



**IMO**  
**INTERNATIONAL MARITIME LAW INSTITUTE**  
Established under the auspices of the International Maritime Organization  
A specialized agency of the United Nations



**A Law to Incorporate the International Convention on Oil  
Pollution Preparedness, Response and Cooperation, 1990  
and the Protocol on Preparedness, Response and  
Co-operation to Pollution incidents by Hazardous and  
Noxious Substances, 2000 into the  
Laws of Myanmar and to Provide for the Effective  
Implementation Thereof**

**A Legislation Drafting Project submitted in partial fulfillment of the  
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## **LIST OF ABBREVIATIONS**

<b>DMA</b>	Department of Marine Administration
<b>IMO</b>	International Maritime Organization
<b>MARPOL</b>	International Convention for the Prevention of Pollution from Ships, 1973, and its amendments by the Protocol of 1978
<b>MEPC</b>	Marine Environment Protection Committee
<b>OPRC Convention</b>	International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990
<b>OPRC-HNS Protocol</b>	Protocol on Preparedness, Response and Co-operation to Pollution incidents by Hazardous and Noxious Substances, 2000
<b>UNCLOS</b>	United Nations Convention on the Law of the Sea, 1980

## Introduction

The marine pollution caused by oil and hazardous and noxious substance are of great concern for every States. Oil pollution and other marine pollution incidents are the major environmental concerns causing detrimental effects on both marine ecosystem and coastal habitats directly or indirectly. There are a number of major oil spill incidents occurred globally such as *Torrey Canyon* oil spill accident in the United Kingdom in 1967, and *Amoco Cadiz* oil tanker disaster in off Brittany, France in 1978. In every case, oil spill poses significant risk to different coastal and marine resources. There is a precise assumption that so long as the continuous development of oil seaborne trade, the risk of oil spills will continue to occur throughout the world.

Every maritime nation, whether flag State, port State or coastal State, needs clear and decisive legal framework which empowers the Government to take necessary precautionary measures as well as to undertake careful planning to ensure rapid, efficient and effective oil spill response when oil is spilled. The International Maritime Organization (IMO) thus adopted the two essential international conventions in the context of marine pollution preparedness and response, namely the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention)<sup>1</sup> and the Protocol on Preparedness, Response and Co-operation to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS Protocol)<sup>2</sup>.

The OPRC Convention and the OPRC-HNS Protocol provide well-established standards for oil and hazardous and noxious substance spill preparedness, response and cooperation. Myanmar is a State Party to the OPRC Convention but it is still necessary to ratify the OPRC-HNS Protocol. Being a Party to the OPRC Convention, Myanmar is under obligation to develop the national response system such as designation of national authorities, national and site-specific contingency plan, international and regional cooperation, training and exercise and response equipment available for response to oil spills.

It is inevitable for Myanmar at this moment in time to implement the OPRC Convention and the OPRC-HNS Protocol at the national level since shipping is one of

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<sup>1</sup> International Convention on Oil Pollution Preparedness Response and Cooperation (adopted 30 November 1990 and entered into force on 13 May 1995), UNTS 51.

<sup>2</sup> Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (adopted 15 March 2000 and entered into force 14 June 2007).

the main industries which contribute to the country's economic development. The number of vessels calling at the Port of Yangon has gradually increased during the last decade. In addition, the increase of fuel demand and the exploration and production of oil from offshore installation has been continuously growing to facilitate the economic booming. More importantly, crude oil has since February 2018 been imported to the Myanmar Made island port from the Gulf area in order to be transported through oil pipelines to China since February 2018. It is expected up to 300,000 deadweight tankers will dock at the Made island oil port and approximately one tanker per week will come to such port for oil transmission.

It has become imperative to adopt national legislation for preparedness and response to oil and hazardous and noxious substance against the backdrop of present circumstances. For a developing country like Myanmar, it is more important than ever to implement the OPRC Convention and OPRC-HNS Protocol because the world has witnessed that even the developed countries with advance technology were in the extremely difficult situation when the major oil tanker disaster occurred off their coast. It is, therefore, worth recalling the saying goes "*Prevention is better than cure*" because it would have been out of control if the adequate preparation were not undertaken in advance to respond to oil and hazardous and noxious substance spill incident.

## EXPLANATORY NOTE

### 1. Historical Background of the OPRC Convention

Maritime transport is the backbone of global trade and shipping carries the vast majority of international trade with its share ranging between 80 and 90 percent of trade.<sup>3</sup> Ships sail across the globe to carry the world's food, raw materials, fossil fuel, and industrial products. The world trade is mostly relied on shipping, which is considered to be the most environmentally friendly form of transport, especially considering its productive value.<sup>4</sup> The shipping industry transports nearly two billion tons of crude oil, one billion tons of iron ore and 350 million tons of grain.<sup>5</sup> Although maritime transport facilitates international transportation and contributes to the economic development, there is an adverse environmental impact on the marine ecosystem and ocean due to any unfortunate pollution of oil discharged from ships that may happen.

Over the past few decades, major oil tanker incidents occurred and subsequent released of the large amount of oil into the sea produced detrimental effect on the environment and community. Oil spills can have catastrophic effects on coastal and marine ecosystems, which can then take several years, even decades, to recover.<sup>6</sup> Spills can also have socio-economic impacts by causing the closure of fishing zones, limiting tourism, and reducing clean water supplies for industry as well as affecting human health.<sup>7</sup> Oil pollution from ship poses a serious threat to the livelihood of coastal community since the leakage of oil from ship can spread out over a wide area of sea and reach to the shoreline of the coastal States in the event of major oil spill incident.

The world's first major oil tanker disaster is known as the *Torrey Canyon* incident, which occurred in Cornwall in the southwest of England in March 1967. The grounding of the oil tanker *Torrey Canyon* spilling of thousands of tonnes of crude oil caused the death of thousands of seabirds and threatened the livelihoods of many local

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<sup>3</sup> United Nations Conference on Trade and Development, '50 Years of Review of Maritime Transport, 1968-2018: Reflecting on the Past, exploring the future' (2018) 4.

<sup>4</sup> Malgosia Fitzmaurice, 'The International Convention for the Prevention of Pollution from Ships (MARPOL)' in David Joseph Attard (eds), *The IMLI Manual on International Maritime Law Volume III Marine Environmental Law and Maritime Security Law* (1st edn, OUP 2016) 33.

<sup>5</sup> International Chamber of Shipping, 'Shipping and world trade: driving prosperity', <<https://www.ics-shipping.org/shipping-fact/shipping-and-world-trade-driving-prosperity/>> accessed 25 November 2020.

<sup>6</sup> European Environment Agency, 'Europe's Environment, The Fourth Assessment' (2007) 232.

<sup>7</sup> *ibid.*

people.<sup>8</sup> Following such incident, the IMO, as a specialized agency of the United Nations responsible for measures to prevent marine pollution from ships, adopted the International Convention for the Prevention of Pollution from Ships.<sup>9</sup> The Convention is known as MARPOL which is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.<sup>10</sup>

The MARPOL Convention includes regulations aimed at preventing and minimizing pollution from ships – both accidental pollution and that from routine operations – and currently includes six technical Annexes.<sup>11</sup> In addition, the IMO established a compensation scheme to ensure that the victims who had suffered are able to claim for their economic losses and damages as a result of oil pollution. The IMO thus adopted two international conventions on liability and compensation for oil pollution damage, including the International Convention on Civil Liability for Oil Pollution Damage<sup>12</sup> (1969 Civil Liability Convention), and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage<sup>13</sup> (1971 Fund Convention).

One of the prominent oil tanker disasters in the past few years was *Exxon Valdez* incident occurred in Alaska (US) in March 1989. The 11 million gallons of crude oil was spilled in this incident, and clean-up alone cost in the region of US \$2.5 billion and total costs, including fines, penalties, and claim settlements, have at times been estimated at as much as US \$7 billion.<sup>14</sup> The effects and ramifications of such catastrophic event signal the necessity of additional regulatory framework to prepare and respond effectively for the serious oil pollution incidents.

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<sup>8</sup> International Tanker Owners Pollution Federation Ltd, ‘Torrey Canyon, United Kingdom, 1967’ (23 May 2014) <<https://www.itopf.org/in-action/case-studies/case-study/torrey-canyon-united-kingdom-1967/>> accessed 28 November 2020.

<sup>9</sup> International Convention for the Prevention of Pollution from Ships (adopted 2 November 1973, entered into force 2 October 1983) 1340 UNTS 184.

<sup>10</sup> Gabino Gonzalez and Frédéric Hébert, ‘Conventions relating to Pollution Incident Preparedness, Response and Cooperation’ in David Joseph Attard (eds), *The IMLI Manual on International Maritime Law Volume III Marine Environmental Law and Maritime Security Law* (OUP 2016) 199.

<sup>11</sup> *ibid.*

<sup>12</sup> International Convention on Civil Liability for Oil Pollution Damage (adopted 29 November 1969, entered into force 19 June 1975) 973 UNTS 3.

<sup>13</sup> International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (adopted 18 December 1971, entered into force 16 October 1978) 1110 UNTS 57.

<sup>14</sup> Susan Lyon and Daniel J. Weiss, ‘Oil Spills by the Numbers, The Devastating Consequences of Exxon Valdez and BP Gulf’, (Center for American Progress, 30 April 2010) <<https://www.americanprogress.org/issues/green/news/2010/04/30/7620/oil-spills-by-the-numbers/>> accessed 29 November 2020.



In the aftermath of *Exxon Valdez* incident, the IMO convened an international conference on oil pollution preparedness and response in 1989. During the conference, the Marine Environment Protection Committee (MEPC) of IMO was requested to develop a draft international convention with the aim to imposing measures on oil pollution preparedness and response. In November 1990, the International Convention on Oil Pollution Preparedness, Response and Co-operation<sup>15</sup> (OPRC Convention) was adopted by a diplomatic conference convened by the IMO, and the Convention entered into force five years later on 13 May 1995. There are currently 113 State Parties to the OPRC Convention, which represent 78 percent of the world tonnage.

Due to the combined efforts of the oil/shipping industry and governments – with the support of the IMO – to improve safety and pollution prevention, statistics for oil spills from tankers for close to five decades show a progressive downward trend.<sup>16</sup> However, oil pollution has been an issue of concern to the present day. As long as oil resources are explored, produced, transported, and stored on or in the marine environment, there will be an inherent risk of oil spills.<sup>17</sup> There is still a possibility that oil spill incidents may continue to occur, and the most recent oil spill incident was the grounded of bulk carrier *MV Wakashio* on a coral reef at Pointe d’Ensy, on the south-eastern coast of Mauritius on 25 July 2020, and reports indicated that approximately 1,000 tonnes of oil had leaked into the ocean.<sup>18</sup>

### **1.1. The Objectives of the OPRC Convention**

The OPRC Convention aims to provide a framework designed to facilitate international co-operation and mutual assistance in preparing for and responding to major oil pollution incidents and requires States to plan and prepare by developing national emergency response structure in their respective countries, and by maintaining adequate capacity and resources to address oil pollution emergencies.<sup>19</sup> The OPRC Convention is, therefore, to establish the national system for preparedness and response oil spill incident from ships nationally or cooperation with other States.

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<sup>15</sup> International Convention on Oil Pollution Preparedness Response and Cooperation (n 1).

<sup>16</sup> International Tanker Owners Pollution Federation Ltd, ‘50 years (1968-2018) Promoting Effective Spill Response Handbook’ (2018) 7.

