

Explanatory Note:

A principal legislation to incorporate the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), as well as to mitigate land based pollution titled as “*The Sea Pollution Prevention Act, 2011*”.

Brief history and general description of MARPOL 73/78 as well as the legal aspect of the sea pollution:

The problem of sea pollution has assumed an increasing importance and in particular, the problem has become a central concern since the late 1950's. For the protection of environment and in consequence of a number of high profile disasters which having been broadcast have raised public awareness. Such disasters have had more far reaching consequences with the increase of large number of tanker fleets. In addition, developments in marine science have lead to a greater awareness of the environmental consequences of such incidents. This concerned was expressed in Article 24 of the Geneva Convention on the High Seas 1958 which laid down that “*Every State shall draw up regulations to prevent pollutions from the seas by the discharge of oil from ships or pipe lines or resulting from the exploitation and exploration of the sea bed and its subsoil, taking account of existing treaty provisions on the subject.*”¹

Pollution of the marine environment is mainly due to release of toxic, harmful substances from land based sources or through atmosphere or by dumping material into the rivers which finds its way into the seas. Fertiliser used in agricultural land or pesticide used therein falls into inland river waters being washed away by rain and then transmitted into the sea by natural flow of the river. Industrial wastes and garbage is another main cause of pollution which ultimately goes to the sea. Among the sources of marine pollution 44% of the total pollutions are arising out of land based sources, 12% are caused by marine transport, 10% are caused by dumping, 1% are due to oil exploration and production, and 33% are caused by atmospheric inputs.²

¹ See, O'Brien John, International Law, Cavendish Publishing Limited, London, 2002 ; P.430, para-3

² Handout of the lecture on marine environmental law in IMLI, January 2011, by Mr. Ruben Y. Maceda

Pollution from ships is generally of two kinds: operational and accidental. For example, in case of operational pollution, the oil tankers traditionally washed their oil tanks and disposed of the oily residue at sea, causing significant volumes of pollution. Other ships also discharge oily wastes from engine rooms and cause significant pollution from sewage discharges and rubbish disposal at sea. Ballast water may contain cargo residues or alien species which when transported to other areas can cause serious eco-system damage. The second, more dramatic, form of marine pollution emanates from marine casualties, the sinking / grounding of large oil tankers such as the Torrey Canyon incident 1967. The objective of the International Convention for the Prevention of Pollution from ships, 1973 as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), in this context is to eliminate the need for such discharges, through technical solutions and providing for the shore facilities for the reception of waste and cargo residues.

The 1926 Preliminary Conference on Oil Pollution of Navigable Waters, held in Washington, can be identified as one of the earliest international efforts to protect the marine environment from vessel-source pollution. In 1954, the *International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL)* was adopted in a conference organized by the United Kingdom.

The highly publicised incident of the *Torrey Canyon* in 1967, which concerned a Liberian super tanker carrying over 120,000 tons of crude oil negligently became aground on the high seas. Oil escaped in large quantities causing considerable pollution along the coast of France and UK. To prevent further escape of oil the United Kingdom bombed the tanker. Thereafter, international action manifested itself in the signing of 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties which entered into force in 1975. The Convention provides for the State parties to take action to prevent damage to coastlines which might be caused by oil pollution. To ensure payment of compensation, the International Convention on Civil Liability for Oil Pollution Damage was also signed in 1969, which provides that as a general principle that parties causing oil pollution should pay compensation. An

international fund was established under the terms of the 1971 Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage.³

Following the *Torrey Canyon* incident, under the auspices of the International Maritime Organization (IMO), the *International Convention for the Prevention of Pollution from Ships (MARPOL)* 1973 was also adopted. Increasing incidents of pollution involving oil tankers were the catalyst for an International Maritime Organization (IMO) conference on Tanker Safety and Pollution in 1978. The *MARPOL 73/78* is therefore a combination of the 1973 Convention and the 1978 Protocol. Under Article 9 of the *MARPOL Convention*, it was stipulated that the *MARPOL 73/78* supersedes the *International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) 1954* as between the parties.

Nowadays among the most significant instruments regulating the specific matter of pollution from ships, aircraft, and land based sources are:

- (i) The International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (known as the MARPOL 73/78);
- (ii) The Convention for the Prevention of Marine Pollution by Dumping Wastes and Other Matters, 1972 (known as the London Convention);
- (iii) The Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, 1972 (known as the Oslo Convention);
- (iv) The Convention for the Prevention of Marine Pollution from Land based sources 1974, (known as the Paris Convention);
- (v) The International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990(OPRC); and
- (vi) The International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969.

Thus there had been a considerable number of regional and international instruments drawn up prior to the United Nations Convention on the Law of the Sea 1982 (UNCLOS). The basic provisions relating to pollution in UNCLOS are set out in Part XII

³ See, O'Brien John, *International Law*, Cavendish Publishing Limited, London, 2002, p. 431, para-2

(Arts. 192-238) of the Convention. Art.192 provides that ‘States have the obligation to protect and preserve the marine environment’. The duty of the State party to take appropriate measures to prevent, reduce and control pollution of the marine environment is set out in Art.194 of the Convention, which includes to minimise to the fullest possible extent: (a) the release of toxic, harmful, or noxious substances, specially those which are persistent from the land based sources, from or through the atmosphere or by dumping; (b) pollution from the vessels; (c) pollution from the installations and devices used in exploitation of the natural resources of the seabed and subsoil; (d) pollution from other installations and devices operating in the marine environment. In addition to these general provisions, the Convention stipulates that States are under a duty to co-operate with each other on a global basis and as appropriate on a regional basis, to preserve the marine environment (Art.197) and to provide assistance to developing States to facilitate this objective (Arts. 202- 203). State Parties are required to adopt laws to restrain not only land based pollution (Art.207), but also pollution by vessels (Art.211) and pollution by dumping (Art.210). The 1982 Convention further provides that such laws shall be enforced by coastal State or the flag State or port State as appropriate (Arts. 213-222).⁴

After, devastating consequences of the sinking of *The Amoco Cadiz* (1978), *The Exxon Valdez* (1989), *The Sea Impress* (1990), *The Erika* (1999) and *The Prestige* (2002), the awareness of international community is further accelerated to combat oil pollution. In the *Saiga Case* (1999) the International Tribunal for the Law of the Sea (ITLOS) held that ‘*the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States*’. These responsibilities include taking the measures to prevent pollution of the sea.⁵ Customary international law gives the State Parties to the UNCLOS the ample power to regulate marine pollution from vessels. ‘Polluter pays’ principle is followed in the domain of

⁴ Ibid, See pp.431-432

⁵ Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law and the Environment*, Third Edition-2009, Oxford University Press; p.400-401,para-3

public law, which can be invoked to require the polluter to compensate for the environmental damage.

The MARPOL 73/78 is the principal instrument established by IMO for prevention of marine pollution. MARPOL 73/78 covers all the technical aspects of pollution from ships and applies to ships of all types with the exception of war ships, naval auxiliaries, or other vessels owned and operated by a State and used for non-commercial purposes (Art.3). All vessels must hold an International Oil Pollution Prevention Certificate which is to be issued by the flag State (Art.5). MARPOL 73/78 contains provisions allowing for port State control inspections. It should be noted that MARPOL 73/78 does not contain any provisions about the disposal of waste into the sea by dumping because this topic is covered by the London Dumping Convention. Similarly, it does not apply to pollution arising out of the exploration and exploiting of sea bed mineral resources. There are six annexes to the MARPOL 73/78 regulating the prevention of:

- (a) Pollution by oil (Annex-I);
- (b) Pollution by noxious liquid substances carried in bulk(Annex-II);
- (c) Pollution by harmful substances carried in package, portable tanks, freight containers, or road or rail, tank wagons etc.(Annex-III);
- (d) Pollution by sewage from ships (Annex-IV);
- (e) Pollution by garbage from ships (Annex-V); and
- (f) Air pollution from ships (Annex-VI).

Annex-I and Annex-II entered into force on 2nd October 1983; Annex-III entered into force on 1st July 1992, Annex-IV entered into force on 27th September 2003; Annex-V entered into force on 31st December 1988;⁶ and Annex-VI entered into force on 19th May, 2005. Annex-I and Annex-II of the Convention being compulsory, all States signing or acceding to the Convention are bound by them and the remaining annexes are optional.

Annex-I is based on the philosophy that in principle, the discharge of oil is prohibited. Annex-I applies to all ships unless a vessel is exempted by administration of its flag State (Regulation 2 of MARPOL 73/78). According to Regulation 10 of Annex-I, discharge of

⁶ Fogarty Aengus R.M; Merchant Shipping Legislation, Second Edition, LLP London, 2004; p.374,para-6

oil and oily mixture from any oil tanker or any other vessel of 400 gross tonnage and above is completely prohibited when such vessels are in a special area, i.e the Mediterranean Sea, the Baltic Sea, the Black Sea, the Red Sea and the Gulf area. The tanker must carry an International Oil Pollution Prevention (IOPP) certificate issued by the flag State after initial survey of the ship. Annex-I provides that all oil carrying ships must be in a position of retaining oily wastes on board through the 'load on top' system or for discharge to shore reception facilities. This provision involves the fitting of appropriate equipment including a filtering system, slop tanks, piping and pumping arrangements etc. New oil tankers of 70,000 dwt and above must be fitted with 'segregated ballast tanks' (SBT) and are required to meet certain sub-division and damage stability requirements so that they can survive after damage by collision or stranding.⁷ The Protocol provided for the 'segregated ballast tanks' (SBT) on all new tankers of 20,000 dwt and above (instead of 70,000 dwt and above required by MARPOL 73/78) to be protectively located. All new tankers of 5,000 dwt and above must be fitted with double hulls.⁸ Regulation 20 requires an oil record book to be carried and maintained on board of all ships.

