MALTESE LEGISLATION ON THE PREVENTION, REDUCTION AND CONTROL OF MARINE POLLUTION : A CRITICAL STUDY *

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SECTION 1 : INTRODUCTION

The scope of this essay is limited to an examination of Maltese Maritime Law relating to the prevention, reduction and control of marine pollution. Indeed, this essay does not embrace the protection of the marine environment in its totality as this would include appraising other provisions of the Maltese legal system, such as those relating to the establishment and management of marine nature reserves, fishing zones, illegal methods of fishing, exploitation of the natural resources of the sea, emission of dark smoke from vessles, etc. Such a study, commendable as it may be, does not fall within the ambit of this essay and can easily be dealt with in other seperate studies without in any way adversely affecting the subject matter of this essay.

SECTION 2 : MALTESE LEGISLATION ON THE PREVENTION, REDUCTION AND CONTROL OF MARINE POLLUTION

In Annex I to this eassy, I have listed Maltese laws and regulations concerning the prevention, reduction and control of marine pollution. In this section, I intend to analyse the provisions of our legislation on the subject-matter under discussion.

A. THE CODE OF POLICE LAWS

Part XX of the Code of Police Laws (Chapter 10 of the Laws of Malta) is entitled *Of Territorial Waters, Harbours And Wharves*. It contains eleven sections in all, of which only five can be said to relate to a certain extent to the prevention, reduction and control of marine pollution.

Although the Code of Police Laws does not afford us with a definition of the term "Territorial Waters", regard should be had to section 1(2) of the Constitution of Malta [1] and, in particular, to Chapter 226 of the Laws of Malta [2]. Nor do we have a definition of a wharf in our law. This word may however be safely defined as a platform beside which a vessel may be moored for the purpose of loading and / or unloading. On the other hand, the Code of Police Laws [3] defines the term "Harbour" as "any harbour, port, bay, cove, creek or seashore". The first part of the definition of the term "Harbour" (that is to say that "Harbour" means, inter alia, a harbour) tends to be rather tautological.

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Section 224 of the Code of Police Laws has two sub-sections. Sub-section 1 thereof provides that :

"It shall not be lawful to leave in any harbour or any wharf anything which might impede the free navigation or obstruct the passage, embarkation or disembarkation of persons, merchandise or other things, or leave therein any unserviceable vessel, abandoned or sunk; or throw therein anything which might cause any deposit of mud; or in any other manner render the bottom of the harbour in a different condition from its ordinary state, or obstruct the mouth of any public sewer discharging into the sea".

Viewed from the perspective of the subject-matter of this essay, section 224(1) has an indirect relevance to marine pollution. Indeed, it not only contemplates marine pollution from vessels but also, to a certain extent, it also contemplates pollution from land-based sources [4]. However, this subsection is mainly intended to guarantee that Maltese harbours are always navigable and, consequently, no mud should be deposited in the harbours for precisely this purpose. Nevertheless, it seems that this section is supporting more the Port Authority's role in providing navigable harbours rather than aiming at preserving, reducing or controlling the contamination of Maltese harbours.

Indeed, this sub-section does not prohibit the discharge of pollutants into the inland waters once an action cannot effect the bottom of the harbour (as opposed to sinking any unserviceable vessel therein) or obstruct the mouth of any public sewer discharging into the sea. Again, it should be noted that with regard to the latter aspect, there are no regulations which control the discharge of sewage within the territorial waters; in fact, this sub-section considers inland waters as a convenient place for the discharging of sewage therein. Of course, this has to be contrasted to the discharge of petroleum in our harbours [5].

Section 224(2) does not remedy this defect. This sub-section provides that :

> "No ballast, stones, mud, debris, refuse, or any other solid matter shall be discharged from any vessel [6] or dredger, within such area, outside any harbour, as shall be fixed by the Minister responsible for ports by notice in the Government Gazette or in contravention of any regulations made from time to time by the Minister responsible for ports published in the Government Gazette respecting the conveyance and discharge outside the harbours of the materials or things above mentioned."

This sub-section applies to:

(i) Ballast,
(ii) Stones,
(iii) Mud,
(iv) Debris,
(v) Refuse, and
(vi) Any other solid matter.

Ballast is the water which is introduced into a ship's tank to secure stability. [7]

The above six elements of section 224(2) do not seem to include the following

(i) oil,
(ii) any other pollutant (other than oil),
(iii) any mixture of oil, and
(iv) any mixture of other pollitants (other than oil),

because it appears that these four elements cannot fall under the category of "ballast" or "any other solid matter" due to their liquid form. Moreover, they do not seem to constitute "stone", "mud", "debris" or "refuse" because stone is something solid, debris is usually used in conjunction with building material, mud - although it is in a liquid form - applies more to rubbish, and refuse is usually solid material.

Section 224(2) has to be construed in conjunction with subsection (1) of the same section in the sense that whilst subsection (1) prohibits the obstruction of navigation in the harbours, subsection (2) prohibits the obstruction of navigation outside (albeit adjacent to) the harbours.

A problem however arises as to the correct construction of the exact limit outside the harbour once section 224(2) is silent on the matter. Of course, one can indirectly infer that such a distance is fairly close to the harbours but one cannot arrive at reckoning the exact distance simply through an implied inference. According to the said subsection, such an area outside the harbours has to be established by the Minister responsible for ports. This was, in fact, determined by the said Minister through Government Notice 24 of 1905 which provides that :

> "No vessel or dredger shall discharge materials outside the harbours, except at a distance of not less than one mile and a half form the coast line, and in a depth not less than 50 fathoms."

Moreover, the said Notice defines the word "materials" as including ballast, stones, mud, debris, refuse and any other solid matter, utilizing the same six elements of section 224(2) of the Code of Police Laws. Note, however, the ill-drafting of this interpretation provision. The Government Notice states that the term "material" includes (and not means) the said six elements. In other words, it is not restricting itself to only the six elements mentioned in the parent act but it is going beyond such elements. Indeed, section 224(2) specifically empowers the Minister responsible for ports to make regulations regarding "the materials or things above mentioned", i.e. the six elements of section 224(2). so the 1905 Regulation gives the impression of being ultra vires the powers granted by the parent act (when the term "material" is interpreted to include other materials which do not fall under the parametres of the said six elements, e.g. the release of toxic substances). This dilemma could easily be avoided if the illustrative term "includes" is substituted by the comprehensive term "means".

Another provision which has to be considered with regard to marine pollution is section 232 of the Code of Police Laws which states that :

"It shall not be lawful to load, carry, or discharge any ballast without the permission of, or in any other place than that appointed for the purpose by the Director of Ports."

According to this section, the discharge of ballast can only be undertaken when permission has been granted by the Director of Ports even though such

discharge takes place in any place appointed for that purpose by the Director of Ports. If, however, it is intended to discharge ballast in any other place other then that appointed by the Director, the Director of Port's permission has to be sought in order to discharge in such other place.

The next provision which has to be analysed is section 227 of the Code of Police Laws dealing with the throwing of noxious things in the harbours:

"No person shall leave in any harbour or on any wharf anything which may cause injury to public health, or a nuisance; or throw into the waters of any harbour or into any part of the internal waters or of the territorial waters of Malta any rubbish or dirty liquid which may cause a nuisance."

What does the law understand by the vague term "nuisance"? Pollution in our harbours would surely constitute a nuisance to the flora and fauna which inhabit these waters. But I do not think that this is what the legislator had in mind when this provision was enacted. Nuisance, in this context, has to be interpreted in conjunction to the term "injury", and it seems that "nuisance" is a degree less than "injury": it is something which annoyes or inconveniences (presumably somebody) but does not cause an injury.

Again, it seems that "public health" should be interpreted in a narrow way and should not be extended to imply harm to the marine environment even though the latter may, in turn, produce injury to public health.

Indeed, the term "nuisance" when used in the context of marine pollution is not common only to Malta. In the United Kingdom, this term is applied in two cases: nuisance can be either private or public. Private nuisance is a wrongful interference with a person's use or enjoyment of his land or some right connected with it. Hence it must be a prerequisite to success in a claim that the claimant shows that he has a proprietory interest in the land [8]. But this first type of nuisance is of no use to us in construing section 227 of the Code of Police Laws because:

a. the term "nuisance" is linked to "harbour", "wharf", "internal waters" and "territorial waters" and the law is more interested in the sea (whether it is internal waters or territorial waters) rather than in the land proximate to these waters;
b. if section 227 is contravened, the result would be a criminal offence and not a civil wrong. Indeed, the Code of Police Laws is of a regulatory nature and the sanction attached to a transgression of one of its provisions is usually penal (as the term "Police" after all suggests);
c. the scope of section 227 is not inspired by civil law but by public law and so this section is not interested in protecting wrongful interference with an individual's use or enjoyment of his land or some right connected with it.