<sup>17</sup> International Maritime Organization, ‘Manual on Oil Pollution, Section II – Contingency Planning’ (2018) 3.

<sup>18</sup> International Maritime Organization, ‘Responding to MV Wakashio Oil Spill’ <<https://www.imo.org/en/MediaCentre/HotTopics/Pages/Wakashio-FAQ.aspx>> accessed 28 November 2020.

<sup>19</sup> Gonzalez and Frédéric Hébert (n 10) 201.

### 1.1.1 The Scope of its Application

The Convention recognizes that offshore installations, sea ports, oil terminals, oil pipelines and oil handling facilities are also a potential source of marine oil pollution other than ship-source pollution.<sup>20</sup> Thus, the Convention applies to all sources including offshore units, sea ports and oil handling facilities, which may provoke oil pollution incidents.

The Convention defines a ship as any kind of vessel operating in the marine environment which includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft.<sup>21</sup> It is noted that the Convention applies to all types of vessel, regardless of the ship's tonnage, which distinguishes the OPRC Convention from other IMO conventions because the OPRC Convention defines a ship in a very broader sense in order to make adequate preparation in advance in combating the oil pollution. However, the Convention does not apply to warships, naval auxiliary or other ship used only on government non-commercial service.<sup>22</sup>

### 1.1.2. General Overview of the OPRC Convention

The OPRC Convention contains nineteen Articles and an Annex. The key features of the Convention are as follows;

- **Oil pollution emergency plan** – The requirement for ship is to have on shipboard oil pollution emergency plan<sup>23</sup> which is subject to inspection by officers duly authorized by that Party while in a port or at an offshore terminal.<sup>24</sup> In addition, the State Party is obliged to ensure that operators of offshore units, sea ports, oil terminals, oil pipelines and other oil handling facilities under their jurisdiction shall have in place oil pollution emergency plans which are coordinated with the national system.<sup>25</sup>
- **Oil pollution reporting procedure** – The masters of the ship shall report to the authorities of the nearest coastal State without delay if there is any discharge or probable discharge of oil from a ship and any observed event

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<sup>20</sup> International Convention on Oil Pollution Preparedness Response and Cooperation (n 1) preambular para. 2.

<sup>21</sup> *ibid* art 2(3).

<sup>22</sup> *ibid* art 1(3).

<sup>23</sup> *ibid* art 3(1)(a).

<sup>24</sup> *ibid* art 3(1)(b).

<sup>25</sup> *ibid* art 3(2) and art 3(3).

involving oil pollution at sea.<sup>26</sup> Likewise, persons in charge of offshore units shall report any event of discharge of oil on their offshore units as well as any observed event at sea involving a discharge or presence of oil to their coastal State.<sup>27</sup> The person in charge of sea ports and oil handling facilities shall report to its competent national authority.<sup>28</sup> Parties shall instruct its maritime inspection vessels or aircraft and other relevant officials to make such report to the competent national authority.<sup>29</sup> Pilots of civil aircraft are also requested to report to the nearest coastal State.<sup>30</sup>

- **Action on receiving an oil pollution report** – When the report is received, the State Party shall assess the event to determine whether it is an oil pollution incident<sup>31</sup> and assess the nature, extent and possible consequences of the oil pollution incident.<sup>32</sup> If the assessment concludes that the incident is sufficiently serious, the State Party has an obligation to inform other countries whose interest are affected or likely to be affected by such incident<sup>33</sup> together with details of assessment, of any action taken and intended action to deal with the accident.<sup>34</sup> The States should provide the IMO with regard to the severity of oil pollution incident, their assessment of the extent of the threat to their interest and any action taken or intended.<sup>35</sup>
  
- **National and regional systems for preparedness and response** – The Convention calls for the establishment of a national system for responding promptly and effectively to oil pollution incidents.<sup>36</sup> In this regard, the State Party is under an obligation to designate the competent national authority with responsibility for oil pollution preparedness and response, national operational contact point for the receipt and transmission of oil pollution reports, authority responsible for the requesting assistance in case of serious pollution<sup>37</sup> and a

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<sup>26</sup> *ibid* art 4(1)(a)(i) and art 4(1)(b)(i).

<sup>27</sup> *ibid* art 4(1)(a)(ii) and art 4(1)(b)(ii).

<sup>28</sup> *ibid* art 4(1)(c).

<sup>29</sup> *ibid* art 4(1)(d).

<sup>30</sup> *ibid* art 4(1)(e).

<sup>31</sup> *ibid* art 5(1)(a).

<sup>32</sup> *ibid* art 5(1)(b).

<sup>33</sup> *ibid* art 5(1)(c).

<sup>34</sup> *ibid* art 5(1)(i).

<sup>35</sup> *ibid* art 5(2) and 5(3).

<sup>36</sup> *ibid* art 6(1).

<sup>37</sup> *ibid* art 6(1)(a).

national contingency plan shall be in place for preparedness and response of oil pollution.<sup>38</sup>

- The State Party shall be responsible for stockpile of a minimum level of oil pollution combating equipment.<sup>39</sup> The Party shall establish the holding of oil spill combating exercise for oil pollution response and training of relevant personnel working on ships, offshore units, sea ports, and oil handling facilities for effective preparedness and response.<sup>40</sup> The State Party is also obliged to draw detailed plans and communication responsibilities for responding to a pollution incident,<sup>41</sup> and to create mechanism to coordinate the response to an oil pollution incident.<sup>42</sup> In light of the exchange of information, the national arrangement, pollution response equipment and expertise to oil pollution response and marine salvage may be available to other States upon request, and national contingency plan be provided to the IMO.<sup>43</sup>
- **International co-operation in pollution response** – The international cooperation is an essential element of the Convention and the State Party is meant to cooperate and provide advisory services, technical support and equipment for responding to an oil pollution incident following the request of the affected States.<sup>44</sup> The Convention obliges the government of the Party to take legal or administrative measures so as to facilitate the movement of ships, aircrafts and response equipment and personnel during oil pollution incident.<sup>45</sup> Parties are endeavored to conclude bilateral or multilateral agreements for oil pollution preparedness and response.<sup>46</sup>
- **Research and development** – The Convention encourages the State Parties to co-operate directly or through the IMO or regionally to promote and exchange research and development programmes relating to the enhancement of the state-of-the-art of oil pollution preparedness and response, and establishment

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<sup>38</sup> *ibid* art 6(1)(b).

<sup>39</sup> *ibid* art 6(2)(a).

<sup>40</sup> *ibid* art 6(2)(b).

<sup>41</sup> *ibid* art 6(2)(c).

<sup>42</sup> *ibid* art 6(2)(d).

<sup>43</sup> *ibid* art 6(3).

<sup>44</sup> *ibid* art 7(1).

<sup>45</sup> *ibid* art 7(3).

<sup>46</sup> *ibid* art 10.

of links between research institutions and the holding of international symposia.<sup>47</sup>

- **Technical co-operation** – State Parties undertake directly or through the IMO arrangements to provide support for those Parties which request technical assistance, such as in the training of personnel and ensuring the availability of relevant technology, equipment and facilities, facilitation and initiate joint research and development programmes.<sup>48</sup>
- **Institutional arrangements** – The role of the IMO under the Convention is to perform the information services, education and training, technical service and technical assistance.<sup>49</sup> The Organization in carrying out these activities shall endeavor to strengthen the ability of States individually or through regional arrangements to prepare for and combat oil pollution incidents.<sup>50</sup>
- **Reimbursement of cost assistance** – By recognizing the substantial amount of costs involved in combating the oil pollution incident, the Convention provides a set of rules for the reimbursement of any assistance in its Annex. The basic principle is that if the State requests the assistance of another State in pollution response, the requesting State shall reimburse to the assisting State unless the assisting State takes on its own initiative.<sup>51</sup> The reimbursement of such costs is calculated in accordance with the law and current practice of the assisting State.<sup>52</sup>

## 1.2. The OPRC-HNS Protocol

It is estimated that of about 37 million different chemicals are transported regularly by sea, either in bulk or in packaged form.<sup>53</sup> The hazardous and noxious substances pollution from ship has attracted international attention since the number of ships carrying hazardous and noxious substance is growing. Being aware of the emerging threat of pollution involving chemicals, State Parties to the OPRC Convention adopted the Protocol on Preparedness, Response and Co-operation to

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<sup>47</sup> Ibid art 8(1) (2) (3).

<sup>48</sup> Ibid art 9(1).

<sup>49</sup> Ibid art 12(1).

<sup>50</sup> Ibid art 12(2).

<sup>51</sup> Ibid annex para (1) (a).

<sup>52</sup> Ibid annex para (2).

<sup>53</sup> Dr. Karen Purnell, 'Are HNS Spills more Dangerous than Oil Spills?' (2009) 6.

Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS Protocol) in March 2000.<sup>54</sup>

### **1.2.1. The Objectives of the OPRC-HNS Protocol**

The objectives of the OPRC-HNS Protocol, similar to the OPRC Convention, is to establish a framework developing national capacity to prepare for and respond to hazardous and noxious substance pollution incident, and to provide a platform for international cooperation and mutual assistance in preparing and responding to major hazardous and noxious substances pollution incidents.<sup>55</sup>

### **1.2.2. The Scope of its Application**

The OPRC-HNS Protocol is a supplement of the OPRC Convention because the pollution incident involving chemicals was not covered in the OPRC Convention. In the preamble of the OPRC-HNS Protocol, it recalls the Resolution 10, on the expansion of the scope of the OPRC Convention , to include hazardous and noxious substances, adopted by the Conference on International Co-operation on Oil Pollution Preparedness and Response 1990.<sup>56</sup> The OPRC-HNS Protocol is thus an expansion of the OPRC Convention and follows the same principles. The only notable difference is that the OPRC Convention deals with the oil pollution incident, whereas the OPRC-HNS Protocol addresses the hazardous and noxious substance incident. The hazardous and noxious substance is defined as follows in the Protocol,<sup>57</sup>

“any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.”

It is important to note that not all chemicals transported by sea are considered hazardous but hazardous and noxious substance may present one or any combination of the following hazards: flammability, explosivity, toxicity, reactivity, corrosivity, and radioactivity.<sup>58</sup> Similar to the OPRC Convention, the OPRC-HNS Protocol

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<sup>54</sup> Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (n 2).

<sup>55</sup> Patricia Charlebois, Pollution Response, ‘IMO Initiatives on Preparedness and Response to an HNS incident’

<<https://www.itopf.org/fileadmin/data/Documents/Papers/charlebois.pdf>> accessed 16 December 2020.

<sup>56</sup> *ibid* preamble para (2).

<sup>57</sup> *ibid* art 2(2).

<sup>58</sup> Purnell (n 53) 4.

applies to ships, except any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.<sup>59</sup>

### **1.2.3. The Contents of the OPRC-HNS Protocol**

The format and structure of the OPRC-HNS Protocol is the same as the OPRC Convention because the provisions contained in the Convention are equally applicable to pollution incidents by hazardous and noxious substances. The basic principles of the OPRC-HNS Protocol such as shipboard pollution emergency plan, incident emergency plan at sea port and hazardous and noxious substance handling facilities, reporting of chemical discharges from ship, notification to other States in the case of major chemical spills, establishment of a national system for preparedness and response to incident, national chemical spill contingency plan, storage of responding equipment and dispersants, holding of exercise and training, international cooperation in pollution response, research and development and mutual assistance in technical matters are the same with its parent OPRC Convention. The OPRC-HNS Protocol has eighteen Articles and Annex. The salient features of the OPRC-HNS Protocol are as follows:

- Obligations to ensure that ships entitled to fly its flag have on-board a pollution incident emergency plan and the masters or other persons in charge of such ships follow reporting procedures in the event of hazardous and noxious substance incident;<sup>60</sup>
- The authorities or operators in charge of sea ports and hazardous and noxious substances handling facilities shall have pollution incident emergency plans for hazardous and noxious substance;<sup>61</sup>
- The Parties of the Protocol have an obligation to inform the other States whose interests are likely to be affected by such hazardous and noxious substance incident;<sup>62</sup>
- The obligations to establish a national system for responding promptly and effectively to pollution incidents by the following procedures:

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<sup>59</sup> Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (n 2) art 1(3).

