

**ENFORCEMENT OF THE PROVISIONS OF THE UNCLOS 1982 ON MARINE  
POLLUTION BY MARINE VESSELS:  
CASE STUDY OF TANZANIA**

**By**

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**A Research Report Submitted in Partial Fulfillment of the Requirement for the  
Award of the Degree of Master of Laws (LLM) of Mzumbe University.**

**2013**

## CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation paper entitled; **ENFORCEMENT OF PROVISIONS OF THE UNCLOS 1982 ON MARINE POLLUTION BY MARINE VESSELS: CASE STUDY OF TANZANIA**, in partial fulfillment of the requirements for award of the degree of Master of Laws (LL.M) of Mzumbe University.

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## **DEDICATION**

I dedicate this research paper to my father **Lauden N. Lauden** and my late mother, **Mariam N. Lauden**, who really inspired me to love God.

## ABBREVIATIONS

AIS	-Automatic Identification System
CAP	-Chapter of Law.
CLL	-Convention on the Load Lines
DMI	-Dar-es-Salaam Maritime Institute
EEZ	-Exclusive Economic Zone.
FUND	-Fund for Compensation for Oil Pollution Damage
GESAMP	-Group of Expert on the Scientific Aspects of Marine Environment Protection
HNS	-Hazardous and Noxious Substances
HSC	-High Seas Convention.
ICJ	-International Court of Justice
IMO	-International Maritime Organization.
LOS	-Law of the Sea
MARPOL	-International Convention on the Prevention of Pollution by Ships
MSC	-Maritime Safety Committee.
MV	-Maritime Vehicle
NRCC	-National Rescue Co-ordination Centres (NRCC)
OILPOL	-International Convention for the Prevention of Pollution of the Sea by Oil
OPRC	-Oil Pollution Preparedness Response and Cooperation (1990)
SOLAS	-Safety of Life at Sea (1974)
STCW	-Standards of Training, Certification and Watch Keeping for Seafarers
SUMATRA	-Surface and Maritime Transport Regulatory Authority
TAWLA	-Tanzania Women Lawyers Association
TPA	-Tanzania Ports Authority
TSIP	-Transport Sector Investment Programme
UN	-United Nations
UNCLOS	-United Nations Convention on the Law of the Sea

UNTS	-United Nations Treaty Series
USA	-United States of America
VDR	-Voyage Data Recorder

## **ABSTRACT**

The law of the sea is of systematic importance to the discipline of public international law, it teaches the society about historical, social, economic and political forces that play upon the formation and interpretation of legal principles. It has provided out solutions of different problems worldwide, including marine pollution as it has been indicated on article 199-222 of the UNCLOS III of 1982. Marine pollution is a wide reaching problem and its influence to the health of human populations is great. This paper provides the insight view the enforcement of the law of the sea of 1982 using Tanzania as a case study. The study finds that these kinds of pollutions are not only seriously affecting the human health and economic welfare, but also the animals. It would appear that many coastal states including Tanzania are not keen to watch out the problems caused by marine vessels seemingly infringing what the Convention stands for. The study reveals also the contradiction caused by UNCLOS III via its articles in narrating down the control of marine pollution from marine vessels, hence, raising difficulties in enforcement. It is submitted that states including Tanzania should restructure their policies and regulations to conform to their assumed obligations under the Convention. According to this study, still time left in the hands of global institutions, governments and local bodies to use the 1982 United Nations Conventions on the Law of the Sea to balance the marine problems caused by marine vessels worldwide including Tanzania for safeguarding the interests of marine industry.

## TABLE OF CONTENTS

CERTIFICATION .....	i
DECLARATION AND COPYRIGHT .....	ii
ACKNOWLEDGEMENTS .....	iii
DEDICATION .....	v
ABBREVIATIONS .....	vi
ABSTRACT .....	viii
TABLE OF CONTENTS .....	ix
LIST OF TABLES .....	xiii
LIST OF INSTRUMENTS .....	xiv
LIST OF CASES .....	xvi
LIST OF FIGURES .....	xvii
CHAPTER ONE .....	1
GENERAL INTRODUCTION .....	1
1.1 Introduction .....	1
1.2 Background to the Problem .....	2
1.3 Statement of the problem .....	5
1.4 Research Hypotheses .....	6
1.5 General objective .....	6
1.6 Specific objective .....	6
1.7 Significance of the study .....	7
1.8 Literature review .....	8
1.9 Research Methodology .....	15
1.10 Research Design .....	15
1.11 Area of Study .....	15
1.12 Study Population (Units of Inquiry) .....	16
1.13 Sample Size .....	16
1.14 Sampling techniques and procedures .....	16
1.15 Data Collection .....	17
1.15.1 Primary Sources .....	17
1.15.2 Interviews .....	17

1.15.3 Questionnaires.....	18
1.16 Secondary Data .....	18
1.16.1 Documentary Review.....	18
1.16.2 Electronic Sources.....	18
1.17 Data Processing and Analysis .....	19
1.18 Data Quality Control.....	19
1.19 Limitation of the study .....	20
1. 20 Conclusion .....	20
CHAPTER TWO .....	22
CONCEPTUAL FRAME WORK .....	22
2.1 Introduction.....	22
2.2 Territorial sea .....	22
2.3 Exclusive Economic Zone (EEZ).....	23
2.4 Pollution .....	25
2.4.1 Marine Pollution .....	26
2.4.2 Vessel Source Pollution .....	26
2.4.3 Pollution under the UNCLOS III.....	27
2.4.4 Pollution from Vessels as understood in this study .....	28
2.5 Polluter .....	28
2.6 Pollutants.....	29
2.7 Conclusion .....	30
CHAPTER THREE.....	31
INTERNATIONAL AND REGIONAL FRAMEWORK ON THE PREVENTION OF VESSEL SOURCE POLLUTION .....	31
3.1 Introduction.....	31
3.2 Treaty Law .....	31
3.3 The 1982 United Nations Law of the Sea Convention .....	32
3.3.1 Brief Overview of the Law of The Sea Convention .....	32
3.3.2 The Endorsement of Compatible Multilateral Conventions by the UNCLOS III	34
3.4 Flag State Jurisdiction.....	36
3.4.1 The Definition and Functions of Flag State Jurisdiction .....	37

3.4.2 Flag State Prescriptive Jurisdiction in the UNCLOS III over the Prevention of Vessel Source Pollution .....	39
3.4.3 The General Obligation to Protect and Preserve the Marine Environment from Vessels Source Pollution.....	39
3.4.4 The Obligation of Flag States to Formulate National Laws for the Prevention of Vessels Source Pollution.....	41
3.5 Jurisdiction of Port States to Establish Conditions for Port Entry in National Laws	43
3.5.1 Legislative Jurisdiction by port state in the Territorial Sea. ....	45
3.6 The Right of Innocent Passage and Marine Pollution.....	47
3.6.1 Restriction Basing on Marine Environment.....	48
3.6.2 Ships Carrying Dangerous Materials and the Concept of Innocent Passage .....	48
3.6.3 The Coastal State’s Right of Hot Pursuit in the Territorial Sea.....	49
3.7 Coastal State jurisdiction in the Exclusive Economic Zone on Pollution.....	50
3.7.1 Introduction .....	50
3.7.2 Legislative Jurisdiction .....	51
3.8 The Competent International Organization.....	52
3.9 Generally Accepted International Rules and Standards.....	54
3.9.1 Generally Accepted International Rules and Standards Applicable to the Preservation of Vessel Source Pollution. ....	55
3.10 MARPOL 73/78: Overview and General Characteristics.....	58
3.10.1 Application of MARPOL 73/78 by States .....	59
3.11 The Regional Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region.....	60
3.12 Conclusion .....	61
CHAPTER FOUR.....	62
POSITION OF TANZANIA IN THE ENFORCEMENT OF THE LAW OF THE SEA OF 1982.....	62
4.1 Introduction.....	62
4.2 National Legal framework .....	62
4.3 Environment Management Act 2004, Act No 20 Of 2004 .....	62
4.4 Territorial Sea and Exclusive Economic Zone .....	64

4.5 Fisheries Act, 2003 .....	64
4.6 Merchant Shipping Act .....	64
4.7 Surface and Marine Transport Regulatory Authority (SUMATRA) .....	66
4.8 National Institute of Transport (NIT).....	66
4.9 Marine and Coastal Areas .....	67
4.10 The National Laws under MARPOL 73/78 .....	67
4.11 The Implementation of Flag State Prescriptive Jurisdiction by the United Republic of Tanzania (URT) .....	68
4.11.1 Function of the Flag State Authority of the Tanzania.....	68
4.12 The Relevance of UNCLOS III in Tanzania on Marine Pollution.....	69
4.13 Conclusion .....	71
CHAPTER FIVE.....	73
FINDINGS AND ANALYSIS.....	73
5.1 Introduction .....	73
5.2 UNCLOS III.....	73
5.3 Data Collected from the Ministry of Transport.....	75
5.4 Data collected from SUMATRA .....	77
5.5 Data from DMI.....	79
5.6 Data Collected from different Tanzanian Lawyers.....	80
5.7 Data from Human Rights Centre.....	81
5.8 Non-lawyers .....	83
5.9 Conclusion .....	83
CHAPTER SIX .....	84
CONCLUSION AND RECOMMENDATIONS.....	84
6.1 Introduction .....	84
6.2 Conclusions .....	84
6.3 Recommendations .....	86
REFERENCES.....	90
APPENDICES .....	99
APPENDIX A: FOR LAWYERS ONLY .....	99
APPENDIX B: SAMPLE OF INTERVIEW .....	103

## LIST OF TABLES

Table 5.1: Whether UNCLOS III does not provide effective mechanisms on the prevention of marine pollution by ships.....	75
Table 5.2: Whether Tanzanian legal system merchant shipping Act is sufficient .....	79

## **LIST OF INSTRUMENTS**

### **MUNICIPAL STATUTES**

Fisheries Act, 2003

Tanzania Environment Management Act, No. 20 of 2004

The Merchant Shipping Act of 2003 Act no 21

The surface and Marine Transport Regulatory Authority [SUMATRA] Act, Act No. 9 of 2001

Territorial Sea and Exclusive Economic Zone Act Cap 238 R.E 2002

### **INTERNATIONAL INSTRUMENTS**

Ballast Water Management Convention of 2004.

Convention of the International Maritime Organization, (1947) *UNTS 1520*

Conventions on the International Regulations for Preventing Collisions at Sea, (1972) *ATS 5*

Convention on the prevention of Marine Pollution by Dumping of Wastes and Other Matter, (1972) *UNTS I-15749*

International Convention for the Control and management of Ships' Ballast Water and Sediments. (2004) *ATNIF 18*

International Convention on Standards of Training Certification and Watch keeping for Seafarers, (1978) *ATS 7*.

International Convention Relating to Intervention on the High seas in Cases of oil Pollution Casualities', (1969) *UNTS-1-1409*.

International Convention on oil Pollution Preparedness Response and Cooperation, (1990) *UNTS I-32194*

International Convention on Civil Liability for Oil Pollution Damage (1969) *UNTS I-14097*.

International Convention on the Establishment of an International Fund for Compensation for Oil

International Convention on Load Lines, (1966) *UNTS I-9159*

The international Convention of Liability and Compensation for Damage in Connection with the carriage of Hazardous and Noxious Substances, (1966)

The United Nations convention on the Law of the Sea. Montego Bay, 10 December 1982, in force 16 November, 21 ILM 1245 (1982)

International Convention for the Control and management of Ships' Ballast Water and Sediments adopted in (2004)

## **LIST OF CASES**

Aramco Arbitration ILR, (1959), 27 ILR p. 212

Fisheries Case (United Kingdom V. Norway (International Court Of Justice) December 18, 1951

Great Britain v. Albania, Preliminary Objection, and Judgment in ICJ Rep. (1947-1948)

Nicaragua V. United States, Case ICJ Reports 1986, p. 14 at p. 111

S.S. Lotus (France v. Turkey), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7), Publications of the Permanent Court of International Justice, Series A - No. 10; Collection of Judgments, A.W. Sijthoff's Publishing Company, Leyden, 1927.

## LIST OF FIGURES

FIGURE 1: Whether UNCLOS III does not provide effective mechanisms on the prevention of marine pollution by ships.....	75
FIGURE 2: Whether Tanzanian legal system merchant shipping Act of 2003 is sufficient in protecting marine pollution by marine vessels. ....	79

# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.1 Introduction

United Nations Convention on the Law of the Sea of 1982 (UNCLOS III)<sup>1</sup> is the most comprehensive attempt at creating a unified regime for governance of the rights of nations with respect to the law of the sea. The protection and preservation of marine environment from vessels-source pollution is an important ecological issue that has captured world attention in the past five decades or so and is prominently addressed in international political fora.<sup>2</sup> In protecting and preserving the marine environment, almost universally, environmental remedies have been applied after some actual disaster mainly pollution from oil spills, with warnings generally being ignored.<sup>3</sup> Group of Expert on the Scientific Aspects of Marine Environment Protection (GESAMP) in 2008 suggest that vessels were responsible for 12 percent of the total marine pollution generated from human activities.<sup>4</sup> This share of marine pollution consists, among other things, of pollutant discharge such as oil noxious liquid substances in bulk harmful substances carried in package from sewage, garbage, and ballast water discharge from vessels.<sup>5</sup>

Oil is the pollutant with the longest history of international attention while many sources of pollution are toxic to the marine environment. There is no substance more damaging than oil, especially if a large amount of oil is spilt in a restricted coastline<sup>6</sup> Marine casualties such as Amoco Cadiz, Exxon Valdez, Erika, Torrey Canyon and the Prestige are famous vessel sources of pollution. Such incidents have attracted high profile media coverage and a great deal of public scrutiny, compelling government regulators, law

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<sup>1</sup> The United Nations Convention on the Law of the Sea. Montego Bay, 10 December 1982, in force 16 November, 21 ILM 1245 (1982)

<sup>2</sup> Jin Tan, A. (2006) Vessel-Source Marine Pollution: The Law and Politics of International and Regulations, Cambridge University Press, p. 78.

<sup>3</sup> Lin, B. *et al*, (2006) Compliance with International emission Regulations. Reducing air pollution from Merchant vessels 30 Marine policy 220, p.221.

<sup>4</sup> IMO, International Shipping and World Trade, facts and figure (2008) Maritime knowledge centre [www.imo.org](http://www.imo.org) at 18 September, 2012, p. 21.

<sup>5</sup> Williams, H.H & Mackenzie, K. "Marine Parasites as Pollution Indicators; an Update" (2003) 126 Cambridge Journals, p. 28.

<sup>6</sup> White, M. (2007) Australasian Marine Pollution Laws, 2<sup>nd</sup> Edition, Federation press, p. 16.

enforcement agencies and shipping companies to instigate remedial action in order to minimize damage to coastlines and promote good environmental practices.<sup>7</sup> There is no doubt that, large scale vessel source pollution incidents not only place a large financial burden on the local population, but also threaten concerned parties, then, states like Tanzania are particularly vulnerable to such pollution incidents due to their high reliance on the marine environment for socio-economic sustenance. For this reason, each pollution accident is seen emotively as one incident too many.<sup>8</sup> The general consensus is that, there are sufficient international regulations to provide an effective-framework for the protection of the marine environment from vessel sources pollution but, these regulations lack national prescription and enforcement by flag, coastal and port states.<sup>9</sup> In fact the ineffectiveness of these international legal instruments depends on their implementation through national enabling legislation.<sup>10</sup>

## 1.2 Background to the Problem

Prior to the 20<sup>th</sup> century, the oceans had been subject to the freedom of the seas doctrine. This principle, adopted in the 17<sup>th</sup> century, limited national rights and jurisdiction over a narrow band of water along a nation's coast, the rest of the sea being free to all and belonging to none.<sup>11</sup> Nearly a century later, the cannon-shot rule became the basis for determining how much of the adjacent oceans were under the jurisdiction of a nation.<sup>12</sup> In the 18<sup>th</sup> century this range was approximate three nautical miles. As time progressed, three miles became the widely accepted range for the territorial sea.<sup>13</sup> With the

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<sup>7</sup> Lachlan, M. P. "Managing the Impact of Shipping on the Marine Environment" in Hawksely C.M and Ran, C.B. (2000)(Eds), Preservation and Protection of the Marine Environment (University of Wollongong), p. 102.

<sup>8</sup> Andree, K. (2003), International Environmental Law and Policy Series (Kluwer Law International), p.363.

<sup>9</sup> Douglas, J. C and John, P. G. (1980) (Eds), The Impact of Marine Pollution (Croom Helm London,) p. 95.

<sup>10</sup> Sefanaia, N. Addressing Shipping Related Marine Pollution in the Pacific Island Region (2004) South Pacific Regional Environmental Programme (SPREP) [www.sprep.org](http://www.sprep.org) at 23 September 2012

<sup>11</sup> Grotius, H.(1608) *Mare liberum sive de Lure quod Batavis Competit ad Indicana Comercia, Dissertato* – The Freedom of the High Seas or the Right Which Belongs to the Dutch to take Part in the East Indian trade 55 (Oxford University Press 1916) [Hereafter cited as Grotius, *Mare Liberum*].

<sup>12</sup> <http://www.nauticalcharts.noaa.gov/index.html>

<sup>13</sup> United Nations, the United Nations Convention on the Law of the Sea( A Historical Perspective) available at

technology of the mid-of 19<sup>th</sup> century and early-20<sup>th</sup> ships did not become only more powerful, but also technology allowed humanity to exploit ocean resources that had never been before envisioned. Virtually, unrestricted fleets from around the world towards the areas rich in fish stocks caused the world to be depleted without regard to the stability of their numbers.<sup>14</sup>

In order to protect local resources, biological or mineral, United States was the first nation to challenge the long-standing freedom of the seas doctrine beyond the traditional.<sup>15</sup> By 1950, other countries were asserting rights over a 200-mile zone in order to protect its biological resources from foreign fleets, and a spate of Arab and Eastern European nations were laying claim to a 12-mile territorial sea.<sup>16</sup>

Recognizing the conflicts that were resulting from the current regime, the General Assembly adopted a Resolution 1105(XI),<sup>17</sup> which called for the Convening of the United Nations Conventions. The meeting produced four separate conventions.<sup>18</sup> The convention on the Territorial Sea and Contiguous Zone that established rights and rights of passage through the Territorial sea, The Contiguous Zone to extend 12 nautical miles

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[http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm)  
(accessed 9 September 2012)

<sup>14</sup> Ibid

<sup>15</sup> President Harry S. Truman, President Truman's Proclamations on U.S Policy Concerning Natural Resources of Sea Bed and Fisheries on High Seas as it was signed on September 28, 1945 and become commonly known as the Truman Proclamation, the Proclamation set a claim of sovereignty by the United States to the outer continental shelf and the resources therein as well as establishing the right of the U.S to establish conservations zones in areas of the High seas contiguous to the coasts of the United States, available at <http://www.ibiblio.org/pha/policy/1945/450928a.html> (accessed 10 September 2012)

<sup>16</sup> United Nations, the United Nations Convention on the Law of the Sea (A Historical perspective ) available at [http://www.un.org/depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm](http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm) accessed 19 August 2012

<sup>17</sup> **Resolution 1105 (XI) of the General Assembly of the United Nations Convening the Conference**, Extracted from the *Official Records of the United Nations Conference on the Law of The Sea, Volume II (Plenary Meetings)* accessed 30 September 2012.

<sup>18</sup> United Nations, Diplomatic Conferences: United Nations Conference on the Law of the Sea 1958, available at [http://untreaty.un.org/cod/diplomaticconferences/lawofthe\\_sea-1958/Law\\_of\\_the\\_Sea\\_1958.html](http://untreaty.un.org/cod/diplomaticconferences/lawofthe_sea-1958/Law_of_the_Sea_1958.html) accessed 16 September 2012

from the baselines, but failed to set the standards of limits on the territorial Sea,<sup>19</sup> The Convention on the High Sea established access for land locked nations, expounded on the concept of flag state, outlawing the transport of slaves, covered piracy, established safety and rescue protocols, established a national duty to prevent pollution, and established rights to laying of undersea cables and pipelines.<sup>20</sup> While Law of the Sea Convention I<sup>21</sup> saw a significant development in the international legal regime governing the oceans, there were still many issues left unsettled including marine pollution by ships. In attempt to deal with the issues that remained unresolved after UNCLOS I, the General Assembly called for a second United Nations Convention on the law of the Sea now commonly referred to as UNCLOS II.<sup>22</sup>

The deliberations lasted for nine years, saw the participation of 160 nations, and concluded in 1982 with the United Nations Conventions on the Law of the Sea, commonly known as UNCLOS III or The Law of the Sea Treaty<sup>23</sup>. Currently, Marine pollution industry are linked also with International Maritime Organization (IMO) and International Convention on the Prevention of Pollution by Ships (MARPOL) as instruments for regulation. Then, these instruments will be highly considered in this study without neglecting other related instruments.

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<sup>19</sup> Convention on the Territorial Sea and the Contiguous Zone, 29 April 1958, 516 U.N.T.S. 205. available at [http://untreaty.un.org/ilc/texts/instruments/english/conventions/8\\_1\\_1958\\_territorial\\_sea.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_territorial_sea.pdf))

<sup>20</sup> Convention on the High Seas, 29 April 1958, 450 U.N.T.S. 11 available at [http://untreaty.un.org/ilc/texts/instruments/english/conventions/8\\_1958\\_high\\_seas.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1958_high_seas.pdf)

<sup>21</sup> **The First United Nations Conference on the Law of the Sea (UNCLOS I) convened** from February 24 until April 29, 1958. UNCLOS I adopted the four conventions, which are commonly known as the 1958 Geneva Convention; The Convention on the Territorial Sea and Contiguous Zone; The Convention on the High Seas; The Convention on Fishing and Conservation of the Living Resources of the High Seas; and The Convention on the Continental Shelf.

<sup>22</sup> **The Second United Nations Conference on the Law of the Sea UNCLOS II** from March 17 until April 26, 1960, at <http://untreaty.un.org/cod/diplomaticconferences/lawofthesea-1982/lawofthesea-1982.html>. accessed 25 September 2012).

<sup>23</sup> United Nations, Diplomatic Conferences: United Nations Conferences on the Law of the Sea, 1973-1982, available at <http://untreaty.un.org/cod/diplomaticconferences/lawofthesea-1982/lawofthesea-1982.html>, accessed 25 September 2012).

### 1.3 Statement of the problem

There is no doubt that UNCLOS III is acknowledged to be a framework convention and member states including Tanzania, as it has been reflected in several articles of UNCLOS III require States to "take account of", "conform to", "give effect to" or "implement" the relevant international rules and standards developed by or through the "competent international organization".<sup>24</sup> UNCLOS III especially on articles are of particular relevance in this context: article 21(2) refers to the "generally accepted international rules or standards" on the "design, construction, manning or equipment" of ships in the context of laws relating to innocent passage through the territorial sea; article 211(6)(c) refers to the "generally accepted international rules and standards" in the context of pollution from vessels; article 217(1) and (2) refers to the "applicable international rules and standards" in the context of flag State enforcement; and article 94(3), (4) and (5) requires flag States to conform to the "generally accepted international regulations, procedures and practices" governing, inter alia, the construction, equipment and seaworthiness of ships, as well as the manning of ships and the training of crews, taking into account the "applicable international instruments".