Annex-II contains provisions for the control of pollution by noxious liquid substances carried in bulk. In any case no discharge of residues containing noxious substances is permitted within 12 miles of the nearest land in water of less than 25 meters in depth. The discharge of residues of such substances is allowed only to reception facilities. It requires to be recorded in a cargo record book which must be carried on board.⁹

Annex III contains requirements concerning the issuing of detailed standards on packing, marking, labeling, documentation, stowage, quantity limitations, exceptions and notifications for preventing pollution by harmful substances. Annex III applies to all ships carrying harmful substances in packaged form or in freight containers, portable tanks or road and rail tank wagons. Harmful substances are those which are identified as 'marine pollutants' in the International Maritime Dangerous Goods (IMDG) code. This

⁷ Pamborides G.P, International Shipping Law Legislation and Enforcement; Kluwer LawInternational,1999 ,p.92, para-3

⁸ Ibid, p.94,para-3, p.95,para-3

⁹ Ibid, p.93,para-1

Annex is the first of the Convention's optional Annexes. States ratifying the Convention must accept Annex-I and II but can choose not to accept the other Annexes.¹⁰

Annex-IV provides that ships are not permitted to discharge sewage within four miles of the nearest land unless they have in operation an approved treatment plant. Between four and twelve miles from land sewage must be comminuted and disinfected before discharge. This Annex requires for the provision of reception facilities by the State Parties.¹¹

Annex-V aims in preventing pollution by dumping of garbage into the sea. Garbage means all kinds of victual, domestic and operational waste, for example plastics, food wastes, paper products, rugs, wood, glass, metal, bottles etc. This Annex sets out specific minimum distances from the coast within which no disposal of garbage may take place. The most important feature of this Annex is the complete prohibition placed on the disposal of plastics into the sea. Food wastes and other garbage can not be dumped within 12 miles of land unless it has been passed through a comminuter or grinder. Even then, the minimum distance from land, when dumping is permitted, is set at three miles. The North Sea, the Antarctic and the wider Caribbean were pronounced as special areas under Annex V.¹²

Annex-VI was adopted by the IMO in 1997, through a Protocol which deals with the prevention of air pollution from ships in particular, limits on sulphur oxide and nitrogen oxide emissions and prohibits the deliberate emission of ozone depleting substances.

The International Convention for the Safety of Life at Sea (SOLAS) and its 1978 Protocol contain detailed provisions covering oil tankers, and include mandatory provisions for ships carrying dangerous cargoes in bulk (the IBC Code, which is also mandatory under MARPOL73/78) and for those carrying liquefied gases in bulk (IGC Code). Chapter-IX makes mandatory the application of the International Safety Management (ISM) Code, which requires safety management systems to be run on those ships to which the ISM Code applies. This involves establishing environmental protection

¹⁰ Ibid, p.93,para-2

¹¹ Ibid,p.93,para-3

¹² Ibid, p.95,para-2

policies, and having instructions and procedures to ensure protection of the environment in compliance with international and flag State legislation.¹³

Existing legal position and the need for new legislation in Bangladesh:

Bangladesh is a developing coastal State having an ancient tradition of maritime affairs. Bangladesh has a unique topography being one of the largest riverine deltas of the world. It is a country criss-crossed by hundreds of rivers and is blessed with a large portion of inland navigable waters. In the southern part of the country the Bay of Bengal is located which is a part of the Indian Ocean.

Bangladesh has 114 (above 150 gross tonnage) operational coastal /inland tankers and many of these tankers are second hand after being used in foreign country. Tankers constructed after 1983, when MARPOL 73/78 came into force, is only a few in numbers. The replacement of old tankers has been delayed for quite some years, although some of these tankers may have oil spill preventing capacity as per regulation of original country of export. Hence it is necessary to determine in details to find out the required facilities for compliance of MARPOL 73/78. Bangladesh has more than 500 vessels above 400 gross tonnage.¹⁴

There are two major sea ports in Bangladesh namely- Chittagong and Mongla. Huge number of sea going vessels (about 2000 annually) loads and unloads cargo in these two main sea ports. Apart from this, there are so many river ports inside the inland waters country-wide. In Bangladesh about 90% of the total foreign trade is sea based and more than 50% of the total domestic transportation of goods is conducted by inland vessels passing through rivers. About 10,000 vessels are engaged in transportation of goods in inland waters countrywide to transport cargo, which are loaded and unloaded from the two major sea ports. In addition to this, local commodities are being transported from one place to another through waters.

Some times marine accidents / casualties take place in Bangladesh which is a potential threat for marine environment. The Department of Environment has indentified three

¹³ Sheppard Aleka-Mandaraka, Modern Maritime Law, Second Edition-2007; p.950, para-1

¹⁴ Alam Khurshed, Bangladesh's Maritime Challenges in the 21st Century; First edition,2004, Dhaka;p.295

main sources of sea pollution: (a) oil and chemical substances discharged from the industrial zone; (b) sewage discharged from the urban areas; and (c) oil spill, deck drainage and garbage disposal from the ships in the mouth of the river and at the anchorage area. Along the coast of Chittagong a large number of ship breaking industries have grown up causing considerable threat to marine environment degradation. A large amount of engine oil along with the remaining fuel oil and other oily substances are washed away into the shore and ultimately to the sea. Dumping of rotten foods and food items, expired medicines and/or other merchandise commercially not feasible to unload may also cause serious sea pollution.

The second largest sea port in Bangladesh is Mongla, which is located adjacent to the world's largest mangrove forest called the 'Sunderban', having a unique eco-system and ecology with sensitive and diverse biotic species that can grow and sustain the forest in the highly saline environment. The 'Sunderban' forest has been declared to be a World Heritage Site. The 'Sunderban' are teeming with various flora and fauna, they provide feeding and nursery grounds for many animals; they support 330 species of plants, as many as 400 species of fish, at least 35 species of reptiles, over 270 species of birds, and 42 species of animals. The 'Sunderban' is the single largest remaining habitat of the famous Royal Bengal tiger and estuarine crocodiles. Mainly 100 kilometres long navigational channel through the Pussur-Sibsa river runs through the 'Sunderban', reaches the Mongla port. Thousands of ships that passed through the 'Sunderban' certainly had an impact on the mangroves and its wildlife.¹⁵ Its water resources including marine fisheries contribute significantly to the national economy by bringing foreign currency. In addition to the tremendous contribution made to national economy, it provides livelihood to millions of people.

There are different species of fish and other living resources in the Bay of Bengal, beside which the 'Sunderban' stands. The shore line is about 500 kilometres long. About 40 million people live in the coastal area. The eco-system and marine environment of Bangladesh in coastal area is under a potential threat of pollution. In particular, the

¹⁵ Ibid, p. 297, para- 3

ecosystem of the mangrove forest of the 'Sunderban' as well coastal islands which are unique and sensitive, and therefore, require special care.

Section 8 of the Territorial Waters and Maritime Zones Act, 1974 provides that the Government may, with a view to prevent marine pollution and to preserve ecological balance in the marine environment, take such measures as it may deem appropriate. The Coast Guard Act, 1994 in its section 7 spells out functions of the Coast Guard, under which the Coast Guard has been empowered to enquire into environmental pollution activities and to prevent the same. The Petroleum Act, 1934 requires the Government to make rules regulating the import and storage of petroleum, which is to be exercised to protect the public from dangers arising out of import, transport, storage, distribution and production etc. of petroleum. Under the Petroleum Act, 1934 it is obligatory to communicate any accident by explosion to the nearest Magistrate or Police station and to the Chief Inspector of Explosives in Bangladesh. The setting up of oil refinery, installation of petroleum storage facilities, procurement of inland oil tankers are all functions of Bangladesh Petroleum Corporation established under an Ordinance of 1976. Bangladesh Oil, Gas and Mineral Corporation (Petrobangla) established under an Ordinance of 1985 entered into several Production Sharing Contract (PSC) with several international oil exploration companies under the authority of Bangladesh Petroleum Act, 1974.

The water management laws in Bangladesh, namely- Bangladesh Water Development Board, established under Presidential Order, 1972 has control over the flow of all rivers in Bangladesh with no specific duty as to maintenance of quality of standards. The Wildlife preservation Order, 1973 provides for preservation, conservation, and management of wildlife in Bangladesh. Bangladesh has already adopted environment protection policy in 1992 and enacted the Environment Conservation Act in 1995. One of the major developments since the enactment of Environment Conservation Act is the introduction of environmental clearance for industrial operation. Under the said Act, subordinate legislation has been adopted in 1997 for conservation of environment. There are also National Conservation Strategy (NCS), National Environment Management Action Plan (NEMAP) etc.

The land of Bangladesh is fertile and the country is green. One of the prospective resources of Bangladesh is the sea, the Bay of Bengal, from which oil, gas, fish and other mineral resources could be explored and exploited. Fishing is the important livelihood of the people of Bangladesh. Water pollution is likely to become a major problem of Bangladesh, caused by discharge of waste waters, garbage, oil, oily waste waters, noxious substances from the ships whether by accident or otherwise. Land based pollution is another important problem.

Moreover, the number of oil tankers visiting Bangladesh is increasing gradually with the growing need of bringing about six millions tons of crude oil and oil product each year. Bangladesh has only one oil refinery, namely- the Eastern Oil Refinery Ltd. located in Chittagong, in which huge quantity of crude oil imported are refined annually brought from Persian Gulf regions. After refining, oil products are distributed by inland water transport vessels of up to 1,000 DWT to oil storage depots at Dhaka and Khulna.¹⁶ The protection and preservation of bio-diversity and eco-systems of the sea of Bangladesh and oceans which is the common heritage of mankind, is extremely needed nowadays. This is also necessary for food security, keeping the coast and inland waters free from pollution. The Government policy in this respect is to make the marine environment safe and secured by mitigating the threat of sea pollution.