<sup>60</sup> *ibid* art 3(1).

<sup>61</sup> *ibid* art 3(2).

<sup>62</sup> *ibid* art 3(3).

- Designate a national competent authority that is responsible for preparedness and response to hazardous and noxious substance pollution incident, national operational contact point, and an authority entitled to act on behalf of the State in rendering and receiving the assistance;<sup>63</sup>
- A national contingency plan for preparedness and response shall be in place;<sup>64</sup>
- Establish pre-positioned equipment for responding to hazardous and noxious substance pollution incidents and programmes for its use, exercise and training of relevant personnel for pollution incident response, detailed plans and communication capabilities for responding to an incident and mechanism for coordinating response and mobilizing the necessary resources;<sup>65</sup>
- The current information with regard to the national system for pollution preparedness and response be provided to IMO;<sup>66</sup>
- The Parties to the Protocol agree to cooperate and provide advisory services, technical support and equipment for the purpose of responding to a pollution incident, when the severity of the incident so justifies, upon the request of any Party affected or likely to be affected;<sup>67</sup>
- The Parties to the Protocol have an obligation to take necessary legal or administrative measures to facilitate the arrival and utilization in and departure from its territory and the expeditious movement into, through, and out of its territory of personnel, cargoes, materials and equipment in responding to a hazardous and noxious substance incident;<sup>68</sup>
- The Parties to the Protocol agree to cooperate in research and development activities and technical assistance;<sup>69</sup> and
- The Parties shall take endeavor to conclude bilateral or multilateral agreements for preparedness for and response to pollution incidents.<sup>70</sup>

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<sup>63</sup> *ibid* art 4(1)(a).

<sup>64</sup> *ibid* art 4(1)(b).

<sup>65</sup> *ibid* art 4(2).

<sup>66</sup> *ibid* art 4(3).

<sup>67</sup> *ibid* art 5(1).

<sup>68</sup> *ibid* art 5(3).

<sup>69</sup> *ibid* art 6 and 7.

<sup>70</sup> *ibid* art 8.



## **2. The Reason for Myanmar to Legislate on the OPRC Convention and its Protocol**

Myanmar is a country in Southeast Asia located along the west coast of the peninsula of Indochina and it is bounded by the Bay of Bengal and the Andaman Sea on the south and southwest. The length of the Myanmar's coastline is about 2,228 kilometers which is measured from the mouth of the Naaf River on the border with Bangladesh to Kawthaung, the border crossing from Thailand. Myanmar shares maritime boundaries with Bangladesh, India and Thailand, respectively. Myanmar waters also comprise over 800 islands of various sizes that can be found in the Bay of Bengal, south of Irrawaddy delta, and Myeik archipelago off the Tanintharyi coast.

Myanmar promulgated its Territorial Sea and Maritime Zone Law on 17 July 2017 in accordance with the provisions contained in the United Nations Convention on the Law of the Sea.<sup>71</sup> According to the data from the Ministry of Defense of Myanmar, Myanmar has 9,895 nautical square miles of territorial waters, 92,392.1250 nautical square miles of exclusive economic zone and the total area of Myanmar's waters has 141,210.6508 nautical square miles.

Considering the geographical context of Myanmar, it could become a hub for maritime trade and transportation in the region as well as a gateway to the Far East, Southeast Asia and South Asia. The Bay of Bengal provides Myanmar an easy access to the world's shipping lane in the Indian Ocean. In this respect, ocean related issues and maritime affairs are of great importance for the sustainable development of Myanmar, while taking necessary actions to ensure sustainability of marine environments, safety of navigation and to regulate measures for prevention and control of ship-source pollution.

Myanmar is undergoing a period of transition from a centralized economy to a market economy and dynamically evolving after the reform of 2011, gradually opening up opportunities for foreign and domestic investments.<sup>72</sup> In order to foster the economic development of Myanmar, the maritime transport serves as one of the most important sectors in opening up of country's economy since more than eighty five percent of the country's exports and imports are carried by maritime transport. The

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<sup>71</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) UNTS 516.

<sup>72</sup> Ministry of Commerce, The Republic of the Union of Myanmar, 'Myanmar – Logistic Opportunities and Prospects' <<https://www.commerce.gov.mm/my/content/myanmar-logistic-opportunities-and-prospects>> accessed 29 November 2020.

government has also given great emphasis to develop the deep sea ports along the coast. The deep sea ports being implemented in Myanmar are Kyauk-Phyu deep sea port in the Rakhine State on the west coast and Dawei deep sea port in the Tanintharyi region on the south coast.

The Kyauk-Phyu deep sea port consists of Made island terminal and Yanbye island terminal. A 300,000 ton crude oil terminal on Made island has been built since the Made island oil terminal is the starting point of the Myanmar-China crude oil pipeline connecting from Made island to Ruili in the southwestern Chinese province of Yunnan.<sup>73</sup> The crude oil pipeline is 771 kilometer long, and it is expected to export 22 million tons of crude oil annually. A dozen of crude oil tankers have docked at Made island for transmission of crude oil to China. According to Kunming Customs in southwest China's Yunnan Province, 10.8 million tons of crude oil was imported to China through pipeline in 2019.<sup>74</sup>

Myanmar receives a massive amount of oil per annum via the Myanmar-China crude oil pipeline project alone and the risk of oil pollution caused by ships in Myanmar waters is increasing. Furthermore, the deep sea mining is, as an essential economic sector in Myanmar, one of the human activities at sea which has become a growing source of marine oil pollution. The offshore blocks for oil exploration and production are being carried out in the exclusive economic zone and there are twenty seven blocks out of fifty one are in operation. The offshore blocks also pose a threat to the marine pollution from blowouts and other marine accidents.

In addition, there are currently nine ports, spreading across the entire coastline, that serve coastal and seaborne trade. A total of 20 shipping lines calls at the Yangon and Thilawa port and the vessels calling to the port of Yangon over the last decade were significantly increased, rising from 971 in 2003-2004 to 2,334 in the fiscal year 2013-2014.<sup>75</sup> Shipping traffic is more congested in the Yangon river area since several oil terminals and general cargo wharves are situated along the Yangon river.

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<sup>73</sup> China National Petroleum Corporation, 'Myanmar-China Oil & Gas Pipeline Project (Myanmar Section) Special Report on Social Responsibility' <<http://www.cnpc.com.cn/en/myanmarcsr/201407/8de2c1f19f2c46e19fcb4afdbc05abf0/files/51ef2416408e480d9ab8d50d675354e2.pdf>> accessed 29 November 2020.

<sup>74</sup> Xiaosia, 'China-Myanmar pipeline carries 10.8 mln tonnes crude oil in 2019', (Xinhua 14 January 2020) <[http://www.xinhuanet.com/english/asiapacific/2020-01/14/c\\_138704469.htm](http://www.xinhuanet.com/english/asiapacific/2020-01/14/c_138704469.htm)> accessed 29 November 2020.

<sup>75</sup> Maritime Land, 'Myanmar, Maritime Quickscan' <<https://www.maritieland.nl/wp-content/uploads/2016/04/Myanmar-Maritime-Quickscan-Report-March-2016.pdf>> accessed 29 November 2020.

The new port and terminal developments are under consideration to ensure the maritime safety and security in the Yangon river area.

Despite there has been no significant disastrous pollution incident recorded yet in any port or within Myanmar waters other than some minor incidents had already happened in Yangon river and off coast of Myanmar, it is undoubtedly for Myanmar to face major oil pollution discharged from ships in the near future due to increased shipping traffic in Myanmar. The oil pollution does not recognize the political boundary, and the adjacent States will be affected once the substantial amount of oil has been spilled by the oil tankers or offshore units. In this context, the most important contemporary issue to be dealt in Myanmar is to enact the national legislation to prepare for and respond to oil or hazardous and noxious substance pollution incidents when it occurs not only in Myanmar's territorial sea and exclusive economic zone but also in the waters of the neighboring countries, in compliance with the OPRC Convention.

### **2.1. The Need for Legislation on Preparedness and Response to Oil and HNS Pollution**

In the field of maritime administration, several maritime legislative instruments have been promulgated such as Myanmar Merchant Shipping Act, Inland Vessel Law, the Myanmar Coastal and Inland Water Transport Service License Law, The Carriers Act, the Bills of Lading Act and Myanmar Port Authority Law. At the international level, Myanmar is a State Party to UNCLOS and has acceded to IMO key conventions. Myanmar has signed for accession the OPRC Convention in 2016, becoming the 111<sup>th</sup> State to accede to the Convention. Myanmar has not ratified the OPRC-HNS Protocol but it should be ratified in the future.

Myanmar recognizes the importance of environmental protection and conservation to achieve the continuous development. The Constitution of the Republic of the Union of Myanmar lays down the State's responsibility to protect and conserve natural environment.<sup>76</sup> The laws on the protection of environment have been developed since 2011 as part of the national reform process. On 30 March 2012, the Environmental Conservation Law was promulgated by the Pyidaungsu Hluttaw (Union Parliament) in which the environmental emergency situation is addressed in Article 2 (p) and Article 9 (b), respectively. The said Articles state that at an event of

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<sup>76</sup> Constitution of the Republic of the Union of Myanmar 2008, s 45.

environmental emergency situation, which may affect the safety and health of the public or the environment and ecosystem, the concerned department shall carry out necessary measures relating to the environmental emergency.<sup>77</sup>

Furthermore, the Union Parliament enacted the Natural Disaster Management Law on 31 July 2013 which provides an overarching framework for the disaster management. The oil spills or leakage of gas is one of the forms of natural disaster under the Natural Disaster Management Law.<sup>78</sup> In addition, a Natural Disaster Management Committee was formed to assign the functions and duties of relevant Ministries, departments and government organizations to guide, supervise and ensure effective and expeditious implementation of disaster risk reduction.<sup>79</sup> The preparatory measures must be organized before natural disaster in the area where is likely to strike natural disaster and preparing the disaster risk assessment and planning emergency management.<sup>80</sup>

The aforementioned laws reflect the national commitment to protect, preserve and mitigate the adverse impact on environment. However, there are a lot of limitations on the protection of marine environment. Firstly, the rules contained in the Environmental Conservation Law do not specifically deal with the protection of marine environment, while the law concerning the management of natural disaster does not focus on the pollution of the sea by oil and hazard and noxious substances discharged from ship and offshore activities. Moreover, although the said laws enhance the national capacities to planning and response in the emergency situation of natural disaster, the prevention and risk reduction as to precautionary measure was not adequately provided and the contingency planning for preparedness and respond to every forms of disaster was not identified in the laws.

Secondly, the prevention of marine pollution has not been explicitly stipulated in any specialized laws, and the national legislation to prepare for and response to oil and hazard and noxious substances incident remain under development. Since there is a lack of national law, the subsequent repercussion is that the comprehensive national legal framework which covers preparation and response for oil and hazardous and noxious substance pollution arising from ships and the offshore activities still need to be developed. It is, therefore, necessary to promulgate the law establishing the

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<sup>77</sup> Environmental Conservation Law 2012, s 2 (p) and 9 (b).