Despite this mandate, Tanzanian laws do not specify the exercise of sovereign rights in the country's economic exclusive zone that must accord with environmental policies provided in the Law of the Sea Convention.<sup>25</sup> Also the country's national laws do not seek to balance the state's interests in the environmental protection with the navigational rights of foreign vessels by limiting the exercise of the state's sovereign rights in the exclusive economic zone.<sup>26</sup> Furthermore, the national laws are silent on whether Tanzania may, in the exercise of its sovereign rights levy charges on high risk vessel for granting access to its Exclusive Economic Zone or on the Territorial Sea, such as The Merchant Shipping Act<sup>27</sup> does not provide for the clear solution for the problem.

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<sup>24</sup> International Maritime Organization

<sup>25</sup> Article 193 Of the law of the Sea Convention.

<sup>26</sup> Ibid

<sup>27</sup> See Part XIX of The Merchant Shipping Act, No 21, 2003

The absence of mechanism enforcement such as navy, police force and civil authority to enforce laws has left Tanzania weak. The loopholes in the UNCLOS III confidently have made Tanzania in its sea zone polluted. Therefore, the UNCLOS III, adopted in 20<sup>th</sup> century is now ineffectual to hold back the problem of marine pollution, and some efforts made by Tanzania such as enactment of national anti-pollution to fight the problem cannot achieve the anticipated solution.

#### **1.4 Research Hypotheses**

The research hypotheses were based on the following:-

- i. Article 193-222 of the UNCLOS III does not provide effective mechanisms on the prevention of marine pollution by ships.
- ii. The liability established by the Tanzanian Merchant **Shipping Act is very** narrow to fight marine pollution by ships.
- iii. Standard of proof in marine pollution is highly complicated.
- iv. The Tanzanian law has no sufficient provisions to curb the problem of marine pollution by ships.

#### **1.5 General objective**

The study is focused on the enforcement of marine pollution by ships in Tanzania. It intends to make a critical analysis of the existing Law of the Sea in curbing marine pollution in Tanzanian exclusive economic zone, with a view to assessing how far Tanzania have gone in prevention of marine pollution by ships in order to assess the most efficient legal frame work in making the sea a safer place for all.

#### **1.6 Specific objective**

The following are the specific objectives of the study:-

- i. To examine deeply the efficacy of the UNCLOS III on the prevention of marine pollution in the sea, and how the existing system has possibly turn into the marine pollution in the sea vain.
- ii. Is also hereby to scrutinize the contribution at global level the prevention of marine pollution by ships in Tanzania.

- iii. To examine the Tanzanian anti-marine pollution by ships and its role in safeguarding the off-shore dwellers, identification of loopholes in the said law, and on how it can be made to order.
- iv. To examine critically the law on how responsibility against the ship owner has been detailed.

### **1.7 Significance of the study**

Marine industry is characterized by the threat from ships which have not controlled by the current legal frame work. Hence the focus was on changing the existing current legal frame work. Therefore, this research would be of great significance in the field of international law, since it intended to identify some loopholes in UNCLOS III, IMO, MAPROL and Merchant Shipping Act hence providing suggestions of legal framework in which will ensure security of marine industry from ships at the sea especially in Tanzania.

This research is important to the whole community as it shows the mutual interdependence of all countries in matters concerning marine pollution and how to handle it globally.

By eliciting the views and perceptions of the stakeholders in the marine pollution sector by marine vessels of Tanzania on the pollution style and how best to address the problem, this study highlights how mutual understanding of compliance issues can contribute to designing effective compliance strategies and invariably improve optimal level of compliance by all the stakeholders in the sector.

The nature of this research at last makes it an indispensable reference material for policy-makers, on marine pollution, and academics. It is hoped that some of the thought provoking issues raised by the researcher but not exhaustively addressed because of the scope of the research will serve as the basis for future research.

## 1.8 Literature review

Different scholars have argued on the effectiveness of the UNCLOS III on the prevention of marine pollution in its member states, others have also gone far on discussing the core problem on the implementation and enforcement of marine pollution to some extent they have worked to the problem but still there is a gap on some of the said literatures. In Tanzania this gap is existing as there are no effort made to deal with, even the local literatures are limited. Therefore this part of research contains different literatures on the topic which the researcher used as references when conducting his research. These include:-

**Andree Kirchner (2003),**<sup>28</sup> extensively dealt with large scale vessel source pollution incidents that; not only place a large financial burden on the local population, but also threaten concerned parties, states like Maldives are particularly vulnerable to such pollution incidents due to their high reliance on the marine environmental for socio-economic sustenance. For this reason, each pollution accident seen emotively as one incident too many. The literature is concerned with the situation in Maldives and its archipelagos by advocating the impacts on the poor management of marine industry to its subjects, in this regard the book will be helpful in terms of alerting Tanzania with its negligence on implementing and enforcing law on marine since it is burdensome to clean the marine and also cause loss to the economy at large and the fact is that Tanzania nowadays is highly relied on marine environmental for socio-economic.

**Mary George, (2002),**<sup>29</sup> flag states must exercise jurisdiction under their internal laws over vessels flying their flag, it is a serious problem that states fail to implement and enforce international treaties such as MARPOL 73/78 and the UNCLOS III via flag states. Though the literature talks much on the protection of marine pollution on straits under the 1982 Law of the Sea Convention but the researcher believe that, is going to be of much help as it put emphasis on the duties vested by the international law on

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<sup>28</sup> Kirchner A,(2003), International Environmental Law and Policy Series, Kluwer Law International, P. 363.

<sup>29</sup> George, M. 2002, Transit Passage and Pollution Control in Straits Under the 1982 Law of the Sea Convention, ocean Development & International Law. P. 189.

prevention of marine pollution to its subjects including Tanzania. Despite these propositions given out by the author, the text does not give out the mechanism on the prevention of marine pollution by vessels to the coastal state.

**David O, Connell, (2009),<sup>30</sup>** the author is much based on the types of oil residues or wastes that are accumulated on vessels as part of their normal operations-oil bilge wastes and oil sludge wastes, oil bilge wastes develop when the drippings of oil from the complex machinery aboard a vessel collect and mix with Sea water in the bilge (bottom) of the vessel. The book explain the mechanism and types of oil causing pollution, hence, will be material to this study in Tanzania to make an awareness on how to identify the means marine vessels pollute water.

**Bin Lin and Cheng-Yuan Lin, (2006)<sup>31</sup>** the author explained the burning process of marine bunker fuel oil in engines, broilers and aerators on board, vessels produce significant amounts of black smoke. This smoke consists of nitrogen oxides, unburned hydrocarbons, sulfur oxides, carbon monoxide and carbon dioxide among other substances. More over the author emphasize that, these pollutants have the capacity to deplete the ozone layer, enhance the green-house effect and produce acid rain, as well as being detrimental to human health. It is therefore not surprising that emissions from vessel have attracted a great deal of public concern. The author has tried to show how marine pollution occurred via marine vessels, when he pointed out the form of acidic rain, then the researcher expect to make a critical reasoning on how Tanzanian law has dealt with pollution of this form from marine vessels to the ocean.

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<sup>30</sup> O'Connell, D. (2009) US Coast Guard office of maritime and International Law, [http://www.uscg.mil/proceedings/summer\\_2009/articles/58\\_O'Connell\\_Port%20state%control.pdf](http://www.uscg.mil/proceedings/summer_2009/articles/58_O'Connell_Port%20state%control.pdf) at 24 august 2012. P. 59.

<sup>31</sup> Bin, L. and Cheng-Yuan Li,(2006) *compliance with International emission Regulations. Reducing air pollution from Merchant vessels* 30 Marine policy, p. 14

**Andrew Griffin, MARPOL 73/78 and vessel pollution**<sup>32</sup> he explained that, the underlying monitoring systems, is to make sure that a vessel's operational discharges meet the precise standards prescribed in MARPOL 73/78, the text elaborate why various states choose not to comply with the obligation to detect unlawful discharges from vessels. First of all, the detection of discharge in violation of MARPOL 73/78 requires well trained inspector and substantial financial resources, which some countries have in limited supply. Furthermore, once a slick containing discharges is discovered, it is often difficult to build up sufficient evidence linking the slick to a particular vessel,<sup>33</sup> the book is of much concern with this study as it insists the observance of international convention (MARPOL) on how to monitor marine vessels, since Tanzania is not part to the said Convention, for this reason the author provides out the means to some extent on how to implement and enforce laws on marine pollution. Therefore, Tanzania should match to the prescribed condition in terms of implementing MARPOL 73/78.

**David Anderson, (1998),**<sup>34</sup> he revealed the role of flag states, port states, and International Organizations in the enforcement of the international Rules and standards governing the safety of navigation and the prevention of pollution from ships under the UN convention of the Law of the Sea and other International agreements, the text is very relevant to the study as it put mandate to states on how to work with the problem, on the other hand it does not provide out for the clear solution to fight the problem in case of any breach by marine vessels which forms part of the research and stand as a centre of the discussion which is implementation and enforcement of marine vessels pollution.

**D, Konig, (2010)**<sup>35</sup> the author discussed the concept of marine pollution in the light of MARPOL, when he says the right to report instances of non-compliance by vessels is provided in Regulations 3 of Annex VI of MARPOL 73/78, under this regulation, if only a state has evidence of a MARPOL 73/78 violations. It must provide such evidence to the flag state responsible for the non-complying vessel. The formal reporting of vessels

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<sup>32</sup> Griffin. A, (1994) MARPOL; A glass half full or harmful empty? 1(2) An Indiana Journal of Global Legal Studies 489 at 499

<sup>33</sup> Ibid at, p. 501.

<sup>34</sup> Anderson. D, (1998), Journal of International & Comparative Law, 557 at p. 577.

<sup>35</sup> D, Konig. (2010) flags of ships, (Heidelberg and oxford university press), p. 13-14

non-compliance by other states to the flag state gives rise to an allegation. The text seems to be very crucial to this research since it explains the mandate narrated down by MARPOL to find out the breach by marine vessels, Tanzania is part to the said convention hence the study will use this ground as a way of searching for the problem while it is a part to the convention.

**Erik Jaap Molenaar, (1998),<sup>36</sup>** has argued in connection with article 194(3) that Law of the Sea, prohibits the Intentional discharges of pollutants that are produced due to the normal operation of vessels into the marine environment. However, the Law of the Sea Convention does permit operational discharges from vessels, provided that such discharges do not result in pollution or cause deleterious harm to living resources and the marine environment, law of the sea propose that; *“the introduction by man directly or indirectly, of substances or energy into the marine environment, including estuaries...results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities”*.<sup>37</sup> The text in a very critical way prohibit pollution to the marine whether intentional or not, then it support protection of marine in whatever means.

**Firestone, J. and Jarvis, C.(2007)<sup>38</sup>** the text mentioned out the competences for states to deal with the problem of marine pollution by vessels, this involve competence over flag states, coastal states and port state as for the case of international shipping, this identifies how international law allocates power to states to act in different capacities, honestly this book will be of paramount to the study as it will help to reach at its satisfaction on understanding the mandate that member states have, the question behind will be; why other states including Tanzania are still lagging behind on this crucial issue as a result creating an environment for unsafe haven?.

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<sup>36</sup> Molenaar, E.J.(1998) coastal state Jurisdiction over vessel-source pollution (Kluwer Law International), p. 53.

<sup>37</sup> Article 194 (3) of the United Nations Convention on the Law of the Sea of 1982,

<sup>38</sup> Firestone, J. and Jarvis, C.(2007), op cit, p. 122.

**Firestone, Jeremy and Corbett (2005),**<sup>39</sup> he put emphasize on the fulfillment of the rule or standard as provided in an international convention attains general acceptance even before the instrument is entered into force, provided the instrument has become a general rule of international law.<sup>40</sup> It is obvious clear that the text is explaining about the implementation. Basing on the fact that the generally accepted international rules and standards are referred as rules of reference, then, ratifying the Law of The Sea Convention, states parties accept the inherent rules of reference. To the great extent, the study will base on the generally accepted international rules and standards applicable to the protection and prevention of marine environment from vessel source pollution. Critically on analyzing the study and the question what are the generally accepted international rules and standards applicable to the prevention of vessel source of pollution will be highly of much concern. On the other hand the book is not of so help as it based only on one side of the study; implementation to the member states and not giving out the enforcement mechanism to the problem introduced by this study.

**Oistein Jensen, (2006),**<sup>41</sup> talks about the power of the state under flag state to react on any activities by marine vessels in marine pollution, the ability of a State to exercise power over its own vessels implies acting in the capacity as the flag State.<sup>42</sup> It has involved important words in ensuring full power. The inclusion of the phrase “necessary steps” suggests that a full range of enforcement powers are open to port States, but the use of such powers should be proportional to the circumstances involved, indeed, it has been argued that the jurisdiction under Article 218 of the UNCLOS III is so widely accepted that it constitutes ‘universal’ port State jurisdiction,<sup>43</sup> this is a very useful

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<sup>39</sup> Firestone, Jeremy and Corbett,(2005), Coastal and Port Environments: International Legal and Policy Responses to Reduce Ballast Water Introductions of Potentially Invasive Species (2005) 36 ocean development & International Law.

<sup>40</sup> Ibid

<sup>41</sup> Jensen, O. (2006), Coastal State Jurisdiction and Vessel Source Pollution: The International Law of the Sea Framework for Norwegian Legislation (The Pridtj of Nansen Institute), P, 47.

<sup>42</sup> Ibid , p. 11.

<sup>43</sup> Ibid, p. 37

literature in this study, since it provided out one of the three capacities of the power as vested by the UNCLOS III to states on marine pollution prevention by marine vessels.

**Tatjana Keselj, (1999),<sup>44</sup>** is also a relevant text in this research, it emphasize the responsibility of the port state in making sure vessels entering at its port has been complied by the requirements as per UNCLOS III, as the matter of fact that, this study will mainly embark on three capacities; flag, port and port state in reacting to the hypothesis established. Hence, when a State has given notice of its conditions for port entry to the IMO and to the public, the anti-pollution requirements in the State's national laws are adopted, even though a foreign vessel may view them as a further burden on free trade<sup>45</sup>. However, the correlation one would expect to find between the prescriptive provisions set out in Article 211(3) of the UNCLOS III on the one hand, and the enforcement provisions set out in Article 218 on the other, is surprisingly absent.<sup>46</sup> This lack of resemblance between Articles 211(3) and 218 of the UNCLOS III does not mean that port States are deprived of their right to undertake port State control inspections in port. Article 25(2) of the UNCLOS III maintains that a State has the right to take necessary steps to prevent any breach of the conditions to which the admission of vessels to internal waters or ports is subject to.

**Hakapää Kari, (2005),<sup>47</sup>** the author has concentrated much on "Coastal jurisdiction" he suggests one of the key elements in the Law of the Sea, directly applicable to vessel-source pollution. In general, it refers to three sets of jurisdiction: regulatory jurisdiction, enforcement jurisdiction and judicial jurisdiction. The present discussion will focus on the regulatory and enforcement powers states may exercise over foreign ships in order to protect their coastal waters from vessel-source pollution. Much of the argumentation

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<sup>44</sup> Keselj, T. 'Port State Jurisdiction in Respect of Pollution from Ships: The 1982 United Nations Convention on the Law of the Sea and the Memoranda of Understanding' (1999) 30(2) *Ocean Development & International Law* 127

<sup>45</sup> Ibid, p. 127.

<sup>46</sup> Ibid p. 132.

<sup>47</sup> Kari, H. (2005) "Foreign Ships in Vulnerable Waters: Coastal Jurisdiction over Vessel-Source Pollution with Special Reference to the Baltic Sea," *International Journal of Legal Information*: Vol. 33: Iss. 2, Article 9. Available at: <http://scholarship.law.cornell.edu/ijli/vol33/iss2/9>

took place between two major groups of states. “Coastal states” argued for more extensive powers to protect their coastal waters while “maritime states” attempted to protect their shipping interests. They also wished to retain optimum freedom of navigation for their ships. Coastal states on this text, argued for more extensive national powers to control navigation off their coasts, maritime states stressed the need for international regulation and preferred flag state control to deal with vessel-source pollution. Honestly, this text has all very important elements to this study.

**Marco Roscini (2002),**<sup>48</sup> has gone further on clarifying the security of marine by defining critically the term security. A modern concept of “security” should have not only a political-military meaning, but also an ecological one: the environment, in fact, is a fundamental aspect of territorial sovereignty and its protection is a basic feature of national self-defense. The risk of pollution in a sensitive marine area of a coastal state economically dependent on fishing industry or on tourism can be as serious as the threat of an aggression to its territorial integrity or political independence.<sup>49</sup> It is not surprising, therefore, that several states officially consider the protection of their natural environment as an integral part of national security and perceive the passage of a nuclear ship close to their shore as a threat to it. A régime of previous authorization would thus allow the coastal authorities to assess the specific circumstances of the passage: if there are no considerable risks, it should be authorized, while if a nuclear ship intends to sail through particularly fragile ecosystems or waterways where navigation is highly dangerous, the denial of the passage cannot be considered illicit, especially if there are routes of similar convenience.<sup>50</sup> Therefore, the author is trying to alart the passage of a ship, carrying ultra-hazardous materials not far from the coast, in a stretch of sea where navigation is particularly dangerous, cannot be considered “innocent,” because the high risk of an accident is not taken into account by the vessel. Then, innocent passage principle should be discussed critically in safeguarding the states interest on marine pollution by marine pollution.

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<sup>48</sup> Roscin M, The Navigational Rights of Nuclear Ships, available at <http://ssm.com/abstract>, accessed on 23<sup>rd</sup> June 2013.

<sup>49</sup> Ibid

<sup>50</sup> Ibid

**Lawrence Marin,(2000-2001),**<sup>51</sup> based on the transportation of radioactive materials via oceanic vessels. Since oceans are in constant flow, and their current spread through the earth, then it is believed that any radioactive accident in the ocean may not be so easily checked as the fact is that, would carry nuclear radiation everywhere they ran, hence contaminate oceans and marine environments worldwide. The author has explained the decision of most of the states to choose to protect their marine environment rather than recognizing the right of innocent passage, hence coastal states openly, and forcefully rejected the requests for innocent passage by vessel,<sup>52</sup> carrying radioactive materials. The journal is very material to the study, as it entails conflict between coastal states interests and the principle of innocent passage as provided out in the UNCLOS III, hence bringing critical discussion to this research.

### **1.9 Research Methodology**

This part entails the framework in which the study was carried out. This is an important part as it has explained about the research design, area of the study, study population, sampling technique and procedure, data collection and data analysis.

### **1.10 Research Design**

The study was designed in form of a case study design, is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, it started with giving a brief overview of Tanzania, the way it has been affected by marine problem by vessels. Primarily dealt with legal issues that led to the conditions that facilitate marine pollution. An analysis of the international and local state response was made, and this enabled the researcher to make generalization for the findings.

### **1.11 Area of Study**

The study was conducted in the field of International law, specifically targeting on the Law of Sea Convention of 1982, and it took place in Dar es Salaam. The choice of Dar

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<sup>51</sup> Marin, L. Oceanic, Transportation of Radioactive Materials; the Conflicts between the Law of the Sea's Innocent Passage and duty to Marine Environment, Florida, Journal of International Law, Vol. 13, 2000-2001.

<sup>52</sup> Ibid, P. 365.

es Salaam City was due to the fact that the majority of the offices relied upon for information and data collection are located in Dar es Salaam; also Dar-es-Salaam is an area where marine pollution seems to be high due to the existence of international port. Among the offices are, Ministry of Transport and SUMATRA.

### **1.12 Study Population (Units of Inquiry)**

As the case study reveals, the population targeted was Tanzanians and non Tanzanians. Lawyers as the matter of wide understanding of the matter concerned was highly considered though people from other field were not overlooked.

### **1.13 Sample Size**

As the research was conducted in Tanzania, the targeted marine pollution was Dare-s - salaam. Given the objective of the research the targeted population was 150 persons, lawyers, Law Lecturers, Magistrates, Advocates, Law school of Tanzania and other government officials. Through sample size the researcher gathered sufficient information about the relevance of anti-marine pollution laws (both international laws and Tanzanian anti-maritime pollution laws) in the control of pollution by marine vessels in Tanzanian coast.

### **1.14 Sampling techniques and procedures**

The study was focused on collecting information from respondents on their attitudes and opinions in relation to the effectiveness of the current law of the sea on the control of marine pollution in Tanzania. The sampling technique used in this research was random sampling. This method was employed to the middle and ordinary class of people the aim being to avoid bias hence every member of the population had a chance of being included in the research. The selection was drawn from relevant authority that is Ministry of Transport of Tanzania and visited also at Human Right Centre of Tanzania. Ship workers and members of the ship's crew and others who have relevant information were approached too. Furthermore different lawyers was approached by the researcher so as to provide information on how they regard the current enactment of laws made by Tanzania so as to prosecute non-national polluters of ocean by both national and non-national authorities.

### **1.15 Data Collection**

For the reason of getting reliable information/data, the researcher used both primary and secondary data collection methods. The primary data collection method included questionnaires, interviews and personal observation; whereas secondary data was obtained from various documents such as books, journals, files and other written reports concerned the study which was available at libraries that relate to the problem in study.

#### **1.15.1 Primary Sources**

The primary sources formed a vital part in data collection. At this point the researcher was introduced to fresh facts and circumstances that marine industry face. This method was very important as it helped the researcher to avoid chances of making assumptions and relying on hearsay from unreliable sources concerning the actual condition of marine services in Tanzania.

The field research was conducted through the following ways:-

#### **1.15.2 Interviews**

Is a purposeful interaction in which a person expects to obtain information from another. The method helped the researcher to obtain important data that was inaccessible through observation. Interview explored and probed participants' responses to gather in-depth data about their experiences and feelings. Interviewing was part of the researcher's field research. During field study the researcher interviewed respondents. This involved both structured and unstructured interviews. The structured interviews were conducted to the officials of the following authorities. Ministry of Transport of Tanzania, SUMATRA and other government Ministries, and Human Right Centre, the reason behind for this group to apply structured interview was to phrase question in such a way that elicit they desired information since they are aware with the topic concerned. The unstructured interviews was subjected upon advocates, lawyers and other people in Tanzania about their opinions and recommendations on how the problem of marine pollution by ships along the Coast of Tanzania can be combated the reason for them to apply unstructured interview was not to get answers to predetermined questions but rather to find out where the participants were coming from and what they have experienced, more over the

method was used to obtain more complex or personal information. This method was complement with the use of questionnaires containing open ended questions depending on the availability and flexibility of targeted respondents.