Oil spills in the Bay of Bengal as well as along the river navigation route may happen along side the coast and the 'Sunderban' forest by flowing water. Both in Chittagong and Mongla ports, there is a risk of collision between vessels and of grounding due to engine break downs, navigational error, or dragging of anchors. Other risks of marine pollution considered here are illegal disposal from ships, waste water from industries, farming, domestic waste water etc. The operational quantity of oil spill from the ships and land sources may not exceeding 2500 tonnes per year.¹⁷ Having regard to the seriousness of the problem necessary steps should be undertaken.

¹⁶ Ibid, p. 296, para-3

¹⁷ Ibid, p.301, para-3

Bangladesh is a State Party to a good number of IMO Conventions including the International Convention for the Prevention of Pollutions from Ships, 1973 as modified by the Protocol of 1978 relating thereto, known as the MARPOL 73/78, the Convention contains six Annexes. Bangladesh has acceded all these Annexes. However, the MARPOL 73/78 has not yet been incorporated into the domestic law of Bangladesh. Bangladesh has ratified OILPOL, 1954 in 1981.¹⁸ In the absence of adequate legal provision, the marine environment of Bangladesh in the territorial waters, contiguous zone and the EEZ is at a risk of possible danger of pollution. Some species of fish and living resources in the sea are severely endangered and under the threat of extinction, which is always reported in the national news media. The flora and fauna in the Saint Martin's Island and the 'Sunderban' forest are also under the threat of extinction. The adverse effect of pollution towards the eco-system, ecology and quantity of natural resources may increase day by day causing negative impact to national economy and environment.

Public health may also be endangered by way of contamination of water because of pollution. Hence Bangladesh can not overlook all those potential threats of marine pollutions. In order to preserve the water resources and to keep the sea clean and ultimately to preserve the marine environment, Bangladesh requires an appropriate piece of legislation for the prevention of pollution of the sea. It is an obligation for a sovereign independent State of Bangladesh, to frame its own national legislation with the changing need of the prevailing international legal principles, such as MARPOL 73/78. As a matter of fact, the proposed Act is similar to and in line with those of other jurisdiction as well as in accordance with international Conventions and Protocols in this regard. Any deviation from which will of course lead to confusion and complications.

In fact, Bangladesh can not afford to allow its valuable marine environment to be derogated by pollution. At first phase, Bangladesh needs to incorporate the MARPOL 73/78, i.e Annex-I, II, III, IV and V. Annex-VI may be implemented and dealt with subsequently in conjunction with the Environment Conservation Act 1995.

¹⁸ Ibid, p. 297, para-3

Bangladesh is almost dependent on oil and chemicals imported through its sea ports of Chittagong and Mongla. Therefore, the main object of this draft law is to incorporate the MARPOL 73/78 in order to give effect as a domestic law of Bangladesh and to ensure prevention of pollution of sea by oil, oily-mixtures, noxious liquid substances, sewage, harmful substances, garbage etc. from the ships.

Apart from this, land based pollution is also addressed in this Act because of the persistent land based pollution of the sea, this includes sewage and industrial wastes discharged into rivers or directly into the sea; chemical used as fertilizers and pesticides in agriculture running off the land into rivers; warm water from power stations (some of them nuclear) built on coasts and estuaries; and sprayed agricultural chemicals, all of which eventually be precipitated into the sea.¹⁹ According to a report published in 1990, the Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) estimated that 40% of marine pollution originated from run-off and land based discharges.²⁰ Under Article 207 (1) of UNCLOS States are required to adopt laws and regulations to prevent, reduce and control pollution from land based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally-agreed rules.

Land based marine pollution has been subject to some attention in proceedings before international courts and tribunals. In *Mox Plant Case*,²¹ the ITLOS issued an important provisional order requiring measures to prevent pollution of the marine environment of the Irish Sea from a nuclear fuel reprocessing plant. In *Land Reclamation by Singapore in and Around the Straits of Johor*,²² the ITLOS repeated its statement in the *Mox Plant* case and observed that it could not be excluded that Singapore's land reclamation works may have adverse effects on the marine environment, including within Malaysia's territorial sea. The ITLOS directed Singapore not to conduct land reclamation works in such a way that might cause serious harm to the marine environment.

¹⁹ See, Churchill R.R & Lowe A.V, *The Law of the Sea*, Third Edition, Juris Publishing, Manchester University Press, 1999; p.330, para-3

²⁰ GESAMP, *The State of the Marine Environment*, UNEP Regional Seas Reports and Studies No. 115, Nairobi, 1990, p.88

²¹ *Mox Plant (Ireland V. United Kingdom)* (provisional measures) (2002) 41 ILM 405

²² *Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia V. Singapore)* (provisional measures 8 October, 2003 www.itlos.org,[96,106]

In Bangladesh where ships are scrapped and the processing of hazardous substances by ship recyclers /ship breaking yards poses risks not only to human health among workers in scrapyards, but also producing environmentally hazardous substances such as heavy metals, oils and asbestos. It may be mentioned that in this regard, IMO concluded the Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 addressing issues surrounding ship recycling processes including the safe and environmentally sound operation of ship recycling facilities. The Convention is yet to enter into force.

It should be noted that Bangladesh is one of the biggest ship breaking countries of the world, and ship breaking is also one of the causes of marine pollution. Recently, in pursuance of a Petition filed by the Bangladesh Environmental Lawyers Association (BELA), the Supreme Court of Bangladesh has passed an order in December, 2010 for the Government to formulate necessary legislative framework for the ship-breaking industry consistent with international legal principle on prevention of pollution. In earlier, the Court on 17 March, 2009 ordered the Directorate of Environment to shut down the ship-breaking yards that lacked environmental clearance from the Government.²³

Bangladesh being a port State, flag State and a coastal State, it is obligatory upon Bangladesh, in exercise of its national as well as international responsibility to promote and protect marine environment keeping it free from any sort of pollution by ships that navigate in inland waters and sea. The object of MARPOL 73/78 is to eliminate the pollution of marine environment by ship generated pollutants.

So, the object and purpose of this Act is to incorporate and implement the component parts of the MARPOL 73/78 (except Annex-VI) as domestic laws of Bangladesh, as well as to mitigate other land based pollutions, so as to protect the marine environment keeping the sea free from pollution. The mode of enactment and implementation is by reproducing and incorporating the MARPOL 73/78 partly as the proposed “**Sea Pollution Prevention Act, 2011**” with the Convention forming a functional part. After coming into force of this Act, detailed provisions of the Annexes (I to V) of the Convention will be incorporated in the form of subordinate legislation to be framed under this Act.

²³ IMO info Maritime E-news transmitted by IMLI

The relevant appendices, schedules, forms of certificate, record books etc. as required under MARPOL 73/78 may be included in the subordinate legislation to be enacted subsequently under this Act.

Bangladesh being a party to the MARPOL 73/78 by accession is bound by the provisions of the Convention including all Annexes contained therein. Therefore, this draft “**Sea Pollution Prevention Act, 2011**” is framed in accordance with the MARPOL 73/78 to prevent pollution from ships, and other land based pollutions, as a domestic law of Bangladesh. The Act thus gives a legal framework for the implementation of the MARPOL 73/78 within the maritime zones of Bangladesh and provides a legal framework for the protection of sea beaches, coastal areas, mangrove forests, fisheries resources, marine aquatic life and overall marine environment.

System of incorporation of International Convention into the domestic law of Bangladesh:

Bangladesh maintains dualist approach with regard to application of international law in domestic sphere. No rule of international law by its own force can be applied in the domestic courts of Bangladesh unless it is specifically adopted by the Constitutional machinery (Parliament) introducing and passing a bill to that effect. Because an international convention/treaty is a promise, whereas an Act of Parliament is a command and unless such a promise is transferred into command, it may not be applied in the domestic level in Bangladesh. Treaty obligation concluded by Bangladesh can not *ipso facto* be put into operation unless an enabling legislation to that effect is passed by the Parliament. State practice in Bangladesh demonstrates that domestic laws are adjusted to meet the obligation of international law. Article 25(1) of the Constitution of Bangladesh provides that the State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of another countries, peaceful settlement of international disputes and respect for international law and the principles enunciated in the UN Charter. Again Article 145A of the Constitution states that all treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before the Parliament.

In Bangladesh practice, main authority of concluding an international convention or treaty lies with the Ministry of Foreign Affairs and in respect to accession or ratification of an international convention / treaty the exclusive power is in the hand of the cabinet headed by the Honourable Prime Minister. Having been duly ratified by the cabinet as a policy decision, thereafter, it requires to be passed by the Parliament in the form of legislation (Act of Parliament). Article 65(1) of the Constitution of the People's Republic of Bangladesh provides for delegating to the executive authority (Ministry) to make subordinate legislation (such as rules, regulations, bye-laws, orders or other instruments having legislative effect) by an Act of Parliament.

An international convention or treaty being ratified by the cabinet does not automatically become part of the domestic law, even if, it is published in the Official Gazette. An Act of Parliament or a legislative instrument is always required to be enacted by the competent legislative authority, to make an international treaty or convention binding on the domestic courts and the citizens. Therefore, international law-making treaty obviously requires to be incorporated by an Act of Parliament, in that case a mere ratification by the cabinet is not sufficient to operate as a law in the domestic level. For example, in Bangladesh, an Act namely- *The United Nations (privileges and immunities) Act 1948* was passed by the Parliament in order to give effect the Convention on privileges and immunities of the United Nations, its officials and representatives, adopted by the UN General Assembly in 1946.

