements;

(7) Issue internal regulations for the proper functioning of the Centre;

and

(8) Carry out any other functions related to the oil and HNS pollution preparedness, response and coordination and related matters.

Meetings of the Committee

15. The Committee shall convene at least biannually for routine business. Notwithstanding the said, the Committee may convene whenever oil or HNS pollution occurs or whenever the need arises as determined by the Minister.

Annual reports of the Committee

16. The Committee shall submit an annual report to the Transport Authority outlining the activities of the Committee and summarizing the advice given to the Centre during the previous calendar year.

Committee regulations

17. The Committee shall make its internal regulations for the operation of the Committee.

PART 1V

DIRECTOR-GENERAL AND OTHER STAFF OF THE CENTRE

Appointment of Director-General

18. (1) There shall be for the Centre, a Director-General who shall be appointed by the Minister on the recommendation of the Committee.

(2) The Director-General shall be the Head of the Centre and be responsible for the execution of the policies made by the Committee and the day to day administration of the affairs of the Centre.

Qualification of Director-General

19. The Director-General so appointed shall have minimum of 7 years of experience in marine environmental protection and shall prove the ability in public administration.

Tenure of office

20. The Director General shall hold office for a term of 5 years in the first instance and may be re appointed for a further term of 5 years and no more and on such terms and conditions as may be specified in his letter of appointment.

Resignation

21. The Director-General may resign from his office by notice in writing addressed to the Minister and that he on the date of receipt of the notice by the Minister cease to hold office.

Cessation

22. (1) The Director-General may at any time be removed by the Minister upon approval of the Committee to do so, for inability of discharge the functions of his office whether arising from infirmity of mind or body or for misconduct or if the Minister is satisfied that it is not the interest of the Centre or the interest of public that he should

continue office.

(2) The Director-General cease to hold office;

(a) Upon his death;
(b) Upon his removal by the Minister under Subsection 1 of this Section.

(3) Where a so vacancy occurs, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor and he is eligible for reappointment.

Remuneration

23. The Director General shall be paid such remuneration, fees or other allowances as determined by the Transport Authority on the advice of the Minister and shall be approved by the Minister of Finance and Treasury.

Duties of Director-General

24. The Director General shall be responsible for;

(1) The day to day administration of the Centre;

(2) Supervision and discipline of other Staffs of the Centre;

(3) Execution of policies made on the Centre by the Committee;

(4) Perform other duties as may be determined by the Committee.

Other Staff

25. (1) The Centre shall employ such officers and other employees from time to time as deemed necessary for the purposes of the Centre.

(2) Except the Director General, all other officers and employees of the Centre are Civil Servants and shall be employed on the advice of the Civil Service Commission as per Civil Services Act.

(3) The terms and conditions of service including remuneration and other benefits of officers and employees of the Centre shall be determined by Centre subject to the approval of the Civil Service Commission.

PART V

FUNCTIONS AND RESPONSIBILITIES OF THE CENTRE

Special functions of the Centre

26. The Centre on the advice of the Committee shall perform the following functions;

(1) acts as a Secretariat for the Committee and provides administrative support for the proper functioning of the Committee.

(2) coordination of the response activities to oil and HNS incidents according to this Act.

(3) acts as a report processing and response coordinating point for all oil and HNS spillage incidents.

(4) serves as command and control point for compliance monitoring of this Act, and monitoring and coordinating responses required in plan activations.

(5) Provide the required information to the Organization under the Convention to the Organization.

(6) Perform any other duties stated in this Act and any other responsibility conferred upon it by the Committee as deemed necessary.

Pre-positioned equipments and training

27. The Centre shall establish, within its capabilities either individually or through bilateral or multilateral co-operation and, as appropriate, in co-ordination with oil and shipping corporations and other relevant entities;

(1) a minimum level of pre-positioned oil and HNS spill combating equipment, commensurate with the risk involved and programs for its use.

(2) develop and implement training programs and drill exercises for relevant staffs and oil pollution response organizations in accordance with advice of the Committee.

Development of plans and communication capabilities

28. The Centre shall develop, within its capabilities either individually or through bilateral or multilateral co-operation and, as appropriate, in co-ordination with oil and shipping corporations and other relevant entities;

(1) Detailed plans and communication capabilities for responding to an oil and HNS pollution incident.

(2) Mechanism to co-ordinate the response to an Oil and HNS pollution incident with if appropriate, the capabilities to mobilize the necessary resources.

International arrangements

29. (1) Subject to its capabilities and the availability of relevant resources, the Centre shall seek to enter into and maintain corporative arrangements for technical support and equipment for the purpose of responding to an oil or HNS pollution incident and

the financing of the costs for such assistance shall be based on the provisions set out in the Annex of the Convention.