On the other hand, "public nuisance" in the United Kingdom is also a civil wrong. However, the tort of public nuisance must effect a sufficient number of persons to justify the description "public". In Attorney-General v. P Y A Quarries Ltd. it was held that:

"... any nuisance is "public" which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects. The

sphere of the nuisance may be described generally as "the neighbourhood"; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case." [9]

Section 227 of the Code of Police Laws does not require the nuisance to be directed against the public or against one member of the public. Indeed, whilst the term "injury" is qualified by the words "to public health", the term "nuisance" is used by itself so much so that we do not know to whom must this nuisance be directed (e.g. the public, the Port Authority, vessels using Maltese harbours, internal waters, wharves, ect.)

I think that the term "nuisance" has to be given a wide interpretation in the sense that the nuisance may be directed not only to one or more members or the public who happens to be land [10] but also to any person who may happen to be on board a ship whilst the ship is passing through the said waters.

Another problem which this section poses relates to the construction of the term "dirty liquid" which is reminiscent of the term "mud" in section 224 of the Code of Police Laws. In this connection it is pertinent to ask what are the criteria which qualify a liquid as being "dirty"? Is it simply its colour: that is to say, if the liquid is light coloured it is clean? In my opinion, "dirt" means unclean matter that soils, usually in the form of wet mud. However, is heavy crude oil considered to be dirty under this section? If it is so considered, what about refined oil?

The "dirty liquid" criterion adopted by our law seems to be rather vague in this day and age of scientific and technological progress. In order to, perhaps, arrive at a definition, "dirty liquid" has to be interpreted in conjunction to the other ingredient of this section - "rubbish". Rubbish is usually in solid form and this is reminiscent of the term "refuse" in section 224 of the Code of Police Laws. So "dirty liquid" seems to be that rubbish which is in a liquid (rather that a solid) form. Of course, this nomenclature is hardly suitable to include today's various kinds of substances which - though "clean" - still contaminate the marine environment.

Perhaps the most important provision presently obtaining in Maltese law regarding marine pollution is section 228 of the Colde of Police Laws. Subsection (1) thereof provides as follows:

"If any petroleum or other oil or any mixture containing petroleum or other oil is discharged, leaks or runs into the waters of any harbour or into any part of the internal waters or of the territorial waters of Malta from any vessel or any place afloat, or from any place on land, or from any apparatus used for transferring petroleum or other oils from or to any vessel (whether to or from a place on land or afloat), then -

a. if the discharge, leakage or running is from a vessel, the owner or master of the vessel, or
b. if the discharge, leakage or running is from an apparatus used for transferring petroleum or other oils from or to a vessel, or takes place while petroleum, or other oils are being so transferred, the owner or person in charge of the apparatus, or

c. if the discharge, leakage or running is from any other place, the occupier or other person in charge of such place,
shall be guilty of an offence against theis section and shall be liable, on conviction, to a fine (multa) of not less than one hundred liri and not more than two thousand liri, or to imprisonment form one to six months, or to both such fine and imprisonment."

The interpretation section of the Code of Police Laws affords us with a definition of the term "master" [11]. However, the law is silent on what it means by the following terms -

a. petroleum,
b. oil,
c. mixture containing petroleum or oil, and
d. place afloat.

First and foremost, what does the term "petroleum" mean? As there is not definition given in the Code of Police Laws of the said term, recourse has to be had to other definitions in Maltese law hoping that such definitions may be applied to this section. In fact, a definition of petroleum may be found in the following enactments;

a. Petroleum (Importation, Storage and Sale) Ordinance (Chapter 25 of the Laws of Malta);
b. Income Tax Act (Chapter 123 of the Laws of Malta);
c. Petroleum (Production) Act (Chapter 156 of the Laws of Malta); and
d. Continental Shelf Act (Chapter 194 of the Laws of Malta).

For the intents and purposes of Chapter 25 of the Laws of Malta [12], petroleum means "all natural hydrocarbons whether in liquid or gaseous form, including crude oil and natural gas, and whether in a crude or natural state or in a processed or refined form".

Chapter 156 of the Laws of Malta [13] defines petroleum in a slightly different manner as being "all natural hydrocarbons liquid or gaseous including crude oil, natural gas, asphalt, ozokerite and cognate substances and natural gasoline."

Chapters 123 [14] and 194 [15] adopt the definition of "petroleum" as defined in Chapter 156 which, prima facie, appears to give a wider definition of "petroleum" than that given in Chapter 25. Indeed, the latter definition of petroleum does not expressly mention asphalt, ozokerite and cognate substances and natural gasoline.

With regard to the construction of the term "petroleum" in the sub-section under review, one has to ponder the following question. Which definition of "petroleum", if any, should be adopted for the purposes of section 228 (1) of the Code of Police Laws - that given in Chapter 25 or that mentioned in Chapter 156?

The Marine Pollution (Prevention And Control) Act, 1977 avoids using the term "petroleum or other oil". It opts for a wider definition, namely that of "oil or other pollutant" so much so that the term "oil" as used in the Marine Pollution (Prevention And Control) Act, 1977 includes what section 228 (1) of the Code Of Police Laws refers to as "petroleum or other oil".

Section 228 (1), once again, fails to define the term "oil". The Marine Pollution (Prevention And Control) Act, 1977 states that this nomenclature means "oil of any description and includes spirit produced from oil of any description and includes coal tar." This quite a generic definition which includes not only every single substance which may be classified as oil but also spirit (i.e. gas) produced from oil. This definition cannot, however, be used for the purposes of section 228 (1) as "oil" in the Marine Pollution (Prevention And Control) Act, 1977 has to be construed in conjunction to the other term "pollutant" and the latter term includes other substances which cannot be classified under the category of petroleum or oil [16]. Such would be the case with regard to radioactive wastes, mercury and mercury compounds, cadmium and cadmium products, etc.

The same problem of establishing the correct interpretation of certain terms applies with regard to the term "any mixture containing petroleum or other oil" once the terms "petroleum" and "other oil" do not seem to be very clear.

Once different laws are using the same terms in different senses the end result seems to be confusion!

Section 228 (1) encompasses three types of prohibited activities:

a. a discharge,

b. a leakage, and

c. a run off.

What is the exact difference in meaning, if any, between these three terms? The Marine Pollution (Prevention And Control) Act, 1977 contemplates only a discharge of oil or other pollutant (modelling itself on the definition of a discharge given in the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 [17]) and includes all the possible meanings which can be given to the said three terms of the subsection under examination.

Discharge seems to imply the deliberate act of unloading of petroleum or other oil or any mixture containing petroleum or other oil by any of the classes of persons specified in paragraphs (a), (b) and (c) of section 228 (1). In other words, the persons mentioned in these paragraphs have knowledge of such an act of discharge and have the necessary criminal intent when discharging the said substances.

Leakage gives the impression that the discharge of the said substances was more due to the negligent act of the persons mentioned in paragraphs (a), (b) and (c) of section 228 (1) rather than due to the mental element of the said persons: in other words, the mens rea is lacking in the case of a leakage.

Running off suggests an escape of the said three substances but such escape cannot be said to be the direct result of a criminal intention or of negligence on the part of the persons mentioned in paragraph (a), (b) and (c) of the subsection under analysis. So running off would apply when petroleum or other oil or any mixture containing petroleum or other oil finishes up in the places mentioned by the law irrespective of whether such act was the result of criminal intent or criminal negligence. It is the consequences of the criminal act (i.e. the running off) which is culpable rather than the conduct itself of the persons mentioned in paragraphs (a), (b), or (c) of section 228 (1) which is the cause of the running off of petroleum or oil or any mixture containing petroleum

or other oil. The law is here looking at the material effect rather than at the formal element of the offence contemplated in the subsection under study.