Chapter summary of the draft legislation:

CHAPTER -I
(PRELIMINARY)

CHAPTER - II
(PREVENTION OF POLLUTION FROM LAND AND APPARATUS)

CHAPTER - III
(PREVENTION OF POLLUTION FROM SHIPS)

CHAPTER - IV
(PREVENTIVE MEASURES AGAINST POLLUTION OF THE SEA)

CHAPTER -V
(RECOVERY OF COSTS)

CHAPTER -VI
(MISCELLANEOUS PROVISIONS)

Preamble of the draft “*Sea Pollution Prevention Act, 2011*” clearly speaks that there is an obligation on the part of Bangladesh to implement the ‘MARPOL 73/78’ as a domestic law being party to the Convention. Bangladesh being a port State, coastal State and flag State, pollution from ships and other land based pollution of the sea is also addressed in the draft legislation in order to eliminate increasing number of land based sources of pollution in particular, arising out of the ship-breaking yards. Contents of the Annexes I to V of Convention have been included in the draft except Annex-VI relating to air pollution, which is to be dealt with separately. In section 40 of the draft legislation it is laid down that the ‘MARPOL 73/78’ shall apply (except Annex-VI) to all sea going vessels as determined by the Convention. By inclusion of this provision as part of the draft legislation, the Convention is given the full force of domestic law forming part of the Act.

Chapter-I deals with the definition/interpretation of the terms as contained in the draft legislation, which are consistent with the meaning of the terminology that are used in the Convention and there is no deviation or departure of meaning or inconsistency between the Convention and the draft Act. It also deals with the scope and application of the Act including coming into force. Section-3 provides for issuance of an International Oil Pollution Prevention Certificate and prohibits a ship to engage in any voyage without such a certificate.

Chapter-II deals with the land based pollution and pollution causing from land based sources that have been made punishable with fine and imprisonment or with both, in order to eliminate the same. There are also special defences for the responsible person.

Chapter-III lays down the provisions relating to prevention of pollution from ships. Basic provisions of Annexes I to V of the Convention are incorporated in this chapter, and the details of which may be made by regulations under section 38 of this Act.

Section-7 prohibits discharge of oil and oily mixtures from ships and any violation of which is also made punishable with fine or imprisonment or with both. Section-8 puts prohibition on discharge of oil residues, and any violation of which is made punishable

with fine or imprisonment or with both. Section-9 requires the prior notification of proposal to carry noxious liquid substances to be carried in bulk. Any contravention of which is made punishable with fine. Under section-10 discharge of noxious liquid substances from the ships are strictly prohibited and violation of which is made punishable with imprisonment or fine or with both. Section-11 prohibits discharge of harmful substances carried in packaged form. Section-12 says that discharge of sewage from ships is prohibited subject to provisions of the Convention or any regulation made under this Act, and any contravention is also made punishable. Section-13 prohibits discharge of refuse, garbage, wastes, effluents, plastics and dangerous pollutants. Any violation of this provision is made punishable with fine or imprisonment or with both.

Chapter-IV deals with the preventive measures against sea pollution. Section-14 provides for the reception facilities for ships to deposit oil, oily mixtures, residues, noxious liquid substances, refuse, garbage, plastics or sewage etc. Section-15 requires keeping of oil record books and section 16 requires keeping of cargo records books. Failure to maintain those books are made punishable (Section-17). Under section-18 it is the duty of the master to report discharge of harmful substance from ships which occurs in the prescribed circumstances and failure to do so incurs criminal liability for fine. Section-19 provides that it is also the duty of the occupier of the place on land or person in charge of the apparatus to report the occurrence of the discharge of oil to the Port master; otherwise the person responsible will be held guilty of an offence punishable with fine as determined in this Act.

Chapter-V deals with the recovery of costs. Section-20 provides for recovery of costs for removing refuse, garbage, wastes, plastics, effluents and dangerous pollutants discharged from the ships. Section 21 provides for recovery of costs for removing oil, oily mixtures, and substances discharged from ships. Section-22 provides for recovery of costs for removing oil, oily mixture and substances discharged from land or apparatus. Section-23 speaks about for recovery of costs from person responsible for pollution. Section -24 lays down that costs are recoverable as a debt due to the authority.

Chapter-VI deals with the miscellaneous provisions; such as powers of inspectors (section-25) including power to deny entry or to detain ships for non compliance of the provisions of this Act(section-26); detaining of ships proceeding to sea (section-27); sale of ship, her tackle, furniture and apparel in order to realize the unpaid fine already imposed (section-28). Section 30 provides for the power to enter land and section-31 lays down that the power of arrest and to bring before the court. Section-31 provides for delegation of powers to be exercised under this Act. Section-33 protects from personal liability of an officer employed to exercise powers under this Act. Under section-34 the director may appoint such persons who are qualified to be analysts for the purpose of this Act. Section-35 lays down that an offence under this Act is triable by the Magistrate court or by District court. Under section-37 all fines imposed for an offence under this Act shall be paid to the funds of the authority. Section-38 enables the regulation making powers for the purpose of carrying out the provisions of this Act. Section-39 provides that the tanker and ships to be fitted with equipment to prevent pollution. Under Section 40 MARPOL 73/78 is given force in Bangladesh. Section-41 gives savings of certain laws in force in Bangladesh and this Act shall be in addition to and not in derogation or in substitution of any other laws.

This explanatory note is aimed towards the proper understanding of the purposes and objects of the Act, and it does not form part of the Act.

Long Title

An Act to give effect to the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto, for the prevention, reduction and control of pollution of the sea from ships; and to make provisions generally for the protection of the marine environment from the land based pollution and for matters ancillary thereto.

Preamble

Whereas, the International Convention for the Prevention of Pollution from Ships was signed in London on 2nd November, 1973 convened by the International Maritime Organisation ; and

Whereas, the objective of the International Convention for the Prevention of Pollution from Ships 1973, as modified by the protocol of 1978 relating thereto (known as the ‘MARPOL 73/78’) is to achieve elimination of marine pollution by oil, noxious liquid substances in bulk, harmful substances in packaged form, sewage and garbage from ships; as well as minimization of accidental discharges of such substances; and

Whereas, Bangladesh being a port State, a coastal State and a flag State, it is necessary and expedient in exercise of its national and international obligation, to promote the protection of marine environment from pollution by ships that navigates in its water as well as such other land based pollutions of the sea; and

Whereas, Bangladesh being a State party to the ‘MARPOL 73/78’ and having acceded to all annexes (I to VI) of the Convention, is to give effect and implement it (except Annex-VI) by making legal provisions to be applied as a domestic law;

Now therefore, be it enacted by the Parliament of the People’s Republic of Bangladesh as follows:-

CHAPTER - I
PRELIMINARY

1. Short title, commencement and application.-(1) This Act may be called as ‘the Sea Pollution Prevention Act, 2011’.

(2) It shall come into force immediately.

(3) This Act shall apply –

(a) to all ships carrying the flag of Bangladesh including tankers of one hundred and fifty gross tonnage and above and other ships of four hundred gross tonnage and above which are engaged in voyages to ports or other offshore terminals;

(b) to all foreign ships flying the flag of the respective State operating in the navigable waters of Bangladesh including tankers of one hundred and fifty tons gross or more, and other ships of four hundred tons gross or more which are engaged in voyages to ports or other offshore terminals;

(c) to all ships not flying the flag of a ship but operating under the authority of a State:

Provided that this Act shall not apply to a warship; naval, auxiliary, or other ship owned or operated by the Government and used for the time being only on Government non commercial service.

2. Definition.-(1) In this Act, unless there is any thing repugnant to the subject or context-

"Authority" means the Maritime and Port Authority of Bangladesh established under the Ports Act, 1908 and any person appointed by the Government for the purposes of this Act or any regulations made there under; it also includes the Maritime and Port Authority of Bangladesh established under the Port Authority Act 1976;

"Bangladesh ship" means a ship registered under the Merchant Shipping Ordinance 1983;

"Bangladesh waters" means the whole of the sea within the seaward limits of the territorial waters of Bangladesh; and all other waters (including inland waters) which are within these limits as determined by the Territorial Waters and Maritime Zones Act, 1974.

"Convention" means the International Convention for the Prevention of Pollution from Ships 1973, signed in London on 2nd November 1973, as modified and added to by the Protocol of 1978 (including its protocols, annexes and appendices), known as the 'MARPOL 73/78';

"Director" means the Director of shipping appointed under of the Merchant Shipping Ordinance, 1983 and also includes the Deputy Director of shipping appointed under that Ordinance;

"Discharge" in relation to harmful substances or effluents containing such substances, means any release howsoever caused from a ship, place or thing and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying but does not include- release of harmful substances directly arising from the exploration, exploitation and associated off-shore processing of sea-bed mineral resources; or release of harmful substances for purposes of legitimate scientific research into pollution abatement or control;

"Garbage" means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically except sewage originating from ships;

"Harmful substance" means any substance which, if introduced into the sea, is liable 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 includes any substance subject to control under this Act;

"Inspector" means a person who is a surveyor of ships; or is appointed in writing by the Director to be an inspector for the purposes of this Act or any regulations made there under;

"In packaged form" means in an individual package or receptacle including a freight container or a portable tank or tank container or tank vehicle or ship borne barge or other cargo unit containing harmful substances for shipment;

"Marine pollutant" means a substance which is identified as a marine pollutant in the International Maritime Dangerous Goods Code published by the International Maritime Organisation, as amended from time to time;

"MARPOL surveyor" means a surveyor appointed or registered by the Director or by or on behalf of the Government of a State party to the Convention;

"Master" includes every person, except a pilot, having command or charge of any ship;

"Noxious liquid substance" means any substance which is prescribed by regulations as being a noxious liquid substance and which is subject to the provisions of Annex II of the MARPOL Convention;

"Occupier", in relation to any place on land means the owner thereof and, in relation to a railway wagon or road vehicle, means the person in charge of the wagon or vehicle and not the occupier of the land on which the wagon or vehicle stands;

"Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals) and, without limiting the generality of the foregoing, includes the substances prescribed by regulations as being listed in Appendix I of Annex I of the MARPOL Convention;

"Oily mixture" means a mixture with any oil content parts;

"Oil residues" means any waste material consisting of, or arising from, oil or oily mixture;

"Oil terminal" means any place having permanent means of loading or discharging oil, whether in bulk or package, into or from any ship;

"Owner", in relation to a ship, means the person registered as the owner of the ship or, in the absence of registration, the person owning the ship or the bareboat charterer of the ship; and, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall include such State;

"Place on land" includes anything resting on the bed or shore of the sea, or of Bangladesh waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed or shore of the sea or of Bangladesh waters;

"Plastics" includes, but are not limited to, synthetic ropes, synthetic fishing nets and plastic garbage bags;

"Port" has the same meaning as in the Ports Act, 1908;

"Port Master" means the Port Master appointed under the Port Authority Act, 1976 and includes any Deputy Port Master appointed under that Act;

"Protocol of 1978" means the Protocol relating to the Convention of 1973 which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th February 1978;

"Reception facilities" means facilities which enable ships to discharge or deposit residues and mixtures, which residues and mixtures contain oil or noxious liquid substances;

"Ship" means a vessel of any type operating in the marine environment including oil tanker (a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces), and also includes hydrofoil boats, air cushion vehicles, submersibles, floating craft and fixed or floating platforms;

"Surveyor of ships" means a surveyor of ships appointed under the Merchant Shipping Ordinance 1983;

"Sewage" means- drainage and other wastes from any form of toilets and urinals; drainage from medical premises; drainage from spaces containing living animals; or other waste waters when mixed with the drainages above mentioned.