<sup>78</sup> Natural Disaster Management Law 2013, s 2 (b).

<sup>79</sup> *ibid* s 5 (g).

<sup>80</sup> *ibid* s15 (a).

national system in order to effectively deal with oil spill response and international cooperation for the prevention and protection of marine environment.

The national law will give legal impetus to establish the national system that ensure every oil tanker of 150 gross tonnage and above, and every ship other than an oil tanker of 400 gross tonnage and above must carry on board a Shipboard Oil Pollution Emergency Plan (hereinafter referred to as Plan) approved by the flag State in accordance with regulation 37 of MARPOL, Annex I and article 3 (1) (a) of the OPRC Convention. The MEPC at its thirty- second session adopted Guidelines for the development of Plan under cover of resolution MEPC.54 (32). According to the Guideline, the Plan is to set in motion the necessary actions to stop or minimize the discharge of oil and mitigate its effect.

The master of the ship is obliged to report the nearest coastal States in the case of actual or probable discharges and the intent of this requirement is to ensure that coastal States are informed without delay of any incident giving rise to pollution or threat of pollution of the marine environment as well as of assistance and salvage measures, so that appropriate action may be taken.<sup>81</sup> The ship involved in a pollution incident will have to communicate with both coastal State or port contacts and ship interest contacts.<sup>82</sup> In order to expedite response and minimize damage from a pollution incident, it is essential that appropriate coastal States be notified without delay.<sup>83</sup> When the ships lie in port, notification of local agencies will take responsibility for speedy response, and the Plan also should provide details of all parties with an interest in the ship to be advised in the event of an incident.<sup>84</sup>

Furthermore, the operator of seaports, offshore units, and oil and hazardous and noxious substance handling facilities will have to report to the competent national authority of coastal State without delay any event involving a discharge or probable discharge of oil into the sea. The national law will also compel the operators in the oil industry to store the spill response equipment and conduct pollution incident emergency response exercises and drills. In addition, the national law will designate the relevant authority to oversee the oil pollution preparedness and response, thereby the master of ship, sea port and offshore unit will be able to identify to whom they

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<sup>81</sup> International Maritime Organization, Guideline for the Development of Shipboard Oil Pollution Emergency Plans, Resolution MEPC. 54 (32) adopted on 6 March 1992.

<sup>82</sup> *ibid.*

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid.*

should report when the spill of oil and hazardous and noxious and substance incident occurs within the maritime zones of Myanmar.

Thirdly, Myanmar is a developing country which does not hold a substantial amount of dispersants, adequate human resources and lack of high technology to combat oil and hazardous and noxious substance pollution incident. International cooperation plays a major role in combating the oil and hazardous and noxious substance pollution incident. Myanmar is under obligation as per the OPRC Convention to request assistance or to decide to render assistance requested from the neighboring countries in the event of major oil spill and hazardous and noxious substance incident. In this regard, the national law shall set the clear guidance in a way to seek bilateral, regional and international cooperation in order to reduce the devastating effect on the environment caused by oil and hazardous and noxious substance.

Last but not least, Myanmar has an international obligation to protect and preserve the marine environment as being a State Party of the UNCLOS which provides that all States have a general obligation to protect and preserve the marine environment and duty to enforce international regulations to protect the marine environment from all sources of pollution. The general obligation of States for protection and preservation of the marine environment is contained in Article 192 and 194 of the UNCLOS. It is a basic principle of international law that a State Party to an international treaty shall adhere to the rights and obligation of the treaty. The treaty obligations will become applicable and enforceable domestically only after the provisions contained in the treaty are incorporated into domestic laws. Since Myanmar is a State Party to the UNCLOS and OPRC Convention, Myanmar should adopt national legislation to fulfill the obligations set forth in the UNCLOS and OPRC Convention.

## **2.2. Designation of the National Competent Authority for Preparedness and Response to Oil and Hazardous and Noxious Substance Pollution**

The coordination and concerted action amongst Government departments, Governments of the Regions and States, and local authorities is required in combating the oil and hazardous and noxious substance spill incident. The Government thus should authorize government entity to serve as the Competent National Authority, as indicated in the OPRC Convention. The designated authority shall have a capacity to

coordinate between the concerned authorities of the Government at all level, and it shall have decision making authority for preparedness and response to oil and hazardous and noxious substance pollution.

It is noted that the organizational structure of the Government is unclear which department is solely responsible to prepare for and response to the oil and hazardous and noxious substance incident since the Ministry responsible for the disaster management is the Ministry of Social Welfare, Relief and Resettlement according to the Natural Disaster Management Law, while the Ministry of Natural Resources and Environmental Conservation is in charge of protecting the environment by virtue of the Environmental Conservation Law. In addition, it is observed that the departments under the aforesaid Ministries do not have expertise to deal with marine pollution.

The national authority, which would be exclusively dedicated to effectively manage and adopt measures for the oil and hazardous and noxious substance pollution, should be established under the auspice of the Ministry of Transport and Communication because of its authoritative power in governing the maritime affairs. It has been planned to establish the National Oil and Hazardous and Noxious Substance Preparedness and Response Centre so as to prepare for the spill response in cooperation with the relevant authorities at the different level.

### **3. The Legislative Process**

Myanmar practices a dualist system. It recognizes the primacy of international law over domestic law in its legislation. However, an international convention does not become part of the national law and there is no effect in the domestic court unless the norms and principles of an international convention are incorporated into the domestic law. The national legislation thus is necessary for the effective implementation of an international convention.

Myanmar's legislative process is bureaucratically extensive requiring comprehensive reviews by many government organizations. The concerned Ministry shall translate the international convention into the Myanmar language and the translated language shall be checked by the Union Attorney-General office, and the Security, Tranquility and Law Enforcement Committee finally examine on the draft bill before submitting to the President's office. Upon completion of such process, the draft bill is sent to the Parliament for discussion, scrutiny and approval. The draft bill can be introduced in the lower chamber, the House of Representatives or the upper

chamber, the House of Nationalities. If there is no discrepancy on the draft bill between the two houses, it shall be regarded as approved by the Union Parliament. The approved bill must be signed by the President and published in Myanmar Gazette to take effect in the domestic court.

### **3.1. Implementation of OPRC Convention and OPRC-HNS Protocol in Myanmar**

Myanmar is a contracting State to most of the IMO Conventions, including the OPRC Convention. The Department of Marine Administration (DMA) is the focal department to ensure the effective implementation of IMO Conventions as flag State, port State and coastal State. After ratification or accession to the IMO Conventions, the Department of Marine Administration initiated the procedural steps with a view to domesticating the international law. To ensure the OPRC Convention and OPRC-HNS Protocol are enforceable in Myanmar, the first step that DMA took was translation of the said two IMO instruments into national language. Thereafter, the working group was formed with the experts and legal professional to discuss and analyze the norms and principles that should be incorporated into the national law.

The draft bill was sent to the Union Attorney-General Office and the other concerned Ministries for comments and suggestions. The draft bill was revised when the comments received from the relevant authorities. The coordination meetings and many rounds of discussion were held to undertake the comprehensive review on the draft bill amongst the concerned Ministries and stakeholders. The draft bill namely Preparedness, Response and Co-operation on Pollution incidents by Oil and Hazardous and Noxious Substance Act is now at the hand of the members of Parliament for considerations and approve on the draft bill, unless amendments may be proposed by the Parliament.

**As stated above, Myanmar is a State Party to the OPRC Convention but not a party to the OPRC-HNS Protocol.** Nevertheless, the Government is of the view that there should be a standalone law in which substantive incorporation were embodied to ensure the effective implementation of preparedness, response and cooperation for oil and hazardous and noxious substance pollution. The Parliament should consider accession to the OPRC-HNS Protocol before the proposed Preparedness, Response and Co-operation on Pollution incidents by Oil and Hazardous and Noxious Substance Act is promulgated by the Parliament.



Being a dualist country, the proposed draft bill will only be able to put forth for approval after Myanmar has acceded to the Protocol. Thus, the Parliament should convene the session as early as possible to discuss about the OPRC-HNS Protocol in order to accede the Protocol in due course. Consequently, the Centre can set up only after the draft bill become the law and it is of utmost importance to establish the Centre as it will ensure to implement this national maritime legislation and regulate the activities in compliance with the OPRC Convention and the OPRC-HNS Protocol. It is worth mentioning at this stage that the holistic approach is necessary in combating the oil and hazardous and noxious substance pollution.

### **3.2. Establishment of the National Oil and Hazardous and Noxious Substance Preparedness and Response Centre**

By virtue of the dualist system in Myanmar, the National Oil and Hazardous and Noxious Substance Preparedness and Response Center (hereinafter referred to as the Centre) shall be established only after the promulgation of the proposed draft bill. Following approval by the Union Parliament, the Ministry of Transport and Communication will be able to submit organizational structure of the Centre to the Union Government, and subsequently the Director-General and the staff of the Centre shall be appointed in due course. The Centre shall have a governing board and the board is composed of the government officials from the relevant Ministries, Governments of Regions and State, Navy and other concerned authorities.

The Centre is the government specialized organization designed to protect and systematically conserve the national marine environment, and it will become one of the principal departments of the Ministry of Transport and Communication. It is imperative that the Centre shall have to work hand-in-hand with the DMA in order to effectively and efficiently perform its functions. The Centre will engage in management support and decision-making services for preparation and emergency response to oil and hazardous and noxious substance pollution incident. The establishment of the Centre will enhance the capacity to fight against the oil and hazardous and noxious substance pollution arising from the ship, port, offshore units and oil and hazardous and noxious substance handling facilities.

### **3.3. Explanation of the Draft Bill**

The aim and objectives of the Draft bill is to implement and enforce the provisions set forth in the OPRC Convention and the OPRC-HNS Protocol through

appropriate national legislation. The draft bill provides the clear guideline on managing the potential risk of marine pollution, and the rules, as set out in the bill, will apply when oil and hazardous and noxious substance incident occur in Myanmar waters. The draft bill also develops the national competent authority which has the ultimate decision-making authority for oil spill preparedness and response in line with the OPRC Convention and the OPRC-HNS Protocol. The international cooperation, reporting of marine pollution, research and development in technology are also provided in the draft bill.

### **3.4. Overview of the Draft Bill**

The OPRC Convention and the OPRC-HNS Protocol are international maritime convention establishing measures for dealing with marine oil pollution incident nationally and in cooperation with other countries. The bill seeks to give effect to the said conventions. The purpose of the bill is to incorporate the provisions of the OPRC Convention and OPRC-HNS Protocol into the law of Myanmar. The overview of the draft bill is as follows: -

Chapter I contains name, interpretation of the main terms used under the Act and the scope of application of the Act. Chapter II provides for the basic principles which are intended to achieve the rules provided under the Act.

Chapter III provides for the establishment of the National Oil and Hazardous and Noxious Substance Preparedness and Response Centre which will serve as the National Competent Authority to oversee and manage the preparedness and response to oil and hazardous and noxious substance pollution incident. This Chapter set out the functions and power of the Centre that enable the Centre to discharge its functions effectively and efficiently, and also provides for the organizational framework of the Centre such as appointment of Director-General and staff, sources of funding to the Centre, audit and annual report for the performance of the Centre.