Another problem which emerges when trying to comprehend this section is that relating to what constitutes a "place afloat". There is only one Maltese law which defines the term "place afloat" and this is the Marine Pollution (Prevention And Control) Art, 1977. But the problem tends to complicate itself further owing to the fact that Marine Pollution (Prevention And Control) Act, 1977 has never been brought into force since its enactment and so doubts arise whether this enactment can be used as a source for interpreting an existing law. However, I think that the definition given by the said Act suits the purpose of the subsection under review due to the fact that both section 228 of the Code of Police Laws and the Marine Pollution (Prevention And Control) Act, 1977 are both modelled on U.K. marine pollution legislation. A place afloat can, thus, be defined as "including anything afloat (other than a vessel [18]) if it is anchored or attached to the bed dor shore of the sea or of the territorial waters of Malta, and includes anything resting on the bed and shore of the sea or of the territorial waters of Malta." [19]

Note that the pecuniary fine of a minimum of one hundred liri and a maximum of two thousand liri is in dire contrast to that of section 4 of the Marine Pollution (Prevention And Control) Act, 1977 which latter section provides for a minimum of two hundred and fifty liri (which, by today's standards is still very low) and a (reasonable) maximum of fifty thousand Maltese liri [20].

Section 228 (1) is quite reminiscent of section 4 of the Marine Pollution (Prevention and Control) Act, 1977 621) and is basically concerned with criminal liability. Section 228 62) then contemplates civil liability:

> "Any person found guilty of an offence under this section shall be liable for all damages caused and all costs occasioned by the facts constituting the offence, and the court shall, at the demand of the prosecution made at any time of the proceedings prior to final judgement, order in the same judgement the offender to make good and pay to the Director of Ports all such damages and costs as shall be executable in the same manner as if it had been given in a civil action duly instituted by the Director of Ports against the offender:
>
> Provided that nothing in this subsection shall affect the right of third parties to institute any civil action against the offender for any damage suffered dby them."

This subsection makes provision for a more expeditious process by means of which civil penalties may be collected by the Director of Ports without the need of instituting civil proceedings once the offender has been found guilty of the criminal offence contemplated in the first subsection of the same section. Of course, if the offender is acquitted from the criminal offence enshrined in section 228 (1), the Director of Ports may still institute civil proceedings in order to satisfy his claim because the burden of proof in a civil case is one which requires solely a balance of probabilities rather than proof beyond reasonable doubt as in criminal matters.

B. THE CONTINENTAL SHELF ACT

Section 7 of the Continental Shelf Act (Chapter 194 of the Laws of Malta) relates to the discharge of oil:

"(1) if any oil or any mixture containing not less than one hundred parts of an oil in a million parts of the mixture is discharged or escapes into any part of the sea -

a. from a pipeline, or
b. as a result of any operations for the exploration of the sea bed and subsoil or the exploitation of their natural resources in a designated area,

the owner of the pipeline or, as the case may be, the person carrying on the operations shall be guilty of an offence unless he proves, in the case of a discharge from a place in his occupation, that he took reasonable care to prevent it and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

(2) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine (multa) not exceeding one thousand liri."

This section has been lifted from section 5 of the U.K. Continental Shelf Act 1964 whose marginal note also bears the heading "Discharge of oil".

Unfortunately, even this section poses some problems as to its proper construction. The first problem relates to the term "oil". The U.K. Legislator, admittedly, did not define the said term in section 5 of the U.K. Continental Shelf Act 1964 but, wisely enough, referred to another U.K. enactment which provides such a definition [22]. On the contrary, the Maltese Legislator did not reproduce the definition of the term "oil" as contained in section 1 (2) of the U.K. Oil In Navigable Waters Act 1955 which applies :

a. to crude oil, fuel oil and lubricating oil; and
b. to heavy diesel oil, as defined by regulations made under this section by the Secretary of State;

and shall also apply to any other description of oil which may be specified by regulations made by the Secretary of State, having regard to the provisions of any Convention accepted by Her Majesty's Government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil, or having regard to the persistent character of oil of that description and the likelihood that it would cause pollution if discharged from a ship into any part of the sea outside the territorial waters of the United Kingdom."

It must be pointed out that although the U.K. Oil In Navigable Waters Act 1955 was repealed by section 33 of the U.K. Prevention of Pollution Act 1971, the latter Act does, nevertheless, retain in section 1 (2) thereof the same provision contained in section 1 (2) of the U.K. Oil In Navigable Waters Act 1955. Thus, in U.K. legislation, a wide interpretation has to be given to the term "oil" once regulations are made under section 1 (2) of the U.K. Prevention of Pollution Act 1971 by the Secretary of State to provide for any other description of oil not expressly mentioned in section 1 (2) (a) of the said Act.

Furthermore, section 5 of the U.K. Continental Shelf Act 1964 has been repealed by section 33 of the U.K. Prevention of Oil Pollution Act 1971 but its contents have been faithfully reproduced in section 3 of the U.K. Prevention

of Oil Pollution Act 1971. This is thus the position in the U.K. but not the position in Malta where section 7 of Chapter 194 remains in effect as contained in the said Chapter and not as contained in section 5 of the Marine Pollution (Prevention And Control) Act, 1977, which, in turn, is modelled on section 5 of the U.K. Prevention of Oil Pollution Act 1971.

Another important aspect with regard to the meaning of the term "oil" mentioned in section 7 of Cap. 194 is the term "petroleum" used in section 3 of the same Chapter. Indeed, section 3 of Chapter 194 extends the application of subsection (2) of section 3 [23]; section 4 [24] and section 5 [25] of the Petroleum (Production) Act [26] to the rights exercisable by Malta [27] with respect to the exploration and exploitation of the continental shelf [28] and its natural resources [29]. So the legislator is here distinguishing between the term "oil" and the term "petroleum".

If one were to analyse the said definitions of "petroleum", one will observe that the wording of the definition of the said term in Chapter 156 though similar to that of Chapter 25 is not identical to it: although both definitions use the comprehensive term "means" (and not the illustrative term "includes"), the definition of Chapter 156 includes the following types of petroleum which are not expressly mentioned in the definition of "petroleum" given in Chapter 25 as being particular kinds of petroleum, namely -

(i) asphalt,
(ii) ozokerite, and
(iii) cognate substances,

but, contrary to Chapter 25, no mention is made whether the natural hydrocarbons (liquid or gaseous) may be in a crude or natural state or in a processed or refined form.

I think that although the law is prima facie using different wording for the definitions given in Chapter 25 and Chapter 156 of the term "petroleum", both definitions, essentially, contain the same constituent elements. I do not see any reason why the particular kinds of natural hydrocarbons liquid or gaseous referred to as "asphalt, ozokerite and cognate substances" ought not to fall under the wider and comprehensive definition of "all natural hydrocarbons liquid or gaseous" used in the definition of "petroleum" in Chapter 25. The examples given by the legislator differ from one law to another precisely for the simple reason that Chapter 25 is concerned only with the importation, storage and sale of petroleum, and singles out those kinds of petroleum which fall within the purview of its principal scope, whilst Chapter 156 has singled other kinds of petroleum because its scope is different from that of Chapter 25 as it relates to the production of petroleum in Malta and, therefore, the legislator wanted to make it quite clear to what kinds of natural hydrocarbons this Chapter applies to.

But for the purposes of the Maltese Continental Shelf Act regard should be made to the definition of petroleum given in Chapter 156 which, as above stated [30], is more illustrative than that given in Chapter 25. Again, it should be observed that Chapter 156 is modelled on British legislation and, in particular, on the Petroleum (Production) Act 1934. However, the definition given in section 1 (2) of the latter Act runs as follows :

> "For the purpose of this Act the expression "petroleum" includes any mineral or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation."

Different definitions of petroleum exist in U.K. legislation [31]. Notable amongst these is that given in section 16 (1) of the U.K. Petroleum And Submarine Pipe-Lines Act 1975 :

" "Petroleum" means any of the following:

a. mineral oil, natural gas and bituminous shales;
b. deposits not mentioned in the preceding paragraph from which oil can be extracted by destructive distillation; and
c. hydrocarbons which are related to mineral oil, and are not mentioned in the preceding paragraphs."

A leading U.K. case [32] in the field of petroleum law has held that the word "petroleum" is not a definite term in U.K. law and its construction depends on the particular context in which it is used.

Chapter 194 defines petroleum (by applying the definition given in Chapter 156) so as to include crude oil, the latter being considered as being one form of liquid natural hydrocarbon. It seems that the term "natural hydrocarbons" comprises all types of substances, be they in liquid or in gaseous form, which scientifically speaking can be classified under the general heading of "oil". It must however be noted that the definition of Chapter 156 goes further than this as it also includes other types of natural hydrocarbons, whether in liquid form or in gaseous form. On the other hand, it appears that the term "oil" in section 7 has to be interpreted in a generic way due to the fact that no specific definition is given of this term and that the meaning assigned to it by section 1 (2) of the U.K. Oil in Navigable Waters Act 1955 has been deliberately excluded by its non-inclusion by our legislator in section 7 of Chapter 194.