"Tank" means an enclosed space which is formed by the permanent structure of a ship and which is designed for the carriage of liquid in bulk;

"Terminal" means any terminal, (including an oil terminal), jetty, pier or mono-buoy, and a yard or drydock (including the precincts thereof) in which vessels are constructed, reconstructed, repaired, refitted, finished or broken up;

"Terminal operator" means a person or body of persons having the management of a terminal in Bangladesh; and

"Trade effluent" means the solid or liquid waste of any trade, business or manufacture.

(2) Any reference in this Act to the Convention or any other international agreement shall be construed as including a reference to its protocols, annexes, appendices and other attachments.

3. Prohibition to engage in any voyage without a valid International Oil Pollution Prevention Certificate and issuance of such a certificate.- (1) No tanker or other ship referred to in paragraphs (a) of sub-section 3 of section 1 shall engage in any voyage

except under a valid International Oil Pollution Prevention Certificate issued by the Director under this section or by any authority of a Government of a State as the case may be in accordance with the provisions of the Convention in that behalf in such form and for such duration as may be prescribed.

(2) The owner, operator, master or agent of any tanker or ship to which this Act applies shall make an application for the issuance of an International Oil Pollution Prevention Certificate. Upon receipt of such an application the Director shall cause a survey to be carried out on such tanker or ship by the nominated Surveyor or any authorized organization.

(3) The Surveyor or the authorized organization shall after inspection inform the Director whether such tanker, ship or its equipment complies with requirements of the Convention and is fit to engage in a voyage or proceed to the sea.

(4) Where the Director upon receipt of the information from the Surveyor or the authorized organization, is of opinion that such oil tanker or ship has satisfactorily complied with the provisions of the Convention relating to the issuance of such certificate, may take necessary step to issue an International Oil Pollution Prevention Certificate in the prescribed form in accordance with the Convention. Otherwise, he will reject the same recording reasons thereof, if it appears to him that such oil tanker or ship has not complied with the provisions of the Convention.

(5) Any person being aggrieved by the decision of the Director may appeal to the Secretary of the Ministry of Shipping against such decision within 15 days from such decision as was communicated to him. And the Secretary may on merit consideration allow the appeal or disallow the same recording reasons thereof.

(6) The International Oil Pollution Prevention Certificate issued under this section shall at all times be carried on board of the oil tanker or ship to which such certificate relates and a certified copy of such certificate shall be displayed in a conspicuous place in such oil tanker or ship/vessel.

(7) A certificate issued under this section shall be valid for a period as specified therein and is subject to renewal before or after expiration as determined by the regulation.

CHAPTER - II

PREVENTION OF POLLUTION FROM LAND AND APPARATUS

4. Prohibition of discharge of oil or oily mixtures from land or apparatus.- If any oil or oily mixture is discharged into Bangladesh waters from any place on land, or from any apparatus used for transferring oil from or to any ship-

(a) if the discharge is from a place on land, the occupier of that place or if the discharge is caused by the act of another person who is in that place without the permission of the occupier, that person; or

(b) if the discharge is from an apparatus used for transferring oil from or to a ship, the person in charge of the apparatus;

shall be guilty of an offence and shall be liable on conviction to a fine of not less than Taka 50,000 and not more than Taka 500,000 or to imprisonment for a term not exceeding two years or to both.

5. Special defences.-(1) Where a person is charged with an offence under section 4 as the occupier of a place on land, or as the person in charge of any apparatus, from which the oil or oily mixture is alleged to have been discharged, it shall be a defence to prove that the discharge of the oil or oily mixture was not due to any want of reasonable care, and that as soon as practicable after the discharge was discovered all reasonable steps were taken for stopping or reducing it.

(2) Without prejudice to sub-section (1), it shall be a defence for the occupier of a place on land, who is charged with an offence under section 3, to prove that the discharge was caused by the act of a person who was in that place without the permission of the occupier.

(3) Where a person is charged with an offence under section 3 in respect of the discharge of an oily mixture from a place on land, it shall (without prejudice to any other defence under this section) be a defence to prove-

(a) that the oil was contained in an effluent produced by operations for the refining of oil;

(b) that it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into Bangladesh waters; and

(c) that all reasonably practicable steps had been taken for eliminating oil from the effluent.

(4) Where it is proved that, at the time to which the charge relates, the surface of the waters into which the oily mixture was discharged or the land adjacent to those waters was fouled by oil, the defence under sub-section (3) shall not apply unless the court is satisfied that the fouling was not caused by, or contributed to, by oil contained in any effluent discharged at or before that time from that place.

(5) Where any oil or oily mixture is discharged in consequence of the removal of sunk, stranded or abandoned ships by the Authority in exercise of any power conferred by any written law, the Authority or person employed shall not be guilty and convicted of an offence under section 3, unless it is proved that the Authority or that person failed to take such steps as were reasonably necessary in the circumstances for preventing, stopping or reducing the discharge.

6. Person throwing pollutants into Bangladesh waters.- Any person who puts, throws, casts or deposits into Bangladesh waters, or causes to be put, thrown, cast or deposited there into, any oil, oily mixture, refuse, garbage, plastics, waste matter, car case, noxious liquid substances, marine pollutant in packaged form or trade effluent, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 500,000 or to imprisonment for a term not exceeding two years or to both.

CHAPTER -III

PREVENTION OF POLLUTION FROM SHIPS

7. Prohibition of discharge of oil and oily mixtures from ships.-(1) Subject to sub-section (2) and any regulations made under sub-section (4), if any discharge of oil or oily mixture occurs from a Bangladesh ship into any part of the sea or from any ship into Bangladesh waters, the master, the owner and the agent of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine of not less than Taka 50,000 and not more than Taka 500,000 or to imprisonment for a term not exceeding two years or to both.

(2) Sub-section (1) shall not apply to the discharge of oil or oily mixture from a ship-

(a) which is necessary for the purpose of securing the safety of a ship or saving life at sea; or

(b) if the oil or oily mixture, as the case may be, escaped from the ship in consequence of damage, other than intentional damage, to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of the oil or oily mixture, as the case may be; or

(c) in the case of an oily mixture, if the discharge was for the purpose of combating specific pollution incidents in order to minimise the damage from pollution and was approved by the appointed authority.

(3) For the purposes of sub-section (2), damage to a ship or to its equipment shall be taken to be intentional damage, if the damage arose in circumstances in which the master, the owner or the agent of the ship-

(a) acted with intent to cause the damage; or

(b) acted recklessly and with knowledge that damage would probably result.

(4) The Authority may, with the approval of the Government, make regulations to exempt any ship from the operation of sub-section (1), either absolutely or subject to any prescribed conditions, and either generally or as respects particular classes of ships, or in relation to particular descriptions of oil or oily mixtures or to the discharge of oil or oily mixtures in prescribed circumstances, or in relation to particular areas of the sea.

8. Oil residues.-(1) Subject to sub-section (2), if any oil residues that cannot be discharged from a ship into the sea without contravening section 7 are not retained on board the ship, the master and the owner of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding Taka 500,000 or to imprisonment for a term not exceeding six months or to both.

(2) Oil residues may be discharged from a ship to a reception facility provided in accordance with section 14.

9. Notification of proposal to carry noxious liquid substances.-(1) Where a person who proposes to export or import a noxious liquid substance proposes to do so by having that liquid substance carried in bulk in a ship, that person or the master of the ship shall, in such manner and within such time as may be prescribed, notify the Port Master or an officer designated by the Port Master on that behalf, for the proposal concerned.

(2) If the Port Master or the officer designated by the Port Master is not so notified of the proposal referred to in sub-section (1) and the liquid substance is carried as proposed, that person and the master of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding Taka 25,000 or to imprisonment for a term not exceeding three months or both.

10. Prohibition of discharge of noxious liquid substances from ships.-(1) Subject to sub-section (2) and any regulations made under sub-section (4), if any discharge of a noxious liquid substance, or of a mixture containing a noxious liquid substance, being a

substance or mixture carried as cargo or part cargo in bulk, occurs from a Bangladesh ship into the sea or from any ship into Bangladesh waters, the master, the owner and the agent of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding Taka 500,000 or to imprisonment for a term not exceeding two years or to both.

(2) Sub-section (1) shall not apply to the discharge of a noxious liquid substance or a mixture containing such substance from a ship-

(a) which is necessary for the purpose of securing the safety of a ship or saving life at sea;

(b) if the substance or the mixture, as the case may be, escaped from the ship in consequence of damage, other than intentional damage, to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of the substance or the mixture, as the case may be; or

(c) if the discharge was for the purpose of combating specific pollution incidents in order to minimise the damage from pollution and was approved by the appointed authority.