Chapter IV provides the Governing Body of the Centre and the Board is composed of the representatives from the relevant Ministries, Navy and Region and State Governments which involve in the marine pollution preparedness and response. The Board plays a prominent role which provides advice, recommendations and support to the Centre and render the necessary guidance for the prevention of and response to oil, and hazardous and noxious substance pollution incident. In this

respect, this Chapter mainly deals with the functions of the Board, appointment and tenure of members, and their entitlement to allowance and conduct of the meetings.

Chapter V provides for the preparation of oil and hazardous and noxious substance pollution incident. The Centre must prepare the national contingency plan aimed at alleviating the oil and hazardous and noxious substance spill in Myanmar waters. In addition, the port, offshore installation and oil and hazardous and noxious substance handling facility shall develop pollution incident emergency plan and submit to the Centre for considerations and approval. This Chapter also provides that the operator of oil and hazardous and noxious substance handling facility and offshore installation shall establish and maintain dispersants and marine pollution response equipment inventory and the operators are also obliged to develop training and exercise programmes.

Chapter VI provides for the reporting procedures and communication in pollution incidents in line with Article 4 of the OPRC Convention. This is one of the critical aspects of the convention to trigger the incident response actions according to the contingency plan mechanisms. Furthermore, this Chapter lay down for the international cooperation in pollution response if the pollution incident is severe and highly likely to affect the other States. The cooperation is very important for the developing country like Myanmar, and therefore, this Chapter also deals with sharing of resources and the facilitation of the movement of equipment and personnel in the likelihood of an incident requiring bilateral and regional cooperation.

Chapter VII provides for the oil and hazardous and noxious substance pollution response. In this respect, the Act makes the provisions to appoint Incident Commander for the initial response actions by the Incident Response Team. The role of Incident Commander is to manage and co-ordinate all operations and to pull existing resources within the national contingency plan mechanism and the Centre will request from the Union Government to provide necessary support to effectively undertakes the response action. This Chapter also lays down the Three-tier response system so that the operators of the port and facility are required to respond to an oil spill that is appropriate to their level of responsibility. An incident response should have a beginning and an end. This Chapter therefore empowers the Incident Commander to terminate the response, with the approval of the Ministry and Centre, and incident response report must be published six months after an incident.

Chapter VIII provides for the research and development and technical cooperation. This Chapter endeavors to commence the necessary action to be taken in relation to the development of technology and techniques for pollution preparedness and response. The Centre shall establish necessary links between research institutions to improve the technology.

Chapter IX is the miscellaneous part which includes offences and penalties to those who fail to carry out the obligations provided under the Act, bilateral, regional and multilateral cooperation in pollution preparedness and response, the cost incurred for the response activities and the power of the Ministry to issue general rules and regulations in relation to the Act.

#### **4. Conclusion**

It is envisaged that the risk of maritime accidents is likely to encounter much more frequently as a result of the increase of shipping traffic in Myanmar waterways and development of ports and offshore installations activities in Myanmar waters. The proposed legislation will become a framework for the oil and hazardous and noxious substance spill preparedness, response and cooperation. By adoption of this Act, the government will be able to regulate and set the standards for operation and planning for emergency response to oil and hazardous and noxious spill incident. Therefore, the law concerning the preparedness, response and cooperation on pollution incidents by oil and hazardous and noxious substance should be reviewed and approved without undue delay for the common interest of safeguarding the marine environment.

**To be deposited with the DEPOSITORY OF THE CONVENTION**

**GENERAL MODEL INSTRUMENT OF ACCESSION**

WHEREAS the Protocol on Preparedness Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, was adopted at London on 15 March 2000 by the Diplomatic Conference,

AND WHEREAS The Republic of the Union of Myanmar, being a State entitled to become a party to the said Protocol on Preparedness Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances by virtue of Article 13 thereof,

NOW THEREFORE the Government of The Republic of the Union of Myanmar having considered and approved the said Protocol on Preparedness Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, hereby formally declares its accession to the Protocol on Preparedness Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances.

IN WITNESS WHEREOF I, ...(name)... [President] [Prime Minister] [Minister for Foreign Affairs] of the Government of The Republic of the Union of Myanmar have signed this Instrument of Accession and affixed [my] [the] official seal.

DONE at ....., this..... day of ..... two thousand and.....

(Seal)

(Signature)

[President] [Prime Minister]  
[Minister for Foreign Affairs]

**PREPAREDNESS, RESPONSE AND CO-OPERATION ON  
POLLUTION INCIDENTS BY OIL AND HAZARDOUS AND  
NOXIOUS SUBSTANCE ACT**

**ARRANGEMENT OF SECTIONS**

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**PREPAREDNESS, RESPONSE AND CO-OPERATION ON  
POLLUTION INCIDENTS BY OIL AND HAZARDOUS AND  
NOXIOUS SUBSTANCE ACT**

(The Pyidaungsu Hluttaw Law No.-----, 2021)

The Pyidaungsu Hluttaw hereby enacts this Law.

**CHAPTER I  
PRELIMINARY**

Title	1. This Law shall be cited as Preparedness, Response and Co-operation on Pollution incidents By Oil and Hazardous and Noxious Substance Act.
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Interpretation	2. The following expression contained in this Act shall have meanings given hereunder:
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“Board” means Board of the National Oil and Hazardous and Noxious Substance Preparedness and Response Centre referred to in section 25;

“Centre” means National Oil and Hazardous and Noxious Substance Preparedness and Response Centre established by Section 5;

“Chairman” means the Chairman of the Board referred to section 25 (a);

“Director-General” means the Director-General of the National Oil and Hazardous and Noxious Substance Preparedness and Response Centre;

“Financial year” means the period beginning on 1 November of a specific year and ending on 30 October of the following year;

“Hazardous and Noxious Substances (HNS)” means any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea;

“Member” means member of the Board under section 25;

“Minister” means the Cabinet Minister responsible for the Ministry of Transport and Communication;

“Ministry” means Ministry of Transport and Communications;

“Myanmar waters” means:-

- (a) the internal waters;
- (b) the territorial sea;
- (c) the contiguous zone;
- (d) the exclusive economic zone

of Myanmar as defined in Territorial Sea and Maritime Zone Law 2017;

“Myanmar Ship” means a ship registered under the Myanmar Registration of Ship Act;

“National Contingency Plan” means a strategic overview for responses to marine pollution from shipping and offshore installation;

"Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

"Oil or HNS pollution incident" means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil or HNS and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response;

"Offshore facility" means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil;

“Oil and HNS handling facility” those facilities which present a risk of a marine pollution incident and include harbours, oil/HNS terminals, pipelines and storage tanks adjacent to the shore;

“Operator”, in relation to an oil handling facility or an offshore installation, means a person having, for the time being, the management of such facility or installation in Myanmar;

“President” means President of the Republic of the Union of Myanmar;

“Port facility” means a location, as determined by the Myanmar Port Authority according to the Myanmar Port Authority Law, where ship/port interface takes place, and includes a terminal within a port operating and a single point mooring within a port limit;

“Port” has the same meaning as in the Section-3 of Myanmar Port Authority Law;

“Ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, and floating craft of any type;

“Union Government” means Government of the Republic of the Union of Myanmar.

Scope of  
Application

3. Unless otherwise expressly provided, this Act shall apply to –
  - (a) all Myanmar ships wherever they may be;
  - (b) all foreign ships navigating in Myanmar waters;
  - (c) all offshore facility and port within Myanmar waters;
  - (d) all port with oil and HNS handling facility in Myanmar; and
  - (e) all Government or private entity that use oil or HNS handling facility in Myanmar.
  
4. This Act shall not apply to, or in relation to –
  - (a) a warship or other ship that:
    - (i) is operated for a naval or military purpose by Myanmar Defense Force; or
    - (ii) is operated by the Government only for the non-commercial service.
  - (b) Ships referred to in subsection 4 (a) (i) and (ii) shall, so far as is reasonable and practicable, act in a manner consistent with this Act.
  - (c) The Minister may make regulations prescribing the manner and extent to which the provisions of this Act apply to Myanmar Government ships operated for non-commercial service.
  - (d) Any war ships, naval auxiliary or other ships owned or operated by the Government of a State other than Myanmar and used, for the time being, only on Government non-commercial service.

**CHAPTER II**  
**OBJECTIVES**

Basic Principles

5. This Act shall be implemented in accordance with the following basic principles:
- (a) to protect and preserve the marine environment;
  - (b) to provide prompt and effective response to pollution incidents by oil and hazardous and noxious substance; and
  - (c) to provide for the effective cooperation with neighboring countries.

**CHAPTER III**  
**ESTABLISHMENT OF THE NATIONAL OIL AND HAZARDOUS AND NOXIOUS SUBSTANCE PREPAREDNESS AND RESPONSE CENTRE**

Establishment of the Centre

6. There is hereby established the National Oil and Hazardous and Noxious Substance Preparedness and Response Centre (hereinafter referred to as the Centre in this Act) under the supervision of Ministry.

7. The Centre:

- (a) shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and shall have the power to enter into contracts and incur obligations;
- (b) shall have the right to acquire, hold, mortgage, purchase, sell, lease and deal howsoever with property, whether movable or immovable, real or personal for the purpose of this Act;
- (c) shall succeed the capital issued by the State, possess and use its owned or succeeded fund, moveable property and immoveable property trusted or allowed concession by the State.

8. The common seal of the Centre shall be kept in such custody as the Centre directs and shall not be used except as authorized by the Administration.

Functions of the Centre

9. The functions of the Centre are: -

- (a) to perform the functions and exercise the powers as are conferred upon it by this Act or under any existing law;

- (b) to develop and implement the national strategy on matters pertaining to oil and hazardous and noxious substance pollution preparedness and response;
- (c) to prepare for and response to pollution incidents by oil and hazardous and noxious substance;
- (d) to ensure that a national contingency plan is developed and implemented;
- (e) to co-ordinate with Government agencies, State and Regional Governments, and to cooperate with regional and international organizations on matters concerning prevention of and response to oil and hazardous and noxious substance pollution incidents;
- (f) to act on behalf of the State in relation to any domestic or international agreement relating to oil and hazardous and noxious substance pollution prevention at sea;
- (g) to give advice and make recommendations on policy and plan to the Minister regarding oil and hazardous and noxious substance pollution prevention at sea;
- (h) to collect data relevant to oil and hazardous and noxious substance pollution prevention at sea;
- (i) to provide training services for upgrading the capacity of staffs at port, offshore installation, and other oil and hazardous and noxious substance handling facility;
- (j) to carry out research and cooperate with technical institutions, whether local or foreign, for the development of state-of-art technology on marine pollution prevention;
- (k) to distribute information and technology to take precautionary measures not to cause oil and hazardous and noxious substance spills from ships, ports and oil and hazardous and noxious substance handling facility;
- (l) to carry out necessary supplementary or consequential acts as are convenient for carrying out its functions.

10. The Centre shall not perform, or be required to perform any function not expressly provided under subsection 9, except on such other matters arising out of this Act as the Union Government may refer to it for advice.

Power of the  
Centre

11. The Centre has full power to undertake things that are necessary or convenient to be done for or in connection with the performance of its functions.

Appointment  
of Director-  
General

12. (a) The President on the recommendation of the Minister shall appoint a Director-General of the Centre for the purpose of exercising or discharging the powers, authority or duties conferred or imposed upon the Director-General under this Act.

(b) The Director-General shall be assisted by the Deputy Director-General to undertake the functions of the Centre.

(c) The Deputy Director General shall act as Acting Director General during any vacancy in that office or if the Director General is absent.