(2) The Centre, where appropriate seek assistance of the Organization to identify sources of provisional financing of the costs referred in subsection (1) of this section.

Exchange of research and development programs

30. The Centre shall corporate directly or through Organization or regional organizations in the promotion and exchange of results of research and development programs relating to oil and HNS pollution preparedness and response including technologies and techniques for surveillance, containment, recovery, dispersion, clean-up.

Technical co-operation

31. The Centre shall provide technical support directly or through the Organization, to train its technical personnel and ensure availability of relevant technology, equipment and facilities. It also shall facilitate other measures and arrangements to prepare for and respond to oil and HNS pollution incidents.

Arrival and utilization of ships, aircrafts and others

32. The arrival and utilization in and departure of ships, aircrafts and other modes of transport engaged in responding to an oil or HNS pollution incident from Maldives or transporting personnel, cargoes, materials and equipment required to deal with such an incident shall be carried out in accordance with the relevant Laws of the Maldives and applicable international agreements.

PART VI

SYSTEM FOR OIL AND HNS POLLUTION PREPAREDNESS

Risk assessment

33. (1) The Committee shall undertake within one year upon the Act comes into force, and thereafter once in at least 5 years, or where there is a new development that may alter the risk of oil and HNS pollution incidents affecting Maldives, a national oil and HNS pollution risk assessment.

(2) The purpose of this assessment is to identify the probability occurring oil and HNS pollution incidents and it shall be published in form the developments for the formulation of the contingency plans under this Act and shall minimum include;

(a) The risk of type of amounts of pollution

(b) The probable drifting of oil and HNS

(c) The vulnerability of the resources to be protected

(d) Adequate combat equipment and personnel

(e) The protection of resources to be prioritized

National Contingency plan (NCP)

34. The Committee shall establish a National Contingency Plan for responding promptly and effectively to oil and HNS pollution incidents and such shall include:

(1) The designation of:

(a) The competent national authority with responsibility for oil and HNS pollution preparedness and response.

(b) The national operational contact point which shall be responsible for the receipt and transmission of oil and HNS pollution reports.

(c) authority which is entitled to act on behalf of Maldives to request assistance or to decide to render assistance requested.

Shipboard emergency plan

35. A ship entitled to fly Maldivian flag and any Foreign Ship in the Maldives shall have on board, a ship board oil and HNS pollution emergency plan in accordance with the National Contingency Plan and approved by the Centre.

On-site emergency plan

36. (1) All operators of offshore units within the Maldives shall have an Onsite emergency plan in accordance with National Contingency Plan and approved by the Centre.

(2) A person in charge of a sea port or oil handling facility in the Maldives shall have an emergency plan or similar arrangement in accordance with the national contingency plan and approved by the Centre.

PART VII

OIL AND HNS POLLUTION REPORTING PROCEDURE

Duty to report

37. (1) Masters or other persons having charge of ships flying Maldivian flag and persons having charge of offshore units in the Maldives shall report without delay any event on their ship or offshore unit, or any observed event at sea, involving a discharge or probable escape of oil or HNS:

(a) In the case of ship, to the nearest coastal State; and
(b) In the case of an offshore unit, to the Centre

(2) Persons having charge of ports and oil and HNS handling facilities shall report without delay any event involving a discharge, emission or release or a probability of such escape of oil or HNS to the Centre

(3) Maldives Coastguard vessels, and State owned aircrafts and other such state service or official shall report without delay any event at sea, ports or oil or HNS handling facility involving a discharge of oil or HNS to the Centre or as the case may be, to the nearest Coastal State.

(4) Pilots of civil aircrafts shall report without delay any event at sea involving discharge of oil or HNS or the presence of oil or HNS to the nearest Coastal State.

Reporting requirements

38. Reports required under Section 37 shall be made in accordance with the requirements developed by the Organization and based on the guidelines and principles adopted by the Organization.

PART VIII

SYSTEM FOR OIL AND HNS POLLUTION RESPONSE UPON RECIEPT OF REPORT

Tiered approach

39. (1) The national response system is based on a three tiered approach and these tiers can be categorized according to the assessment referred in section 37. And the three tiers are as follows:

(a) Tier 1: covers incidents at a coastal facility or ship that might occur because of operational activities and that might cause small-scale pollution. They are incidents that a coastal facility or a ship could take under control with its own equipment and capabilities;

(b) Tier 2: are medium-scale incidents that can be intervened and controlled with centre's equipment and capabilities in situations where those of a coastal facility or ship are limited; and

(c) Tier 3: covers large-scale incidents that arise from serious accidents that occur at sea and/or at a coastal facility. The response and clean-up is controlled by the Centre.