(3) For the purposes of sub-section (2), damage to a ship or to its equipment shall be taken to be intentional damage if the damage arose in circumstances in which the master, the owner or the agent of the ship-

(a) acted with intent to cause the damage; or

(b) acted recklessly and with knowledge that damage would probably result.

(4) The Authority may, with the approval of the Government, make regulations to exempt any ship from the operation of sub-section (1), either absolutely or subject to any prescribed conditions, and either generally or as respects particular classes of ships, or in relation to particular descriptions of noxious liquid substances or mixtures containing

such substances or to the discharge of such substances or mixtures in prescribed circumstances, or in relation to particular areas of the sea.

11. Prohibition of discharge of harmful substances carried in packaged form.- (1)

Subject to the provision of the Convention and any regulations made under this Act, if any discharge of harmful substances carried in packaged form occurs from a Bangladesh ship into any part of the sea or from any ship into Bangladesh waters, the master, the owner and the agent of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine of not more than Taka 100,000 or to imprisonment for a term not exceeding one year or to both.

(2) Packages shall be adequate to minimize the hazard to the marine environment, having regard to their specific contents. Packages containing any harmful substances shall be durably marked and labeled with the correct technical name to indicate that the substance is a marine pollutant.

(3) Each ship carrying harmful substances shall have a special list setting forth the harmful substances on board and the location thereof. Harmful substances shall be properly stowed and secured so as to minimize the hazard to the marine environment without impairing the safety of the ship and the persons on board.

12. Prohibition of discharge of sewage from ships.- (1) Subject to the provision of the

Convention and any regulations made under this Act, if any discharge sewage occurs from a Bangladesh ship into any part of the sea or from any ship into Bangladesh waters, the master, the owner and the agent of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine of not more than Taka 100,000 or to imprisonment for a term not exceeding one year or to both.

(2) A ship shall be fitted with a sewage treatment plant and shall meet operational requirements based on standards.

(3) A ship equipped with holding a tank shall be satisfactorily be able to retain of all sewage having regard to the operation of the ship, the number of persons on board and other relevant factors.

(4) A ship shall be equipped with a pipeline leading to the exterior convenient for the discharge of sewage to a reception facility and that pipeline requires to be fitted with a standard shore connection.

(5) A ship shall obtain an International Sewage Pollution Prevention Certificate after holding survey before being engaged in a voyage.

13. Prohibition of discharge of refuse, garbage, wastes, effluents, plastics and dangerous pollutants from ships.-(1) Subject to sub-section (2) and any regulations made under sub-section (5), if any disposal or discharge of refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form occurs from any ship into Bangladesh waters, the master, the owner and the agent of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding 500,000 or to imprisonment for a term not exceeding two years or to both.

(2) Sub-section (1) shall not apply to the disposal or discharge of refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form from a ship-

(a) which is necessary for the purpose of securing the safety of a ship or saving life at sea;
or

(b) if the refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form, as the case may be, escaped from the ship in consequence of damage, other than intentional damage, to the ship or its equipment, and all reasonable precautions were taken after the occurrence of the damage or the discovery of the discharge for the purpose of preventing or minimising the escape of the refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form, as the case may be.

(3) Sub-section (1) shall not apply where a synthetic fishing net, or synthetic material used in the repair of such a net, on a ship is lost at sea, and all reasonable precautions were taken to prevent the loss.

(4) For the purposes of sub-section (2), damage to a ship or to its equipment shall be taken to be intentional damage, if the damage arose in circumstances in which the master, the owner or the agent of the ship-

(a) acted with intent to cause the damage; or

(b) acted recklessly and with knowledge that damage would probably result.

(5) The Authority may, with the approval of the Government, make regulations to exempt any ship from the operation of sub-section (1), either absolutely or subject to any prescribed conditions, and either generally or as respects particular classes of ships, or in relation to particular descriptions of refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form or to the disposal or discharge thereof in prescribed circumstances, or in relation to particular areas of the sea.

CHAPTER -IV

PREVENTIVE MEASURES AGAINST POLLUTION OF THE SEA

14. Reception facilities.-(1) The powers exercisable by the Authority in respect of the port shall include power to provide reception facilities of wastes for ships using the port or any terminal in Bangladesh.

(2) Any power of the Authority to provide reception facilities shall include —

(a) power to join with any other person in providing them, and reference in this section to the provision of reception facilities by the Authority shall be construed accordingly;

(b) power to arrange for the provision of such facilities by any other person;

(c) power to require every ship to use the facilities; and

(d) power to provide reception facilities outside and within the limits of the port.

(3) Subject to any directions given by the Government under sub-section (5), the Authority in respect of the port and a terminal operator in respect of his terminal shall ensure that —

(a) if the port or terminal has reception facilities, those facilities are adequate; or

(b) if the port or terminal has no reception facilities, such facilities are provided, in order to comply, for ships which may be expected to use the port or terminal for a primary purpose other than utilising reception facilities, with the provisions of any regulations made under this Act pertaining to the provision of reception facilities.

(4) The Authority or a terminal operator shall provide the Government with such information as the Government directs in respect of any reception facilities provided by or by arrangement with the Authority or the operator at the port or terminal, as the case may be.

(5) Where it appears to the Government, after consultation with any organisation of the representative of owners of ships registered in Bangladesh, or the Authority and, where appropriate, the terminal operator (if the port or a terminal managed by the operator) that-

(a) has reception facilities, those facilities are inadequate; or

(b) has no reception facilities, the port or terminal should be provided with such facilities, in order to comply, for ships which may be expected to use the port or terminal for a primary purpose other than utilising the reception facilities, with the provisions of any regulations made under this Act pertaining to the provision of reception facilities, the Government may direct the Authority or the terminal operator to provide or arrange for the provision of such reception facilities as appropriate.

(6) Any person who fails to comply with any direction given under subsection (4) or (5) within the period specified in the direction, or within any extended period allowed by the Government shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 50,000 and, in the case of a continuing offence, to a further fine not exceeding Taka 5,000 for every day during which the offence continues after conviction.

(7) Sub-sections (3) to (6) shall not apply unless the port or a terminal managed by a terminal operator is-

(a) in relation to the provision of reception facilities for residues or mixtures containing oil, used by ships carrying such residues or mixtures including such ships when undergoing repair or being broken up; or

(b) in relation to the provision of reception facilities for residues or mixtures containing noxious liquid substances, used by ships carrying such residues or mixtures for the purpose of loading or unloading such substances, repair or breaking up.

(8) The Authority may, with the approval of the Government, make regulations in respect of every matter relating to the provision of reception facilities and other facilities for ships to deposit refuse, garbage, plastics or sewage and, in particular, those regulations may provide-

(a) for fees to be levied for the use of the facilities;

(b) for the conditions upon which ships may make use of the facilities; and

(c) that a contravention thereof shall be punishable by a fine not exceeding Taka 500,000 or with imprisonment for a term not exceeding two years or with both.

15.Regulations requiring the keeping of oil record books.-(1) The Authority may, with the approval of the Government, make regulations requiring oil record books to be carried in all Bangladesh ships and in all ships in Bangladesh waters and requiring the master of any such ship to record in the oil record book carried by it-

(a) the carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed:

- (i) the loading of oil cargo;
- (ii) the internal transfer of oil cargo during a voyage;
- (iii) the unloading of oil cargo;
- (iv) the ballasting of oil tanks (whether cargo or bunker fuel tanks) and dedicated clean ballast tanks;
- (v) the cleaning of oil tanks (whether cargo or bunker fuel tanks) including crude oil washing;
- (vi) the discharge of ballast except from segregated ballast tanks;
- (vii) the discharge of water from slop tanks;
- (viii) the closing of all applicable valves or similar devices after slop tanks discharge operations;
- (ix) the closing of valves necessary for isolation of dedicated clean ballast tanks from cargo and stripping lines after slop tank discharge operations;
- (x) the discharge of dirty ballast or cleaning water from oil fuel tanks;
- (xi) the discharge overboard or disposal otherwise of bilge water, which has accumulated in machinery spaces;
- (xii) the disposal of any oily residues (sludge); or
- (xiii) the disposal of residues;

(b) any event of such discharge of oil or oily mixture as is referred to in section 7 (2) or any regulations made under section 7 (4); and

(c) in the event of accidental or other exceptional discharge of oil or oily mixture which is not referred to in section 7 (2).

(2) The Authority may, with the approval of the Government, make regulations requiring the keeping of records relating to the transfer of oil to and from ships while they are in Bangladesh waters.

(3) The requirements of any regulations made under sub-section (2) shall be in addition to the requirements of any regulations made under sub-section (1).

(4) Any records required to be kept by any regulations made under sub-section (2) shall, unless the ship is a barge, be kept by the master of the ship and shall, if the ship is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.

(5) Regulations made under this section requiring the carrying of oil record books or the keeping of records may-

(a) prescribe the form of the oil record books or records and the nature of the entries to be made in them;

(b) require the person providing or keeping the oil record books or records to retain them for a prescribed period;

(c) require that person, at the end of the prescribed period, to transmit the oil record books or records to a place or person determined by the regulations; and

(d) provide for the custody or disposal of the oil record books or records after their transmission to such a place or person.

16. Regulations requiring the keeping of cargo record books.-(1) The Authority may, with the approval of the Government, make regulations requiring cargo record books to be carried in all Bangladesh ships and in all ships in Bangladesh waters, being ships which carry noxious liquid substances in bulk, and requiring the master of any such ship to record in the cargo record book carried by it -

(a) the carrying out, on board or in connection with the ship, of such of the following operations with respect to a noxious liquid substance as may be prescribed:

- (i) the loading of cargo;
- (ii) the internal transfer of cargo;
- (iii) the unloading of cargo;
- (iv) the cleaning of cargo tanks;
- (v) the ballasting of cargo tanks;
- (vi) the discharge of ballast from cargo tanks;
- (vii) the disposal of residues to reception facilities; or
- (viii) the discharge into the sea or removal by ventilation of residues in accordance with any regulations made under this Act;

(b) in the event of any such discharge of any noxious liquid substance or a mixture containing such substance as is referred to in section 10(2) or in any regulations made under section 10 (4); and

(c) any occasion on which the noxious liquid substance or a mixture containing such substance is discharged, whether intentionally or accidentally.