Tenure of the  
Director-  
General

13. The Director-General shall be a person with extensive knowledge of and ability in maritime affairs and shall hold office for such terms until the retirement age of 60 years.

Functions of  
the Director-  
General

14. The Director-General shall be the chief executive officer of the Centre, and shall be responsible to:

(a) execute the policies and decision of the Board;

(b) control and manage the day-to-day business of the Centre;

(c) implement of the Center's functions and ensuring that the Centre achieve its objectives;

(d) give direction, supervision and control of other employees of the Centre;

(e) advise the Board on any matter concerning the national operational plan for scaling up the prevention of oil, and hazardous and noxious substance incident;

(f) act as accounting officer to the fund of the Centre and report to the Board on the financial performance of the Centre;

- (g) assign any office of the Centre to perform the duties on his behalf but the Director-General shall not be relieved from ultimate responsibility for discharge of any delegated function; and
- (h) carry out and perform the duties assigned to him under this Act.

Structure of the Centre

15. (a) The Centre shall create such divisions in the Centre, and the structure of the Center shall be formed with the approval of the Union Government.
- (b) The Centre shall abide by the duties, functions and procedures stipulated under this Act.

Appointment of Staff

16. (a) The officers and employees who have served in any department of the Ministry, upon the commencement of this Act, shall be able to transfer to the service of the Centre, with their rank, duty, remuneration and conditions of service are not less favorable than their previous appointment under the any department of the Ministry held by such officers and employees.
- (b) Before acting under subsection 16 (a), the Director-General must obtain the Minister's approval.
- (c) The Ministry shall request the Union Civil Service Board to conduct the screening test, written examination and selection process for officers to be appointed at the Centre.
- (d) The Ministry shall appoint the necessary employees, other than officers, with its own internal procedure in accordance with the Ministry Guidelines.

Remuneration

18. The Ministry shall incur and allow the salaries, allowances, gratuity, pensions and matters relating to the retirement of the officers and employees of the Centre, including the officers and employees who have transferred to the Centre.

Sources of Funding

19. (a) The Centre shall prepare an annual budget in respect of its activities in such form as the Board may direct. The Centre shall submit to the Board its annual budget two months before the end of financial year.
- (b) The such annual budget shall be sent to the Ministry to submit to the Parliament.

- (c) The Government shall, with an approval of the Parliament, provide the annual budget to the Centre through the Ministry to be able to discharge its functions under this Act.

Account and  
Audit

20. (a) The Center shall open bank account under the name of the Centre at the Myanmar Economic Bank, and the book of account shall be kept by at the office of the Director-General.
- (b) The Centre shall keep proper and regular accounts and other records of monies received and paid by the Centre.
- (c) The account and record shall at all reasonable times be open for the inspection of any Board member of the Centre and any other person authorized to inspect the account by the Minister.
- (d) The account of the Centre shall be audited by the Union Auditor General's Office, and the audit report shall contain work performance situations, financial statement, and financial data of the Centre.
- (e) The Centre shall submit a copy of the audited account to Minister and Board, together with any report or observations made by auditor on the said statement of account.

Annual Report

21. The Centre shall, no later than two months after the end of each financial year, prepare annual report and submit to Minister on its activities and performance during that year.

Exemption  
from Taxation

22. (a) The Commission, its assets, property, income, operations and transactions are exempt from all taxation including customs duties, capital gains tax, income tax, and property tax.
- (b) No taxation of any kind shall be levied on any obligation or security issued by the Commission.

Immunity

23. No proceedings or other action shall be brought or instituted against the Director-General or member of the Centre's staff, or any person acting on behalf of the Centre for any act done in good faith in the performance or intended performance of any duty under this Act, in the exercise or intended exercise of any power under this Act, or for any default in the performance or exercise in good faith of any such power or duty.

Directives by  
the Minister

24. The Minister shall give the general directions regarding the performance of the functions of the Center.



**CHAPTER IV**  
**GOVERNING BOARD OF THE CENTRE**

Members of  
the Governing  
Board

25. The Centre shall have a Governing Board (hereinafter referred to as the Board in this Act) which shall comprise of:

- (a) Chairman;
- (b) Deputy Chairman;
- (c) Permanent secretary of the Ministry;
- (d) Director-General of the Department of Marine Administration of the Ministry;
- (e) Chief Executive Officer of the Myanmar Port Authority;
- (f) One representative not below the rank of a Director of the following Ministries, Region and State Governments:
  - (i) Ministry for Union Government Office
  - (ii) Ministry of Agriculture, Livestock and Irrigation
  - (iii) Ministry of Natural Resources and Environmental Conservation
  - (iv) Ministry of Electrical and Energy
  - (v) Ministry of Health and Sports
  - (vi) Ministry of Planning and Finance
  - (vii) Ministry of Social Welfare, Relief and Resettlement
  - (viii) Rakhine State Government
  - (ix) Ayeyarwady Region Government
  - (x) Tanintharyi Region Government
- (g) a representative of the Myanmar Navy; and
- (h) Director-General, appointed under section 12.

Appointment  
of Chairman  
and Members  
of the Board

26. The President on recommendation of the Minister shall appoint a Chairman and all Board members who shall be a person with recognized expert knowledge, qualification and experience in shipping, port, marine pollution, offshore installation activities and pipeline associated to the port.

27. The Director-General of the Centre shall be served as the Secretary of the Board.

Tenure of  
Chairman and  
Members of  
the Board

28. The Chairman and other members of the Board, except the Director-General, shall hold office for a term of five years and may be re-appointed for another term of five years and no more.

29. The Chairman may grant leave of absence to a member on such terms and conditions as the Chairman determines. The Board may grant leave of absence to the Chairman on such terms and conditions as the Board determines.

Filling the  
Vacancy of the  
Board

30. A vacancy in the Board shall be filled by the appointment of another person to the vacant office on recommendation of the Minister by the President. If the Chairman or member of the Board is appointed in substitution for vacancy, the term of the office the chairman or a member shall be only for the expiry of the original term of the office.

Termination of  
Members of  
the Board

31. The Chairman or a member of the Board shall be terminated from the office if he:

- (a) has been absent from three consecutive meetings of the Board except he shows good reason for such absence; and
- (b) has demonstrated inability to effectively perform the duties of his office.

Remuneration

32. The Chairman and members of the Board are entitled to enjoy the salaries, allowances, and emolument in accordance with the stipulations of the Government. While away from their regular places of business on the business of the Board, the chairman and members of such Board shall be allowed travel expenses, including per diem in lieu of subsistence, in accordance with the Government Guidelines.

Functions of  
the Board

33. The Board is responsible for the determination of the general policy of the Centre with regard to the financial and operational programme of the Centre and shall:

- (a) carry out the functions, exercise the powers, manage and direct affairs of the Centre but shall not have or exercise any of the executive functions of the Centre vested in Director-General under section 14 of this Act;
- (b) develop overall policies, guidelines, procedures and programs for the prevention of and response to oil, and hazardous and noxious substance incident;

- (c) oversee the operation of the Centre;
- (d) advise Minister in the event of oil and HNS pollution incident; and
- (e) provide guidance to the Director-General and employees of the Centre.

Meetings of  
the Board

34. (a) The Board shall meet as often as the business of the Centre requires but in any event shall meet not less frequently than once in every three months. The Chairman shall direct the time and place of the meeting of the Board;
- (b) The Board shall hold additional meetings at the request of the Chairman. The special meeting shall be held immediately in the event of oil and HNS pollution incidents occur within the Myanmar waters;
- (c) The Chairman shall preside meeting, and if he is absent, the Deputy Chairman shall preside the meeting. If the Deputy Chairman is not present, the members present shall appoint, from amongst their number, a Chairman for that meeting;
- (d) The eleven members of the Board shall constitute a quorum; and
- (e) Questions arising at a meeting are determined by a majority of the votes of the members present and voting.

Minutes of the  
Meetings

35. (a) The Board shall record and kept the minutes of its meetings.
- (b) The meeting minutes shall be distributed to the members of the Board for confirmation and when so confirmed, the Chairman will approve the meeting minutes at the following meeting.

Power to co-  
opt

36. (a) The Board, in its discretion at any meeting of the Board may invite persons to attend a meeting of advising or informing it on any matter.
- (b) A person attending a meeting of the Board under subsection (a) may take part in any discussion at the meeting on which his advice is required but shall not have any right to vote.

Regulation to  
Procedure

37. Subject to this Act, the Centre has the power to regulate its own procedures or any other matter relating to its meetings.

**CHAPTER V**  
**OIL AND HAZARDOUS AND NOXIOUS SUBSTANCE**  
**POLLUTION PREPAREDNESS**

National  
Contingency  
Plan

38. The Centre shall develop a national contingency plan, with the guidance of Minister and Board, within twelve (12) months of the coming into force of this Act.
39. The national contingency plan shall take into account –
- (a) The designation of –
    - (i) the competent national authority with responsibility for pollution preparedness and response in accordance with this Act;
    - (ii) the national operational contact point responsible for the receipt and transmission of pollution incident reports; and
    - (iii) the authority to act on behalf of the Government of Myanmar to request assistance or to decide to render the assistance requested.
  - (b) the organizational relationship of the various bodies, departments and agencies involved, whether public or private;
  - (c) a programme of activities and exercises for pollution incident response and the training of management and operational personnel;
  - (d) detailed plans and communication capabilities for pollution incident response;
  - (e) arrangements to co-ordinate the response to a pollution incident;
  - (f) mechanisms to mobilize the necessary resources and capabilities within the response system;
  - (g) a minimum level of prepositioned pollution combating equipment and the programme for the use of such equipment; and
  - (h) guidelines developed by the Organization.
40. (a) The Centre shall submit the national contingency plan, through the Ministry, to the Natural Disaster Management Committee for consideration and approval.
- (b) The national contingency plan shall be reviewed and updated by the Centre every five (5) years.

Shipboard Oil  
Pollution  
Emergency  
Plan

41. Every ship to which this Act apply shall have on board at all time, a shipboard oil pollution emergency plan in accordance with the guidelines for the development of ship board pollution emergency plans as set out in the First Schedule.

Pollution  
Incident  
Emergency  
Plan

42. Every port, offshore facility and oil and HNS handling facility shall have pollution incident emergency plan which shall be duly coordinated with the national contingency plan.

43. There shall be a separate pollution incident emergency plan for each port, offshore facility and oil and HNS handling facility except that -

- (a) there may be joint contingency plan between operator of offshore installation and oil and HNS handling facility, within an area; or
- (b) there may be joint plan in respect of offshore installation and oil handling facility which are pipeline associated with that facility or installation.

Submission of  
Pollution  
Incident  
Emergency  
Plan to the  
Centre

44. (a) Subject to section 42 of this Act, every operator of port, offshore installation and oil and HNS handling facility shall submit, within twelve (12) months of the coming into force of this Act, pollution incident emergency plan to the Centre for approval.

- (b) An operator shall take into account any guidance and related manuals issued by the Centre in preparing pollution incident emergency plan.

45. Where, after coming into force of this Act:

- (a) a port, oil and HNS handling facility and oil terminal is established; or
- (b) an offshore installation are commenced for the purpose of the production of oil, storage, loading or offloading of oil occurs; the operator of the facility or installation shall submit its own pollution incident emergency plan in respect of the facility or installation to the Centre for approval at least two (2) months before the facility comes into being or the activities are commenced.

46. The Centre shall review submitted plan under section 44 and 45, and shall consider internationally accepted best practice in contingency planning, and advice of the Board and any other prescribed criteria, before approving such plan.