Incident Commander

40. (1) The Director-General shall designate from within the staff of the Centre, Incident Commanders as provided in Section 41 of this Act.

(2) The person appointed as Incident Commander shall be appropriately qualified and experienced for the role and shall have received formal training for the role.

(3) The Incident Commander shall be supported by the Response Team determined by the Director General in order to provide support to the Incident Commander in managing and coordinating the operation.

Action upon receipt of report

41. (1) Whenever, the Centre receives a report of oil or HNS pollution incident, it shall initiate a response in accordance with the National Contingency Plan and shall designate an Incident Commander and mobilize an Incident Response Team.

(2) The Incident Commander shall be the leader of the Incident Response Team and shall together carryout the task. In doing so, Incident Response Team shall;

(a) Asses the event to determine whether it is an oil or HNS pollution incident;

(b) Assess the nature, extent and possible consequences of the oil or HNS pollution incident;

(3) Once the incident has been designated to a Tier level the Centre, through the incident commander with the support of the incident response team shall over see, coordinate and control the response to the spill in accordance with the contingency plan.

(4) if the incident fall under the Tier 3, it shall take appropriate measures and shall through the Centre;

(a) without delay inform all States whose interests are affected or likely to be affected by such oil or HNS pollution incident, together with;

(i) Details of its assessment and any action it has taken, or intends to take, to deal with the incident; and

(ii) Further information as appropriate until the action taken to respond to the incident has been concluded or until joint action has been decided by such states.

Communication to the Organization

42. When the severity of such oil or HNS pollution incident so justifies, the Centre shall provide the Organization directly or as appropriate, through the relevant regional organization or arrangements with the information referred subsection 4(a) using the reporting system developed by the Organization as far as practicable.

PART IX

ESTABLISHMENT OF OIL AND HNS POLLUTION PREVENTION FUND

Establishment of fund

43. (1) A fund known as Oil and HNS Pollution Prevention Fund shall be established at the Centre, to which shall devolve:

(a) Amounts allocated in the Government budget to subsidize the fund;

(b) Grants and donations presented by the national and foreign organizations and accepted by the Centre for the purpose of carrying centre's functions under this Act;

(c) Fines levied under this Act; and

(d) Contribution made under section 44 of this Act.

Contributions to the fund

44. (1) Ships, offshore units, oil and HNS handling facilities that are covered under this Act shall make a contribution to the fund.

(2) Foreign ships calling at ports of Maldives shall also make contribution in terms of a fee to the fund.

(3) The Committee shall determine the amount of contributions based on the pollution risk assessment.

(4) The fund shall have a special balance sheet and its financial year shall commence and end with that of the Government. Any surplus shall be carried over to the following year.

Regulations for the operation of fund

45. The Committee shall make internal regulations the use and operation of the fund on the advice of the Minister and shall be approved by the Minister of Finance and Treasury.

PART X

OFFENCES AND PENALTIES

Failure to report

46. (1) Any person, who without reasonable cause violates any of the Provisions of Part VII and VIII of this Act, commits an offence under this Act.

(2) Upon conviction he shall be liable for the offence is committed in case:

(a) an individual, a fine of not exceeding MVR 50,000 or a term of imprisonment not exceeding 5 years; and

(b) body corporate, a fine of not exceeding MVR100,000.

Liability of director/ partner

47. (1) Where the offence under this Act is committed by a body corporate, every director or officer of that body shall be deemed to have committed the offence and;

(2) Where the offence under this Act is committed by the body of persons is a partnership, every partner of that partnership shall be deemed to have committed that offence.

Provided that no such person referred in subsection (1) and (2) shall be deemed to have committed an offence under this Act, if the person proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence.

Criminal Jurisdiction

48. The Criminal Court shall have the jurisdiction over the offences committed under this Act.

PART XI

MISCELLANIOUS PROVISIONS

Administration

49. The Centre has the primary responsibility for the administration and enforcement of this Act.

Appointment of inspectors

50. The Minister may appoint inspectors for supervision as he deemed necessary for the purpose of this Act.

Inspection

51. Any person duly authorized by the Minister under section 45 may inspect any ship, offshore installation or oil or HNS handling facilities to which this Act applies to monitor its compliance with this Act.

Time bar for prosecution

52. (1) A proceeding for prosecution for an offence against this Act must start;

(a) Within 2 years after the commission of the offence; or

(b) Within 2 years after the offence comes to the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

Regulations

53. The Committee may make regulations for such matters as are necessary for giving full effect to the provisions of this Act and for its due administration.

Commencement

54. The Act shall come in to force on the day of its publication in the Government Gazette.