Another point which has to be considered with regard to section 7 of Chapter 194 is what constitutes a discharge or an escape. First and foremost, it has to be noted that the terminology here used is different from that used in section 228 (1) of the Code Of Police Laws [34], namely that of a discharge, leakage or running off. Instead of the latter two terms, the section under review opts for the term "escape". So whilst the meaning of "discharge" appears to be the same as that given above with regard to section 228 (1) of the Code of Police Laws, an escape may apply in both the case of a leakage and of a running out of oil or any mixture containing oil. Thus, an act of God which provokes an escape of oil would constitute an escape (even though it does not constitute the crime mentioned in section 7 (1) due to the fact that the defence of due diligence may be pleaded in this case). Another instance of an escape would be when an oil tanker is accidentally hit by, say, a missile from a naval vessel. There seems to be a trend in international marine pollution law to lump together a discharge, an escape, a leakage or a run off under one heading - that of a discharge [35].

The discharge or escape of oil or any mixture containing oil has to take place, according to section 7 (1) of Chapter 194, into any part of the sea -

"a. from a pipeline, or
b. as a result of any operations for the exploration of the sea bed and subsoil or the exploitation of their natural resources in a designated area.....".

What does seciton 7 (1) mean by the term "any part of the sea"? Again, paragraph (a) relates to the discharge or escape of oil or an oil mixture as defined in section 7 (1) into any part of the sea from a pipeline. Two questions have to be posed in this regard. First, what is a pipeline? Second, where is the pipeline situate when the said discharge or escpae materialises?

With regard to the proper construction of the term "pipeline" Maltese law does not afford us with any definition. Reference may be had to British legislation which may shed some light on the subject under discussion. The U.K. Pipe-Lines Act 1962 defines the term under review in section 65 but, it is submitted, this definition ought to be discarded as it is very comprehensive in scope and applies to various uses of a pipeline which are beyond the socpe of Chapter 194. However, the definition given by section 33 (1) of the Petroleum and Submarine Pipe-Lines Act 1975 seems to suit our purposes. A pipe-line is said to be a piepe pipe or a system of pipes, excluding a drain or sewer, for the conveyance of any thing, together with apparatus and works associated with such a pipe or system. However, under the latter Act, only the following apparatuses and works are to be treated as associated with such a pipe or system:

a. any apparatus for inducing or facilitating the flow of any thing through, or through a part of, the pipe or system;
b. valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;
c. apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in paragraphs (a) and (b) above;
d. apparatus for the transmission of information for the operation of the pipe or system;
e. apparatus for the cathodic protection of the pipe or system; or
f. a structure used or to be used solely for the support of a part of the pipe or system.

With regard to the second query, from the wording of section 7 (1), the term "any part of the sea" should be construed as meaning the High Seas due to the fact that the continental shelf is beyond the territorial sea. But it must be borne in mind that Malta has also declared a twenty-four nautical mile Contiguous Zone so that the term "sea" should also include the sea falling within the Contiguous Zone. In other words, section 7 (1) applies to the sea within the Contiguous Zone of Malta as well as to the superjacent waters of the High Seas above the Continental Shelf of Malta. However, the Exclusive Economic Zone cannot at the present moment in time be considered to form part of "any part of the sea" because Malta has not yet declared an Exclusive Economic Zone.

Should the pipeline be situated in the territorial waters of Malta or should it be situated outside territorial waters? It must be borne in mind that Chapter 194 is limited only to the exploration and exploitation of the Continental Shelf of Malta together with its natural resources and that both the continental shelf

and its natural resources, according to section 2 thereof, have to be situated outside the territorial waters of Malta. In other words, if an oil rig is extracting petroleum in Maltese territorial waters and oil or any oily mixture as defined in section 7 (1) is discharged or escapes from a pipeline into such waters, section 7 (1) of Chapter 194 does not apply, although section 228 of the Code of Police Laws or any regulation made under section 5 of Chapter 226 would apply due to the fact that Malta has sovereignty in the said waters and does not need a Continental Shelf regime to enforce its powers. On the other hand, section 7 (1) extends Malta's jurisdiction to the superjacent waters above the continental shelf granting it only sovereign rights for the purpose of exploiting and exploring its continental shelf and its natural resources and for preventing marine pollution through such activities.

The Contiguous Zone is adjacent to the territorial sea of Malta but the State of Malta does not exercise sovereignty therein. It is true that Malta can, in virtue of section 4 of Chapter 226 exercise control to prevent and punish infringements of its laws within the contiguous zone but such infringements have to take place within the territory and the territorial waters of Malta and not within its Contiguous Zone. Thus, although Malta is given certain sovereign rights in the superjacent waters above the continental shelf with regard to the discharge of oil in such waters, Malta can enforce these right through its continental shelf regime and not through the contiguous zome regime as the latter does not regulate the discharge or escape of oil in the superjacent waters above the continental shelf as provided in section 7 of Chapter 194.

With regard to paragraph 7 (1) (b), the term "designated area" is defined by section 3 (3) of Chapter 194. The latter empowers the Prime Minister, from time to time, to designate any area as an area where Malta can exercise certain rights therein, these rights being defined in section 3 (1) thereof as those "exercisable by Malta with respect to the continental shelf and its natural resources". Marine pollution will undoubdetly kill the living resources of the shelf and hamper the Maltese state from exercising such right. Thus, international and municipal law both empower the Maltese State to take the necessary action to safeguard its right to exploit the living resources of the continental shelf.

C. THE TERRITORIAL WATERS AND CONTIGUOUS ZONE ACT (CAP 226)

Chapter 226 of the Laws of Malta relates to the territorial waters and to the contiguous zone of Malta. Within the territorial waters Malta has sovereignty whilst within the contiguous zone Malta has certain sovereign rights under both international law and under domestic law.

According to section 3 of Chapter 226, the territorial waters [36] of Malta [37] are all parts of the open sea within twelve nautical miles of the coast of Malta measured from low-water mark on the method of straight baselines joining appropriate points. However, for the purposes of the Fish Industry Act [38] and of any other law relating to fishery, the territorial waters of Malta extend to all parts of the open sea within twenty-five nautical miles from the baselines from which the breadth of the territorial waters is measured. On the

other hand, the contiguous zone [39] extends up to twenty-four nautical miles from the baselines from which the breadth of the territorial waters is measured.

Section 4 (1) of Chapter 226 provides that in the contiguous zone, the State of Malta:

> "shall have such jurisdiction and powers as are recognized in respect of such zone by international law and in particular may exercise therein the control necessary
>
> a. to prevent any contravention [40] of any law [41]relating to customs, fiscal matters, immigration and sanitation, including pollution, and
>
> b. to punish offences against any such law committed within Malta or in the territorial waters of Malta ..."

Section 4 is in conformity with Article 23 of the 1982 United Nations Convention on the Law of the Sea which provides that the breadth of the contiguous zone may not extend beyond twenty-four nautical miles from which the breadth of the territorial sea is measured. But it must be observed that the 1982 U.N. Convention is not yet in force and that Malta has not yet ratified it. Furthermore, Malta is still bound - at least with regard to the other contracting parties to the 1958 Geneva Convention on the Territorial Sea and The Contiguous Zone [42] - by the limits of the contiguous zone as established in Article 24 (2) of the 1958 Geneva Convention on the Territorial Waters and the Contiguous Zone [43].

There is one significant difference in section 4 of Chapter 226 when contrasted to both the said 1958 Convention and the 1982 Convention relating to those purposes for which a coastal state is entitled to exercise its control. I am here refering to the term "sanitation" which, for the purposes of Maltese law, is deemed to include pollution [44]. In other words, our legislator thought it fit to include pollution under the heading of "sanitation" even though no explicit mention is made of pollution in either Convention. Indeed, the 1958 Convention deals only with "sanitary regulations" whilst the 1982 convention talks about "sanitary laws and regulations" but no explicit reference is made to pollution. Nor is the term "sanitation" defined in either Convention.

