

MARPOL CONVENTION: AN ANALYSIS

MS CHETALI SOLANKI

INTRODUCTION

The meaning of MARPOL is “Marine Pollution” and is governed under the International Convention for the Prevention of Pollution from Ships, 1973 (modified in 1978 under protocol to the International Convention for the Prevention of Pollution from Ships, 1973).

The MARPOL convention is one of the most important international conventions on marine pollution. It was the initiative taken under the flagship of IMO (International Maritime Organization) to curb down the pollution caused by ships and other carrier vessels in the sea. The convention majorly covers all types of pollutions and accidental and operational discharges of effluents into the sea. The core objective of the convention was to regulate, monitor and to measure the pollution caused in the sea and to bring the nation states under a common umbrella to discontinue the ill practices which harmed the marine environment including both flora and fauna.

The convention is signed by majority of the nation states in where India is also one of the parties though India has not ratified every annex of the convention, (dealt in a separate chapter). Hence, the research in the paper tries to give a brief account of history and the background of the convention and how the convention came into force and how India has framed its national policies in accordance with the international convention on marine pollution. The paper also discusses about the causes and reasons of poor implementation of the convention both at the international and national level and would also deal with various drawbacks and limitations of the convention and how the countries even after ratifying the convention play with its flaws and how the coastal states take advantage of their geographical positioning.

HISTORICAL BACKGRIUND OF THE MARPOL CONVENTION

❖ International History of MARPOL Convention 73/78

It was considered to a problem which had eye of all the nation states as sea trades were booming in 20th century under the ambit of industrialization and development. Hence, national legislations were enacted by all the nation states regarding the controlling and regulating of oil in relation with trade and other affairs. Hence, considering the need for a worldwide regulation specifically dealing with oil regulation and its monitoring a conference was organized in 1954 by the United Kingdom which was *International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL), 1954*.

- *OILPOL Convention The International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL)*¹

The Convention addressed the issues related to marine pollution which was caused due to various operational and accidental miscarriages. Hence, the convention was frequently amended 1958, 1961 and 1971 keeping it updated. As the Convention was amended it was incorporated with many provisions which were inserted in it so that the problems arising out of marine pollution and environmental damage could be curbed easily. For example: It established “prohibited zones”, it also made a mandate for the contacting parties to promote various processes so that oil pollution could be kept at minimized levels while trading through sea.

As marine pollution was not that a big deal for international organizations and in this case the IMO it was the beginning of industrialization but in 1967 the biggest marine accident took place which every nation state to ponder upon the laws related to marine pollution and regulating the sea trade in and out of the territorial waters of the nation states. But the case of Torrey Canyon (tanker) happened which made marine pollution a mirror facing issue for IMO and in 1973 the MARPOL convention after an extraordinary session to curb and to regulate the cases of oil pollution and operational and accidental miscarriages at sea and also adopted provisions from OILPOL 1954 and initiated a Convention in 1973 which was MARPOL convention.

- *International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL)*

After the disastrous Torrey Canyon collision MARPOL Convention was adopted at the international level by 167 member states. The international conference was organized primarily with an objective to address the question of operational pollution and accidental discharges during any miscarriage or any discharge and to settle the liabilities of the parties involved into the course of event.

Therefore, majorly all the significant provisions of the OILPOL Convention were incorporated in the MARPOL Convention regarding oil pollution and marine damages with other provisions related to disposal of garbage, chemicals and other harmful substances.

- *1978 Protocol to International Convention for the Prevention of Pollution from Ships, 1973*

¹ Introduction and History, Available at:

<http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/HistoryofMARPOL/Documents/MARPOL%2073-78%20Brief%20History%20-%20List%20of%20amendments%20and%20how%20to%20find%20them.htm>, accessed on: 31/01/2016

As, the convention was found out with some flaws so in 1978 under the protocol to the MARPOL convention it was absorbed and measures relating to tanker designs was also incorporated in it² through a conference conducted by IMO on Tanker Safety and Pollution Prevention (TSPP) in 1978 as a series of accidents happened in 1976 and 1977.