### **1.15.3 Questionnaires**

Is a written collection of self-report question to be answered by a selected group of research participants. The aim of this was to accumulate large amount of data. Questionnaire has been termed to be a good means of data collection as it provides a chance to the respondents to think thoroughly before responding. The researcher supplied questionnaires to the relevant personnel from the aforementioned institutions and organisations that have rich knowledge on marine industry, and collect necessary information and ideas' concerning the utility of taking care marine sector in Tanzania. The questionnaires contained structured questionnaires and unstructured, open ended questions that gave the respondent complete freedom of giving their views and providing information related to the problem at hand.

## **1.16 Secondary Data**

### **1.16.1 Documentary Review**

The researcher in conducting this research visited different libraries whereby the analysis of the problem was done through statutes, cases, textbooks, journal articles, reports on the related study and other relevant materials available. The researcher visited Mzumbe University library and the University of Dar-es- Salaam library.

### **1.16.2 Electronic Sources**

Internet search was employed through visiting relevant websites, surfing online journals, reports and other useful materials relevant to the study was monitored. The reason behind for this was insufficient of local literatures pertaining to the study, which assisted the researcher to make a comparative study from other jurisdiction.

### **1.17 Data Processing and Analysis**

The method in its entirety involved data analysis, basically on logic in terms of deductions, inductions and analogy of facts related to research problem. The main focus was on analyzing ideas, suggestions, proposals, and recommendations by both officials relevant to the study. The data collected was scrutinized and examined in details before analyzed. This assisted the researcher to determine whether the data collected was accordance with the objective of the study. The researcher used both qualitative and quantitative data analysis to describe and analyze the data collected. Qualitative data analysis (inductive method), the method involved breaking down data into smaller units, determining their important and putting the pertinent units together in a more general analytical form. Was broken down through the process of classifying or coding hence categorizing the pieces of data. Quantitative analysis this was characterized by a deductive approach this, identified hypotheses to test the reality that was there to be discovered. The researcher believed that the combination of these mixed method approach made the best sense for the study to be conducted. Mixed methods research design aimed at building strength that exists between quantitative and qualitative research methods to understand a phenomenon fully than was possible using either quantitative or qualitative methods alone. However this method involved the summarization of the key findings including the data which was gathered through interview was broken into smallest meaningful units of information hence to be placed into appropriate categories and analyzed in details through content analysis. Content analysis was analyzed by symbolic content of any communication with intent to reduce the total content of communication to some set of categories that represent the objective of the research. Data to be collected through structured questionnaires and scheduled interview was coded by assigning symbols to each response and categories. This enabled the researcher to translate data into symbols which can be counted. Tabulation records the information coded and classified was made useful for data analysis and interpretation.

### **1.18 Data Quality Control**

An attempt was made to ensure vigorous and serious data gathering and analyzing then procedures were relevant. The study was conducted to confirm that the information and

data attained was authentic and reliable. A response that was irrelevant to the study was not included in analysis in order to control the quality of data. However the study used more than one data collection methods in order to get valid and reliable data.

### **1.19 Limitation of the study**

Materials involved in this study were based mainly of the United Nations Convention on the Law of the Sea (UNCLOS III), other international law treaties on the prevention of marine pollution of the sea and national laws of Tanzania. The UNCLOS III was used as reference as often and widely as possible within the scope of the study. Tanzanian Merchant Shipping Act<sup>53</sup> was also used to examine the effectiveness of the local laws on the prevention of marine pollution. However other materials were not ignored as reference. The availability of only a limited amount of local literature on the subject of enquiry, coupled with inadequate amount of legislation on the dedicated area (in some cases a complete absence of primary data) was a major constraints of this study. The study to some extent was constrained by the fact that the role of courts, tribunals and arbitration bodies regarding the regulation of vessel pollution is particularly limited and not well documented in Tanzania; alternatively, the researcher resorted to internet sources and on-line libraries. Financial problems associated with limited fund allocated for the purpose of this study formed immediate limits in the whole process. Unwillingness of the respondents to give facts and data required for this research paper contributed much too various limitations of the study which caused delays on the completion of this study and limited time frame.

### **1. 20 Conclusion**

This study consists of six chapters, including the introduction and the conclusion. Chapter one provides out an introduction to the study and the methodology of the research. It analyzes vessels pollution in the overall context of marine pollution by stating out, background to the research, statement of the problem, hypothesis, objectives, significance of the study, research methodology and literature review. This chapter stands as a benchmark to the next chapter. Chapter two provides for the conceptual

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<sup>53</sup> Tanzanian Merchant Shipping Act No 21, of 2003.

framework; via this, various key terms in the whole research clearly defined; the terms used acted as a regulatory body for the whole study. Chapter three entails an overview of the international legal framework, regional and national legal framework of Tanzania and legislation relating to the protection and preservation of the marine environment from vessel source pollution. The laws that was part and parcel of this chapter includes; The Merchant Shipping Act 2003(Act no 21 of 2003) the United Nations Conventions on the Law of the Sea of 1982, International Maritime Organization, and the MARPOL 73/78. Chapter four base on the position of Tanzania in the implementation and enforcement of the law of the sea of 1982. Chapter five explain the collected data, findings and analysis, the scale was on testing the hypothesis raised on this research basically on the group of the respondent formed a substantial part of the research, and then each group enabled the testing of each hypothesis. Chapter six marks the closing stages of the expedition of the whole document, under this chapter, conclusions and recommendations on the problem raised out by a researcher and the findings observed has been stated clearly.

## CHAPTER TWO

### CONCEPTUAL FRAME WORK

#### 2.1 Introduction

Scholarly, conceptual framework stands as a map that bring the means on how a study is supposed to be. It postulates the meaning and organization of a particular study, hence, this chapter provides a broad understanding of the theories and concepts on the law and practice relating to enforcement of the law of the sea in its generality in developing countries particularly Tanzania. This chapter stands as the cornerstone of the basic understanding of the different concepts towering the law of the sea especially those relating to marine pollution by marine vessels.

#### 2.2 Territorial sea

This is the maritime area that states have the jurisdiction to claim up to twelve nautical miles from the base lines of the state. Territorial sea is a concept where navigation is traditionally governed by the regime of “innocent passage.” It has explained in the words of the 1982 Convention, that, the passage of a foreign ship is “not prejudicial to the peace, good order or security of the coastal state” it shall not be hampered by the coastal state.<sup>54</sup> The ship has the right to pass through the coastal state’s territorial sea. When it comes to environmental threats, the right is refused only if the vessel causes “willful and serious” pollution.<sup>55</sup> This suggests that only harmful discharges, but not ship-related deficiencies such as its poor condition or inadequate equipment or the dangerous nature of its cargo, can deprive the ship of its right of innocent passage. As such, the Convention’s regime of “innocent passage” appears to favour the maritime approach. At the same time, even vessels in innocent passage are subject to coastal laws and regulations (where established in conformity with the Convention) which may relate, for instance, to the prevention, reduction and control of pollution.<sup>56</sup> The right of innocent passage may not extend to “rust buckets” that are in notoriously bad shape and

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<sup>54</sup> Article 19 and 24 of the UNCLOS III

<sup>55</sup> Article 19 (2h) of the UNCLOS III

<sup>56</sup> Article 21 of the UNCLOS III

that would pose an immediate threat to the coastal environment.<sup>57</sup> Hence, territorial sea is much concerned in finding out the enforcement of provisions of UNCLOS by marine vessels since is the zone where marine vessels are allowed to pass, though, its passage is controversial when considering marine pollution problem. This forms vital to the subject at hand as it's much concerned with the pollution by marine vessels in every state blessed with an ocean. Also by being the first zone within the classification of maritime zones, to the large extent coiled in the discussion in finding whether Tanzania protects its marine pollution or not according to the UNCLOS III.

### **2.3 Exclusive Economic Zone (EEZ)**

Is a sea area that states have the jurisdiction to claim up to 200 nautical miles from the base lines of the state. In the exclusive economic zone bordering the territorial sea, coastal competence to control vessel-source pollution is limited by the main rule of free passage and non-interference by coastal states. However, even in the exclusive economic zone, foreign ships may be stopped; forced to coastal port and legal proceedings may be instituted against them if a discharge violation has caused major pollution damage or threat of such damage to the coastal state.<sup>58</sup> This right was also the result of a compromise; freedom of Passage as claimed by maritime states was to prevail, but in serious cases of pollution the coastal state, nevertheless, is entitled to intervene.<sup>59</sup> This provides for more coastal powers than the case was before the 1982 Convention. Prior to 1982, economic zone was high seas, effectively beyond coastal jurisdiction. Economic zones have also altered the zonal pattern of the Baltic Sea.<sup>60</sup> Upon the recent establishment of a Finish exclusive economic zone, all Baltic Sea states have an exclusive economic zone replacing areas previously designated as high seas.<sup>61</sup> This zone is also material to this study, Tanzania recognizes this exclusive economic zone as it has taken initiative by narrating it within the Merchant Shipping Act,<sup>62</sup> but the question is whether Tanzania is maintaining the value of the said zone from the act of marine

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<sup>57</sup> Article 127 of the UNCLOS III

<sup>58</sup> Article 220 of the UNCLOS III

<sup>59</sup> Kari op cit, p, 260.

<sup>60</sup> Ibid

<sup>61</sup> Kari op cit, p. 261.

<sup>62</sup> Merchant Shipping Act No 21 of 2003

vessels?. It is hereby submitted that, the discussion will embark a lot on this zone trying to check out the real commitment of the Tanzanian government by means of enforcement.

### **Marine**

Is a range of threats including from land-based sources, oil spills untreated sewage heavy siltation, invasive species, persistent organic pollutants, heavy metals and other sources, acidification radioactive substance marine litter overfishing and destruction of coastal and marine habitat are also involved.<sup>63</sup>

### **Maritime**

Activities related to the sea.<sup>64</sup>States Parties to IMO treaties are under the obligation to exercise jurisdiction over ships flying their flag, irrespective of the maritime zone where the ships may be.<sup>65</sup>The existence of maritime zones is relevant, however, in determining the jurisdiction of a coastal State over foreign vessels. The legal status of the different maritime zones has also been taken into account in the IMO Conventions establishing regime on civil liability and compensation for oil pollution damage (the Civil Liability Convention 1992, the FUND Convention 1992 and the 2003 Fund Protocol.<sup>66</sup>

### **Environment**

A word environment commands a very broad meaning, according to Tanzania National Environmental Policy environment includes air, land and water; plant and animal life including human life, the social, economical recreational, cultural and aesthetic condition and factors that influence the lives of human beings and their communities, structures, machines and other devices made by man. This covers solid, liquids, gases odour, heat, sound, vibration or radiation resulting directly or indirectly from activities of man and any part of combination of the foregoing and interrelationships between two

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<sup>63</sup> <http://www.grida.no/publications/rr/our-precious-coast/page/1292.asp> accessed on 6 November 2013

<sup>64</sup> [Http://www.the-free-dictionary. Com/maritime](http://www.the-free-dictionary.com/maritime), accessed on 6 November 2013

<sup>65</sup> Ibid

<sup>66</sup> Ibid

or more of them.<sup>67</sup> This definition is wide and inclusive as it covers all other definition of environment and brings clear understanding of the term environment.<sup>68</sup>

## 2.4 Pollution

Pollution is the introduction of contaminants into a natural environment that causes instability, disorder, harm or discomfort to the ecosystem; that means physical systems or living organisms.<sup>69</sup> Pollution can take the form of chemical. Substances or energy, such as noise, heat, or light. Pollutants, the elements of pollution, can be foreign substances or energies, or naturally occurring. When naturally occurring, they are considered contaminants when they exceed natural levels<sup>70</sup>. Pollution has been defined, however in Organization of Economic Cooperation and Development (OECD) instruments as “the introduction by man, directly or indirectly, of substances or energy into the environment... harm living resources and ecosystems, and impair or interfere with amenities and other legitimate uses of the environment.”<sup>71</sup> The major forms of pollution includes air pollution; the release of chemicals and particulates into the atmosphere like carbon monoxide, nitrogen oxides, chlorofluorocarbons and other pollutants produced by industries or motor vehicles. Light pollution, includes light trespass, over illumination and astronomical interference. Noise pollution, thermal pollution, Visual Pollution, Marine pollution, soil contamination occurs when chemicals are released by spill or underground leakage like herbicides, pesticides and chlorinated hydrocarbons and radioactive contamination especially from nuclear activities, like nuclear power generation and nuclear power research, manufacture and deployment.<sup>72</sup>

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<sup>67</sup> Tanzania National Environmental Policy, 1997, See also Tanzania Environmental Management Act, No. 20 of 2004 Which Provide for the Similar Definition.

<sup>68</sup> <http://dictionary.reference.com/browse/environment>, see also, <http://en.wikipedia.org/wiki/Environment> both accessed on 5 December 2012,

<sup>69</sup> <http://www.merriam-webster.com/dictionary/pollution>, the Definition from the Merriam-Webster Online Dictionary" Accessed on 26 August 2012.

<sup>70</sup> The Blacksmith Institute issues annually a list of the world's worst polluted places. In the 2007 issues the ten top nominees are located in Azerbaijan, China, India, Peru, Russia, Ukraine, and Zambia, <http://en.wikipedia.org/wiki/Pollution> retrieved 20th June 2011.

<sup>71</sup> OECD, (1974) *Recommendation of the Council on Principles Concerning Trans Frontier Pollution*, C(74)224, OECD

<sup>72</sup> Tanzania Environment Management Act, No. 20 of 2004, defines pollution to mean any direct or indirect alteration of the physical, thermal, chemical, biological, or radio-active properties of any part of the environment by discharging, emitting, or depositing of wastes so as to adversely affect any

As it has been expanded therein above, pollution has various forms but because of the merits of this study, it will only attach itself to marine pollution form as caused by marine vessels and the following concepts will be discussed too.

#### **2.4.1 Marine Pollution**

Is the introduction by man, directly, or indirectly, of substances or energy to the marine environment resulting in deleterious effects such as: hazards to human health, hindrance to marine activities, impairment of the quality of seawater for various uses and reduction of amenities.<sup>73</sup> But also, marine pollution is based on a ‘probability formula’, as in a broad sense, pollution not only exists when “deleterious effects” actually occur, but also when pollution is likely to eventuate.<sup>74</sup> Also, despite this rather broad interpretation of marine pollution, in the context of the UNCLOS III, it suffices to say marine pollution can only result from human behavior. Therefore, materials which result in deleterious effects as harm to living resources and marine life, hindrance to marine activities and impairment of the quality for sea water, cannot be considered marine pollution, and as per this study marine pollution is based on marine vessels.

#### **2.4.2 Vessel Source Pollution**

There was in fact little legal concern with pollution of the seas until the 1960s. This situation changed prompted by many severe accidents related to oil transport. The disasters of *Torrey Canyon* and *Amoco Cadiz*<sup>75</sup> brought attention to the need of improved protection of the marine environment. The response of international law was already brewing. Potential harm from shipping led to international rules that aimed to limit environmental consequences. Most important was the adoption of the 1973 International Convention for the Prevention of Pollution from Ships with the 1978 Protocol (hereinafter MARPOL 73/78).<sup>76</sup> However, the development of the global legal

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beneficial use, to cause a condition which is hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause contravention of any condition, limitation, or restriction which is the subject to a licence under the said act.

<sup>73</sup> OECD, Op cit C (74) 224,

<sup>74</sup> Ibid

<sup>75</sup> Lachlan, Op cit, p. 102.

<sup>76</sup> ILM, Vol. 12, 1973, pp. 1,319ff (Convention) and ILM, Vol. 17, 1978, pp. 546ff (Protocol).

framework to preserve and protect the environment was among the key issues at the Third United Nations Conference on the Law of the Sea (hereinafter UNCLOS III) and the resultant UNCLOS III. Part XII sets out general as well as more specific rules for protecting and preserving the marine environment, including the coastal State's right and duties to regulate vessel source pollution.

### **2.4.3 Pollution under the UNCLOS III**

Article 1(1)(4) of the UNCLOS III defines 'pollution of the marine environment' as '...the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea and water and reduction of amenities. The criterion determining the fact of pollution is the consequence ensuing as a result of introducing a pollutant into the marine environment. According to the definition, only human behavior can cause marine pollution. Furthermore, *how* substances are introduced to the environment is irrelevant. Both direct and indirect influence is included. There is no doubt that oil released from ships qualifies as 'pollution' under the definition. Questions can be asked whether introduction of marine organisms caused by ballast water procedures fulfils the definition. Living organisms or pathogens cannot be considered as 'substances or energy' in the terminology of UNCLOS III. This problem is addressed specifically in Article 196 and differentiates the problem of harmful introduction of alien species from problems relating to pollution. Implicitly, Coastal State Jurisdiction and Vessel Source Pollution the UNCLOS III recognizes that these are two different problems. Consequently, the provisions of Part XII relating vessel source pollution therefore do not directly apply to the introduction of harmful alien species. This problem illustrates that coastal States may have concerns that not necessarily can be addressed through the measures provided for in the UNCLOS III alone.<sup>77</sup>

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<sup>77</sup> IMO doc. BWM/CONF/9, paras. 2.10-2.13.

#### **2.4.4 Pollution from Vessels as understood in this study**

Although pollution from vessels can be both biological and chemical, only the latter will be in focus here. As regards to such pollution there is a need to differentiate between accidents and operational discharges. The latter is deliberate and ‘routine’ operations, such as tank cleaning. Most often they can be controlled and negative impacts avoided, yet mostly by vessel personnel, thus flag State. Accidental discharges occur when vessels collide or come in distress at sea. A lot can be done to avoid accidental discharges, but there will always be unfortunate circumstances that cause accidents to happen. Averages visualize the impact chemical pollution may have on the environment. The accidents of *Torrey Canyon* and *Prestige* are prime examples. When an accident occurs, the consequences in the immediate area severe and cause great damage. However, this is a relatively small part of the pollution from vessels. Altogether, intentional operational discharges from ships make up the largest part of impact on the marine environment from vessel based pollution.<sup>78</sup> Focus should thus be to minimize risks from regular activity that virtually is the biggest problem.

#### **2.5 Polluter**

The meaning given to the word polluters has developed in the early 1970s, polluting emissions from industry were a particular concern and this was reflected in debate of that time. In the 1970s, the OECD did not define who the polluter was because at the time, it seemed fairly obvious that; polluter is the party who is responsible for the polluting activity, that is the party having control over the activity from which the emission of pollutants originates. Since then, no further development occurred, with the exception of the definition of polluter in the context of accidental pollution, where the polluter is the operator.<sup>79</sup> However, other scholars have used a more precise definition; The European Commission, for example, defines the polluter as “someone who directly or indirectly damages the environment or who creates conditions leading to such

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<sup>78</sup> GESAMP Report No. 50, op cit, p. 25.

<sup>79</sup> Recommendation of the European Commission, OJEC (1975) L194, p. 1 found on <http://www.lne.be/themas/klimaatverandering/vlaams-klimaatbeleidsplan-2006> 2012/archief/klimaatbibliotheek/strategie/economische-instrumenten algemeen/vkc\_bibstrat\_ecinstr\_alg\_6.\_OESO\_polluter\_pays\_principle\_as\_it\_relates\_to\_international\_trade.pdf

damage”<sup>80</sup> In addition, the Commission has stipulated that “the cost of combating pollution should be borne at the point which offers the best solution from the administrative and economic points of view and which make the most effective contribution towards improving the environment”.<sup>81</sup>

Under this approach, the designation of the polluter is not automatic, but depends on the government’s choice, based on considerations of economic efficiency or administrative expediency, and not of equity. As a result, with regard to waste, the polluter is not necessarily the party who disposes of waste in the environment, but may be the producer of the waste, if not the producer of the object that will become waste after being used.<sup>82</sup>

In addition, the European Commission was careful to stipulate that the concept of polluter does not affect provisions concerning third-party liability, making it possible to designate on the one hand a polluter to bear the cost of prevention and, on the other, a third party responsible for the pollution to pay compensation<sup>83</sup>.

## **2.6 Pollutants**

A pollutant is a waste material that pollutes air, water or soil, and is the cause of pollution. Three factors determine the severity of a pollutant that is its chemical nature, its concentration and its persistence.<sup>84</sup> Some pollutants are biodegradable and therefore will not persist in the environment in the long term. Critically, pollutants under the concept of marine pollution by marine vessels are considered to be the key concept in this study, and it comprise different forms though mainly are in oil form, there is no doubt that the amount of pollutants introduced by marine vessels results into critical pollution. Marine pollution can cross international borders very quickly compared to other forms of pollution. Due to this, international regulations are needed for their control.

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<sup>80</sup> Ibid

<sup>81</sup> Ibid

<sup>82</sup> Ibid

<sup>83</sup> Neither the Tanzania Environment National Policy 1997, Merchant Shipping Act of 2003, nor Environmental Management Act, 2004 defines who is the polluter.

<sup>84</sup> <http://en.wikipedia.org/wiki/Pollution> accessed on 20th May 2013

## **2.7 Conclusion**

This chapter has discussed the concepts which have close bearing with the subject of this study; marine pollution by marine vessels. This chapter has discussed the concepts like, pollution, pollutant, polluter, marine vessels, and other concepts, these concepts have bearing on marine pollution, and will bring positive assistance to the understand this study its usefulness to the reader in the next chapters to.

## **CHAPTER THREE**

### **INTERNATIONAL AND REGIONAL FRAMEWORK ON THE PREVENTION OF VESSEL SOURCE POLLUTION**

#### **3.1 Introduction**

The international legal framework for the protection and preservation of the marine environment from vessels source pollution is primarily governed by international conventions.<sup>85</sup> The development of this international legal framework goes back to the early 17<sup>th</sup> century.<sup>86</sup> International conventions covers a broad range of issues that have evolved from rules of free navigation, detailed technical standards on construction and the operations of ships.<sup>87</sup> Numerous international conventions ranging from the Law of the sea convention to regulatory conventions administered by International Maritime Organization have been adopted to enforce the importance of protecting the marine environment from vessel source pollution. Generally, this chapter intends to provide the background and the role of the international conventions applicable to the protection and preservation of the marine environment from vessel source pollution, which is very essential to the analysis of this study.

#### **3.2 Treaty Law**

Given the deficiencies of customary law and general principles of law, the international law relating to marine pollution from vessels is predominantly contained in treaties. These may be systemized into different categories. The first category could be treaties that aim to prevent accidental pollution by regulating construction, equipment and the operational standards of vessels, including training and qualification of the crew. The most important treaties in this respect are the 1974 International Convention for the

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<sup>85</sup> Franckx, E.(2001),Vessel Source Pollution and Coastal State Jurisdiction: the **Work of the ILA** Committee on Coastal State Jurisdiction Relating to Marine Pollution, Kluwer International law, 1991-2000, at p. 2.

<sup>86</sup> Anderson op cit, p. 558.