(2) The Authority may, with the approval of the Government, make regulations requiring the keeping of records relating to the transfer of noxious liquid substances to and from ships while they are in Bangladesh waters.

(3) The requirements of any regulations made under subsection (2) shall be in addition to the requirements of any regulations made under subsection (1).

(4) Any records required to be kept by any regulations made under sub-section (2) shall be kept by the master of the ship.

(5) Regulations made under this section requiring the carrying of cargo record books or the keeping of records may -

(a) prescribe the form of the cargo record books or records and the nature of the entries to be made in them;

- (b) require the person providing or keeping the cargo record books or records to retain them for a prescribed period;
- (c) require that person, at the end of the prescribed period, to transmit the cargo record books or records to a place or person determined by the regulations; and
- (d) provide for the custody or disposal of the cargo record books or records after their transmission to such a place or person.

17.Failure to carry record books and evidence.-(1) If any ship fails to carry an oil record book or cargo record book as is required under section 15 or 16, the owner, the agent or the master of that ship shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 25,000.

(2) Any person who fails to comply with any of the requirements imposed by section 15 or 16 or any regulations made there under shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 25,000.

(3) Any person who makes an entry in any oil record book or cargo record book carried or any record kept under section 15 or 16 which is to his knowledge false or misleading in any material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 100,000 or to imprisonment for a term not exceeding one year or to both.

(4) In any proceedings under this Act-

(a) any oil record book or cargo record book carried or any record kept in pursuance of any regulations made under section 15 or 16 shall be admissible as evidence of the facts stated in it;

(b) any copy of an entry in such oil record book or cargo record book or record which is certified by the master of the ship in which the book is carried or by the person by whom

the record is required to be kept to be a true copy of the entry shall be admissible as evidence of the facts stated in the entry; and

(c) any document purporting to be an oil record book or cargo record book carried or a record kept under section 15 or 16, or purporting to be such a certified copy as is mentioned in paragraph (b) shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.

18. Duty to report discharges of harmful substances from ships.-(1) If any actual or probable discharge of any harmful substance occurs in prescribed circumstances from a Bangladesh ship into any part of the sea or from any ship into Bangladesh waters, the master of the ship shall without delay report the occurrence in such manner and to such officer as may be prescribed.

(2) It is a defence if a person charged with an offence under sub-section (1) proves that he was unable to comply with that sub-section in relation to the relevant occurrence.

(3) Where a discharge referred to in sub-section (1) occurs and -

(a) the master of the ship is unable to comply with that sub-section in relation to the occurrence; or

(b) the discharge occurs in circumstances in which the ship is abandoned, the owner, charterer, manager and operator of the ship or an agent of the owner, charterer, manager or operator of the ship shall without delay report the occurrence in such manner and to such officer as may be prescribed.

(4) Any person who contravenes sub-section (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 25,000 or to imprisonment for a term not exceeding three months or to both.

(5) On the prosecution of a person for an offence under sub-section (3), it is a defence if the person proves —

(a) that he was not aware of the relevant occurrence; or

(b) in the case of an offence to which sub-section (3) (a) applies, that he neither knew nor suspected that the master of the ship concerned was unable to comply with sub-section (1) in relation to the relevant occurrence.

19. Duty to report discharges of oil, oily mixture and substances from land or apparatus.-If any actual or probable discharge into Bangladesh waters of oil, oily mixture, noxious liquid substance or a mixture containing such substance occurs from a place on land or an apparatus used for transferring oil or that substance from or to a ship, the occupier of the place on land or the person in charge of the apparatus, as the case may be, shall forthwith report the occurrence to the Port Master in the prescribed manner and, if he fails to do so, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 25,000 or to imprisonment for a term not exceeding two months or to both.

CHAPTER -V

RECOVERY OF COSTS

20. Recovery of costs for removing refuse, garbage, wastes, plastics, effluents and dangerous pollutants discharged from ships.-(1) If any refuse, garbage, waste matter, plastics, pollutants in packaged form or trade effluent is discharged from any ship into Bangladesh waters or into any part of the sea or waters outside Bangladesh waters and the refuse, garbage, waste matter, plastics, pollutants or trade effluent subsequently drifts or flows into Bangladesh waters, the owner of the ship shall be liable to pay for the costs of any measure reasonably taken by the appointed authority after the discharge for the purpose of removing it and for preventing and reducing any damage caused in Bangladesh by contamination resulting from the discharge.

(2) Where the refuse, garbage, waste matter, plastics, marine pollutant in packaged form or trade effluent is discharged from two or more ships -

(a) a liability is incurred under this section by the owner of each of them; but

(b) the damage or cost of which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable, each of the owners shall be liable, jointly and severally with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

21. Recovery of costs for removing oil, oily mixture and substances discharged from ships.-(1) If any oil, oily mixture or noxious liquid substance is discharged from any ship into Bangladesh waters or into any part of the sea or waters outside Bangladesh waters and the oil, mixture or substance subsequently flows or drifts into Bangladesh waters, the owner of the ship shall be liable to pay for the costs of any measure reasonably taken by the appointed authority after the discharge for the purpose of removing it and for preventing or reducing any damage caused in Bangladesh by contamination resulting from the discharge.

(2) Where the oil, oily mixture or noxious liquid substance is discharged from two or more ships-

(a) a liability is incurred under this section by the owner of each of them; but

(b) the damage or cost of which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable, each of the owners shall be liable, jointly and severally with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(3) The reference in this section to the measures reasonably taken after the discharge of oil, oily mixture or a noxious liquid substance for the purpose of preventing or reducing any damage caused by contamination resulting from the discharge shall include actions taken to remove the oil, mixture or substance from the water and foreshores or the taking of such other actions as may be necessary to minimise or mitigate damage to the public

health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, foreshores and beaches.

22. Recovery of costs for removing oil, oily mixture and substances discharged from land or apparatus.- If any oil, oily mixture or noxious liquid substance is discharged from any place on land or from any apparatus used for transferring the oil, mixture or substance from or to any ship (whether to or from a place on land or to or from another ship) or for any other operation, the person in charge of that apparatus or the occupier of that place, as the case may be, shall be liable to pay for the costs of any measure reasonably taken by the appointed authority after the discharge in removing or eliminating the oil, mixture or substance.

23. Recovery of costs from person responsible for pollution. - Any person who puts, throws, casts or deposits or causes to be put, thrown, cast or deposited into Bangladesh waters any oil, oily mixture, refuse, garbage, plastics, waste matter, car-case, marine pollutant in packaged form, noxious liquid substance or trade effluent shall be liable to pay for the costs of any measure reasonably taken by the authority in removing or eliminating it.

24. Costs recoverable as a debt due to the authority. - Any cost due from and payable by any person by virtue of section 20, 21, 22 or 23 shall be recoverable by the authority or any person duly authorised by the authority to act on its behalf as a debt due to the authority.

CHAPTRE-VI

MISCELLANEOUS PROVISIONS

25. Powers of inspectors.-(1) An inspector may exercise the powers referred to in sub-section (2) only for the purpose of ascertaining-

(a) whether a provision of this Act or any regulations made there under that is applicable in relation to a Bangladesh ship has been complied with in respect of that ship;

(b) whether there has been a discharge from a ship in contravention of this Act or any regulations made there under;

(c) whether a provision of the Convention that is applicable in relation to a ship other than a Bangladesh ship has been complied with in respect of that ship; or

(d) whether a provision of a law of a country other than Bangladesh giving effect to the Convention, being a provision that is applicable in relation to a ship other than a Bangladesh ship, has been complied with in respect of that ship.

(2) An inspector may for any of the purposes referred to in sub-section (1)-

(a) go on board a ship with such assistants and equipment as he considers necessary;

(b) require the master of a ship to take such steps as the inspector directs to facilitate the boarding;

(c) inspect and test any machinery or equipment of a ship;

(d) require the master of a ship to take such steps as the inspector directs to facilitate the inspection or testing of any machinery or equipment of the ship;

(e) open, or require the master of a ship to cause to be opened, any hold, bunker, tank, compartment or receptacle in or on board the ship and inspect the contents of any hold, bunker, tank, compartment or receptacle in or on board the ship;

(f) require the master of a ship to produce a record book required by any regulations made under this Act to be carried in the ship or any other books, documents or records relating to the ship or its cargo that are carried in the ship;

(g) make copies of, or take extracts from, any such books, documents or records;

(h) require the master of a ship to certify that a true copy of an entry in a record book required by any regulations made under this Act to be carried in the ship is a true copy of such an entry;

- (i) examine, and take samples of, any substances on board a ship; and
- (j) require a person to answer questions.

(3) Any person who-

(a) without reasonable excuse, refuses or fails to comply with a requirement made of him by an inspector in the exercise of his powers under sub-section (2); or

(b) in answer to a question that he is required to answer under sub-section (2), makes a statement that is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 25,000 or to imprisonment for a term not exceeding six months or with both.

26. Power to deny entry and to detain ship.-(1) Where the Director or Port Master has reasonable cause to believe that a ship which proposes to enter the port does not comply with the requirements of this Act or any regulations made there under, he may deny the entry of such ship to the port.

(2) Where the Director or Port Master has reasonable cause to believe that a ship-

(a) has incurred a liability under section 20 or 21; or

(b) has contravened any of the requirements of this Act or any regulations made there under and, in the opinion of the Director or Port Master, the ship presents an unreasonable threat of harm to the marine environment or has caused harm to such environment, the Director or Port Master or any officer authorised in writing by the Director or Port Master may detain that ship.