❖ India and MARPOL Convention

The Indian Merchant Shipping Act, 1958, by virtue of Article 253 of the Constitution of India, 1950 imbibes the provisions relating to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 and the International Convention for the Prevention of Pollution from Ships, 1973. Also, the regulating laws in India relating to oil pollution and operational and accidental discharges at sea are governed by International Convention, Merchant Shipping Act, 1958 and M.S. (Prevention of Pollution of the Sea by Oil) Rules, 1974.³

India's draft policy of 2004 brought many crucial changes in the domestic legislations in India and which proved to be promising in regulating and monitoring the flaws in the existing legislation.⁴

- To avoid any operational or accidental miscarriage a Contingency Plan would be made prior to the initiation of any process so that in case of mishappenings same could be dealt with. Also, a Local Action Team/Group would be appointed which would coordinate with all the major ports in case of urgency.
- All the shipping activities would be included under *The Territorial Waters Continental Shelf, Exclusive Economic Zone (EEZ), other Maritime Zones Act, 1976* to promote and to regulate Indian Shipping.
- Improving the agreements whether bilateral or multilateral with other countries to enhance Indian Maritime interests.
- Also Particularly Sensitive Sea Areas (PSSA) would be protected and would be provided with facilities promoting and preserving their natural habitat and environment.
- Moreover, according to the draft policy regulations relating to marine pollution would be revised time and again and would be maintained in consonance with the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO).

² Introduction and History, Available at:

<http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/HistoryofMARPOL/Documents/MARPOL%2073-78%20Brief%20History%20-%20List%20of%20amendments%20and%20how%20to%20find%20them.htm>, accessed on: 31/01/2016

³ Gopal Krishna, Indian Implementation plan for MARPOL Convention ?, (October 29, 2004), Available at:

<http://www.marinedefenders.com/commercial/marpol.php> (accessed on: 31/01/2016)

⁴ *Ibid*

Hence, the draft policy of India has scrutinised and ratified the regulations related to marine pollution and as per the maritime policy of India the regular updation is to be done with respect to the International conventions on maritime pollutions and environmental damage during any spillage in the sea.

CASES ON MARITIME POLLUTION⁵

After the case of *torrey canyon tanker* the need to have a legislations at both international and the national level became crucial as many case related to miscarriages, operational and accidental spills of hazardous substances started to come up. Hence, it gave rise to the convention of 1973 and protocol of 1978 and the related VI annexure and many the cases dealing with marine pollution and environmental damage were took seriously and the probability of parties being prosecuted increased manifolds. Therefore, it becomes significant in analyzing the rationale behind every court's judgment as to how they tackle the cases related to marine pollution. Thus, a brief account of some of the major cases is discussed below.

Universal Sales Limited v. Edinburgh Assurance Co. Ltd., 2012 FC 418

In the present case the insured (Plaintiffs) claimed indemnity from the insurers (Defendants) for the purpose of the reimbursement of the removal costs. The Plaintiffs demanded a settlement payment of \$5 million from the federal government in respect of the cost of raising the 'Irving Whale'. On the other hand the insurers denied the payment and stated there was no coverage policy in the agreement regarding the settlement.

The trial court while providing the Plaintiffs with the compensation held that the claim for sue and the labour expenses didn't cost any loss to the Plaintiffs and hence these claims were denied by the court. But the settlement payment with reference to the Crown was awarded to the Plaintiffs which were split by the court between the underwriters and the plaintiffs in the ratio of 25% and 75%.

❖ *R. v. Bolt, 2011 NLTD 20*

The present matter was referred under the Fisheries Act, under the violation of the provision of failure to report any spill or mismanagement of any hazardous or deleterious substance. According to the facts of the case the Defendants under the present circumstances failed to report the spill of a deleterious substance i.e., diesel fuel into water which was a frequent habitat of fishes during refueling of the vessel. Hence, they were charged with fine of \$ 15,000 in total but the Appellate Court struck down the fine as it was not proved on reasonable grounds.

⁵ Case Summaries, Available at: http://www.admiraltylaw.com/grouped_summaries.php?topic=14

❖ *FFS HK Ltd. v. P.T. 25 (Ship), 2010 BCSC 1675*

The issue related to this case was of spilling during an operational process which occurred in Vancouver harbor which cost a loss of \$ 1 million to the owner of the vessel. The responsibility of the accident was shared by the owner (Plaintiff) equally but he also alleged and charged the crew carrying out the bunkering operation with transferring of objects with a speed higher than which was required. Hence, the court reviewed the case and through the facts and the contract held that as the bunkering operation is a joint operation and “transfer rate” being an integral part was not to be increased without prior information by the vessel but the court held it to be the major cause of the spill and awarded compensation to the Plaintiff with keeping the clause of joint responsibility into account.