<sup>87</sup> Article 2 of MARPOL 73/78, “entails ships as a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushioned vehicles, submersibles, floating craft and fixed or floating platforms”.

Safety of Life at Sea,<sup>88</sup> the 1978 International Convention on Standards of Training, Certification and Watch Keeping<sup>89</sup> and the 1972 Convention on International Regulations for Preventing Collisions at Sea.<sup>90</sup> Secondly, there are treaties that aim to prevent operational pollution from vessels by prohibiting and limiting discharges of oil and other polluting substances. The first convention to deal with such pollution was the Coastal State Jurisdiction and Vessel Source Pollution International Convention for the Prevention of Pollution of the Sea by Oil in 1954<sup>91</sup>. MARPOL 73/78 supersedes between parties the 1954 Convention and is up to date relating technical standards of ships carrying oil. It was adopted under the auspices of the IMO in 1973 and deals with all forms of operational pollution from ships other than dumping. Tanzania ratified MARPOL 73/78 on 23 July 2008. A final category could be treaties with the purpose of mitigating pollution following maritime casualties by defining the right of intervention by coastal States. Customary rules exist for this purpose but there are also specialized conventions. The most important are the 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (hereinafter 1969 Intervention Convention)<sup>92</sup> and the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (hereinafter OPRC).<sup>93</sup>

### **3.3 The 1982 United Nations Law of the Sea Convention**

#### **3.3.1 Brief Overview of the Law of The Sea Convention**

The Law of The Sea is the primary instrument in the international legal framework or the legal toolkit in environmental protection.<sup>94</sup> Law of The Sea convention is the undisputed “Constitution of the Oceans”, as it was proclaimed by Ambassador Tommy Kohn in his position as president of the third United Nations Conference on the Law of

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<sup>88</sup> United Nation Treaty Series (UNTS) Vol. 1184, p. 2.

<sup>89</sup> British Command Papers, Cmnd. 9266, Treaty Series, No. 50, 1984.

<sup>90</sup> British Command Papers, Cmnd. 9266, Treaty Series, No. 77, 1977.

<sup>91</sup> UNTS, Vol. 327, p. 3.

<sup>92</sup> ILM, Vol. 9 (1970), p. 25.

<sup>93</sup> ILM, Vol. 30(1991), p. 733.

<sup>94</sup> Doussis, E. (2006), Environmental protection of the Black Sea: A Legal Perspective, Southern East European and Black Sea Studies 355 at p. 355.

the Sea (UNCLOS III).<sup>95</sup> From a legal point of view, the Law of The Sea Convention stands as milestone in the development of an international legal framework for the sea.<sup>96</sup>

The Law of The Sea provides state jurisdiction for the protection and preservation of the marine environment from vessel source pollution.<sup>97</sup> Indeed, the Law of the sea Convention allocates power to state parties acting in different capacities.<sup>98</sup> In the case of international shipping, states normally act in three capacities: as the flag state, coastal state and port state.<sup>99</sup> Hence, the Law of the Sea Convention establishes different competences over vessel source pollution prevention according to these general categories of states.<sup>100</sup> The law of the Sea Convention resulted from the negotiations of UNCLOS III that commenced in 1973.<sup>101</sup> It took twelve years before the Law of The Sea Convention came into force in 1994, following the deposit of the 60<sup>th</sup> instrument of ratification by Guyana a year earlier.<sup>102</sup> Certain provisions of the Law of The Sea Convention are almost verbatim to generally declaratory principles previously established in international law, such as the Geneva Conventions.<sup>103</sup>

The Law of The Sea Convention applies to 161 states via ratification or accession as of 29 March 2011.<sup>104</sup> The near-universal ratification of the Law of The Sea Convention to diminish the role of customary international law, limited to its general form, Some

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<sup>95</sup> A constitution of the Sea was a phrase used by President of the Conference Kohn at the time the Convention was adopted.

<sup>96</sup> Doussis op cit, p. 355.

<sup>97</sup> Franckx op cit, p. 4.

<sup>98</sup> Firestone *et al*, (2007) op cit, p. 122.

<sup>99</sup> The word (flag, coastal or port) denotes the capacity and the second word (states) has the same meaning as provided in Article 1(2)(1) of the Law of the Sea Convention. Article 1(2)(1) states that “states parties” means “states which have consented to be bound by the convention and for which the convention is in force”.

<sup>100</sup> Part XII of the Law of the Sea Convention

<sup>101</sup> Khee ji-Tan op cit, p.83.

<sup>102</sup> The decision to convene the UNCLOS III was made in 1970, relatively soon after decolonization countries demand their involvement and expressed consent to the formation of the law of the sea.

<sup>103</sup> The Geneva Conventions comprise the Convention on the Territorial Sea and the Contiguous Zone (TSC), The Convention on the High Seas (HSC), The Convention on Fisheries and Conservation of the Living Resources of the High Seas (1958 Fisheries Convention) and the Continental Shelf (CSC) These Conventions are by-products of the United Nations Conference on the Law of the Sea of 1958.

<sup>104</sup> UN Division for Ocean Affairs and and the law of the Sea  
[http://www.un.org/Depts/los/convention\\_agreements/convention\\_overview-convention.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview-convention.htm) at 09 March 2013.

authors argue that the law of the sea convention has achieved such widespread acceptance as to amount to customary international law, and thus even non-parties are bound by it.<sup>105</sup> The Law of the sea convention is a vast instrument divided into 17 parts with almost three hundreds articles. Part XII of the Law of Sea Convection, which consists of 11 Sections with 45 Articles ranging from 192 to 237, is the most fundamental part, setting out State obligations for the protection and preservation of the marine environment. This part is based on the core philosophy and core principle of environmental law.<sup>106</sup> Other authors emphasize the importance, completeness and the innovative character of Part XII of the Law of Sea Convention in the protection and preservation of the marine environment.<sup>107</sup>

### **3.3.2 The Endorsement of Compatible Multilateral Conventions by the UNCLOS**

#### **III**

This part intends to analyze those provisions of the Law of the sea Convention that endorse the implementation of multilateral convections which are administered by the competent international organization. This part will also analyze the multilateral conventions applicable to the protection of the marine environment from vessel source pollution. The Law of the Sea Convention provides an umbrella framework, setting out the rights and duties of State parties and codifying the general rules and principles that govern the use of ocean space.<sup>108</sup> The Law of the sea Convention does not, however, provide specific standards for particular forms of vessel source pollution. It only provides a general framework for pollution management.<sup>109</sup> Instead, detailed technical standards, for the management of vessel source pollution are provided by generally accepted international rules and regulations in applicable multilateral convections. Looking critically to the Law of the sea convention is flexible enough to allow for new

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<sup>105</sup> Molenaar op cit, p. 10.

<sup>106</sup> Franckx op cit, p. 3.

<sup>107</sup> Ibid

<sup>108</sup> Christopher, C. J. The international ocean Regime at the new millennium: a survey of the contemporary legal order (2000) 43 oceans and coastal Management 163 to 164.

<sup>109</sup> Dzidzornu, D & Tsamenyi, M. Enhancing International Control of Vessel-Source Oil Pollution under the Law of the Sea Convention, 1982: A Reassessment (1991) University of Tasmania Law Review 270 at p. 281.

developments, elaborations and clarifications through new multilateral conventions or instruments.<sup>110</sup> The Preamble to the Law of the Sea Convention provides that “matters not regulated in this Convention continue to be governed by the rules and principles of general international law”.<sup>111</sup> These rules and principles of general international law include the provisions in multilateral regulatory conventions applicable to the protection of the marine environment from vessel source pollution.

The Law of the Sea Convention endorses the implementation of multilateral regulatory conventions for the protection and preservation of the marine environment that are compatible with the Law of the Sea Convention.<sup>112</sup> Article 237 of the Law of the sea Convention provides that the provisions of the Convention are:

*“Without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.”*<sup>113</sup>

With regard to the compatibility of rules in multilateral conventions with those in the Law of the sea Convention, the latter Convention goes further to stipulate that the:

*Convention shall not alter the rights and obligations of State parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other State parties of their rights or the performance of their obligations under this Convention.*<sup>114</sup>

The use of the term “compatible” in the above provision reflects the predominance of the Law of the Sea Convention. Provided that other multilateral conventions relating to the protection and preservation of the marine environment are compatible with the Law of the sea Convention; such treaties do not require modification.<sup>115</sup> It should be noted, however, that although the Law of the Sea Convention endorses multilateral conventions previously concluded, as well as treaties that may be concluded in furtherance of the general principles set forth in the Law of the Sea Convention, Article 211(1) of the Law

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<sup>110</sup> Anderson op cit, p. 558.

<sup>111</sup> Preamble to the Law of the Sea Convention

<sup>112</sup> Article 237 of the Law of the Sea Convention

<sup>113</sup> Ibid

<sup>114</sup> Article 311 (2) of the Law of the Sea Convention

<sup>115</sup> Molenaar op cit, p. 56.

of the Sea Convention requires that such conventions be established through the competent international organization or general diplomatic conference.<sup>116</sup> The competent international organization is referred to in various Articles of the Law of the Sea Convention.<sup>117</sup> The following section identifies and analyses the competent international organization referred to in the Law of the Sea Convention.

### **3.4 Flag State Jurisdiction**

Is a central doctrine in maritime affairs and is widely acknowledged in international maritime law<sup>118</sup> as the first line of defence against substandard vessels.<sup>119</sup> UNCLOS III and MARPOL 73/78 provide obligations for flag States to exercise jurisdiction for the protection and preservation of the marine environment from vessel source pollution.<sup>120</sup> This chapter analyses the jurisdiction of flag States to prescribe national laws and regulations to comply with the requirements in the UNCLOS III and MARPOL 73/78, thereby preventing vessels from polluting the marine environment. The analysis in this chapter will identify the gaps that exist between the applicable provisions in the UNCLOS III and MARPOL 73/78, and the national laws of Tanzania with respect to the exercise of flag State prescriptive jurisdiction. Before analyzing the concept of the flag State and flag State jurisdiction under international law, it is imperative to answer the following question: *Is Tanzania a flag State under the international conventions it has ratified or acceded to?* This part will answer this question based on vessel registrations by Tanzania. SUMATRA is a body entrusted in Tanzania to act as flag state and port state.

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<sup>116</sup> Article 211 (1) of the Law of the Sea Convention

<sup>117</sup> Articles 207(4), 208(4), 210(4), 212(3) of the law of the sea Convention

<sup>118</sup> Tatley, W. The Law of the Flag, "Flag Shopping", and Choice of Law (1993) 17 *Tulane Maritime Law Journal* 139 at p. 146.

<sup>119</sup> Perepelkin, M. *et al*, 'An improved methodology to measure flag performance for shipping industry' (2009) 34 (3) *Marine Policy* 394 at p. 394.

<sup>120</sup> Franckx *op cit*, p. 4.

### 3.4.1 The Definition and Functions of Flag State Jurisdiction

The term ‘flag State’ refers to the nationality of a particular vessel.<sup>121</sup> It also refers to the administration or the government of the State whose flag the vessel is entitled to fly.<sup>122</sup> The ability of a State to exercise power over its own vessels implies acting in the capacity as the flag State.<sup>123</sup> Vessels must be registered with a State that can exercise jurisdiction as prescribed by the UNCLOS III Convention over them, not only in the State’s own seas, but also in seas of other States.<sup>124</sup> This is referred to as flag State jurisdiction.<sup>125</sup>

Flag State jurisdiction is, in most circumstances, exclusive<sup>126</sup> on the high seas and accorded primary status over other types of jurisdiction.<sup>127</sup> A flag State is obliged to exercise jurisdiction under its internal law over a vessel flying its flag.<sup>128</sup> For this reason, flag States must assume jurisdiction and control over the administrative, technical and social matters of vessels flying their flag,<sup>129</sup> in conformity with “generally accepted international regulations, procedures and practices”<sup>130</sup> Flag States also have jurisdiction over the construction, design and manning standards of vessels under their registry.<sup>131</sup> The term ‘jurisdiction’ is most often used to describe the lawful power of a state to define and enforce the rights and duties of, and control the conduct of, natural and juridical persons,<sup>132</sup> sometimes jurisdiction refers to particular aspects of general legal

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<sup>121</sup> Churchill R.R., & Lowe, A.V. (1999) *The Law of the Sea* (Manchester University Press, 3<sup>rd</sup> ed ) p. 344.

<sup>122</sup> [www.marisec.org/flag-performance](http://www.marisec.org/flag-performance) at 9 May 2013.

<sup>123</sup> Jensen op cit, p. 11.

<sup>124</sup> [http://www.uncl.ac.uk/laws/environment/satellites/docs/21\\_oil\\_Pollution.pdf](http://www.uncl.ac.uk/laws/environment/satellites/docs/21_oil_Pollution.pdf) at 24 March 2013 page 10.

<sup>125</sup> Wright, A.N. ‘Beyond the Sea and Spector: Reconciling Port and Flag State Control over Cruise Ship onboard Environmental Procedures and Policies’ (2007) 18 *Duke Environmental LAW AND Policy Forum* 215 at p.221.

<sup>126</sup> The Permanent Court of International Justice affirmed the exclusivity of flag State jurisdiction in the Lotus Case.

<sup>127</sup> Anderson, D. & Franckx, E. (2001), *Vessel-Source Pollution and Coastal State Jurisdiction: The Work of the ILC Committee on Coastal State Jurisdiction Relating to Marine Pollution 1991 – 2000* (Kluwer Law International).

<sup>128</sup> Article 94 (2)(b) of the UNCLOS III;

<sup>129</sup> Article 94(1) of the UNCLOS III.

<sup>130</sup> Article 94(5) of the UNCLOS III

<sup>131</sup> Wright op cit, p. 221.

<sup>132</sup> Oxman, B.H. (2010), *Jurisdiction of State* (Heidelberg and Oxford University Press) page 2.

competence in the form of rights, liberties and powers.<sup>133</sup> However, ‘jurisdiction’ is generally more active and narrower than ‘sovereignty’, and covers any type of conduct whether civil, administrative or criminal in nature, which is limited by the State’s sovereignty.<sup>134</sup>

It is necessary to distinguish between a State’s competence to prescribe legislation for individuals or vessels and its competence to enforce legislation already prescribed.<sup>135</sup> The latter jurisdiction includes the competence to exercise judicial jurisdiction that is, to institute proceedings and impose penalties in compliance with legislation prescribed by the State. Hence, enforcement jurisdiction often coexists with legislative jurisdiction.<sup>136</sup> The legislative or enforcement jurisdiction that a State has in respect of a particular vessel varies depending on whether it is flag, coastal or port State.<sup>137</sup> According to the UNCLOS III, the enforcement jurisdiction of flag State is mandatory, whereas enforcement by port or coastal States is considered discretionary.<sup>138</sup> However, prescriptive is discretionary for all flag, port and coastal States. The UNCLOS III places important limitations on the prescriptive and enforcement jurisdiction of coastal and port States compared to flag States.<sup>139</sup> The UNCLOS III provides a ‘package deal’ for securing overall agreement, with minimum standards for flag States and maximum standards for coastal and port States. The stipulation of these minimum and maximum standards is vital to achieving the basic objective of the UNCLOS III, which is to establish legal order for the seas and oceans to promote the peaceful use of the sea and oceans.<sup>140</sup>

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<sup>133</sup> Yang H, *Jurisdiction of the Coastal State over Foreign Merchant Ship in Internal Waters and the Territorial Sea* (Springer, 2006)

<sup>134</sup> *Ibid*

<sup>135</sup> Churchill & Lowe *op cit*, p. 344.

<sup>136</sup> *Ibid* at p. 85.

<sup>137</sup> *Ibid* at p. 344.

<sup>138</sup> Articles 217 and 218 of the UNCLOS III

<sup>139</sup> The UNCLOS III on attempts to balance the competing interests of the three categories of State. Erik Jaap Molenaar, *Coastal State Jurisdiction Over Vessel-Source Pollution* (Kluwer Law International, 1998), pp. 50-54.

<sup>140</sup> Preamble to the UNCLOS III.

### **3.4.2 Flag State Prescriptive Jurisdiction in the UNCLOS III over the Prevention of Vessel Source Pollution**

Broadly, the UNCLOS III requires flag States to protect the marine environment from pollution in three main ways. The first is the explicit obligation to protect and preserve the marine environment. Flag States have a general duty not to pollute the marine environment and must not condone the actions of nations that do.<sup>141</sup> The second and most critical obligation is the fundamental commitment of flag States to prescribe laws, regulations and standards in order to achieve the first duty of protecting the marine environment.<sup>142</sup> The third obligation is to enforce, at the national level, international standards that have been agreed upon for protecting the marine environment.<sup>143</sup> The following section analyses the general obligation of flag States to protect the marine environment, as well as the prescriptive jurisdiction of flag States for the protection and preservation of the marine environment from vessel source pollution, as provided in the UNCLOS III<sup>144</sup>.

### **3.4.3 The General Obligation to Protect and Preserve the Marine Environment from Vessels Source Pollution**

The UNCLOS III explicitly requires state parties to design measures to minimize vessels polluting the marine environment. States are required to take measures aimed at preventing accidents and dealing with emergencies, ensuring the safety of operation at sea, as well as regulating the design, construction, equipment, operation and manning standards on vessels.<sup>145</sup> These measures, seek to prevent, reduce and control pollution of the marine environment from the “release of toxic, harmful or noxious substances, especially those which are persistent... from or through the atmosphere and dumping” to

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<sup>141</sup> Article 194 of the UNCLOS III

<sup>142</sup> Article 211 of the UNCLOS III.

<sup>143</sup> Article 194 of the UNCLOS III

<sup>144</sup> Flag State jurisdiction under the UNCLOS III is not limited to the protection and preservation of the marine environment. It also extends to registration requirements, conditions of registry, exploitation of living resources, exploitation of non-living resources and scientific research. Such issues are not analysed in this study as they do not have direct relevance to State jurisdiction over the protection and preservation of the marine environment from vessels source pollution.

<sup>145</sup> Article 194(3)(b) of the UNCLOS III

the fullest possible extent.<sup>146</sup> The measures taken by States to minimize vessel source pollution must also prevent intentional and unintentional discharges to the sea.<sup>147</sup> Some authors state that the UNCLOS III prohibits the intentional discharge of pollutants that are produced due to the normal operation of vessels into the marine environment.<sup>148</sup> However, the UNCLOS III does permit operational discharges from vessels, provided that such discharges do not result in pollution or cause deleterious harm to living resources and the marine environment. According to the UNCLOS III, pollution of the marine environment only occurs when;

*the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries...results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.*<sup>149</sup>

Three issues are particularly evident from the above definition of ‘marine pollution’. First, the definition of marine pollution is action-oriented. It focuses on the introduction of certain substances or energy as well as being effect-oriented (by requiring that such introduction result in “deleterious effects”).<sup>150</sup> Second, the definition of marine pollution is based on a ‘probability formula’, as in a broad sense, pollution not only exists when “deleterious effects” actually occur, but also when pollution is likely to eventuate.<sup>151</sup> Third, despite this rather broad interpretation of marine pollution, in the context of the UNCLOS III marine pollution can only result from human behavior.

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<sup>146</sup> Article 194(3)(a) of the UNCLOS III

<sup>147</sup> Article 194(3)(b) of the UNCLOS III

<sup>148</sup> Molenaar op cit, p. 53; Molenaar’s statement is in reference to Article 194 of the UNCLOS III

<sup>149</sup> Article 1(4) of the UNCLOS III; The use general terms such as “harm”, “hazards”, “hindrance”, “impairment”, “reduction” and “amenities” in the definition allow for multiple interpretations; The inclusion of “energy” in Article 1(4) of the UNCLOS III can be read as an indication that negotiators of the Third United Nations Conference on Law of the Sea were aware of the threat to the marine environment from light and noise energy, as well as vibrations from explosive devices; The UNCLOS III does not contain a definition of the word sea or the expression marine environment. Nor is a definition provided for the expression prevents, reduce and control pollution, which is used repeatedly in Part XII of the UNCLOS III.

<sup>150</sup> Molenaar., op cit, p. 16

<sup>151</sup> Ibid

### **3.4.4 The Obligation of Flag States to Formulate National Laws for the Prevention of Vessels Source Pollution**

The likelihood of flag States discharging their duties under international law is largely dependent on the existence of robust legislation which mandates strict compliance by vessels.<sup>152</sup> The UNCLOS III requires flag States to formulate national laws for the prevention of vessel source pollution in three articles. The first is the obligation in Article 211 of the UNCLOS III for flag States to “adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry”<sup>153</sup>. Article 211 of the UNCLOS III is the primary provision that regulates pollution from vessels, as the prescriptive jurisdiction of flag States under the article applies to the regulation of all types of vessel source pollution, i.e. pollution from discharge of oil, noxious liquid substances, packaged goods garbage, sewage and emission of harmful substances to the proliferation of national laws and regulations, as the various paragraphs of the article reference the adoption of laws more than seven times.

Second and more specifically, the UNCLOS III requires flag States to formulate nation laws for the prevention of vessel source pollution from the emission of harmful substances through vessel exhausts into the atmosphere. In this regard, Article 212 of the UNCLOS III provides that “States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty.”<sup>154</sup> Third and most importantly, flag States are obliged under Article 217 of the UNCLOS III to “adopt laws and regulations and take measures necessary to ensure compliance by vessels flying their flag or their registry”.<sup>155</sup> This provision is particularly important as it provides the jurisdiction for flag States to enforce laws and regulations in order to ensure compliance by vessels in accordance with laws and regulations adopted by the State.

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<sup>152</sup> Burgher, P. ‘In-depth analysis of accidental oil spills from tankers in the context of global spill trends from all sources, (2006) 140 Journal of Hazardous Material, p. 235 at.245.

<sup>153</sup> Article 211 (2) of the UNCLOS III

<sup>154</sup> Article 212 of the UNCLOS III

<sup>155</sup> Article 217 (1) of the UNCLOS III

Similar phrases to “other measures necessary” are provided in various articles of the UNCLOS III.<sup>156</sup> However no guidance is provided in the UNCLOS III on the scope of these “other measures” or how they might be “necessary” for flag States to ensure compliance by vessels. Therefore it is essential to analyze the meaning of the phrase “other measures necessary” in the context of the UNCLOS III. Generally, State may adopt their own interpretation of the phrase “other measures necessary”, as long as they comply with the duties imposed by the UNCLOS III.<sup>157</sup> Articles of the UNCLOS III that contain similar phrases to “other measures necessary” are predominantly found in the section that provides flag State prescriptive jurisdiction, titled “International Rules and National Legislation to Prevent, Reduce and Control Pollution of the Marine Environment”.<sup>158</sup> Therefore, it can be argued that “other measures necessary” may include government policies, guidelines and rules on flagging of ships<sup>159</sup> and the fixing of conditions for the grant of its nationality<sup>160</sup> in order to ensure a ‘genuine link’ between the flag State and the vessels under its registry.<sup>161</sup> Such policies and guidelines generally complement the laws adopted in accordance with the UNCLOS III.