Thus, in the case of infringements of pollution regulations committed within the territory of Malta or in the Maltese territorial sea, the State of Malta is empowered under Maltese law to exercise the control necessary in the contiguous zone to prevent and punish such infringements [45]. Sanitary measures generally deal with public health rules and pollution can be controlled in a contiguous zone when it forms a health risk. It is not clear, however, in Public International Law whether pollution which does not form a health risk is also included in the term "sanitation". It seems that the Maltese legislator has decided to give a wide meaning to the said term so as to include also pollution which does not form a health risk [46].

Another provision of relevance to this study is section 5 of Chapter 226 which was added in 1981 [47]. It empowers the Prime Minister to make regulations to control and regulate the passage of ships through the territorial waters of Malta. The territorial waters of Malta are considered to be

> "... all parts of the open sea within twelve nautical miles of the coast of Malta [48] measured from low-water mark on the method of straight

baselines joining appropriate points." [49].

Furthermore, in virtue of section 5 (1) of Chapter 226, the Prime Minister may make regulations to control and regulate the passage of ships through territorial waters on, inter alia, the conservation of the living resources of the sea; the preservation of the environment and the prevention, reduction and control of pollution thereof; and the prevention of infringement of any customs, fiscal, immigration or sanitary laws or regulations.

Section 5 (1) is modelled on Article 21 of the 1982 U.N. Convention on the Law of the Sea [50]. The said Article and section 5 of Chapter 226 distinguish between pollution on the one hand and sanitary laws and regulations on the other. Indeed, Article 21 (1) (f) of the 1982 U.N. Convention on the Law of the Sea and section 5 (1) of Chapter 226 expressly contemplate the coastal state's right to make regulations relating to "the prevention, reduction and control of pollution". However, Article 21 (1) (h) of the 1982 U.N. Convention and section 5 (1) of Chapter 226 also empower the coastal state to make regulations in respect of the "prevention of infringement of ... sanitary laws and regulations," So it seems that both Article 21 (1) of the 1982 U.N. Convention and section 5 (1) of Chapter 226 do not consider an infringement of pollution regulations as falling under sanitary regulations once specific provision is made therein for pollution regulations as distinct from sanitary regulations. This means that the term "including pollution" in section 4 (1) (a) of Chapter 226 seems to have been given a wider interpretation by the Maltese legislator than that intended by the contiguous zone provisions of international conventional law. Indeed, the contiguous zone forms part of the High Seas and the four controls exercised therein by a coastal state curtail the freedom of the High Seas as contemplated in the Geneva Convention on the High Seas, 1958 and in customary international law.

No subsidiary legislation has been made under section 5 of the Territorial Waters and Contiguous Zone Act.

For the intents and purposes of section 4 relating to the contiguous zone and section 5 relating to the territorial waters, Chapter 226 speaks of "pollution", i.e. it does not limit itself to marine pollution but applies to all types of pollution, e.g. marine pollution, noise pollution, workplace pollution [51]. However, the provisions of the Food, Drugs and Drinking Water Act relating to the contamination of drinking water, or the provisions of L.N. 52 of 1986 relating to occupational safety already apply to the territorial waters of Malta. But the provisions of the Clean Air Act relating to air pollution do not extend to the territorial waters of Malta. So the provisions of this latter Act can be extended under section 5 of Chapter 226 to apply also to the territorial sea.

An interesting aspect which has to be noted with regard to pollution of the territorial waters of Malta is the resolution adopted by the House of Representatives on Thursday, 23rd June 1988:

"That this House reaffirms that nuclear armaments should not be allowed on the territory of the Republic of Malta.

For this reason, the House expects that those countries the warships of which were given diplomatic clearance to visit the Island would respect such

a decision.

The House resolves that the Minister of Foreign Affairs should notify this resolution to the Government requesting diplomatic clearance allowing their vessels to enter Maltese harbours and that the House considers that diplomatic clearance so given would be a sufficient guarantee that no nuclear weapons are being carried on such vessels entering the Island." [52]

This Resolution although it has an indirect effect on the prevention of marine pollution from nuclear vessels is more interested in safeguarding the territorial integrity and independence of the State of Malta.

In addition, regard must be had to section 5 (2) of Chapter 226 which states as follows:

> "In the application of any regulations made under subsection (1) of this section to warships or to nuclear powered ships or to ships carrying nuclear or other inherently dangerous or noxious substances, their passage through territorial waters may, by any such regulation, be made subject to the prior consent of, or prior notification to, such authority as may be specified therein."

This subsection is modelled on Article 23 of the 1982 United Nations Convention on the Law of the Sea [53]. Contrary to the Resolution of the House of Representatives, it applies to -

a. the territorial waters (and not only to "Maltese harbours");
b. the Maltese Arcipelago (and not only to the Island of Malta):
c. the following categories of vessels -
   (i) warships (whether possessing nuclear armaments or otherwise);
   (ii) nuclear powered ships;
   (iii) ships carrying nuclear substances;
   (iv) ships carrying dangerous substances;
   (v) ships carrying noxious substances.

Although section 5 (2) of Chapter 226 is modelled on Article 23 of the U.N. 1982 Convention, this Article does not in any way run counter to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone [54].

Again, section 5 of Chapter 226 has to be contrasted with section 234 of the Code of Police Laws. Under the latter provision the Minister responsible for ports is enabled "to make regulations for the preservation of good order in any part of the territorial waters of Malta and for any other purpose in respect thereof." Viewed from the purview of section 234 of Chapter 10, section 5 of Chapter 226 seems to be already comprised under the Code of Police Laws as the said enabling section of the Code of Police Laws is wide enough to include all the purposes for which the Prime Minister is empowered by section 5 of Chapter 226 to make regulations. Again, even the provisions of section 5 (2) of Chapter 226 can be made under section 234 of the Code of Police Laws.

D. THE PORTS REGULATIONS, 1966

The Ports Ordinance, Chapter 170 of the Laws of Malta, authorises the Minister responsible for ports to make regulations relating to the maintenance, control and management of any port or the approaches to any port and for

the maintenance of good order therein [55]. This section, thus, empowers, the Minister to make regulations for the maintenance of good order within the ports [56] whilst section 234 of the Code of Police Laws makes a similar provision but it extends such power of making regulations for the purpose of preservation "of good order in any part of the territorial waters of Malta" (the ports being, quite naturally, included in the said territorial waters). This implies that the Minister responsible for ports may exercise his right to make regulations relating to the maintenance of good order in the ports under both section 12 of the Ports Ordinance and under section 234 of the Code of Police Laws. As things stand, the Minister may create the same offence under both enabling provisions.

The Ports Regulations, 1966 [57], were made by the Minister responsible for ports in exercise of the powers conferred upon him by section 12 of the Ports Ordinance. Regulation 130 confirms the conclusion reached in the previous paragraph when it provides that

> "The provisions of these regulations are in addition to and not in derogation of the provisions of any law or regulations."

Again, regulation 31 (1) provides that -

> "Subject to any other enactment or regulations, no person shall discharge or allow to escape into a port from any ship or any installation any oil of any descritpion and the master of a ship shall be responsible for any damage caused or expenses which may be occasioned by the flow of oil from a ship for any reason whatsoever into the waters of a port."

This regulation has to be applied subject to any other enactment or regulations. At present, this section has to be interpreted subject to section 228 of the Code of Police Laws and subject to regulation 42 of Legal Notice 53 of 1965 [58]. Of course, one must bear in mind that although no regulations on the matter contemplated by regulation 31 (1) of the Ports Regulations, 1966, have been made under section 5 of the Territorial Waters And Contiguous Zone Act, there still exists the possibility that some time in the future the Prime Minister will make such similar provisions.

The provision of section 228 of the Code of Police Laws seems to encompass the provision of regulation 31 (1) of the Ports Regulations, 1966. Although regulation 31 (1) of the Ports Regulations, 1966 covers a discharge or an escape of oil from a ship or any installation, both sources are covered in section 228 (1) of the Code of Police Laws as the latter subsection applies to a discharge of oil from any vessel, any place afloat, any place on land as well as any apparatus used for transferring oil from or to any vessel.

As to a regulation which which makes a similar provision to that contained in regulation 31 (1) of the Ports Regulations, 1966, regard must be had to regulation 42 of Legal Notice 53 of 1965 which provides that -

> "No petroleum shall be discharged or allowed to escape into the waters of a port."

In the latter regulation, the term "port" means Grand Harbour, Marsamxett Harbour, Marsaxlokk Harbour and St. Paul's Bay [59]. So regulation 42 of Legal Notice 53 of 1965 does not apply - contrary to regulation 31 (1) of the Ports Regulations, 1966 - to:

a. the landing places at Ramla-il-Bir and iċ-Ċirkewwa;

b. Mġarr, Gozo;

c. Santa Marija Bay and San Niklaw Bay in Comino.