47. Where the Centre considers that any pollution incident emergency plan submitted under section 44 and 45 is not -

- (a) compatible with the national contingency plan for the time being in force; or
- (b) appropriate for dealing with oil and HNS pollution incidents which may occur in the area in which the operator has jurisdiction or exercise responsibility,

the Centre may, after consultation with the operator, direct that the plan be altered in such a manner as the Centre considers appropriate, and the operator shall alter the plan in accordance with such direction.

48. The Centre shall approve pollution incident emergency plan, after receiving the recommendations of the Ministry and Board, and shall not unreasonably withhold approval.

49. Where any major change occurs which affect or may affect the validity or effectiveness of a plan to a material extent, the operator shall submit a new plan or amendments to the existing plan, within three (3) months of such change becoming known to the operator, and resubmit the plan to the Centre for approval.

50. Every port, offshore installation and oil and HNS handling facility shall fully review its pollution incident emergency plan not later than five (5) years after submission of the plan in accordance with section 44 and 45 of this Act.

51. Every operator shall implement pollution incident emergency plan as approved and altered under this Act in the event of an oil pollution incident.

Training and  
Exercise

52. Every operator shall ensure that regular training and exercises are undertaken in relation to pollution incident emergency plan annually and shall undertake a full equipment deployment and mobilization exercise of its plan at least every three (3) years and in each case shall notify and invite the Centre to monitor the exercise.

53. The Centre shall undertake a table top management exercise annually for oil and HNS spill preparedness and response to ensure that the national contingency plan remains active and updated on a regular basis.

54. The Centre shall implement the national training and exercise programme at least every two (2) years for relevant officials from port, offshore installation and oil and HNS handling facility with a view to achieving an effective implementation of the different levels of contingency planning.

55. The outcome of the national training and exercise programme contemplated in section 53 and 54 shall assist to improve the national contingency plan as well as the pollution incident emergency plan.

Stockpile of  
Dispersants

56. (a) The operator of an oil and HNS handling facility or offshore unit shall at all times keep a stock of not less than 10,000 litres of readily usable dispersants which is appropriate for the type of oil or HNS the oil and HNS handling facility or offshore installation handles, and it shall comply with the specifications set out in the Second Schedule to this Act which may change from time to time without prior notice.
- (b) The operator shall keep the dispersants at the port, facility or installation in such a manner as to be readily accessible to the operator and the Centre.
- (c) The operator shall, when so required by the Centre, submit samples of dispersants kept under this regulation for testing and certification or provide a valid Certificate of the date of testing the dispersant.
- (d) All costs incurred in connection with the testing and certification of dispersants shall be borne by the operator or owner of the facility or installation.
- (e) A person shall not use any dispersant which does not comply with the specifications set out in the Second Schedule of this Act for the purpose of eliminating or reducing any oil or HNS pollution.
- (f) The Centre shall at all times keep a stock of not less than 10,000 litres of readily usable dispersants which comply with the specifications set out in the Second Schedule of this Act at all its operational offices in a manner that they shall be readily accessible and deployable in the event of an oil or HNS pollution incident.

Stockpile and  
maintenance of  
equipment

57. (a) The operator of a port and oil and HNS handling facility or offshore installation shall at all times maintain at their operational offices, facility or installation, a minimum level of prepositioned oil spill combating equipment, including the items specified in the Third Schedule of this Act, that is appropriate for the type and quantity of oil or HNS that the operator's pollution incident emergency plan may be utilized to effectively combat an oil or HNS pollution incident spill from the port, offshore installation and oil and HNS handling facility.
- (b) The operator of a port, offshore installation and oil and HNS handling facility shall –

- (i) submit to the Centre an annual return of the inventory of the stockpiled equipment;
- (ii) maintain an inventory of all equipment owned by the operator; and
- (iii) certify that the equipment is maintained and exercised in a condition ready for immediate deployment at any time required.

58. The Centre may from time to time –

- (a) visit the port, offshore installation and oil and HNS handling facility to check the dispersants and equipment stockpile and the maintenance records; and
- (b) request for a sample dispersants and equipment to be taken out of the stockpile to assess its quality and working condition.

59. The operator of port, offshore installation and oil and HNS handling facility shall comply with the request made under subsection 58 (b) of this Act.

Requirement to Cooperate with the Centre

60. In the event of oil or HNS pollution incident, the operator of port, offshore installation and oil and HNS handling facility shall, upon the request of the Centre, provide to the Centre the dispersants and equipment kept under subsection 56 (a) and 57 (a), respectively.

61. The Centre shall reimburse the operator such amounts and on such terms as the Centre and the operator may have agreed for the dispersants, equipment and services provided. If the Centre and the operator are unable to agree on the amounts or the terms, the matter shall be referred to the Minister whose decision shall be final, and the Centre shall reimburse the operator in accordance with the decision.

Inspection

62. Any person duly authorized by the Centre shall inspect any ship, port, offshore installation and oil and HNS handling facility to which this Act applies.

## CHAPTER VI

### REPORTING AND COMMUNICATION

Reporting of incident by Ships

63. The master of a Myanmar ship, whether in Myanmar waters or elsewhere, who observes or otherwise becomes aware of any event involving a discharge of oil into the sea from his ship or another ship or from an offshore installation, regardless of quantity, shall report the discharge without delay –

- (a) if the ship is in Myanmar waters, to the Centre; and



(b) if the ship is elsewhere, to the nearest coastal State.

64. The master of foreign ship navigating in Myanmar waters, who observes or otherwise becomes aware of any event involving a discharge of oil into the sea from his ship or another ship or from an offshore installation, regardless of quantity, shall report the discharge without delay to the Centre.

Reporting of  
incident by  
Port and  
Facility

65. A person having charge of port, offshore installation and any oil and HNS handling facility who observes or otherwise becomes aware of –

- (a) any event involving a discharge of oil;
- (b) any event involving a probable discharge of oil; or
- (c) the presence of oil in the sea,

shall without delay report the discharge, regardless of the quantity of oil involved, to the Centre.

66. The following officials shall report without delay any observed event at sea or at a port, offshore installation and oil and HNS handling facility involving a discharge, emission, release or presence of oil or HNS to the Centre –

- (a) officers of the Navy, Marine Police Force, Customs, Immigration Service or Marine Administration;
- (b) marine pilots; and
- (c) any other officials designated by the Minister for the purposes of this sub-section.

67. Any other person who becomes aware of any event involving discharge of oil into sea from ship, offshore installation and oil and HNS handling facility, regardless of quantity of oil, shall without delay, report the discharge to the Centre.

68. Reports under this section shall be made in accordance with the Standard Reporting Requirements as set out in Fourth Schedule.

Action on  
receiving  
Pollution  
Report

69. Whenever the Centre receives a report under this Act, it shall-

- (a) assess the event to determine whether it is an oil pollution incident;
- (b) assess the nature, extent and possible consequences of the oil pollution incident; and

- (c) without delay, inform all States whose interests are affected or likely to be affected by such oil pollution incident, and-
  - (i) provide details of its assessments and any action it has taken, or intends to take, to deal with the incident; and
  - (ii) furnish any other or further information as considered appropriate.

70. (a) In the event of a severe incident of marine pollution of national significance, the Centre may provide the information to the IMO and other States, where necessary, for further action.
- (b) When exchanging information and communicating with other States and with the Organization, the Centre shall, in so far as it is practicable, comply with the reporting system contained in the Fifth Schedule.
- (c) Upon recognition of an incident that has the potential to become a marine oil pollution of national significance, the Centre may activate all or part of the national contingency plan as appropriate.
- (d) Upon confirmation of an incident as being a marine oil pollution of national significance, the Centre shall-
- (i) activate all or part of the national contingency plan;
  - (ii) take steps to organize and coordinate the mitigation and prevention of any further pollution;
  - (iii) initiate and pursue clean-up strategies and activities;
  - (iv) monitor and evaluate the extent of the pollution and efforts by all parties in the clean-up and control;
  - (v) ensure and encourage the deployment of stockpiles of equipment and dispersants; and
  - (vi) request for regional and international assistance.

71. The Centre, with the consent of the Board and approval of the Ministry and Union Government, shall co-operate and provide advisory services, technical support

and equipment for the purpose of responding to a serious pollution incident, upon the request of any State Party to the Convention affected or likely to be affected.

72. The financing of the costs for such assistance shall be subject to reimbursement by the requesting State and shall be in accordance with the provisions set out in the Sixth Schedule.

73. Where Myanmar is the State in need of assistance, the Centre may ask the Organization to assist in identifying sources of provisional financing of the costs.

74. In accordance with applicable international agreements, the Centre shall take necessary measures to facilitate –

- (a) the arrival and utilization in, and departure from, its territory of ships, aircraft and other modes of transport engaged in responding to an oil pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and
- (b) the expeditious movement into, through and out of Myanmar of personnel, cargoes, materials and equipment referred to in subsection 73 (a).

## **CHAPTER VII**

### **OIL AND HAZARDOUS AND NOXIOUS SUBSTANCE**

#### **POLLUTION RESPONSE**

75. When the Centre receives a report of oil and HNS pollution incident, the Director-General of the Centre shall appoint Incident Commander and Deputy Incident Commander within the staff of the Centre.

76. The persons appointed as Incident Commander and Deputy Incident Commander shall be appropriately qualified and experienced for the role and shall have received formal training for the role.

77. The Incident Commander shall, within the framework of the national contingency plan and with the advice and support of the Incident Response Team, assume the powers, roles and responsibilities outlined in section 82 for the duration only of the response to the incident.

78. The Deputy Incident Commander shall fulfil the role of Incident Commander when the Incident Commander is absent or when directed to do so by the Incident Commander.

Arrival,  
utilization and  
departure of  
foreign means  
of response

Appointment  
of Incident  
Commander

79. When the Centre receives a report of oil and HNS pollution incident under section 63, 64, 65, 66 and 67, it shall initiate a response in accordance with the national contingency plan and the Centre shall be to -

- (a) designate the Incident Commander and Deputy Incident Commander as required under section 75; and
- (b) designate the Incident Command Centre; and
- (c) establish the Incident Response Team to the Incident Command Centre.

80. The first action of the Incident Response Team shall be to make an assessment of the incident, so as to designate the incident to a response Tier level as follows:

- (a) Tier One, which involves small spills that are within the response capability and resources of an individual port or other facility, the response and clean-up shall be conducted by the owner or operator of that port or other facility under its pollution incident emergency plan, with oversight and support from the Centre and Incident Response Team as required; and
- (b) Tier Two, which involves medium spills that are within the national capability and resources of the national contingency plan, the response and clean-up shall be controlled directly by the Incident Commander and the Centre under the national contingency plan with support from the Incident Response Team and other parties as required; and
- (c) Tier Three, which involves large spills that are of a magnitude and severity that is beyond the response capability and resources of Myanmar and impact or threaten to impact across the jurisdiction of neighbouring country, the response and clean-up is controlled directly by the Incident Commander and the Centre under the national contingency plan with support from the Incident Response Team, as well as from neighbouring country and other external assistance, in accordance with the procedures contained in any relevant bilateral or multilateral memorandums of understanding, contingency plan and related arrangements in place at the time.

81. Once the incident has been designated to a Tier level, the Centre, through the Incident Commander and with the support of the Incident Response Team, shall oversee, coordinate and control the response to the spill in accordance with the contingency plan relating to the designated Tier level.