Other measures necessary to ensure compliance by vessels may include the development of criteria and procedures for payment of adequate compensation to individuals and organizations that have been affected by a pollution incident.<sup>162</sup> Other measures may also include the development of guidelines to ensure recourse is available to affected parties within the legal system of flag States in conjunction with a fund specifically designated to provide adequate and prompt compensation in respect to damage caused

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<sup>156</sup> Article 207 (2), 208 (2), 210(2) and 212(2) of the UNCLOS III

<sup>157</sup> Harrington, C.A. ‘Heightened Security. The need to incorporate Articles 3 Bis (1) (A) and 8 Bis (5) (E) of the 2005 Draft SUA Protocol into Part VII of the United Nations Convention on the Law of the Sea (2007) 16 (1) Pacific Rim Law and Policy Journal 107 at 115.

<sup>158</sup> Section 5 of Part XII of the UNCLOS III

<sup>159</sup> Under Article 91 of the UNCLOS III, every flag State has the right to develop its own criteria for flagging vessels. Notwithstanding exceptional circumstance, a vessel may fly the flag of only one State throughout the course of its journey, and may not change its flag during a voyage or while in a port of call. Article 92 (2) of the UNCLOS III states that a ship flying more than one flag may be assimilated into a Stateless ship.

<sup>160</sup> Article 91 of the UNCLOS III

<sup>161</sup> A genuine link between the State and the vessel must be established under Article 91 (1) of the UNCLOS III; The UNCLOS III does not precisely define the concept of a ‘genuine link. Therefore the interpretation of ‘genuine link’ differs widely among States.

<sup>162</sup> Article 235 (3) of the UNCLOS III

by pollution to the marine environment.<sup>163</sup> In order to provide up-to-date response to emerging needs for the protection and preservation of the marine environment, laws, regulations, guidelines and procedures adopted by States are to be re-examined from time to time as necessary.<sup>164</sup> Furthermore, States are required to cooperate in establishing appropriate scientific criteria for the formulation and elaboration of laws and regulations for the prevention, reduction and control of pollution of the marine environment,<sup>165</sup> in order to encourage consistency in the national laws adopted by flag States. The obligation of flag States to formulate national laws is not limited to the prevention of vessel source pollution. According to the UNCLOS III, States must adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land based sources,<sup>166</sup> seabed activities subject to State jurisdiction,<sup>167</sup> activities in the area,<sup>168</sup> as well as dumping,<sup>169</sup> taking into account the internationally agreed rules, standard and recommended practices.

### **3.5 Jurisdiction of Port States to Establish Conditions for Port Entry in National Laws**

In reality UNCLOS III empower national laws for the protection, reduction and control of pollution of the marine environment as a condition of entry to their ports.<sup>170</sup> However, before such requirements are enforced, they must first be publicized and communicated to the IMO.<sup>171</sup> The UNCLOS III reads:

*States (may) establish particular requirements for the prevention, reduction and control of pollution of the marine environment, as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals.... State shall give due publicity to such*

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<sup>163</sup> Article 235 (2) of the UNCLOS III

<sup>164</sup> Articles 207 (4), 208 (5), 206(1), 210 (4) and 211(1) of the UNCLOS III

<sup>165</sup> Article 201 of the UNCLOS III; The need for international cooperation in eliminating the effects of pollution and preventing or minimizing damage to the marine environment is also emphasized in Article 199 of the LOS Convention.

<sup>166</sup> Article 207 (1) of the UNCLOS III

<sup>167</sup> Article 208 (1) of the UNCLOS III

<sup>168</sup> Article 209 (2) of the UNCLOS III

<sup>169</sup> Article 210 (1) of the UNCLOS III

<sup>170</sup> Article 211(3) of the UNCLOS III.

<sup>171</sup> Ibid

*requirements and shall communicate them to the competent international organization*<sup>172</sup>.

Once a State give notice of its conditions for port entry to the IMO and to the public, the anti-pollution requirements in the State's national laws are adopted, even though a foreign vessel may view them as a further burden on free trade.<sup>173</sup> Port States may prescribe that vessel be fitted with equipment such as an Automatic Identification System (AIS) or a Voyage Data Recorder (VDR) as a condition of entry into port,<sup>174</sup> thereby enabling the State to regulate or monitor traffic and pollution from vessels<sup>175</sup>. However, port States are barred from implementing conditions that exceed generally accepted international rules and standards on the construction, design, equipment and manning of foreign vessels.<sup>176</sup> Therefore, conditions that require foreign vessels be fitted with equipment that is not generally accepted at the International level can generate significant controversy, as the conditions may exceed the construction, design, equipment and manning standards provided in applicable multilateral regulatory conventions.

Port States have the right to take “necessary steps” to prevent a breach of port entry conditions by vessels. In this regard, Article 25(2) of the UNCLOS III states that:

*In the case of ships proceeding to internal waters or a call at a port facility outside internal water, the...State...has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.*<sup>177</sup>

The inclusion of the phrase “necessary steps” suggests that a full range of enforcement powers are open to port States, but the use of such powers should be proportional to the circumstances involved.<sup>178</sup> The jurisdiction to take necessary steps to prevent a breach of

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<sup>172</sup> Ibid

<sup>173</sup> Keseli, Op cit, p. 127.

<sup>174</sup> Molenaar, Op cit, p. 242.

<sup>175</sup> Ali, K. ‘Legal and Policy Dimensions of Coastal Zone Monitoring and Control: The Case in Ghana’ (2004) 35 Ocean Development & International Law 179.

<sup>176</sup> Firestone *et al*, Op cit, p. 128.

<sup>177</sup> Article 25(2) of the UNCLOS III

<sup>178</sup> Jensen op cit, p.17.

port entry conditions is reaffirmed in the UNCLOS III by the right of port States to prescribe anti-pollution requirements in their national laws.<sup>179</sup> According to Article 211(3) of the UNCLOS III, a State must require the master of a vessel flying its flag or of its registry to indicate to the port State whether it complies with the entry conditions established by the port State when navigating into port.<sup>180</sup> However, the precise wording used in Article 211(3) of the UNCLOS III is not very helpful. Some authors have expressed the opinion that the information provided by a vessel seeking entry may not be sufficient for the port State to confirm that its port entry conditions have been satisfied.<sup>181</sup> Like the UNCLOS III, MARPOL 73/78, in its Article 4(2), provides port States with the jurisdiction to prescribe port entry conditions in their national laws for the prevention, reducing and control of pollution from vessels.<sup>182</sup> However, very few States appear to have enacted legislation implementing anti-pollution requirements as provided in the UNCLOS III and MARPOL 73/78 in relation to port State jurisdiction.

### **3.5.1 Legislative Jurisdiction by port state in the Territorial Sea.**

Port States have legislative jurisdiction to take administrative measures to prevent vessels from sailing, provided the vessel is in violation of applicable international rules and standards relating to seaworthiness that threaten damage to the marine environment.<sup>183</sup> Article 219 of the UNCLOS III provides that:

*States which, upon request or on their own initiative, have ascertained that a vessel within one of their ports is in violation of applicable international rules and standards relating to seaworthiness of vessels and thereby threatens damage to the marine environment, as far as practicable, shall take administrative measures to prevent the vessel from sailing.....*<sup>184</sup>

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<sup>179</sup> Article 211(3) of the UNCLOS III; J Firestone and C Jarvis, 'Response and Responsibility: Regulating Noise Pollution in the Marine Environment' (2007) 10 Journal of International Wildlife Law and Policy 109 at 128.

<sup>180</sup> Article 211(3) of the UNCLOS III

<sup>181</sup> Molenaar, F. E. J. (1997) 'Residual. 'Residual jurisdiction under IMO Regulatory Conventions' in Ringbom, H. (ed), Competing Norms in the Law of Marine Environmental PROTECTION (Kluwer Law International), pp. 213-214.

<sup>182</sup> International Maritime Organization, MARPOL- How to do it (IMO, 2002) p. 21.

<sup>183</sup> Hodgson, B.G.T., and Beale, N. The Environmental Cost of International Shipping' (2009)4 National Environmental Law Review 58 at 62.

<sup>184</sup> Article 219 of the UNCLOS III

The UNCLOS III further provides that:

States may permit the vessel to proceed only to the nearest appropriate repair yard, and upon removal of the causes of the violation, shall permit the vessel to continue immediately.<sup>185</sup>

It is suggested that the wording of Article 219 of the UNCLOS III imposes an obligation upon port States to take reasonable measures to monitor vessels within their ports and off-shore terminals, thereby ensuring the compliance of such vessels within the applicable international rules and standards relating to the seaworthiness of vessels<sup>186</sup>. Unlike Article 218 of the UNCLOS III, Article 219 appears to have been drafted for maximum effectiveness. Indeed, the use of the verb shall instead of may in Article 219 implies that States are Obligated to take the administrative measures described above whenever the type of violation outlined in the article occurs.

Like the UNCLOS III, MARPOL 73/78 also establishes basic principles governing the in port detention of foreign vessels by port States. Under MARPOL 73/78, Port States must ensure that vessels do not sail until they can proceed to sea without presenting an unreasonable threat of damage to the marine environment.<sup>187</sup> However, vessels can be granted permission to leave port in order to proceed to the nearest appropriate repair yard.<sup>188</sup> Jurisdiction over vessels in port for pre-existing defects that are not presently polluting the port is more problematic. MARPOL 73/78 circumvents this somewhat murky issue by giving port States the jurisdiction to inspect vessels and report their defects to the flag State, as well as the power to detain the vessel until repairs is carried out.<sup>189</sup>

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<sup>185</sup> Article 219 of the UNCLOS III.

<sup>186</sup> Ambrosa, R. 'Regulation of Shipping: The Vital Role of Port State Control' (2004) 18 *Martime Law Association of Australia and New Zealand Journal* 83 at 87.

<sup>187</sup> In such circumstances, the port State shall take such step to ensure that the vessel does not sail until the situation has been brought to order in accordance with the requirements of MARPOL 73/78. Regulations 6.3.3 and 11.2 of Annex I, and Regulation 4.5 of Annex IV of MARPOL 73/78.

<sup>188</sup> ARTICLE 5(2) of MARPOL 73/78, Regulation 16 of Annex II, Regulation 8 of Annex III, Regulation 8 of Annex V and Regulation 10 of Annex VI of MARPOL 73/78

<sup>189</sup> Fitzgerald op cit, p. 31.

### **3.6 The Right of Innocent Passage and Marine Pollution**

There are several open textured provisions on the issue of innocent passage that lend themselves to varying interpretation and, therefore, leave several questions without definite answers. The main provision on what constitutes non-innocent passage, article 19(1) is fluid enough to admit the incorporation of several activities not listed in article 19(2). For instance, subparagraph (h) envisages non-innocent passage resulting from the engagement in “willful and serious pollution”. Willful speaks of volition. However, the gravity of the pollution which would render passage non-innocent is far from clear. The word “serious” is coloured by relativity and would always depend, for its meaning, on the singular interpretation of the coastal state. To what extent the coastal state will be tolerant with the acts which are not correlated with the real meaning of “innocence”? How someone can accept the principle while for example its passage results into marine pollution? Would it be fair to that particular state? The fact is that; the passage can be innocent according to the UNCLOS III but the action of spreading the materials that are easily carried away by water can raise the seriousness of the polluter on maintaining the status of the coastal state, of which it cannot be called innocent.

Coastal state is obliged not to hamper innocent passage, it is also obliged to protect and preserve the marine environment and its resources. The concern here is the extent to which the coastal state may restrict innocent passage for environment-based reasons. On the other hand, article 25 only envisages temporal suspension of the right for security reasons and not the requisition of notification or the prior authorization by the coastal state for the passage of such ships. To hold otherwise will be giving effect to the notion that the mere presence of foreign warships in the territorial sea is an offensive conduct. As it stands, the allusion to articles 19 and 25 to strengthen the 35 requirement of prior notification or authorization is “valid only for those states whose opinion it expresses.” However, the circumstances under which the issue of innocent passage of warships was negotiated suggest that the final provisions do not reflect the achievement of real consensus. Therefore, it seems that many coastal states do not consider themselves bound by the provisions of the UNCLOS III on this issue.

### **3.6.1 Restriction Basing on Marine Environment**

As should be expected, many coastal states have passed legislations concerning the preservation of the marine environment which inevitably impact on the right of innocent passage.<sup>190</sup> It may be recalled that engaging in an act of willful and serious pollution would render passage non-innocent under article 19(2) (h), from this article, it has been pointed out the unsatisfactory state of this provision owing to the relativity of the word “serious” though it clearly points to the fact that the pollution in question must be of a grave magnitude. Gravity of the pollution seems to be insignificant; hence, it is worth to comment that, law should be restrictive, by stipulating that, passage is non-innocent if a ship passing through its territorial waters engages simply in any act of pollution of the marine environment contrary to the laws of any state. There is no requirement that the pollution be willful.

### **3.6.2 Ships Carrying Dangerous Materials and the Concept of Innocent Passage**

Coastal State jurisdiction over vessels carrying dangerous materials provides a good example of situations where the right of innocent passage is put to a test. Coastal State Jurisdiction and Vessel Source Pollution, Article 23 of the UNCLOS III recognizes the right for foreign nuclear powered ships and ships carrying nuclear or other inherently dangerous substances to exercise innocent passage. However, they shall carry documents and observe special precautionary measures in order not to threaten the peace and security of the coastal State. As mentioned above Tanzania<sup>191</sup> has also adopted rules for, *inter alia*, dangerous goods that are about to enter the territorial sea and internal waters.<sup>192</sup> Although recognized in the UNCLOS III, the problems concerning dangerous goods including nuclear powered ships are somehow connected with the principle of innocent passage in justifying illegal acts including marine pollution. Ships in transit within Tanzanian waters are generally powered by conventional fuel. Hence, the focus should be potential harm from the cargo, as well as fuel. Article 22(2) of the UNCLOS III provides that ships carrying dangerous substances *in particular* may be referred to

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<sup>190</sup> Article 19 of the UNCLOS III

<sup>191</sup> Merchant Shipping Act, No 21 of 2003

<sup>192</sup> See Section 287-291 of the Merchant Shipping Act No. 21 of 2003

use specific sea lanes in the territorial sea. This is an important preventive rule in the protection the marine environment. The coastal State does not under all circumstances know the status of ships in transit. However, with regard to Article 22 there seems to be no obligation for the flag State or the ship itself to notify the coastal State prior to entrance, unless there is a legal basis to require such notification. Article 198 of the UNCLOS III provides for an obligation to notify other States if ‘the marine environment is in imminent danger of being damaged or has been damaged by pollution’. The question is whether this article is applicable only in cases of accidents already occurred. According to the provision, it comes to effect only when a State is aware of cases where there is a clear and present danger of damage to the environment. Ship carrying oil or other dangerous substances will probably not represent such a risk only by regular navigation through the territorial sea. Hence, this creates confusion if UNCLOS III intend seriously to protect marine pollution by marine vessels.

### **3.6.3 The Coastal State’s Right of Hot Pursuit in the Territorial Sea**

One of the few exceptions to the primacy of flag State jurisdiction is the coastal State’s right of hot pursuit, as provided for in Article 111 of the UNCLOS III. This provision implies possible enforcement jurisdiction within the territorial sea. A number of conditions must be present before the right of hot pursuit can be initiated. The coastal State must have good reasons to believe that laws and regulations have been violated. Concrete evidence is of course sufficient, but probably not necessary. The pursuit must then be commenced when the foreign ship is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State. This does not mean that the *pursuing* ship have to be within one of these zones. By giving the ship a visual or auditory signal to stop, pursuit is begun. Furthermore, the pursuit can’t be interrupted and must be carried out hot and continuously. If the pursuit is interrupted, it can’t be undertaken again. However, it may be taken over by other ships. The right of hot pursuit ceases as soon the pursued ship enters the territorial sea of the flag State or a third State. This is a deflection of the coastal State’s sovereignty over its own territory.

### **3.7 Coastal State jurisdiction in the Exclusive Economic Zone on Pollution**

#### **3.7.1 Introduction**

Coastal State jurisdiction with regard to protection of the marine environment in the EEZ is provided for in Article 56(1) (b) (iii) of the UNCLOS III, which must be read in conjunction with the specific rules established in Part XII. The EEZ is a result of the coastal State's desire to gain greater management and observation over the economic resources adjacent to the coast, particularly with regard to fishing. The vast size of the EEZ and the importance of the resources and economic uses of the area, motivate coastal States' concerns about navigation. Within the EEZ the coastal State enjoys sovereign rights and jurisdiction as provided for in Articles 56 and 58 of the UNCLOS III. For the rights and duties on the continental shelf within the 200-mile zone, the continental shelf regime and the regime of the EEZ, coexist. Subsequently, the provisions in Part VI of the UNCLOS III are applicable and supplement the rules within the EEZ. It would seem that the breadth of the zone and the rights enumerated in Articles 56 and 58 are part of customary international law. Whether the jurisdictional provisions have passed into the status of customary law, is however more doubtful. These are nevertheless of high importance to Tanzania. Much of the vessel source pollution takes place within 200 miles, yet beyond the territorial Coastal State Jurisdiction and Vessel Source Pollution. Tanzania may of course exercise legislative and enforcement jurisdiction in the capacity of flag State. However, with regard to ships in transit, the pollution control relies on international rules. Tanzania is entitled to control pollution in this zone for the reason that it enjoys all rights within it, mainly, When it comes to impacting navigation in the EEZ, the coastal State should take several factors into consideration. First and foremost, one should try to analyse the shipping activity in the area and to what extent vessel source pollution may harm the marine environment. The basis for jurisdictional provisions within the EEZ should always be with regard to the sovereign rights of the coastal State enjoys within the zone. Secondly, legislative and enforcement action should be with accurate basis in the UNCLOS III. Regulations outside the territorial sea may be objected by flag States and not necessarily without good reasons.

### **3.7.2 Legislative Jurisdiction**

Article 211(2) of the UNCLOS III affirms the primary and traditional responsibility of the flag State with regard to adoption of regulations with the purpose of protecting the marine environment. Moreover, within the EEZ, the coastal State has jurisdiction with regard to the protection and preservation of the marine environment. The relevant provisions regarding prescriptive jurisdiction are found in Part XII. Article 211(5) reads: *‘Coastal States, for the purpose of enforcement as provided for in sub-section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference. The coastal State has no obligation to regulate pollution within the EEZ, as indicated by the term ‘may’.* However, if the competence is used, there are limitations. The rules shall only conform and give effect to rules and standards with basis in international law. In this respect the Merchant Shipping Act in section 426 and 427 allows ratification of international conventions and other instruments hence legalizing legislative jurisdiction with regard to protection of the environment on the EEZ, but only in accordance with international law. If national legislation is violated, this authorizes the coastal State, *inter alia*, to commence hot pursuit as provided for in Article 111(2) of the UNCLOS III, through this, Tanzania is entitled to prevent pollution on the EEZ alternatively. The phrase conforming to and giving effect to be different to those used elsewhere in the UNCLOS III. The coastal State is limited to implementation with regard to legislative jurisdiction in the EEZ. In reality the power of states within the EEZ in controlling marine pollution is limited as it is unclear whether or not navigational measures can meet the criterion of generally accepted.

As a consequence of coastal State legislative jurisdiction within the EEZ, a certain overlap with regard to the flag State jurisdiction may occur if regulations are adopted in accordance with Article 211(5) and (6). Neither, the flag nor the coastal State has unrestricted discretion in the adoption of rules and standards. The laws and regulations of the flag State must at least have the same effect as that of generally accepted

international regulations and those of the coastal State must conform and give effect to generally accepted international rules and standards. Within the EEZ apply to violations of applicable international rules and standards, or the coastal State's laws and regulations compatible with such rules and standards. Measures are graded according to the degree of harm threatened or caused by violations committed within the EEZ, in order to prevent impediments to the freed of navigation. Where there are 'clear grounds for believing' that a ship has violated international rules and standards or the legislation of the coastal State, the coastal State may require information in order to establish whether a violation has occurred. This is provided for in Article 220(3) of the UNCLOS III and reflected in Section 380 (c) By suspicion of violation within EEZ<sup>193</sup>. In this respect, Tanzania as a flag State also has a duty under Article 220(4) of the UNCLOS III.

### **3.8 The Competent International Organization**

The competent international organization that has the most substantial direct effect upon the law of the sea is the International Marine Organization (IMO).<sup>194</sup> The IMO has a wide competence in matters affecting shipping and pollution prevention. The IMO, through its committee such as the Marine Safety Committee, Legal Committee and the Marine Environment Protection Committee, have developed prominent rules and regulations concerning navigation and marine pollution.<sup>195</sup> The IMO was created under the Convention of the International Maritime Organization 1974.<sup>196</sup> According to this Convention, one of the purposes of the IMO is to encourage and facilitate the general adoption of the highest practicable standards in the matters concerning the prevention and control of marine pollution from ships.<sup>197</sup> By using the word "encourage" instead of any legally binding terms, the Convection established the IMO as a standard setter but not an enforcer.<sup>198</sup> Historically, IMO Conventions have established standards but leave enforcement of those standards to State parties in accordance with the Law of the sea

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<sup>193</sup> Merchant Shipping Act, No 21 of 2003

<sup>194</sup> Churchill & Lowe op cit, p. 23.

<sup>195</sup> Ibid

<sup>196</sup> Convention of the International Maritime Organization, (1947) *UNTS 1520*

<sup>197</sup> Article 1 of the International Maritime Organization

<sup>198</sup> Pietri, D. et al, The Arctic Shipping and Environmental Management Agreement: A Regime for Marine pollution (2008) 36 *Coastal Management*, p. 508 at 512.

Convention.<sup>199</sup> Some authors argue that the Law of the sea Convention has deferred the details of the framework preserving vessel source pollution to the IMO's subsequent multilateral regulatory instruments.<sup>200</sup> Indeed, various articles of the Law of the sea Convention provide that States, when acting especially through the competent international organization or diplomatic conference, shall endeavor to establish global standard and recommend practices and procedures to prevent, reduce and control pollution of the marine environment.<sup>201</sup> However, the use of the term "especially" indicates that States have the discretion not through the competent international organization when establishing global and regional rules for the protection and prevention of marine pollution.