Again, regulation 42 of the said Legal Notice speaks of "petroleum" (as defined in section 2 of Chapter 25) and not of "any oil of any description" as contemplated in regulation 31 (1) of the Ports Regulations, 1966. Indeed, although neither the Ports Ordinance nor the Ports Regulations, 1966, define what constitutes "oil", such definition does not seem to be necessary once the term "oil" is qualified by the words "of any description", i.e. in the case, "oil" does include the contents of the definition of "petroleum" given in Chapter 25.

When the provisions of the aforesaid enactment and regulation do not cover the situation contemplated in regulation 31 (1) of the Ports Regulations, 1966, then the latter regulation applies. However, as seen above, section 228 (1) of the Code of Police Laws already covedrs the field which is being regulated by regulation 31 (1) of the Ports Regulations, 1966 and, thus, regulation 31 (1) is superfluous.

E. THE PETROLEUM SHIPS ENTRY AND DISCHARGE OF PETROLEUM IN HARBOURS REGULATIONS, 1936

Government Notice 397 of 1936 relates to the entry and discharge of petroleum in Maltese harbours. These regulations were made under section 5 of Chapter 25 and are more or less of a regulatory nature. They do not contemplate the instance where petroleum is discharged into inland waters but are more interested in establishing certain measures and safeguards which have to be adopted by petroleum ships.

What is important, however, for our purposes is that these Regulations have a definition of what constitutes a "harbour":

> " "Harbour" means Grand Harbour, Marsamxett Harbour and Marsaxlokk Harbour." [60]

Again, according to these Regulations, petroleum (as defined in Chapter 25) can be either ordinary [61] or dangerous [62]. Indeed, according to Regulation 12, no dangerous petroleum is to be landed or loaded in the Grand Harbour or Marsamxett Harbour. The only Harbour where dangerous petroleum can be landed or loaded is, by inference, Marsaxlokk Harbour. Does this imply that any petroleum ship [63] which lands or loads dangerous petroleum in any landing place, in a bay or in the middle of our internal waters is not covered by these Regulations?

Indeed, according to Regulation 16, ordinary petroleum may be landed or loaded in the Grand Harbour and the Marsamxett Harbour if permission is granted in writing by the Director of Ports. If ordinary petroleum is landed or loaded in Marsaxlokk Harbour no such permission in writing is required. But what happens if ordinary petroleum is discharged in any loading place other than the above-mentioned three Harbours, e.g., in a bay or in the middle of Maltese internal waters?

The term "discharge" as used in the definition of a "petroleum ship" and int he rest of the Regulations is given quite a different meaning than that which we are today ordinarily accustomed to in, say, the International

Convention for the Prevention of Pollution of the Sea by Oil, 1954 or the International Convention for the Prevention of Pollution from Ships 1973 / 78 etc. In fact, the term "discharge" - as can be seen quite clearly from Regulation 12 (4) - is equated to the term "landed". In other words, "discharge" in these Regulations does not mean the discharge of petroleum into inland waters but the unloading of the petroleum carried in the petroleum ship on land.

These Regulations are rather archaic. They were last amended in 1937 and since then have prevailed notwithstanding the progress achieved in the ship industry and commerce relating, for example, to ship construction, ship safety, the evolution of super oil tankers and several other developments which have taken place since World War II. Nor do these regulations contemplate the transfer of petroleum to ships outside Maltese harbours. Indeed the Mediterranean Offshore Bunkering Company provides bunkers to vessels outside harbours and, at present, there are four designated areas for bunkering purposes outside Maltese harbours [64]. So they do not conform to present day needs of modern navigation. Concepts such as, for instance, segregated ballast tanks, bilge oil, reception facilities, etc., which are regulated by the International Convention for the Prevention of Pollution from Ships 1973 / 78 and the International Convention For The Safety Of Life At Sea 1974 are not catered for in these Regulations.

F. THE MARINE POLLUTION (PREVENTION AND CONTROL) ACT, 1977

This is the best drafted legislation on the subject under review. The Marine Pollution (Prevention And Control) Act, 1977 (Act XII of 1977) however has one main defect - it has not yet been brought into force by the Minister responsible for shipping. Although it was enacted twelve years ago, the pertinent Legal Notice required to bring it into force has not yet been published in the Government Gazzette. Nor have any regulations been made under this Act.

The 1977 Act is divided into seven Parts and contains 37 sections in all. It implements into domestic law the following international and regional instruments:

INTERNATIONAL INSTRUMENTS

1. The International Convention for the Prevention of Pollution of the Sea by Oil of the 12th May, 1954;
2. The International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties of hte 29th November 1969 and the 2nd November 1973 Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil;
3. The Convention on the Prevention of Pollution of the Sea by Oil of the 12th May, 1954; and
4. The International Convention for the Prevention of Pollution from Ships, 1973 and the protocol of 17th February, 1978.

REGIONAL INSTRUMENTS

1. The Convention for the Protection of the Mediterranean Sea against Pollution of 16th February, 1976;
2. The Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft of the 16th February, 1976.

The sources used in drafting this law, apart from the said instruments, are the following British laws:

1. The Prevention of Oil Pollution Act, 1971;
2. The Merchant Shipping (Oil Pollution) Act, 1971;
3. The Merchant Shipping Act, 1974;
4. The Dumping At Sea Act, 1974.

Part II of the 1977 Act deals with criminal liability for pollution. Basically, according to this Part, pollution can be of two types: pollution from oil or other pollutant. Note that in the U.K. model, the Prevention of Oil Pollution Act 1971, the terms "other pollutant" [65] were not used as the legislator was regulating only oil pollution. But the Maltese Legislator felt the need to add the words "other pollutant" so as to cover pollution from substances other than oil. Although I am in complete agreement with this approach, the problem lies in the fact that the definition given of "pollutant" is so wide that it covers also oil pollution. So once oil pollution is not being excluded from the definition of "pollutant" there is no need to distinguish between oil pollution on the one hand and pollution from other substances other than oil on the other. The Maltese legislator was using United Kingdom legislation as his model, adding to the said model other provisions which cater for the International Convention on the Prevention of Pollution from Ships 1973 / 78 (MARPOL 73 / 78) and the 1973 Protocol relating to intervention on the High Seas in Cases of Marine Pollution by substances other than Oil. But the legislator must have forgotten that oil is one type of pollutant, if not the most harmful pollutant resulting from shipping activities.

Moreover, whilst the United Kingdom has incorporated the International Convention on Civil Liability for Oil Pollution Damage, 1969 (C.L.C. 1969) into its, domestic law through the Merchant Shipping (Oil Pollution) Act 1971, our legislator preferred to do away completely with the said 1969 Convention. Again, the U.K. has also incorporated the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (Fund 1971) by means of the Merchant Shipping Act 1974 but, again, the Maltese legislator did not include it in his 1977 Act. So if Malta decides to ratify the above-mentioned 1969 and 1971 Conventions, the 1977 Act will have to be thoroughly amended so as to bring it in line with the said Conventions.

In this essay, it is not intended to analyse the provisions of the 1977 Act because this task has already been done in another study [66]. However, when viewed from the international viewpoint, this Act needs to be enhanced so that better provision be made for the implementation in Maltese Law of MARPOL 73 / 78 [67] and for the introduction in our law of the C.L.C. 1969 and the Fund 1971 Convention. Indeed, if the latter two Conventions are to be implemented into domestic legislation, then Part III of the 1977 Act has to be substituted

by new provisions which will be in line with the said international instruments. Even the provisions relating to dumping of wastes at sea can be ameliorated.

Again, it must be noted that section B (4) of the 1977 Act [68] provides a radical departure from the Merchant Shipping Act in the sense that the principle of limitation of the shipowner's liability is done away with completely except as provided in section 9 of the 1977 Act [69]. On the other hand, the ratification of the C.L.C. 1969 implies that Maltese Marine Pollution Law must encompass the principle of limitation of liability of the shipowner in case of oil pollution damage as well as the incorporation into Maltese internal legislation of a scheme for compensation for such damage based on the principle of strict (and not absolute) liability.