Incident  
Commander to  
Coordinate the  
Response

82. During the response to any marine pollution incident in Myanmar waters, the Incident Commander shall, within the framework of the national contingency plan and with the advice and support of the Incident Response Team -

- (a) manage and co-ordinate all operations; and
- (b) direct the use of all resources,

necessary to prevent and minimize the human-health, ecological and economic impacts of the incident and to clean-up the pollution until the response is terminated in accordance with section 84.

83. The Centre shall request from the Union Government to utilize all national assets and resources to support the Incident Commander in order to effectively deal with the incident during the response to the oil and HNS pollution incident.

Response  
Termination

84. The Incident Commander, in consultation with the Incident Response Team and with approval of the Ministry and Centre, shall determine the point when further response and clean-up efforts and expenditure become unreasonable and can no longer be supported on grounds of environmental effectiveness relative to cost, and declare the response terminated.

85. In relation to section 84, the Incident Commander shall consider the advice of scientific and environmental experts on the Incident Response Team as well as any advice provided through external assistance.

86. Once the response and clean-up is declared terminated, follow-up activities may continue, including -

- (a) natural resource damage assessment and monitoring; and
- (b) environmental restoration and rehabilitation; and
- (c) investigation and enforcement procedures; and

87. The Centre shall review and evaluate the response within six (6) months of the response termination and submit a report to the Natural Disaster and Management Committee, through Ministry, with a view to improving the updating the national

contingency plan and any relevant pollution incident emergency plan of each port, offshore installation and oil and HNS handling facility.

## CHAPTER VIII

### RESEARCH AND DEVELOPMENT AND TECHNICAL COOPERATION

Research and  
Development

88. The Centre shall co-operate directly, or through relevant regional organizations or arrangements in the promotion and exchange of results of research and development programmes that relates to the enhancement of the state-of-the-art oil pollution preparedness and response including technologies and techniques for;

- (a) surveillance;
- (b) containment;
- (c) recovery;
- (d) dispersion;
- (e) clean-up;
- (f) otherwise minimizing or mitigating the effects of oil pollution; and
- (g) restoration.

89. The Centre shall, where appropriate, establish directly or through relevant regional organizations or arrangements, the necessary links between research institutions within this country and those of other state parties to the convention.

90. The Centre shall, where appropriate, co-operate directly or through relevant regional organizations with other state parties to promote, as appropriate, the holding on a regular basis of international symposia on relevant subjects which include technological advances in oil and HNS combating techniques and equipment.

91. The Centre with other states parties shall, where appropriate co-operate directly or through other competent international organizations for development of standards for compatible oil and HNS combating techniques and equipment.

Technical  
Cooperation

92. The Director-General shall, where appropriate, directly or through international bodies, as appropriate, in respect of pollution preparedness and response, provide support for those State Parties to the Convention which request technical assistance –

- (a) to train personnel;

- (b) to ensure the availability of relevant technology, equipment and facilities;
- (c) to facilitate other measures and arrangements to prepare for and respond to oil pollution incidents; and
- (d) to initiate joint research and development programmes.

93. The Centre shall co-operate in the transfer of technology in respect of oil pollution preparedness and response.

## CHAPTER XI MISCELLANEOUS

Offences and Penalties

94. A master or owner of a ship or operator of a facility within Myanmar waters to which this Act applies who –

- (a) fails to submit or re-submit a pollution incident emergency plan in accordance with section 44 and 45 of this Act;
- (b) does not maintain a pollution incident emergency plan, as approved, with alterations directed by the Commission, under section 47 of this Act;
- (c) fails to implement its pollution incident emergency plan in contravention of section 51 of this Act; or
- (d) denies access to a Centre appointed inspector,

commits an offence and shall be liable on conviction to a fine of not less than \_\_\_\_\_ kyats or imprisonment for a term not exceeding \_\_\_\_\_ years or to both.

95. A person who fails to make a report under the provisions of section 63 to 67 of this Act, without reasonable cause, commits an offence and shall be liable on conviction to a fine of not less than \_\_\_\_\_ kyats or imprisonment for a term not exceeding \_\_\_\_\_ years or to both.

Bilateral and Multilateral Cooperation in Preparedness and Response

- 96. (a) The Centre, with consent of the Board and approval of the Ministry and the Union Government, may enter into bilateral or multilateral arrangements for oil and HNS pollution preparedness and response, and copy of such agreements shall send to the Organization.
- (b) The Centre shall initiate, follow-up and explore opportunities for regional cooperation in responding to oil and HNS pollution incidents

and where necessary, shall request and provide assistance in combating specific incidents.

Polluter-Pay Principle

97. Notwithstanding any provision contained in this Act, the recognized source of the pollution damage shall bear responsibility for the costs of responding to the oil or HNS pollution incident.

98. The provisions of this Act shall not be interpreted so as to prejudice the rights of the Centre to recover from third parties the costs of actions taken to deal with pollution or the threat of pollution under other applicable legislations and rules for the time being in force nationally and internationally.

99. Every ship and operator of a port, offshore installation and oil and HNS handling facility to which this Act applies must show evidence of readiness to deal with its pollution incidents, including without limit to –

- (a) an approved pollution incident emergency plan;
- (b) adequate stockpile of oil and HNS pollution incident combating equipment and dispersants; and

(c) evidence of contract with accredited oil and HNS pollution incident responder.

Fees

100. Fees payable in respect of any approval of a pollution emergency plan and any renewal, amendments and late submission thereof shall be established from time to time by the Centre.

Exemption

101. The Centre may, either absolutely or subject to such conditions as the Centre may deem fit, exempt from any of the provisions of this Act any person to whom this Act applies if the Centre is satisfied that compliance with the provisions is either impracticable or unreasonable.

Repealing Clause

102. All laws, regulations and rules or parts thereof which are inconsistent with the provisions of this Act are hereby amended or repealed accordingly.

General Power to make Regulations

103. In implementing the provisions contained in this Act:

- (a) the Ministry may issue necessary rules, regulations and by-laws with the approval of the Union Government; and
- (b) the Ministry and the Centre may issue necessary notifications, orders, directives and procedures.



I hereby sign under the Constitution of the Republic of the Union of Myanmar.

(Sd.) -----

President of the  
Republic of the Union of Myanmar

## **FIRST SCHEDULE**

### **Section 41**

#### **SHIP BOARD POLLUTION INCIDENT EMERGENCY**

##### **PLANS GUIDELINES**

1. Every oil tanker of 150 tons gross tonnage and above and every ship other than an oil tanker of 400 tons gross tonnage and above shall carry on board a shipboard pollution incident emergency plan approved by the Commission. In the case of ships built before 4 April 1993 this requirement shall apply 24 months after that date.
2. Such a plan shall be in accordance with guidelines (MEPC.54(32), as amended, developed by the Organization and written in the working language of the master and officers. The plan shall consist at least of-
  - (a) the procedure to be followed by the master or other persons having charge of the ship to report an oil pollution incident, as required in the guidelines established by the Centre;
  - (b) the list of authorities or persons to be contacted in the event of an oil pollution incident;
  - (c) a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil following the incident; and
  - (d) the procedures and point of contact on the ship for coordinating shipboard action with national and local authorities in combating the pollution.

## SECOND SCHEDULE

### Section 56

#### SPECIFICATIONS OF DISPERSANTS

1. The flash point of the dispersant shall not be less than 65°C (150°F) and shall be in accordance with a defined testing standard approved by the Centre or other relevant regulatory authorities.
2. The dispersion capacity of the dispersant shall not be more than 1 part of dispersant to 1 part of marine fuel oil of viscosity not less than 300 seconds (Redwood 1) at 50°C (122°F) and shall be in accordance with a defined testing standard approved by the Centre.
3. The biodegradability of the surface-active agent shall not be less than 9000n the average of the results of the seventh and eighth day from the commencement of the test at 37°C (99°F) which shall be in accordance with a defined testing standard approved by the Centre.
4. The toxicity of the dispersant using glass fish (*Chanda gymocephalus*) as a standard test organism shall be as follows: The mixture of the dispersant and the standard marine fuel oil (MFO V1100/ 1200) in the ratio of 1:1 shall have a 96-hour LC 50 value of not less than 100mg per litre as measured by the method of the Ministry of Agriculture, Livestock and Fisheries or other relevant regulatory authorities.
5. The dispersant shall not contain aromatic hydrocarbons and chlorinated hydrocarbons in concentrations greater than (a) total aromatic hydrocarbons 3% (b) total chlorinated hydrocarbons 0.05 mg per litre.

## **THIRD SCHEDULE**

### **Section 57**

#### **EQUIPMENT AT FACILITY OR INSTALLATION**

1. At least one marine craft specifically suited for day and night counter pollution operations, equipped with a complete set of dispersant spray booms as approved by the Commission, from which dispersants can be applied on to the sea surface with at least 2,000 litres of dispersants which shall comply with the specifications set out in the Second Schedule to this Act, on board.
  
2. All boom is to have at least one ISO international boom connector per 300 metres of boom for connecting dissimilar booms, with a minimum of 300 meters of boom recognised as being appropriate in the oil pollution emergency plan for the oil at risk of being spilt.
  
3. At least 12 knapsack sprayers each of 20 litre capacity and at least 2 dispensing pumps, and suitable VHF radio telephone sets as approved by the Ministry of Information on a frequency to be specified by the Centre, for beach cleaning operations.

## **FOURTH SCHEDULE**

### **Section 68**

#### **STANDARD REPORTING REQUIREMENTS**

Any report under section 68 shall be made in accordance with the General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Report Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants, adopted by the Organisation (Resolution A.851(20) as amended by resolution MEPC.138(53)).

1. Any report shall include:
  - (a) identity of the ships involved;
  - (b) time, type and location of incident;
  - (c) quantity of oil involved or estimate thereof; and
  - (d) assistance and salvage measures.
  
2. Any person who is obliged under the provisions of this Act to send a report shall so soon thereafter:
  - (a) supplement the initial report, as necessary and provide information concerning further developments; and
  - (b) comply as fully as possible with requests from the Commission or affected States for additional information.
  
3. Reports shall be made by using the fastest telecommunications channels available with the highest possible priority.

## FIFTH SCHEDULE

### Section 70

#### POLLUTION INCIDENT COMMUNICATION FORM

**Address:**

**To:**

**Date time group:**

**Identification: CDC-MYANMAR**

1	Date and Time	
2	Position	
3	Incident	
4	Position and/or extent of pollution on the sea	
5	Characteristics of pollution	
6	Source and cause of pollution	
7	Wind direction and speed	
8	Current direction and speed and/or tide	
9	Sea state and visibility	
10	Drift of pollution	
11	Forecast of likely effect of pollution and zones affected	
12	Identity of observer/reporter. Identity of ships on scene	
13	Action taken	
14	Photographs or samples	
15	Names of other states and organisations informed	
16	Spare	
17	Request for assistance	
18	Cost	
19	Pre-arrangements for the delivery of assistance	
20	To where assistance should be rendered and how	
21	Acknowledge	

**SIXTH SCHEDULE**

**Section 72**

**POLLUTION INCIDENT ASSISTANCE REIMBURSEMENT FORM**

To:

Incident date:

Date claim submitted:

Identification:

	RESOURCES	COST
1	Aerial Activity (Helicopters and other aircraft)	
2	Maritime Activity (Coast Guard vessels; launches etc)	
3	Response Resources (Vehicles and equipment)	
4	Personnel (Salaries etc)	
5	Expenses (Associated with personnel)	
6	Subcontractors 1. Equipment 2. Personnel	
7	Miscellaneous 1. Other third-party services and purchases, including consumable items.	