The IMO has indeed been very successful in addressing complex maritime matters such as the construction and design of vessels to improve the safety of life at sea, procedures to minimize marine casualties and measures to prevent the spillage of pollutants, as well as collisions, accidents and grounding.<sup>202</sup> Those who are skeptical of the IMO's role in preventing marine pollution maintain that the IMO has largely exhausted the regulations of oil pollution, and has thus sought to regulate other areas, such as chemicals and alien organisms in ballast water, in order to justify its continued existence.<sup>203</sup> Furthermore, influential States, through not necessarily large in size,<sup>204</sup> use the IMO as platform to advance coastal State concerns and to internationalize issues which could arguably be considered local or regional problems.<sup>205</sup> Although the argument above has certainly been raised by some authors, it may not necessarily be true. Indeed, rare practices by the IMO have provoked the kind of criticism described above.<sup>206</sup> But even if a problem is characterized as local in nature, it is important to ask two major questions;

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<sup>199</sup> Ibid

<sup>200</sup> Gregory, L.R., Report on the Comparative Analysis of Compliance Mechanism (University of Wollongong, 2006), p. 93

<sup>201</sup> Articles 207(4), 208(4), 210(4), 212(3) of The Law of the Sea Convention

<sup>202</sup> Pam borides op cit, p. 180

<sup>203</sup> Ibid, at p. 132.

<sup>204</sup> Ibid

<sup>205</sup> Information obtained during a field visit at the Ministry of Transport by Director of the Ministry in Environmental matters, 16 June 2013.

<sup>206</sup> Ibid

- (i) *Whether individual States have the capacity to unilaterally regulate local problems?; and (ii) Will unilateral, localized State practices take precedence over uniform practice, either regionally or internationally?*

In both instances, the answer is probably No. Most State has neither the capacity nor influence to act an effective proxy for the regulation of the globalised problem of vessel source pollution. Most shipping interests have acknowledged that harmonizing regulations at the international level via the IMO is far more preferable than the dislocation that would arise from unilateral or regional actions by individual States.<sup>207</sup> Hence the most competent international organization for regulating maritime affairs in general and preserving vessel source pollution in particular, is the IMO.

### **3.9 Generally Accepted International Rules and Standards**

According to the Law of the Sea Convention, laws and regulations adopted by States for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry, shall at least have the same effect as the generally accepted international rules and standards established through the competent international organization.<sup>208</sup> The above provision of the Law of the sea Convention raises the primary question: What amount for a rule or standard to be *generally accepted*? A complex textual analysis is needed to ascertain the most appropriate interpretation of the phrase *generally accepted*.<sup>209</sup> The incorporation of such terminology in the Law of the Sea Convention is certainly not attributed to poor draftsmanship.<sup>210</sup> The phrase can perhaps be viewed as a ‘lowest common denominator’ a standard acceptable to all parties in an attempt to harmonise (often opposing) interests, such as the need to protect the marine environment on the one hand, and the prevention of the freedom of navigation (or any other national activities affecting the seas) on the other.<sup>211</sup>

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<sup>207</sup> Khee-Jin Tan, op cit, p. 83.

<sup>208</sup> Article 211(2) UNCLOS III

<sup>209</sup> Franckx op cit, 11

<sup>210</sup> Ibid

<sup>211</sup> Ibid

There is no definition of the phrase “generally accepted international rules and standards” in the Law of the sea Convention. International conventions are referred to as “generally accepted” upon entry into force of the instrument or when some wider level of acceptance is reached by State to implement the international convection. International conventions may also attain general acceptance when participation is widespread, representative and includes States whose interests are particularly affected.<sup>212</sup> The generally accepted international rules and standards are also referred to as “rules of reference”. By ratifying the Law of the Sea Convention, State parties accept the inherent rules of reference.<sup>213</sup> The Law of the Sea Convention’s ruler of reference with respect to vessel source pollution apply in principle only between States parties accept to the Law of the Sea Convention.<sup>214</sup> Under the rules of reference, States incur the obligation to prescribe norms in national legislation that at least reach the same level as the rules of reference. The generally accepted international rules and standards applicable to the protection and preservation of the marine environment from vessel source pollution are critical to the analysis in this study<sup>215</sup> hence it will be material to answer the following question via this section: *What are the generally accepted international rules and standards applicable to the prevention of vessel source pollution?*

### **3.9.1 Generally Accepted International Rules and Standards Applicable to the Preservation of Vessel Source Pollution.**

The generally accepted international rules and standards on the prevention of vessel source pollution rely heavily on specific technical provisions in various multilateral regulatory conventions.<sup>216</sup> The existence of several multilateral conventions has resulted

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<sup>212</sup> Ibid

<sup>213</sup> Second report of committee on coastal state jurisdiction relating to marine pollution (1998) in Erick Franckx, Vessel-source pollution and coastal state jurisdiction relating to marine pollution 1991-2000 (kluwer International 2001), pp. 39-52

<sup>214</sup> Franckx op cit, p. 32

<sup>215</sup> The Word applicable appears in relation to all actors, articles 94(3)(b) and 217 for flag states, articles 218, 219 226 (b) (c) and 228 for port states and article 219 and 220 for coastal states.

<sup>216</sup> Molenaar op cit, p. 60.

in overlapping spheres of jurisdiction which lead sometimes into contradictory requirements.<sup>217</sup>

The IMO is currently responsible for some fifty multilateral regulatory conventions and protocols, forty of which are in force or due to enter into force shortly.<sup>218</sup> This includes the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), which regulates all forms of vessel source pollution, as well as the International Convention for the Safety of Life at Sea (SOLAS 1974). SOLAS 74 mainly covers safe ship construction, onboard lifesaving devices, radiotelegraphy and safety of navigation. The International Convention for the Control and Management of Ship's Ballast Water and Sediments 2004 prohibits the introduction of harmful aquatic-invasive species into the marine environment.<sup>219</sup> Furthermore, the IMO has established the International Convention on Standards of Training, Certification and Watch Keeping for Seafarers (STCW 1978).<sup>220</sup> This Convention covers training courses, certification of general safety of vessels, their operation and navigation.

A number of serious accidents involving tankers in the last decade have prompted the development of the Convention on the International Regulations for Preventing Collisions at Sea (COLREG 1972).<sup>221</sup> The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION 1969).<sup>222</sup> The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990) were developed to limit the damage to the marine

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<sup>217</sup> Gunther, H. Regional Arrangements and third State vessels: is the Pacta Tertiis Principle Being Modified in Henrik Rengbom (Ed), competing Norms in the law of marine environmental protection (Kluwer Law International, 1997), pp. 217 and 218.

<sup>218</sup> White, M. (2007) Australian Marine Pollution Laws 2<sup>nd</sup> Edition, Federation Press, p.16.

<sup>219</sup> International Convention for the Control and management of Ships' Ballast Water and Sediments. (2004) ATNIF 18

<sup>220</sup> International Convention on Standards of Training Certification and Watch keeping for Seafarers, (1978) ATS 7.

<sup>221</sup> Conventions on the International Regulations for Preventing Collisions at Sea, (1972) ATS 5

<sup>222</sup> International Convention Relating to Intervention on the High seas in Cases of oil Pollution Casualties', (1969) UNTS-1-1409.

environment once an accident occurs.<sup>223</sup> Conventions such as the International Convention on Civil Liability for Oil Pollution (CLC 1969)<sup>224</sup> and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1971) were developed to provide compensation for damage resulting from accidents in the marine environment.<sup>225</sup> Other conventions for developed by the IMO include the International Convention on the Load Lines (CLL 1966),<sup>226</sup> and the International Convention of Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS 1996).<sup>227</sup> Almost all IMO Conventions contain provisions for the protection and preservation of the marine environment or provide safety standards to reduce the risk of marine pollution.

MARPOL 73/78 is the world's first treaty to regulate most forms of marine pollution by vessels, with the exception of land-generated wastes dumped under licence (which is regulated by the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter).<sup>228</sup> Vessel source pollution from the residue of anti-fouling ship paint the introduction of alien organisms via ballast water and pollution caused by shipwrecks are also not covered by MARPOL 73/78. However, such pollutants are regulated by other specialized international regulatory conventions.<sup>229</sup> Furthermore, MARPOL 73/78 does not provide regulations on manning and social aspects of shipping, although such issues are vital to ensure safe, secure and pollution-free vessel operations.<sup>230</sup> It is often claimed that MARPOL 73/78 has been highly successful and many consider that MARPOL 73/78 has reduced the amount of pollutants discharged into the marine environment by vessels.

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<sup>223</sup> International Convention on oil Pollution Preparedness Response and Cooperation, (1990) UNTS I-32194

<sup>224</sup> International Convention on Civil Liability for Oil Pollution Damage (1969) UNTS I-14097.

<sup>225</sup> International Convention on the Establishment of an International Fund for Compensation for Oil

<sup>226</sup> International Convention on Load Lines, (1966) UNTS I-9159

<sup>227</sup> The international Convention of Liability and Compensation for Damage in Connection with the carriage of Hazardous and Noxious Substances, (1966)

<sup>228</sup> Convention on the prevention of Marine Pollution by Dumping of Wastes and Other Matter, (1972) UNTS I-15749

<sup>229</sup> International Convention for the Control and Management of Ships' Ballast Water and Sediments adopted in (2004)

<sup>230</sup> [www.marisec.org/flag-performance](http://www.marisec.org/flag-performance) accessed on 14 May 2013, at p. 6.

### 3.10 MARPOL 73/78: Overview and General Characteristics

MARPOL 73/78 has been in force since 2 October 1983,<sup>231</sup> with a minimum of fifteen States (representing 50% of world gross tonnage) ratifying the Convention.<sup>232</sup> The ‘Entry into force’ approach of MARPOL 73/78 has been widely criticized, as it does not appropriately balance the interests of flag States with the interests of coastal or port States. The minimum requirement of fifteen States is out of step with the growth of United Nations member States from 135 in 1973 to 192 as of March 2011.<sup>233</sup> Furthermore, with a world fleet now dominated by developing States, such as Panama and Liberia, a 50% requirement of the gross tonnage gives those States undue influence in seeking amendments to MARPOL 73/78, although amendments may come into force in the absence of an objection from at least one-third of the State parties.<sup>234</sup> Despite this fact, the Convention is currently in force and hence obligatory on State parties to the convention.<sup>235</sup> MARPOL 73/78 superseded the 1954 International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL 54)<sup>236</sup>. In general, MARPOL 73/78 provides guidelines on issues such as the obligation to cooperate in the detection of violations and enforcement,<sup>237</sup> the prohibition of violations and the institution of proceedings to levy sanctions under the vessel’s law of administration.<sup>238</sup> Furthermore, MARPOL 73/78 provides guidelines on certification and special rules on inspection,<sup>239</sup> the settlement of disputes,<sup>240</sup> the communication of information<sup>241</sup> and the investigation of casualties to vessels.<sup>242</sup> Apart from the regulation of international discharges, MARPOL 73/78 also covers accidental discharges from vessels, as well as the regulation of pollution arising out of the exploration and exploitation of seabed mineral resources

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<sup>231</sup> [www.imo.org](http://www.imo.org) accessed on 21 May 2013

<sup>232</sup> Article 15.1 of MARPOL 73/78

<sup>233</sup> <http://www.eyeonthem.org/facts.asp?i+16> at 16 May 2013

<sup>234</sup> Article 16(2)(f) of MARPOL 73/78

<sup>235</sup> Lowe, *op cit*, p. 346.

<sup>236</sup> International Convention for the Prevention of Pollution of the Sea by Oil, (1954) UNTS 327

<sup>237</sup> Article 6(1) of MARPOL 73/78

<sup>238</sup> *Ibid* article 4

<sup>239</sup> *Ibid* article 5

<sup>240</sup> *Ibid* article 10

<sup>241</sup> *Ibid* article 11

<sup>242</sup> *Ibid* article 12

from fixed or floating platforms.<sup>243</sup> Infringements of MARPOL 73/78 provisions, particularly for international and willful violations or falsification of records, can result in both the vessel Management Company and seafarers being liable to criminal prosecutions. If found guilty, large fines amounting to millions of dollars may be imposed under applicable national laws, and in serious cases perpetrators may even face imprisonment.

### **3.10.1 Application of MARPOL 73/78 by States**

The first step towards the application of MARPOL 73/78 by a State is ratification or accession. Indeed, a large number of States have ratified MARPOL 73/78. As at 28 February 2011, 150 States have ratified the Convention and its compulsory Annexes I and II.<sup>244</sup> Ratification of Annexes III, IV, V and VI are optional to States. The 150 States that are party to MARPOL 73/79 account for 99.14 percent of the gross tonnage of the world's merchant fleet.<sup>245</sup> Vessels registered in these 150 States that engage in international navigation are subject to comply with the requirements of MARPOL 73/78, irrespective of their location. Less than one percent of the world's gross tonnage is flying a flag of a State that is not a party to MARPOL 73/78.<sup>246</sup> It is widely recognized that the costs involved in ratifying MARPOL 73/78 represent the main obstacle to ratification for countries that are currently not parties to the Convention. Where the vessel of a State has not ratified or acceded to MARPOL 73/78, the vessel is not exempt from the application of generally an accepted rule prescribed in the Convention and does not receive any favorable treatment when it is within a port of a State that is party to MARPOL 73/78.<sup>247</sup>

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<sup>243</sup> Ibid article 2(4)

<sup>244</sup> [www.imo.org](http://www.imo.org), accessed on 21 May 2013.

<sup>245</sup> Ibid

<sup>246</sup> Ibid

<sup>247</sup> Article 3(1) and 5(4) of Marpol 73/78

### **3.11 The Regional Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region**

#### **Nairobi Convention of 1985**

The Convention for the Protection, Management and development of the Marine and Coastal Environment of the Eastern Africa Region, commonly referred to as the Nairobi Convention, was adopted on 21 June 1985 and Tanzania acceded on 1 March 1996, together with its two Protocols and an Action Plan. The objective of the Convention is to ensure sound environmental management of the maritime and coastal areas of the East African region. The Convention provides a framework for the protection and development of marine and coastal resources. The protocols focus on the conservation of flora and fauna and on measures for combating marine and coastal pollution. The Convention is an initiative taken in the East African setting considering the economic and social value of the Eastern African marine and coastal environment, the unique hydrographic and ecological characteristics of the region, local shortcomings in the integration of environmental protection in national planning, and the inability of the more broad-based environmental conventions "to entirely meet the special requirements of the Eastern African region". Tanzania stands to benefit from the Convention and its Protocols. Priority areas include: coastal management, pollution monitoring, and contingency planning to combat marine pollution, coastal erosion and environmental impact assessment. Provision is made for cooperation among parties for sharing of information on the conservation and management of natural resources and exchange of expertise within the sub-region. But the issue is why the problem of marine pollution by marine vessels is still there? The UN Convention on the Law of the Sea was ratified by Tanzania on 30 September 1985. Other relevant Conventions/Treaties include: Convention on the Continental Shelf, adopted in 1958, Convention on the High Seas, adopted in 1958, International Convention for the Protection of Pollution from Ships, adopted in 1973, and International Convention on Oil Pollution Preparedness, Response and Cooperation, adopted in 1990.

### **3.12 Conclusion**

Though, its principles as it has been discussed therein above create a controversial on enforcing marine cases by its member states, still, it is material to say that, international regime has made enough in promoting marine interests to its member states, and it is believed that if states could dare to comply with the said principles even to a certain extent unlike the way the situation is right now may be this study could be discussed in a nutshell. Critically, the spirit of the UNCLOS III to the great extent, do suggest the prevention of marine pollution by marine vessels but the problem can be seen in interpretation and political interests of its member states in defining the intention of the Law of the Sea.

## **CHAPTER FOUR**

### **POSITION OF TANZANIA IN THE ENFORCEMENT OF THE LAW OF THE SEA OF 1982**

#### **4.1 Introduction**

Tanzania has a strong maritime tradition going back centuries. Zanzibar was once the chief port on the East African, Indian Ocean coast. Its hinterland reached into Central Africa as far as the middle Congo River. Swahili traders used dhows to conduct trade through many ports along the coast.<sup>248</sup> This tradition continues today with motorized craft. The government of Tanzania has announced plans to develop a new port at Mbegani, near Bagamoyo; it would offer a deepwater harbour with a two-berth container terminal.<sup>249</sup> 12 Indian Ocean ports: Wete, Tanga, Pangani, Bagamoyo, Zanzibar, Dar es Salaam, Kilindini, Kilwa Masoko/Kilwa Kisiwani, Lindi and Mtwara.<sup>250</sup> For the sake of understanding clearly the position of Tanzania in terms of dealing with marine pollution by marine vessels one has to dig on three capacities which a state has been mandated by the UNCLOS III, hence one has to argue whether a particular state has fulfilled those requirements, This part will embark on the national laws and the position of Tanzania in the enforcement of the Law of the Sea of 1982 on marine pollution by marine vessels considering the discussion above on international legal framework.

#### **4.2 National Legal framework**

#### **4.3 Environment Management Act 2004, Act No 20 of 2004**

This is termed to be a solution of environmental issues in Tanzania, it came into existence in 2004 mainly to solve problems of different kinds pertaining to environment, it has discussed different concepts of environment such as mining, pollution, and degradation just to mention a few. Unfortunately, some of the issues such as marine pollution by marine vessels have not been even mentioned by the said law. Only has

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<sup>248</sup> Found at Wikipedia the free encyclopedia, [http://www.world.cargonews.com/htm/n2012\\_1212.htm](http://www.world.cargonews.com/htm/n2012_1212.htm), "[Green Light for New Tanzanian Port](#)". November 2012. Accessed on 30 June 2013.

<sup>249</sup> Ibid

<sup>250</sup> Ibid

provided for general prohibition of pollution.<sup>251</sup> Moreover it put emphasize on the prohibition of water pollution in discharging hazardous substances chemicals and oil.<sup>252</sup> This has created a kind of disaster to the country since the law as a mother law of environment was supposed to give a general overview of all problems including marine pollution by ships since marine pollution is part and parcel of environment.

### **National Environmental Policy**

The National Environmental Policy (NEP), adopted in 1997, seeks to provide the framework for making the fundamental changes that are needed in order to incorporate environmental considerations into the mainstream of decision making.<sup>253</sup> The NEP seeks to provide guidance and planning strategies in determining how actions should be prioritized, and provides for the monitoring and regular review of policies, plans and programmes. It further provides for sectoral and cross-sectoral policy analysis, so that compatibility among sectors and interest groups can be achieved and the synergies between them exploited. The overall objectives of the NEP are, therefore, the following:

- To ensure the sustainability, security and equitable use of resources in meeting the basic needs of present and future generations without degrading the environment or risking health and safety.
- To prevent and control the degradation of land, water, vegetation, and air, which constitute our life support systems.
- To conserve and enhance our natural and man-made heritage, including the biological diversity of Tanzania's unique ecosystems.
- To improve the condition and productivity of degraded areas, as well as rural and urban settlements, in order that all Tanzanians may live in safe, healthy, productive and aesthetically pleasing surroundings.

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<sup>251</sup> Section 106 (i) Of Environment Management Act No, 20 of 2004

<sup>252</sup> Ibid, Section 110

<sup>253</sup> Government of the United Republic of Tanzania, 1997. "National Environmental Policy." Office of the Vice-President, Dar es Salaam

- To raise public awareness and understanding of the essential links between the environment and development, to promote individual and community participation in environmental action, and
- To promote international cooperation on the environment agenda, and expand participation and contribution to relevant bilateral, sub-regional, regional, and global organizations and programmes, including the implementation of treaties.

#### **4.4 Territorial Sea and Exclusive Economic Zone**<sup>254</sup>

These are laws made to regulate oceanic zones under the control of Tanzania. It was expected these laws as related to marine industry, at least to explain something on how the management of marine industry are supposed to be, especially on protection of marine pollution by marine vessels. Rather, these laws are based on explaining the rights and advantages basing on navigation that Tanzania expect to gain and to the lesser extent mentioning the passage of materials by ships which are harmful to living organisms.

#### **4.5 Fisheries Act, 2003**<sup>255</sup>

This is another law came into existence mainly for the control and regulation of fishing activities within Tanzania coast. As its name entails, this Act, has not provided out about pollution control by marine vessels. It is only provide out the means of navigating while fishing within Tanzanian zones mainly within the EZZ. Neglecting this marine pollution control by marine vessels made Tanzania to come up with the Merchant Shipping Act of 2003.

#### **4.6 Merchant Shipping Act**<sup>256</sup>

This is a first and main law in terms of marine pollution control by marine vessels, Merchant Shipping Act can be seen in section 367-381, and it allows ratification of international Convention, including amendments thereto and replacement thereof and other instruments. Part XIX entails about the prevention of pollution, Section 377 it said;

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<sup>254</sup> Territorial Sea and Exclusive Economic Zone Act Cap 238 R.E 2002

<sup>255</sup> Fisheries Act, No, 22 of 2003

<sup>256</sup> Merchant Shipping Act No, 21 of 2003

*“ If any oil or oily mixture is discharged from a ship into a harbour or into the sea within 100 nautical miles from the coast of Tanzania; or a Tanzanian ship into the sea within 100 nautical miles of any land, the owner or master of the ship shall be liable to a fine of not less than the equivalent in Tanzanian shillings of the United States dollars fifty thousand or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.*

*(2) A person laying information or giving evidence leading to the conviction of the master or owner of a ship for an offence under this section may, at the discretion of the Court trying the case be awarded a portion not exceeding one-half of the fine imposed. (3) where a person is liable to a fine mentioned in subsection (1), he shall also be liable to any expense that has been incurred or will be incurred in removing pollution or making good any damage attributable to the pollution”*

Liability has explained in Section 378 of Merchant Shipping Act Where, as a result of oil discharge or escapes from a ship, except as otherwise provided by this part, the owner of a ship shall be liable for any damaged caused to any person, property, environment, ecosystem, or marine within the United Republic by reason of contamination resulting from discharge or escape. While section 378 (7) of the above Act, entails about liability due to the discharge of oil by ship into Tanzanian water. Part XXII, talks about legal proceedings for the cases involving marine pollution by ships; this is supported by Section 335 and 336 that empower the court in Tanzania to entertain cases on marine pollution by ships. No liability shall be incurred by the owner of a ship under section 378 by reason of any discharge or escape of oil from a ship or imminent threat of contamination, if the owner proves that the discharge, escape, or threat of contamination resulted from an act of war, hostility, insurrection or an act of God; or Occurred as a result of an act done or omitted to be done by a person, not being a servant or agent of the owner, with intent to do damage to the ship, as per section 379.

#### **4.7 Surface and Marine Transport Regulatory Authority (SUMATRA)<sup>257</sup>**

The Surface and Marine Transport Regulatory Authority (SUMATRA) is a Multi-sector regulatory agency established by The Surface and Marine Transport Regulatory Authority Act, No 9 of 2001 section 4.<sup>258</sup> The Act came into force on 20th August 2004.

Some of the Roles and Functions of the authority are: The Roles

- a) Promoting effective competition and economic efficiency;
- b) Protecting the interests of consumers
- c) Protecting the financial viability of efficient suppliers
- d) Promoting the availability of regulated services to all consumers including low income, rural and disadvantaged consumers. The Functions;

a) To perform the functions conferred on the Authority by sector legislation, b) to monitor the performance of the regulated sectors, including in relation to:- (i) levels of investment. (ii) Availability, quality and standards of services (iii) the cost of services (iv) The efficiency of production and distribution of services, and (v) other matters relevant to the Authority d) to facilitate the resolution of complaints and disputes. In reality, it is so hard to trace the role of the agency on shipping industry since its concern has been on the buses and the rights of its users of the said services being centered much in Dar-es-Salaam. Port and flag state are under SUMATRA, hence, this, was a meaningful agency in terms of protecting marine industry inter alia other services; but the situation is different.