❖ *R. v. M/V “Kathy L” et al., 2010 BCPC 30*

Under the following case a barge sank when it was towed from an initial point to the final point and due to which certain pollutant was spilled. The owner of the vessel, towing company and the captain of the tug were made liable for the operational miscarriage but the Court dismissed all the charges against all the Defendants but held the owner of the vessel liable for gross negligence and not taking proper care and caution. The court charged the owner as he failed to foresee the probable cause of the negligence in case of any omission or negation.

DRAWBACKS OF MARPOL CONVENTION

Though the convention satisfies many goals but is not free from flaws as the coastal states and the flag states were not on consensus on many issues. The coastal states had a different set up and the states that trade with the help of coastal states were at a lower pedestal. For ex: the inclusion of the term ‘within the jurisdiction’ had to be included in the convention so that the coastal states don’t advantage on being the states with accessibility of sea. To create a negotiating slab the clause was added into the convention.

❖ *MARPOL and dilemma of jurisdiction*⁶

As it is a matter of multiple jurisdictions often many glitches are created between the *port*, *coastal* and the *flag states*. Hence to establish a clear jurisdictional approach becomes a sturdy process. As the maritime trade between the states is performed through ships and vessels carrying the trade products they are often subjected to

⁶ Mark Szepes, MARPOL 73/78: The Challenges of Regulating Vessel-Source Oil Pollution, (Vol2:73), Manchester Student Law Review, Available at: [http://www.humanities.manchester.ac.uk/medialibrary/law/main_site/Research/Student_Law_Review2/MSLR_Vol2_5\(Szepes\).pdf](http://www.humanities.manchester.ac.uk/medialibrary/law/main_site/Research/Student_Law_Review2/MSLR_Vol2_5(Szepes).pdf) (accessed on: 15/02/2016)

many jurisdictions which may be international, domestic or customary. This creates a problem of jurisdiction over the ship or vessel if they default in any case.

Moreover, as the convention is not self executing and it is on the will of the nation state to apply it in their domestic legal structure its thrust of being binding on the states doesn't make much difference. Though the IMO has a regulatory authority over the states in only implementation of the convention but it doesn't possess any specific inherent powers which could bind the nation states to the convention.

❖ MARPOL and Problems related to Operational Processes⁷

The close study and implementation of the Convention projects many operational flaws and non-compliances on part of the nation states which are largely inclined towards financial complexities. So, the question which arises out of the financial glitch is that whether the nation states should be fined on punitive grounds for their miscarriages and undue discharges which harm the marine life and ecology. If the states are made subjected to deterrence based on fine, will they abide by the regulations of the convention as it is voluntary in nature or denial of entrance to the coastal states would make the non coastal states obey the convention but what about the coastal states? Also, discharges from ships which were made prior to the inception of the convention are a major operational flaw which is nowhere questioned and poses a serious threat to the marine environment.

Moreover, the convention also demands from the coastal states to construct reception facilities which would monitor the discharge of various substances while at sea but still after numerable year majority of the states don't have reception facilities which is a serious violation of the pre-requirements of the convention and is a non-compliance of the convention.

Hence, the convention is surrounded with many flaws which are often exhausted by states which are at a position more benefitting in comparison to the other states. Therefore, to create equality with respect to all the nation states being party to the convention provisions related to its strict implementation should be carved out as marine pollution is a great threat to the marine ecology which is interconnected with most of the state's economy.

⁷ Mark Szepes, MARPOL 73/78: The Challenges of Regulating Vessel-Source Oil Pollution, (Vol2:73), Manchester Student Law Review, Available at: [http://www.humanities.manchester.ac.uk/medialibrary/law/main_site/Research/Student_Law_Review2/MSLR_Vol2_5\(Szepes\).pdf](http://www.humanities.manchester.ac.uk/medialibrary/law/main_site/Research/Student_Law_Review2/MSLR_Vol2_5(Szepes).pdf) (accessed on: 15/02/2016)

CONCLUSION

As it is geographically the most abundant fraction on the earth, its significance is to be prioritizing above all. Pollution at the sea is a concern on which every nation state should act instantaneously and should frame their domestic laws in such a way that they consent with the laws framed at the global level.

It is a known phenomenon all over the world and the international community fears the uncontrollable menace at the sea. As, the countries advance at the technological frontier the probability of more problems arising out of man and ecology encounters increases every now and then. Thus, it should be the prime initiative of every nation to fix the dynamics of the changing circumstances with the framework of the laws existing.

Hence, developing strategies to fight this menace which is rising with time as every nation is now engaged in sea trades is necessary.

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