(3) The Director or Port Master may release a ship detained under sub-section (2) if the owner of the ship deposits with the Government or the Authority a sum of money or furnishes such security which would, in the opinion of the Director or Port Master, be adequate to meet the owner's liability under this Act.

(4) The provisions of the Admiralty Court Act, 2000 shall be construed as extending to any claim in respect of a liability incurred by the owner of a ship under this Act.

27. Detained ship proceeding to sea.-(1) If any ship is detained under section 26 (2) and the ship proceeds to sea before it is released by the Director or Port Master, the master of the ship, the owner thereof and any person who sends the ship to sea, if that master, owner or person is party or privy to the act of sending the ship to sea, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 50,000 or to imprisonment for a term not exceeding one year or to both.

(2) The Director or Port Master or any officer authorised by the Director or Port Master to detain a ship may, if he thinks it necessary, place a police officer on board as a police guard.

(3) Where a ship proceeding to sea takes to sea when any officer authorised to detain the ship, police guard or inspector is on board in the execution of his duty, then the owner and the master of the ship shall each be liable to pay all expenses of and incidental to the officer, police guard or inspector being so taken to sea, and also to a fine not exceeding Taka 20,000, or not exceeding Taka 2,000 for each day until the officer, police guard or inspector returns or until such time as would enable him after leaving the ship to return to the port from which he is taken, and the expenses ordered to be paid may be recoverable as a fine.

(4) Any police guard so placed on board a ship may take such steps as are necessary to prevent the ship from leaving the port.

(5) Any person who opposes or in any way obstructs any officer authorised to detain the ship, a police guard or an inspector shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Taka 10,000.

28. Sale of ship. - Where the owner, master or agent of a ship has been convicted of an offence under the provisions of this Act or any regulations made there under and any fine imposed in respect of the conviction is not paid at the time ordered by the court, the court shall, in addition to any power for enforcing payment, have the power to direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

29. Exemptions.-(1) This Act shall not apply to any warship, naval auxiliary or other ship owned or operated by a State (including the Government) and used for the time being, only on Government non-commercial service.

(2) The Government may in his discretion exempt any ship or person from any of the provisions of this Act or any regulations made there under.

(3) Any exemption granted by the Government under sub-section (2) may be granted subject to such conditions as the Government thinks fit and the exemption shall not have effect unless those conditions are complied with.

30. Power to enter on lands.-(1) The Government may, by its officers, employees, agents or contractors, enter upon any land adjoining the sea or foreshore for the purpose of removing or eliminating any oil, oily mixture, refuse, garbage, waste matter, plastics, marine pollutant in packaged form, noxious liquid substance or trade effluent from Bangladesh waters.

(2) The Government shall pay compensation to the owner of the land for any permanent damage caused to the land in the exercise of the powers conferred by sub-section (1).

(3) If any dispute arises as to the amount of compensation payable to the owner of such land, the dispute may be summarily determined by a Magistrate's Court or a District civil Court.

(4) Except as provided in sub-section (2), no action shall be brought against the Government for any compensation in respect of any damage caused or arising out of the exercise of the powers conferred by sub-section (1).

31. Powers of arrest.-(1) The Director, the Port Master, a police officer or any person authorised in writing by the Director or Port Master, may arrest without warrant any person who has committed or whom he reasonably believes to have committed an offence under this Act or any regulations made there under and take him before a Magistrate's Court or a District civil Court, as the case may be, to be dealt with according to law.

(2) Any article concerning, by or for which an offence has been committed may be seized and taken to a police station, unless given up sooner by order of a Magistrate's Court or a District Court, until the charge is decided in due course of law.

32. Delegation of powers.-The Director may appoint such officers as he may think fit for the purpose of exercising the powers conferred and performing the duties imposed on the Director under this Act and any regulations made there under.

33. Protection from personal liability.-No act or omission by the Government, the Director, Port Master, any officer employed in the administration of this Act or any other person acting under the direction of the Government, the Director or Port Master shall, if the act or omission was bona fide for the purpose of executing this Act or any regulations made there under, subject them or any of them personally to any action, liability, claim or demand.

34. Evidence of analyst.-(1) The Director may, by instrument in writing under his hand, appoint such persons who in his opinion are qualified to be analysts for the purposes of this Act.

(2) Subject to sub-section (4), a certificate of an analyst appointed under sub-section (1) stating that he has analysed or examined a substance and stating the result of his analysis

or examination is admissible in evidence in any proceedings for an offence under this Act as prima facie evidence of the facts stated in the certificate and of the correctness of the result of the analysis or examination.

(3) For the purposes of this section, a document purporting to be a certificate referred to in sub-section (2) on its production by the prosecution shall, unless the contrary is proved, be deemed to be such a certificate.

(4) A certificate referred to in sub-section (2) shall not be received in evidence in pursuance of that sub-section unless the person charged has been given a copy of the certificate together with reasonable notice of the intention of the prosecution to produce the certificate as evidence in the proceedings.

(5) Where a certificate of an analyst appointed under sub-section (1) is admitted in evidence under sub-section (2), the person charged may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he had given evidence of the matters stated in the certificate.

35. Court for trial of offences.-Any offence under this Act or any regulations made there under may be tried by a Magistrate's Court or a District Court and that Court shall, notwithstanding any provisions of the Code of Criminal Procedure, 1898 and any other law in force, have jurisdiction to impose the maximum penalty provided for by this Act or any regulations made there under.

36. Composition of offences.-(1) The Director, Port Master or any person authorised in writing by the Director or Port Master may compound any offence under this Act or any regulations made there under which is prescribed as a compoundable offence, by collecting from a person reasonably suspected of having committed the offence a sum not exceeding Taka 20,000.

(2) The Government may make regulations to prescribe the offences which may be compounded.

37. Fines, etc. to be paid to Authority.-All fines imposed for any offence under this Act or any regulations made there under and all sums collected under section 36 shall be paid into the funds of the Authority.

38. Regulations.-(1) The Authority may, with the approval of the Government, make such regulations as it appear to the Authority necessary or expedient for the purposes of carrying out the provisions of this Act and for prescribing anything which may be prescribed under this Act and, in particular, for the purpose of-

(a) giving effect to any provision of the Convention including relevant appendices, forms of certificate, record books etc. which have not been given effect to in this Act;

(b) giving effect to any provision of the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (including the Final Act of the Conference and the attached resolutions) signed in London on 30th November 1990;

(c) giving effect to any provision of any international agreement not mentioned in paragraph (a) or (b) which relates to the prevention, reduction or control of pollution of the sea or pollution from ships;

(d) giving effect to any international agreement which modifies any of the international agreements mentioned in paragraphs (a), (b) and (c); and

(e) prescribing any measure which the Authority considers necessary for the prevention, control or reduction of pollution of the sea or pollution from ships.

(2) Without prejudice to the generality of sub-section (1), the Authority may, with the approval of the Government, by such regulations-

(a) require persons carrying on any trade, business or manufacture to install such equipment as may be prescribed by the Authority for the purpose of eliminating any oil in any trade effluent and for preventing or reducing the discharge of any trade effluent into Bangladesh waters;

(b) require the owners or operators of cargo terminals, shipyards, oil refineries and oil terminals in Bangladesh, and such other facilities in Bangladesh as the Port Master may determine, to store such detergents, dispersants and equipment as the Authority may prescribe to deal with any pollution of Bangladesh waters;

(c) provide for the conduct of investigations of casualties in respect of any discharge from a ship or any contravention of the provisions of this Act or any regulations made there under;

(d) provide for the appointment, registration, duties and powers of MARPOL surveyors and the approval of the organisation employing such surveyors for the purposes of giving effect to Annex II to the Convention;

(e) prescribe fees to be paid in respect of the issue or recording of any certificate, licence or other instrument or the doing of any other thing in pursuance of this Act or any regulations made there under;

(f) provide for the approval of documents and the carrying out of surveys and inspections for the purpose of giving effect to any of the international agreements referred to in sub-section (1)(a) to (d), or to a measure referred to in sub-section (1)(e) and the issue, duration and recognition of any certificate for that purpose;

(g) provide for the denial of entry or prohibition of proceeding to sea of any ship which does not have in force a certificate issued pursuant to any regulations made under paragraph (g); and

(h) provide for the extra territorial application of any of the regulations to Bangladesh ships and to persons on board such ships.

(3) Any regulations made under this section may -

(a) make different provisions for different circumstances;

- (b) empower any specified person to grant exemption from any provisions of the regulations;
- (c) provide for the delegation of functions exercisable by virtue of the regulations;
- (d) include such incidental, supplemental and transitional provisions as appear to the Authority to be expedient for the purposes of the regulations; and
- (e) provide that a contravention thereof shall be punishable by a fine not exceeding Taka 500,000 or with imprisonment for a term not exceeding two years or with both.

39. Requirement for construction and equipment needed to prevent pollution.-

The Director may require the tankers and ships -

- (a) to be fitted with such equipment to prevent pollution; and
- (b) to comply with such requirements relating to the design, construction, structure of tankers and ships in accordance with the Convention.

40. Application of MARPOL 73/78 in Bangladesh.-(1) Notwithstanding anything contained in any other law for the time being in force in Bangladesh, the MARPOL 73/78 shall subject to this Act apply to all sea going vessels as determined by Annexes I to V (except Annex-VI) to the said Convention.

(2) Detailed provisions relating to Annex I to V of the Convention including the relevant appendices, schedules, forms of certificate, record books etc. as required under the Convention may be made by regulations under section 38 of this Act.

41. Savings of certain laws. - This Act shall be read and construed as being in addition to, and not in derogation of or in substitution of any other laws in force in Bangladesh, in relation to the prevention of pollution of the Marine Environment.

Introduced in Parliament by
The Minister-in-charge,
Ministry of Shipping
Government of the People's Republic of Bangladesh