#### **4.8 National Institute of Transport (NIT)<sup>259</sup>**

National Institute of Transport (NIT) is a Public Higher Learning Institution, established by the NIT Act No. 24. of 1982. Currently the Institute is under the Ministry of Transport. However, its history dates back in 1975, when it was formed for the purpose of the production of manpower for the transport and the allied sectors. The complexity of the transport Industry and the intricacies involved in its management necessitated the introduction of comprehensive training programme for the Sector. The institution is

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<sup>257</sup> The Surface and Marine Transport Regulatory Authority [ SUMATRA] Act, Act No. 9 of 2001

<sup>258</sup> Section 6 (c) (11) The Surface and Marine Transport Regulatory Authority Act. No 9 of 2001

<sup>259</sup> Act No. 24. of 1982 , Accessed at <http://www.nit.ac.tz/> on 10 May 2013

there as per the duty and role of the ministry of transport in educating people to run transport sector.

#### **4.9 Marine and Coastal Areas**

In 1994 the Marine Parks and Reserves Act<sup>260</sup> was enacted. The Act aims, inter alia, at the protection, conservation and restoration of the species and genetic diversity of living and non-living marine resources and the eco-system processes of marine and coastal areas. The new Act also marks the beginning of enactment of environmental legislation which includes community based conservation through the involvement of villagers and other local resident users in the vicinity of, or dependent on a marine park or marine reserve in all phases of the planning, development and management of that marine park or reserve, and share in the benefits of the operation of the protected area. The Mafia Marine Park is the first marine park to be established in the country. However, this law does not effectively prevent marine pollution by marine vessels hence is not supporting the problem at hand.

#### **4.10 The National Laws under MARPOL 73/78**

Flag States have a legal responsibility to adopt national laws in order to ensure that vessels under their registry comply with generally accepted international rules and regulations provided in multilateral conventions such as MARPOL 73/78.<sup>261</sup> Flag State jurisdiction over the prevention of vessel source pollution is provided in the main text of MARPOL 73/78 and its six annexes. The main text of MARPOL 73/78 provides two obligations for flag States in these areas: they are; to formulate national laws to give effect to MARPOL 73/78; and to exercise enforcement jurisdiction in order to levy legal and administrative sanctions on non-compliant vessels. States must adopt national legislation to give force to the convention, thereby exercising jurisdiction for the protection and mitigation of vessel source pollution.<sup>262</sup> The national laws enacted by

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<sup>260</sup> Marine Parks and Reserves Act N0. 29 of 1994

<sup>261</sup> [http://www.bpa.edu.edu/port/research/REGULATORY\\_ISSUES.doc](http://www.bpa.edu.edu/port/research/REGULATORY_ISSUES.doc)> 27 April 2013.

<sup>262</sup> Dzidzornu, D. and Tsamenyi, M. 'Enhancing International Control of Vessel-Source Oil Pollution under the Law of the Sea Convention, 1982: A Reassessment' (1991) University of Tasmania Law Review 170 at 281.

States must regulate various matters that fall within the scope of MARPOL 73/78.<sup>263</sup> In this regard, MARPOL 73/78 States those national laws shall:

*Give effect to the provisions of [the convention] and those Annexes thereto by which they are bound, in order to prevent the pollution of the marine environment by the discharge of harmful substances or effluents containing such substances in contravention of the convention.*<sup>264</sup>

MARPOL 73/78 does not provide any guidance on the scope of national legislation required to implement the convention. Therefore, State Practices differ substantially in relation to national laws adopted to give force to MARPOL 73/78 and the regulations provided in applicable annexes to the convention. However, while higher standards can be applied to a State's national vessels, they cannot be enforced against foreign vessels unless the relevant standard has been raised at the international level, through the IMO.<sup>265</sup>

#### **4.11 The Implementation of Flag State Prescriptive Jurisdiction by the United Republic of Tanzania (URT)**

Under the national laws of United Republic of Tanzania (herein referred as URT), it is essential to answer the following two questions: *Which URT government agency is the flag State authority?*; and *What are the functions of the flag State authority?* Some authors argue that it is not necessary to answer the first question, as the real focus should be on the governance of the responsible agency, rather than the government agency itself (i.e. the responsible agency with jurisdictional authority).<sup>266</sup>

##### **4.11.1 Function of the Flag State Authority of the Tanzania**

The Department of Transport, which forms part of the Ministry of Transport and Environment, is the flag State administration.<sup>267</sup> The Department of Transport has the

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<sup>263</sup> Article 1(1) of MARPOL 73/78

<sup>264</sup> Article 1 (1) of MARPOL 73/78

<sup>265</sup> Churchill & Lowe, op cit, p. 346.

<sup>266</sup> Marcus, B. L. 'Strategic coastal Governance Issues in Fiji. The challenges of integration (2008) 32 *Marline Policy*, P. 856 at 858.

<sup>267</sup> The term Administration is defined in Article 2 (5) of MARPOL 73/78 as "the Government of the State under whose authority the vessel is operating.

function of regulating, among other things, vessel traffic services, international cooperation in maritime affairs, maritime search and rescue operations, navigational warnings and notices, hydrographic surveys, navigation aids, the prevention of pollution from vessels, as well as the safe carriage of dangerous goods.<sup>268</sup> The Department of Transport is also responsible for training, examining and certifying seafarers, issuing passports to seafarers, flag State control and port State control.<sup>269</sup> The discharge of these functions is entrusted to the Director of the Department of Transport, under whom a Director for Maritime Transport is appointed. In responsible for the safe, sustainable and environmentally sound operation of vessels registered to fly the flag of Tanzania<sup>270</sup> though the Tanzanian constitution<sup>271</sup> has not mentioned out the issue of protection on marine pollution in any article. It is reasonable to believe that Tanzanian marine industry generally is at jeopardy as the fact is that its main law is not supporting it.

#### **4.12 The Relevance of UNCLOS III in Tanzania on Marine Pollution**

In reality UNCLOS III empower national laws for the protection, reduction and control of pollution of the marine environment as a condition of entry to their ports.<sup>272</sup> However, before such requirements are enforced, they must first be publicized and communicated to the IMO.<sup>273</sup> The UNCLOS III reads:

*States (may) establish particular requirements for the prevention, reduction and control of pollution of the marine environment, as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals.... State shall give due publicity to such requirements and shall communicate them to the competent international organization.*<sup>274</sup>

Once a State give notice of its conditions for port entry to the IMO and to the public, the anti-pollution requirements in the State's national laws are adopted, even though a

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<sup>268</sup> Information provided to the researcher during a field visit by the Ministry of Transport, April, 2013 by Marine Engineer.

<sup>269</sup> Ibid

<sup>270</sup> Ibid

<sup>271</sup> The Constitution of The United Republic of Tanzania of (1977) as Amended from time to time.

<sup>272</sup> Article 211(3) of the UNCLOS III.

<sup>273</sup> Ibid

<sup>274</sup> Ibid

foreign vessel may view them as a further burden on free trade.<sup>275</sup> Port States may prescribe that vessel be fitted with equipment such as an Automatic Identification System (AIS) or a Voyage Data Recorder (VDR) as a condition of entry into port<sup>276</sup>, thereby enabling the State to regulate or monitor traffic and pollution from vessels.<sup>277</sup> However, port States are barred from implementing conditions that exceed generally accepted international rules and standards on the construction, design, equipment and manning of foreign vessels.<sup>278</sup> Therefore, conditions that require foreign vessels be fitted with equipment that is not generally accepted at the International level can generate significant controversy, as the conditions may exceed the construction, design, equipment and manning standards provided in applicable multilateral regulatory conventions.

Port States have the right to take “necessary steps” to prevent a breach of port entry conditions by vessels. In this regard, Article 25(2) of the UNCLOS III states that:

*In the case of ships proceeding to internal waters or a call at a port facility outside internal water, the...State...has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.*

The inclusion of the phrase “necessary steps” suggests that a full range of enforcement powers are open to port States, but the use of such powers should be proportional to the circumstances involved.<sup>279</sup> The jurisdiction to take necessary steps to prevent a breach of port entry conditions is reaffirmed in the UNCLOS III by the right of port States to prescribe anti-pollution requirements in their national laws.<sup>280</sup> According to Article 211(3) of the UNCLOS III, a State must required the master of a vessel flying its flag or of its registry to indicate to the port State whether it complies with the entry conditions

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<sup>275</sup> Keseli, op cit, p, 127.

<sup>276</sup> Molenaar op, cit, p. 242.

<sup>277</sup> Kamal-Deen, A. ‘Legal and Policy Dimensions of Coastal Zone Monitoring and Control: The Case in Ghana’ (2004) 35 Ocean Development & International Law 179.

<sup>278</sup> Firestone, *et al* op cit, p. 128.

<sup>279</sup> Jensen op cit, p. 17

<sup>280</sup> Article 211(3) of the UNCLOS III; J Firestone and C Jarvis, ‘Response and Responsibility: Regulating Noise Pollution in the Marine Environment’ (2007) 10 Journal of International Wildlife Law and Policy 109 at 128.

established by the port State when navigating into port.<sup>281</sup> However, the precise wording used in Article 211(3) of the UNCLOS III is not very helpful. Some authors have expressed the opinion that the information provided by a vessel seeking entry may not be sufficient for the port State to confirm that its port entry conditions have been satisfied.<sup>282</sup> Like the UNCLOS III, MARPOL 73/78, in its Article 4(2), provides port States with the jurisdiction to prescribe port entry conditions in their national laws for the prevention, reducing and control of pollution from vessels.<sup>283</sup> However, very few States appear to have enacted legislation implementing anti-pollution requirements as provided in the UNCLOS III and MARPOL 73/78 in relation to port State jurisdiction.

#### **4.13 Conclusion**

International law recognizes navigation as a freedom and a right of a flag State, yet limits in varying degrees the operation of vessels in the maritime areas of a coastal State. This part has shown Tanzanians rights and obligations under the UNCLOS III to regulate vessel source pollution. Relevant Tanzanian rules have also been reviewed. In internal waters the coastal State enjoys sovereignty and foreign vessels enjoy in principle no right of navigation. They are subject to the jurisdiction of this State's courts as well as its legislative and enforcement jurisdiction. Coastal States also claim authority over the territorial sea, generally characterized as sovereign. The jurisdiction extends specifically to exclusion or regulation of passage by foreign ships, to prescription and application of law to practically all activities within the area and to exclusive exploitation of resources. The major opposing claim on behalf of all States in the territorial sea is customarily expressed in terms of a right of innocent passage. The law must thus strike a reasonable balance between the interests of the coastal State and the needs of international navigation. Coastal State Jurisdiction and Vessel Source Pollution.<sup>284</sup> Beyond the territorial sea all vessels enjoy, in principle, freedom of navigation. However, the coastal State has sovereign rights over the natural resources

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<sup>281</sup> Article 211(3) of the UNCLOS III

<sup>282</sup> Molenaar, *op cit*, pp. 213-214.

<sup>283</sup> International Maritime Organization, MARPOL- How to do it (IMO, 2002), p. 21.

<sup>284</sup> UNCLOS III, Art. 221.

within its EEZ and jurisdiction with regard to the protection and preservation of the marine environment.

The deficiencies of flag State enforcement and insufficient regime of port State control have, resulted in a legalistic compromise between two extremes' within the EEZ. Coastal States are not given full jurisdiction to enforce international regulations against foreign ships; their powers are graded according to the likely harm. Furthermore, characteristic for the pollution regime within the EEZ is the coastal State's obligation to implement and conform to generally accepted international rules and standards. Uniformity and internationalism lay at the basis of this, leaving the coastal State little margin of appreciation with regard to national regulations. In consideration of the enforcement competence, the overriding aim of uniformity can be difficult to fulfil. It all depends on how national States interpret the merely vague terms of, *inter alia*, clear objective evidence. Noteworthy, is however that the limitations on coastal State jurisdiction within the EEZ to some extent is compensated by less restrictive powers within special areas. This counts especially with regard to Article 211(6) of the UNCLOS III. The coastal State may under special circumstances adopt more extensive regulations to protect vulnerable marine areas. Consequently, the regime here is more comparable to that of the territorial sea.

## CHAPTER FIVE

### FINDINGS AND ANALYSIS

#### 5.1 Introduction

In this chapter the researcher presents data collected from different authorities; the data were collected from the Ministry of Transport, Lawyers from different offices such as Legal Firms found in Dar-es-salaam, Morogoro and Arusha and Lecturers from different universities, on the utility of the Law of the Sea in the implementation and enforcement of the law of the Sea in Tanzania. This part will help the researcher to determine whether the collected data support the formulated hypothesis and comply with the objective of the study. The researcher intends to use only qualitative data analysis in analyzing the collected data, simply because it is based on factual and logical reasoning of the legal system employed to unveil the truth. The qualitative analysis will help the researcher in coming up with reasonable conclusions and recommendations in next chapter.

#### 5.2 UNCLOS III

On answering the question *whether the current International Law of the Sea (UNCLOS III) provide effective mechanism on protecting marine pollution*, respondent<sup>285</sup> argued that the Law of the Sea Convention (UNCLOS III) defines marine pollution; the respondent argued that the problem has been the lack of political will to domesticate the UNCLOS III provisions in the laws. Also the respondent argued about the insufficient capital and ineffective patrol in the sea has brought marine industry into jeopardy, this can be supported by the views of Griffin,<sup>286</sup> MARPOL 73/78 and vessel pollution in which he emphasized on the well trained inspector and substantial financial resources moreover Griffin admitted the difficult in building up sufficient evidence linking the slick to a particular vessel, hence fighting marine problem economic situation and poor enforcement is a major problem as the fact is, it has coastal guard surveying only within the territorial sea then how someone can build evidence without surveying in other zones

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<sup>285</sup> Luther A. Frank., Lecturer of Law, Tumaini University –Arusha, Interviewed on 26 June 2013.

<sup>286</sup> Griffin Op cit, p. 489.

such as in EEZ?. It was further argued that UNCLOS III cannot lead to the protection of marine pollution due to the fact that it does not propose the effective treatment of the marine vessels. Moreover it was argued that many principles within the UNCLOS III such as innocent passage and warship create a kind of permitting pollution hence contradicting itself.<sup>287</sup>

Another respondent from SUMATRA,<sup>288</sup> she commented that, marine pollution in Tanzania is highly associated with the poor means provided out by the UNCLOS III of 1982 on how to enforce laws when pollution has been noticed by the coastal state. practically there is no formal procedures on how to take action on the problem of marine pollution in Tanzania. This loophole has created a debate on the effectiveness of the UNCLOS III of 1982 and its supplements in marine industry. It was further argued that International law limits the ability of coastal states to impose and enforce their own environmental and navigation regulations on foreign ships passing through their waters. She suggested that, countries must use international conventions established through the IMO and UNCLOS III. However, the current approach to setting international standards for shipping tends to be reactive, slow, and based on industry driven compromises.<sup>289</sup>

He<sup>290</sup> argued that, UNCLOS III, has provided for the compliance on the wise use of seas and ocean to the marine vessels but its compliance does not provide out the clear mechanism on how to enforce the laws in case of pollution to sea or ocean rather coastal state are the one to deal with the problem, UNCLOS III has just provided the principles and mandate, not enforcement and implementation mechanism so it is at the state expense to deal with marine pollution. From this it is possible to say that UNCLOS III has escaped liability in terms of marine pollution by marine vessels.

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<sup>287</sup> Mr. Sigareth Mrisho, Mzumbe University, Interviewed on 6th June, 2013.

<sup>288</sup> Officer at SUMATRA, head office, Dar-es-Salaam, interviewed on 21st august 2013.

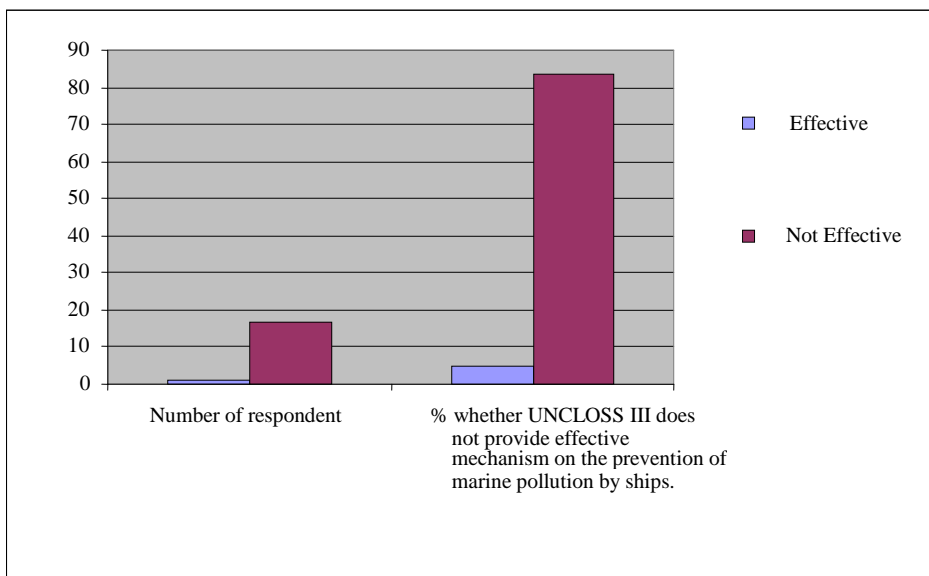
<sup>289</sup> Ibid

<sup>290</sup> Dennis Faustin, Officer, from SUMATRA, Working at NRCC-CENTER, Kigamboni-Dar-es-Salaam.

**Table 5.1: Whether UNCLOS III does not provide effective mechanisms on the prevention of marine pollution by ships**

Type of Response	Number of respondent	% whether UNCLOSS III does not provide effective mechanism on the prevention of marine pollution by ships.
Effective	1	16.67
Not Effective	5	83.33
Total	6	100

**FIGURE 1: Whether UNCLOS III does not provide effective mechanisms on the prevention of marine pollution by ships**



**Source: different lawyers**

### 5.3 Data Collected from the Ministry of Transport

A number of 20 respondents were faced in the Ministry of Transport and its agencies representing Government Ministry, questionnaires were distributed to officers of the Ministry together with interview as a way of getting enough data since interview allow the extension of question. Out of 20 respondents were faced which made the efficient of 100%. Responding to the questions from the researcher, on whether Tanzanian law has sufficient provisions to curb the problem of marine pollution one of the respondents argued that these laws can safeguard the marine interests due to the fact that the law is clear he referred to Tanzanian Merchant Shipping Act of 2003 no 21 on how to deal

effectively with the acts of marine vessels, hence there is an indication to fight marine problems.<sup>291</sup> He went further on saying that, Tanzania has ratified UNCLOS III and other conventions but the good thing is, it has an interesting port which acts as a centre of ships from different angle of the world, so prevention of marine industry is of paramount, but he admitted that somehow enforcement might be the problem. On the other hand, he went on criticising the policy of the country as he said, “Flag States should also prescribe policies and guidelines on the flagging of vessels” this entails that, policy are not clear on how the flagging vessels should conduct their own activities in overcoming marine pollution problem, These laws, regulations, policies, guidelines and criteria must, to the fullest possible extent, prevent, reduce and control the release of toxic, harmful or noxious substances, into the marine environment.

However, it was argued that somehow Tanzania by being part and parcel of IMO and Law of the Sea of 1982, has gone a step ahead on implementation but the problem remain with enforcement mechanism towards marine pollution by ships.<sup>292</sup> Flag States must ensure that residues not meeting the relevant international standards are retained on board for subsequent disposal at shore reception facilities, but Tanzania is not fulfilling this practically ships are free to dispose wastes everywhere within the sea, while in real sense wastes according to Ballast water convention are to be disposed in the high sea.<sup>293</sup>

He claimed that, the need for international support by Tanzanian government is required due to the difficulties on recognising the causative of marine pollution by ships; here he was referring to the issue of evidence on proving the liability towards the pollution by marine vessels, hence, responding to the hypothesis whether the liability established by Merchant Shipping Act<sup>294</sup> of 2003, is narrow. Moreover, he confessed that currently Tanzania is not a member to the IMO through Ballast Water Management Convention of 2004 which protects ships on discharging oil in the EEZ and territorial sea.

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<sup>291</sup> Adinan Kisanko, Officer of Marine Environment from the Head Quarter Ministry of Transport, Dar-es-Salam

<sup>292</sup> Magesa Henry, Engineer of Marine Environment from the Head Quarter Ministry of Transport, Dar-es-Salaam.

<sup>293</sup> Ibid

<sup>294</sup> Merchant Shipping Act No, 21 of 2003

This, then can be seen as a logic to some extent since most of the state do rely on the economic matters only rather than other interests while other problems are world wide, Respondent who is an engineer of the environment in the Ministry of transport responding to the question posed by the researcher on whether the Tanzanian legal framework can lead to the real implementation and enforcement of the law of the Sea in Tanzania, argued that, Tanzanian law has mandated its courts to deal with cases on marine pollution where there is any indication of ships caused problem, in his views the legal framework is sufficient to combat the marine problem. Responding to why still there is a problem if the frame is fine, he went on saying that Tanzanian government is not active on making a follow up on the foreign vessels coming into Dar-es-salaam port such as inspection to see if at all there is any indication to cause marine pollution and insufficient capital to have devices for detecting pollution.

#### **5.4 Data collected from SUMATRA**

SUMATRA is a main agency under the ministry of Work to be given power to control marine industry as port and flag state. While visited at this body the first question was, whether the liability established by the merchant shipping Act is reasonable for the protection of marine pollution by marine vessels, on responding to the question, it was said that, the law is sufficient but the equipment to facilitate the exercise on recognizing the causative of marine is a problem, he went on saying that, ships are coming in and out but the patrol is not done for monitoring rather than depending on the tower National Rescue Co-ordination Centres (NRCC) which is based on monitoring security but has no power to notice all problem on marine, as the tower was built for safety of passengers to the large extent, hence, recognizing the responsibility ship company for marine problem is very difficult, on other way round he said “we depend on the mercy of innocent ships company within our EEZ to provide reasonable information on the causative of marine pollution something which is difficult”.<sup>295</sup> He added that; from the above ground of narrow liability it encourages also the standard of proof to be complicated as a result left

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<sup>295</sup> Yese Fredy, SUMATRA Officer Working at NRCC-KIGAMBONI, Dar-es-Salaam, Interviewed on 12 June 2013.

Tanzanian marine industry into darkness while the UNCLOS III has mandated states to control marine industry.