G. THE MERCHANT SHIPPING (DANGEROUS GOODS) RULES, 1974

The Merchant Shipping (Dangerous Goods) Rules, 1974 were made under the enabling provision contained in section 285 of the Merchant Shipping Act. It should be noted that sections 284 to 291 of the Merchant Shipping Act deal with the carriage of dangerous goods and are intended to implement .into Maltese domestic law the provisions of the International Convention for the Safety of Life at Sea 1960.

The Merchant Shipping (Dangerous Goods) Rules, 1974 [70] are also intended to implent into Maltese Law the said 1960 Convention. What is however important to note is that in 1974 a new International Convention for the Safety of Life at Sea was adopted and that Malta has ratified the 1974 Convention in 1986 [71]. This notwithstanding, Malta has not updated its Merchant Shipping Act as well as the regulations and rules made thereunder dealing with safety of life at sea to conform to the 1974 Convention.

Thus, for example, section 284 of the Merchant Shipping Act affords us with a definition of what constitutes dangerous goods [72].

Note that this definition is not an exhaustive one and that the Minister has, in Legal Notice 90 of 1974, following the International Convention for the Safety of Life at Sea 1960, categorized dangerous goods into nine different types of classes. What is however to be borne in mind is that according to section 284, "petroleum" is considered to be a dangerous good. No distinction is however made between "ordinary petroleum" and "dangerous petroleum" as is the case under Government Notice 397 of 1936 because, for the intents and purposes of the 1960 Convention, petroleum is always dangerous irrespective of its flash point.

Furthermore, although Legal Notice 90 of 1974 classifies dangerous goods into nine categories, it does not make any dierct reference to the International Maritme Dangerous goods Code adopted by the International Maritime Organisation, a specialized agency of the United Nations.

Moreover, in 1983, regulations concerning substances carried in bulk in purpose-built ships were introduced. Indeed, the amendments made in 1983 to the International Convention for the safety of Life at Sea (SOLAS) 1974 extended the application of Chapter VII [73] of SOLAS to chemical tankers and liquefied gas carriers by making reference to two new Codes which have been

developed by the International Maritime Organisation, these Codes being, the International Bulk Chemical Code and the International Gas Carrier Code which both relate to ships built on or after the 1st of July, 1986.

With regard to the carriage of dangerous goods by sea, it should be pointed out that Maltese law does regulate this type of carriage in other laws and regulations. Confer in this respect Annex II to this to this essay.

H. THE PROPOSED DRAFT ENVIRONMENT PROTECTION ACT

In January, 1990, the Minister responsible for the environment issued a White Paper on the protection of the environment which also contained a proposed draft Environment Protection Act [74]. Part V of the said draft contains only five sections in all which relate to the discharge into the sea of any substance. This Part of the draft bill proposes to implement the provisions of the Convention on the Prevention of Marine Pollution by Dumping of wastes and other Matter, 1972.

These five sections do not cover - apart from the said 1972 Convention - the other international and regional instruments which Malta has ratified and accepted to implement in its domestic legislation. Indeed, these five sections are by far worse than the Marine Polluction (Prevention And Control) Act, 1977 which - albeit its deficiencies - at least honours Malta's international and regional obligations assumed under the various Conventions ratified or acceded to by Malta as above-mentioned. On the other hand, the proposed draft Environment Protection Act does not even cover the instruments which Malta has ratified and are at the present moment in time enacted in the Marine Pollution (Prevention And Control) Act, 1977 [75]

SECTION 3 : CONCLUSION

By way of conclusion it should be observed that the only enactment which attempts to prevent, reduce and control marine pollution - apart from the carriage of dangerous goods by sea - is the Marine Pollution (Prevention And Control) Act, 1977. However, this Act is not yet in force whilst the other provisions of Maltese internal law on the subject under review are archaic and need a major overhaul. As I have attempted to show in this essay, the latter legislation gives rise to a considerable amount of difficulty as to its proper construction so much so that there is quite an amount of overlap and confusion in these provisions. On the other hand, the proposed draft Environment Protection Act fails to remedy this situation.

I am of the opinion that the Marine Pollution (Prevention And Control) Act, 1977 should be revised with a view to include the provisions of the C.L.C. 1969 and the Fund 1971 Convention. Regulations should also be prepared so as to cover the MARPOL 73 / 78 Annexes. Moreover, the Merchant Shipping Act and the subsidiary regulations made thereunder should also be reviewed with the aim of providing for the implementation into Maltese law of the International Maritime Dangerous Goods Code and the innovations introduced by the International Convention for the Safey of Life at Sea, 1974.

NOTES

1. Cfr. Volume I of the Revised Edition of the Laws of Malta, 1984.
2. Infra, p. 18.
3. Section 2.
4. For example, mud, deposit and sewage.
5. Infra. pp. 6 - 10.
6. Section 2 of Chapter 10 defines "vessel" as "any ship or boat or any other description of vessel used in navigation". The term "boat" is, in turn, defined as "any craft not intended for navigation to places outside the limits of Malta, used for the purpose of carrying on any trade or calling, and includes pleasure boat."
7. The International Convention For the Prevention Of Pollution From Ships 1973 / 78 (MARPOL 73 / 78) defines "clean ballast" and "segregated ballast" in Annexes I and II thereof.
8. Cfr. Christopher Hill, *Maritime Law* (London: Lloyd's of London Press Ltd., 1989) at p. 284; David W. Abecassis, *The Law And Practice Relating To Oil Pollution From Ships* (London: Butterworths, 1978) at pp. 120 - 121.
9. (1957) 2 Q.B. 169, CA.
10. Contrary to the U.K. doctrine of private nuisance, the nuisance contemplated in section 224 of the Code of Police Laws covers nuisance both on land as well as in Malta's harbours, internal and territorial waters.
11. Master means any person having the command, charge or custody of any vessel.
12. Section 2.
13. Section 2.
14. Section 2 (1).
15. Section 3 (4).
16. Cfr. the definition given of "pollutant" in section 2 of Act XII of 1977.
17. Discharge means "any discharge or escape however caused."
18. The definition of "vessel" in Chapter 10 and the Marine Pollution (Prevention And Control) Act, 1977 is identical.
19. Section 2 of the Marine Pollution (Prevention and Control) Act, 1977.
20. The Marine Pollution (Prevention and Control) Act, 1977, does not provide for the punishment of imprisonment, contrary to section 228 of Chapter 10.
21. Cfr. section 4 of the Marine Pollution (Prevention And Control) Act, 1977.
22. Section 5 (1) of the U.K. Continental Shelf Act 1964 provides that "If any oil to which section 1 of the Oil in Navigable Waters Act 1955 applies ...".
23. This section prohibits any person from searching or boring for or getting petroleum without a licence.
24. This section relates to the granting of licences to search and bore for, and get, petroleum.
25. This section relates to the making of regulations with respect to the exploration, prospecting and mining for petroleum.
26. Chapter 156 of the Laws of Malta.
27. According to the interpretation section, Malta has the same meaning as is assigned to it by section 124 of the Constitution of Malta, that is to say, "the island of Malta, the island of Gozo and the other islands of the Maltese Archipelago, including the territorial waters thereof."
28. Cfr. section 2 of Chapter 194 for the definition of the "continental shelf".
29. Ibid. re. defintiion of "natural resources".
30. Supra. p. 12.
31. Cfr., e.g. section 1 (1) of the Ministry of Fuel and Power Act 1945, section 9 (1) of the Oil Taxation Act 1975, section 5 of the Energy Act 1976.
32. Borys v. Canadian Pacific Rly Co (1953) AC 217 at 223.
33. Section 2 of the Marine Pollution (Prevention and Control) Act, 1977.
34. Supra, p. 9.
35. Thus, in the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 "discharge in relation to oil or to an oily mixture means any discharge or escape howsoever caused."

MARPOL 73 / 78 has followed suit. On the other hand, the International Convention on Civil Liability for Oil Pollution Damage 1969 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 retain the distinction between a discharge and an escape.

36. This includes both the inland waters and the territorial sea.
37. According to the interpretation section (section 2 of Chapter 226), Malta means the island of Malta, the island of Gozo and the other islands of the Maltese Archipelago.
38. Chapter 138 of the Laws of Malta.
39. The contiguous zone is the zone of the open sea contiguous to the territorial waters of Malta.
40. "Contravention" includes, according to section 3 of the Interpretation Act, 1975 (Act VII of 1975), a failure to comply with.
41. "Law" according to the interpretation section, includes any instrument having the force of law.
42. However, some of the contracting parties to the said 1958 Convention, like Malta, have revised their contiguous zone limits to bring them in conformity with the 1982 U.N. Convention on the law of the Sea. Cfr. R.R. Churchill and A.V. Lowe, *The Law of the Sea* (Manchester: Manchester University Press, 1988) at pp. 343 - 359.
43. "The contiguous zone may not extend beyond twelve miles from the baseline from which the breath of the territorial sea is measured."
44. Cfr. Section 4 (1) (a) of Chapter 226.
45. The law in section 3 (2) uses the following words: "... jurisdiction shall extend accordingly." In other words, the same jurisdiction of the Maltese State as on land extends also to the territorial waters of Malta.
46. Cfr. Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, 1979).
47. Added by section 3 of Act XXVIII of 1981.
48. Cfr. the definition of "Malta" given in section 2.
49. Section 3 (1) of Chapter 226.
50. Op. cit. at pp. 7 - 8.
51. Workplace pollution is contemplated in L.N. 52 of 1986.
52. Cfr. The Times, 24th June, 1988.
53. Op. cit. at p. 8.
54. R.R. Churchill and A.V. Lowe, op. cit. at Pp. 74 - 76.
55. Section 12 of Chapter 170.
56. As defined by section 4 of Chapter 170 and L.N. 96 of 1982.
57. L.N. 43 of 1966.
58. The Petroleum Ships Regulations, 1965.
59. Regulation 2 of L.N. 53 of 1965.
60. Regulation 1 of G.N. 397 of 1936.
61. "Ordinary petroleum means petroleum having a flash point from 73 degress F to 150 degrees F inclusive."
62. "Dangerous petroleum" means petroleum having a flash point below 73 degrees F."
63. "Petroleum ship means any ship, vessel, lighter or hulk having on board petroleum as cargo or any ship or vessel from which petroleum has been discharged, and which has not been freed from petroleum vapour to the satisfaction of the Superintendent of the Ports" (i.e. the Director of Ports).
64. Cfr. *Maritime Malta,* Office of the Parliamentary Secretary for Offshore Activities and Maritime Affairs, in particular, the sheet entitled "Bunkering Facilities."
65. Cfr. section 2 of the Marine Pollution (Prevention And Control) Act, 1977.
66. Cfr. Dr. William Azzopardi, "The Protection of the Environment (A Comparative Analysis), University of Malta, LL.D. thesis, 1988, at pp. 93 - 101.
67. No mention is made in the Marine Pollution (Prevention and Control) Act, 1977 that it was enacted with a view to implement the provisions of MARPOL 73 / 78. However, section 27 empowers the Minister responsible for shipping to make regulations covering the matters regulated by MARPOL 73 / 78.
68. Section 8 (4) of the Marine Pollution (Prevention And Control) Act, 1977 provides that - "Where the owner of a vessel incurs a liability under this section by reason of a discharge, sections 349 and 350 of the Merchant Shipping Act, 1973 shall not apply in relation to that liability."

69. Cfr. section 9 of the Marine Pollution (Prevention And Control) Act, 1977.
70. Legal Notice 90 of 1974.
71. Act XXV of 1986, the International Convention for the Safety of Life at Sea (Ratification) Act, 1986, empowered the Government of Malta to accede to SOLAS 1974 and its Protocol of 17th February, 1978. However, section 21 of Act XXIV of 1986 had already amended section 213 of the Merchant Shipping Act by substituting the reference to the 1960 SOLAS Convention by reference to the 1974 SOLAS Convention and the 1978 SOLAS Protocol. What is to be borne in mind, nevertheless, is that although both the Merchant Shipping Act and Act XXV of 1986 do not expressly menttion the amendments made to SOLAS 1974 and its Protocal of 1978 in 1981 and in 1983, these amendments also form part of Maltese Law once there were made according to the provisions of the siad International Convention, and when Malta acceded to this Convention it had done so when these amendments were already part and parcel of the 1974 SOLAS Convention.
72. Note that no reference is made to the International Maritime Dangerous Goods Code of the International Maritime Organization.
73. This is entitled "Carriage of Dangerous Goods". Chapter 8 of SOLAS deals with Nuclear Ships but no provision is made with regard to nuclear ships in the Merchant Shipping Act. One should however bear in mind section 5 of Chapter 226 (supra at p. 20).
74. "Proposed Draft Bill On Environment Protection". Valletta: Department of Information, January, 1990.
75. Cfr. Supra pp. 24 - 25.

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ANNEX I

MALTESE LEGISLATION RELATING TO THE PREVENTION, REDUCTION AND CONTROL OR MARINE POLLUTION.

Maltese legislation relating to the prevention, reduction and control of marine pollution is twofold:-

1. Maltese Legisaltion, and
2. International Instruments.

1 MALTESE LEGISLATION

Maltese Legislation is, in turn, sub-divided into two categories:

A. Primary Legislation, and
B. Secondary Legislation.

1. A. MALTESE PRIMARY LEGISLATION

The primary legislation which regulates the prevention, reduction and control of Marine Pollution is the following:

a. Code of Police Laws (Chapter 10).
b. Petroleum (Importation, Storage and Sale) Ordinance (Chapter 25).
c. The Expolosives Ordinance (Chapter 33).
d. Factories Ordinance (Chapter 107).
e. Ports Ordinance (Chapter 170).
f. Continental Shelf Act (Chapter 194).
g. Clean Air Act (Chapter 200).
h. Territorial Waters and Contiguous Zone Act (Chapter 226).
i. Merchant Shipping Act (Chapter 234).
j. Marine Pollution (Prevention and Control) Act, 1977 (Act XII of 1977).
k. International Convention For The Safety Of Life At Sea (Ratification) Act, 1986 (Act XXV of 1986).

1. B. MALTESE SUBSIDIARY LEGISLATION

a. Material Discharge Outside Harbours Regulations, 1905 (G.N. 24 of 1905).
b. Petroleum Ships Entry And Discharge Of Petroleum In Harbours, 1936 (G.N. 397 of 1936).
c. Port Regulations, 1966 (L.N. 43 of 1966).
d. Merchant Shipping (Dangerous Goods) Rules, 1974 (L.N. 90 of 1974).

2. INTERNATIONAL INSTRUMENTS

This is subdivided into two categories:-

A. Global Instruments, and
B. Regional Instruments.

2. A. GLOBAL INSTRUMENTS

a. The International Convention For The Prevention Of Pollution Of The Sea By Oil, 1954.
b. The Geneva Convention On The Territorial Sea And The Contiguous Zone, 1958.
c. The Geneva Convention On the Continental Shelf, 1958.
d. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, 1963.
e. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof, 1971.
f. The Convention on the Prevention of Marine Pollution by Dumping of Wastes And Other Matter of the 13th November, 1972, as amended on 12th October, 1978 and 11th March, 1981.
g. The International Convention For The Safety Of Life At Sea of 1st November 1974 and its Protocol of 17th February, 1978.

2. B. REGIONAL INSTRUMENTS

a. The Convention For The Protection Of The Mediterranean Sea Against Pollution, 1976.
b. Protocol For The Prevention Of Pollution Of The Mediterranean Sea By Dumping From Ships And Aircraft, 1976.
c. Protocol Concerning Co-Operation In Combating Pollution Of The Mediterranean Sea By Oil And Other Harmful Substances In Cases of Emergency, 1976.
d. Protocol Concerning Mediterranean Specially Protected Areas, 1982.

ANNEX II

PROVISIONS OF MALTESE LAW WHICH ALSO REGULATE DANGEROUS GOODS

PRIMARY LEGISLATION

1. The Code of Police Laws (Chapter 10) : Sections 237, 238, 240(2), 241.
2. The Petroleum (Importation, Storage and Sale) Ordinance (Chapter 25) : Section 12.
3. The Explosives Ordinance (Chapter 33) : Section 3.
4. The Factories Ordinance (Chapter 107) : Section 3(2) (ii).
5. The Ports Ordinance (Chapter 170) : Section 12(m).
6. The Territorial waters and Contiguous Zone Act (Chapter 226) : Section 5(1) (2).

SUBSIDIARY LEGISLATION

1. The Ports Regulations, 1966 (L.N. 43 of 1966) : Regulations 33, 88, 89A, 98 to 126 and the First Schedule thereof.
2. Petroleum Ships Entry and Discharge of Petroleum in Harbours Regulations, 1936 (G.N. 397 of 1936).
3. Factories (Health, Safety and Welfare) Regulations, 1986 (L.N. 52 of 1986) : Regulations 18, 19, 38 to 44.

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