It was also found that, the applicable national laws do obligate the flag State to prescribe laws for the protection and preservation of the marine environment, however, these laws bar Tanzanian to formulate laws specifically designed to prevent vessel source pollution from substances such as oil, noxious liquid substances, packaged goods, garbage and sewage, as provided in applicable international conventions.<sup>296</sup> Moreover she went on claiming that, the national laws of Tanzania are silent on the flag State's obligation to detect unlawful discharges from vessels, to ensure that vessels are equipped with systems that can monitor and record such discharges, and to maintain records of discharges. No provisions has been provided in applicable national laws requiring the crew onboard vessels to appropriately package, label and stow harmful substances to reduce the risk of pollution. Lastly, he said, none of the national laws of Tanzania impose requirement on the flag State to investigate reports of non-compliance by vessels under its registry.<sup>297</sup>

In interpreting UNCLOS III he said;<sup>298</sup> port States may establish anti-pollution requirements in their national laws for the protection, reduction and control of pollution of marine environment as a condition of port entry, imposing monetary charges for the entry of, and services provided to, foreign vessels in their ports. In circumstances where the vessel does not comply with, States may deny the vessel entry into their ports or internal waters under their jurisdiction, to undertake port State control and in-port enforcement over foreign vessels in their ports and internal waters but more taking administrative measures to prevent sub-standard vessels from leaving their ports. Finally, she commented that: "The national laws of Tanzania do not cover the establishment of anti-pollution requirements... though; the national laws of Tanzania do

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Edith Magafu, Registration Officer at SUMATRA- Head office, Dar-es-Salaam, Interviewed on 10 June 2013

<sup>297</sup> Ibid

<sup>298</sup> Kalebu Simon, SUMATRA Head office , Dar-es-Salaam, Interviewed on 7 June 2013.

provide the port State with the jurisdiction to authorize foreign vessels to navigate into the country's ports and internal waters.<sup>299</sup>

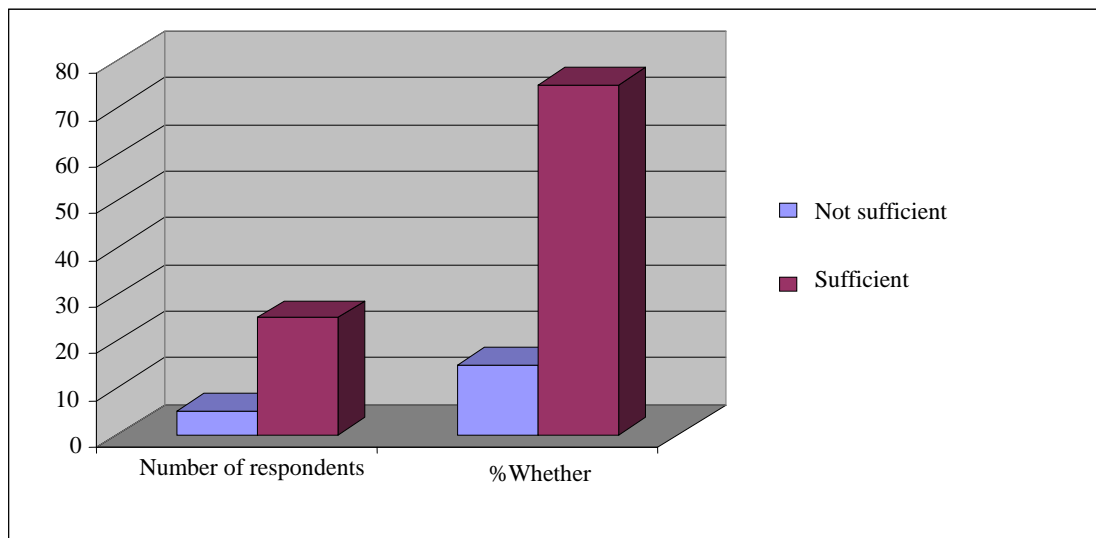
### 5.5 Data from DMI

On responding to the question whether Tanzania has made effort on protecting marine problem by marine vessels, a respondent argued that somehow wastes has been seen on the sea within Tanzania waters in form of oil, and evidence is seen to the port sea cleaners using local means of removing wastes.<sup>300</sup> From this it is reasonable to believe that the respondent was referring to the lack of seriousness from the government in terms of enforcing laws on marine pollution.

**Table 5.2: Whether Tanzanian legal system merchant shipping Act is sufficient**

Types of response	Number of respondents	% Whether
Sufficient	5	25
Not sufficient	15	75
Total	20	100

**FIGURE 2: Whether Tanzanian legal system merchant shipping Act of 2003 is sufficient in protecting marine pollution by marine vessels.**



**Source: Ministry of Transport and its agencies; SUMATRA and DMI in controlling marine pollution in Tanzania.**

<sup>299</sup> Ibid

<sup>300</sup> Abdalah Mwinikombo, Student from DMI - Dar-es-Salaam, Interviewed on 2nd July 2013

## 5.6 Data Collected from different Tanzanian Lawyers

The researcher faced 20 lawyers from Dar-es-Salaam, Morogoro and Arusha. The researcher selected this category as they are knowledgeable to this study.

For the purpose of this research, the researcher posed the Question solely aiming at testing if Tanzanian law (especially Merchant Shipping Act of 2003) can lead to the control of marine pollution resulted from marine vessels entering at Tanzanian coasts. The response on the question whether the Tanzanian legal framework can lead to the aforesaid question. Some respondents argued that, the law is not sufficient to protect marine industry in its generality.<sup>301</sup> His argument was based on the contradiction which law of the sea has posed such as the way it is very hard to the principle of innocent passage and the problem of marine pollution but also the proof of evidence since in Tanzania there is no traffic special for patrol within Tanzanian water.

However, one respondent<sup>302</sup> was of the view that, if Tanzania has jurisdiction to prosecute marine polluters by marine vessels, then why are there no many trials? The respondent elaborated that many of the problems involved are practical, not jurisdictional. The respondent portrayed that an independent prosecutor may be reluctant to run a case based solely on circumstantial evidence. The result will be that, polluters can be released on the basis of insufficient evidence. There can be a problem if the court of law requires the production in court of the ship alleged to have been polluted marine since there is no traffic to monitor the coastal areas in Tanzania. He finally concluded that regional wise (East African states) judicial system is not supportive to determine pollution' cases by ships, that, what required is the international specialized tribunal for marine cases.

However in reply of the same question the Legal Officer at Tanzania Women Lawyers Association (TAWLA)<sup>303</sup> made an observation that, it is the high time for the government and the legislature think of changing the nature of the law and adopt the

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<sup>301</sup> Advocate Frank Samwel, Interviewed on 15<sup>th</sup> may 2013, Dar-es-salaam.

<sup>302</sup> Advocate Fadhil Thomas, interviewed on 23 March 2013 at Sanawari main office, Arusha.

<sup>303</sup> Ismail Ayo, Project Officer from TAWLA, interviewed on 6 June 2013, Arusha

relevant laws that would maintain the status of the marine industry which had in the recent years. SUMATRA as a body regulating marine and surface transport as port and flag state should be vested power to have a special army that will be making patrol on the territorial and Economic exclusive zone of Tanzania aiming at noticing any form of pollution for reasonable evidence to save the gap of narrow liability as established by Merchant Shipping Act of 2003. Unlike nowadays where SUMATRA use coast guard to make patrol on the territorial sea for only few kilometers.

### **5.7 Data from Human Rights Centre**

The response on the question whether the International Law of the sea as well as Tanzanian legal framework can lead to the control of marine pollution by marine vessels. It was explained to the researcher that “under the current Legal Framework marine pollution are not well articulated and extensively put into books and its practice to the existing laws are not well implemented”.<sup>304</sup> His views was based on the facts that if courts of law are not somehow busy with cases involving marine pollution it entails may be the law is very clear or is unclear finally she commented that so long as marine vessels are performing their duties every day and there is an evidence that 12% of the marine pollution are as a result of marine vessels, then the existing law in Tanzania is not proper.

Another respondent<sup>305</sup> in reply on the question as to whether the standard of proof is clear under International Law as well as Tanzanian legal frame in guaranteeing protection of marine pollution from marine vessels, argued that, the current legal system is neither sufficient nor is it promising on the interests of marine industry. Her argument was based on the fate of the law bearing a cumbersome means in case of enforcing marine pollution by ship through establishing liability to the causative, she mentioned Ballast Water Management Convention under IMO, the Act prevent ships to discharge oil in the EEZ and in the Territorial sea and Tanzania is not a member to this relevant convention. She further entailed that, the Tanzanian government are only considering the

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<sup>304</sup> Daudi Saimalie, lawyer, Arusha, interviewed on 18 March 2013.

<sup>305</sup> Erica Mathias, Legal officer at Human Right Centre, Arusha interviewed on 20<sup>th</sup> March 2013.

profit earned from the utilization of the Dar-es-Salaam port from the ships entered to it and neglecting the huge pollution from its oceanic zone. Finally, the respondent explained to the researcher that the current legal frame work to fight marine pollution in Tanzania do not ensure the protection. Another respondent from this centre<sup>306</sup> clearly elaborated the Constitution of the United Republic of Tanzania does not specify this problem at all, and then its enforcement mechanism is very difficult.

It was stated that, the problem of marine has seen a convergence of the international community, industry and national interests <sup>307</sup>. He elaborates that, addressing the circumstances under which marine problem by marine vessels develops is a key in designing a legal solution. Responding to the researcher's question on how he regards the current legal response to the marine pollution by marine vessels in Tanzania and its standard of proof, the respondent argued that, Tanzania must also be satisfied that ship operations companies are not keen on the problem because there is a loophole on the law protecting marine industry, the law allows them to escape liability to the large extent because the standard of proof is complicated hence benefiting the polluter.

However, while being interviewed by the researcher noted that every aspect of the case raises serious logistical problems. The respondent noted that foreign vessels involve cases that touch more than one state of which procedures somehow are cumbersome. Since, transporting prosecution witnesses and evidence to a foreign court would be burdensome. Naval officers in active service would be called upon to testify. Identification by victims would be made even more problematic by the fact that multinational of foreign-flagged vessels would have returned to their homes around the world.

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<sup>306</sup> Ismail Ayo, Project officer from TAWLA, Arusha, interviewed on 8 June 2013

<sup>307</sup> Rweshabura Elphace, Lawyer, Internship Unit at ICTR. Interviewed on 9<sup>th</sup> September 2012.

## **5.8 Non-lawyers**

Arguing about the protection of marine pollution from vessels<sup>308</sup> he said it depends on the innocent of the ship captain to command the ship for discharge of unwanted oil, since long journey of the ship may force the captain to discharge oil into the ocean within the EEZ, but principally oil should be discharged at the end point of its journey. This entails about the poor enforcement of the laws on marine pollution.

## **5.9 Conclusion**

The process of data collection was based on the relevance data regarding the research paper. The researcher always faced and interviewed respondents in which he believed could provide the relevant information. Always people with legal knowledge were interviewed. However, the process faced some difficulties due to the reluctance and failure of some respondents to bring back some questionnaires given to them and some of them rejected to cooperate at all and to the great extent non-lawyers were not involved at all due to the ignorance of the study. However, through collecting data, it was found by the researcher that the Law of the Sea is seemed to be a new regime to some Tanzanian lawyers due to the fact that some of them had failed to understand some legal concepts relating to the law of the sea complete. However, the data needed were obtained and analysed as it has been shown above.

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<sup>308</sup> Abdallah Ismail, Director from Kilimanjaro Sea Company (Azam -Marine) Dar-es-salaam, Interviewed on 5<sup>th</sup> June 2013

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATIONS

#### 6.1 Introduction

The United Republic of Tanzania is one of the maritime developing countries in East Africa and is located in the heart of Indian Ocean vessels source of pollution danger zone. Tanzania receives 100-200 million tones of pollution from ships as it located within the danger zone pollution.<sup>309</sup> As a result, the risk of pollution to the maritime environment of Tanzania is immensely high. This paper has analyzed flag, port and coastal state obligations and jurisdiction under applicable International conventions for the protection and preservation of the marine environment from vessels source pollution. This paper has also analyzed the national laws of the United Republic of Tanzania, trying to highlight between these laws and the international framework on flag, port and coastal State jurisdiction over the prevention of vessel source pollution. As analyzed in Chapter four the national legal framework of Tanzania, and its position on covering the protection and preservation of the marine environment from vessel source pollution are based on the laws which relate to the marine zones of Tanzania; and laws relating to maritime transport. This chapter will draw conclusions from the gap that has been identified in this paper between applicable national laws of Tanzania and international laws.

#### 6.2 Conclusions

This paper has analyzed the national laws of Tanzania that provide flag, port and coastal State jurisdiction for the protection and preservation of the marine environment from vessel source pollution. The paper has also examined the inconsistencies that exist between the applicable national and international legal framework on the prevention of vessel source pollution. Indeed, the results of the research have proven that:

*The current legal framework of Tanzania falls short of enforcing flag, coastal and port State prescriptive jurisdiction under international law for*

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<sup>309</sup> According to 2005 data oil Movement, Source from International Shipping and World Trade, Facts and Figure (2008) [www.org.org](http://www.org.org) at page 21 accessed on 4th April 2013.

*the protection and preservation of the environment from vessel sources pollution.*

It must be conceded that, inconsistencies between the applicable national and international legal framework is an easier task than a crafting a solution. Indeed, striking a legislative balance between the right of States to protect and preserve their marine environment on the one hand, and the freedom of navigation of foreign vessels on the other, calls for a delicate ‘weighing up’ of competing interests. What is clear is that States require healthy national legislation in order to discharge their jurisdiction under international law.

An analysis has also revealed that the United Republic of Tanzania has the jurisdiction to adopt laws and regulations in respect to the maritime zones of Tanzania. However, none of the applicable national laws provide for the prevention, reduction and control of marine pollution from vessels navigating in the territorial sea. Furthermore, none of the national laws of Tanzania provide a requirement to adopt laws and regulations that confirm with the safety and pollution rules that exist under the UNCLOS III and rules of international law relating to the passage of foreign vessels in the territorial sea. The national laws of Tanzania do not bar the country from adopting legislation that exceeds the jurisdiction provided in the UNCLOS III, or from prescribing monetary charges for the mere passage of foreign vessels in the territorial sea. Furthermore, the national laws of Tanzania are silent on the adoption of measures such as the installation of navigational and safety aids in order to facilitate the traffic of foreign vessels to reduce the risk of pollution in the country’s territorial sea. As shown from the analysis in the paper, the United Republic of Tanzania has the power to exercise enforcement jurisdiction over foreign vessels navigating in the country’s territorial sea that have violated national laws on pollution prevention. However, these national laws do not provide specific details to guide the coastal State in exercising its enforcement jurisdiction. For example, there is legislative provision under the UNCLOS III enabling the coastal State to temporarily suspend the passage of the foreign vessels in specified areas where such suspension is essential to preventing pollution.

The national legal framework of Tanzania is also lacking in other respects, The coastal State does not have jurisdiction to institute proceedings against foreign vessels navigating in the country's EEZ that have committed an offence resulting in pollution damage to the marine environment of Tanzania. The national laws are also silent on the right of the coastal State to request information from foreign vessels navigating in the EEZ, so to the duty of the Tanzania to ensure that pollution does not spread beyond the areas where the State exercises sovereign rights (as provided in the UNCLOS III. Based on the above gaps in the national laws of Tanzania, it can be concluded that the national laws fall short of enforcement coastal State prescriptive jurisdiction under international law for the protection and preservation of the marine environment from vessel source pollution within the country's maritime zones.

### **6.3 Recommendations**

The paper has proven that the current legal framework of Tanzania falls short of enforcing flag, coastal and port State prescriptive jurisdiction under international law for the protection and preservation of the marine environment from vessel source pollution. Therefore, it is recommended that the Government of Tanzania, with the approval of the Parliament, amending the Merchant Shipping Act<sup>310</sup> of 2003 which has many loopholes and adopting a composite law such as Ballast Water Management Convention and others relevant,<sup>311</sup> to address the inconsistencies between the national and international framework examined in this paper. To be successful, the composite law must provide specific jurisdictional powers and obligations for the flag, port and coastal State of Tanzania for the protection and preservation of the marine environment from vessel source pollution.

In their territorial sea, coastal States have jurisdiction to adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising innocent passage.<sup>312</sup> It is recommended that, Tanzania adopt laws and regulations, in conformity with the provisions of the UNCLOS III and other rules of

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<sup>310</sup> Merchant Shipping Act No 21 of 2003

<sup>311</sup> Held at IMO's Headquarters, endorsed by the International Conference in London from 9 to 13 February, 2004

<sup>312</sup> Article 211(4) of the UNCLOS III.

international law, which relate to (inter alia), innocent passage through the territorial sea, safe navigation, the regulation of marine traffic,<sup>313</sup> the preservation of the marine environment, as well as the prevention, reduction and control of pollution.<sup>314</sup> It should be noted however, that the jurisdiction of coastal States to prevent the non-innocent passage of foreign vessels, as well as the jurisdiction to physically inspect such vessels and, where appropriate, institute proceedings must be exercised in accordance with the limitations prescribed in the UNCLOS III.

It is also recommended that, Tanzania, as coastal State, may designate traffic separation schemes (both voluntary and mandatory) to promote the safe passage of foreign vessels to comply with UNCLOS III.<sup>315</sup> However, Tanzania before designating such schemes, must take into account customary channels,<sup>316</sup> any special character of the traffic,<sup>317</sup> as well as the density of traffic,<sup>318</sup> in reality, traffic separation schemes stand as a practical tool at the disposal of coastal States and sanctioned by the UNCLOS III<sup>319</sup> for the prevention, reduction and control of marine pollution.

In their EEZ, coastal States have sovereign rights to explore, exploit, conserve and manage national resources,<sup>320</sup> as well the right to protect and preserve the marine environment,<sup>321</sup> It is recommended that coastal States should abide by environmental policies and act in accordance with their duty under the UNCLOS III to protect and preserve the marine environment.<sup>322</sup> Since Coastal States also have the jurisdiction in respect of vessels in their EEZ to “adopt laws and regulations for the prevention,

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<sup>313</sup> Article 21(1)(a) of the UNCLOS III

<sup>314</sup> Article 21(1)(f) of the UNCLOS III

<sup>315</sup> Article 41(1) of the UNCLOS III

<sup>316</sup> Article 22(3)(b) of the UNCLOS III

<sup>317</sup> Article 22(3)(c) of the UNCLOS III

<sup>318</sup> Article 22(3)(d) of the UNCLOS III

<sup>319</sup> Article 194(1) of the UNCLOS III provides that “States shall take individually or jointly as appropriate, all measures consistent with [the UNCLOS III] that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practical means as their disposal”.

<sup>320</sup> Article 56(1)(a) of the UNCLOS III

<sup>321</sup> Article 56(1)(b)(iii) of UNCLOS III

<sup>322</sup> Article 193 of the UNCLOS III; The duty of coastal States in Article 193 of the LOS Convention is further emphasized in Article 192, which provides that: “States have the Obligation to Protect and Preserve the Marine Environment”.

reduction and control of pollution from vessels conforming and giving effect to generally accept international rules and standard established through the competent international organization”.<sup>323</sup>

It is recommended Tanzania to make laws and pin point specific provisions relevant for the states to institute proceedings against the vessel responsible.<sup>324</sup> Furthermore, it is recommended that, Tanzania as a coastal State may impose high monetary penalties over foreign vessels for causing pollution damage in its EEZ,<sup>325</sup> coastal States do have an obligation to contain such pollution in their EEZ.<sup>326</sup>

Coastal States have the right to exercise additional prescriptive and enforcement jurisdiction in areas within their EEZ exclusively declared to be ‘a special pollution prevention areas’, Indeed, where a coastal State has reasonable grounds for believing that a particular, clearly defined are of its EEZ requires the adoption of special mandatory measures to prevent vessel source pollution for recognized technical reasons, the coastal State may request the IMO to designate the area as a ‘special pollution prevention area’.<sup>327</sup> Having this opportunity, it is recommended that Tanzania adopt laws and regulations that prescribe additional measures that foreign vessels must adhere to when navigating through the area within the EEZ.

Recommendation should be on a comprehensive legal structure by Tanzania to enable effective judicial operation over marine pollution by marine vessels. As it has been stated in conclusion marine pollution prosecution by an arresting state is not always practicable and collection of evidence is difficult. It is advisable for Tanzania to train judges and prosecutors on how to deal with the problem.

Finally, there should be an amendment of UNCLOS III so as to make a clear cut about the enforcement powers contained in articles related to innocent passage and the carriage

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<sup>323</sup> Article 211(5) of UNCLOS III

<sup>324</sup> Article 220(6) of UNCLOS III

<sup>325</sup> Article 230(1) and (2) of UNCLOS III

<sup>326</sup> Article 194(2) of UNCLOS III

<sup>327</sup> Article 211(6)(a) of the UNCLOS III.

of dangerous materials which bring confusion in interpretation in protecting marine pollution by marine vessels.

It is hereby calls for generations, men and women who call this region home have made their living from the water. That, living is now in jeopardy...one of the lessons we have learned from this spill is that we need “better regulations, better safety standards, and better enforcement...”<sup>328</sup> for the marine environment is extremely timely. Indeed, the world has recently witnessed one of the most catastrophic oil spills in living memory one which has devastated marine and wildlife, as well as economies. It is hoped that the Government of Tanzania will take heed of this call and implement a more comprehensive framework to protect and preserve the marine environment for the benefit of future generation.

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<sup>328</sup> Quotation from United States President Barack Obama, in his first oval office address to wrest control over the oil spill catastrophe in the Gulf of Mexico, see the White House, Remarks by the President to the Nation on the BP Oil Spill (2010) <http://www.whitehouse.gov/the-pressoffice/remarks-president.nation-bp-oil-spill> at 30 June 2010. Accessed on 29 May 2013

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## APPENDICES

### APPENDIX A: FOR LAWYERS ONLY

#### QUESTIONNAIRES TO LAWYERS AND OTHER EXPERTS

Dear Respondent, I am Leonard Lauden a candidate of Mzumbe University in Morogoro , pursuing a Master Degree in Laws(LL.M-International Law) doing a research entitled,“**Enforcement of the provisions of the UNCLOS on marine pollution by marine vessels; case study of Tanzania.**”

The success of this research depends much on your highly appreciated assistance, in that regard, may I request your precious and valuable limited time to respond to the questionnaires put before you to the best of your knowledge for the wellbeing of this generation and the coming one as well as other living creatures as the success of this research might contribute something in the entire goal of protecting the environment. Frankly speaking, I declare that the information obtained will be for academic purpose only.

*Thank you in advance for your valuable assistance*

**PART A**

**PARTICULARS OF THE RESPONDENT**

NAME:.....

GENDER:.....

AGE: between a) 18-30 years

b) 31-45 years

c) 45 and above

OCCUPATION:.....

ADDRESS.....

DATE .....

**PART B: QUESTIONS**

General Instructions.

Please locate ✓ for the right answer and for the multiple choice questions

Do you agree that Law of the Sea lacks effective mechanisms in its enforcement and implementation in individual state?

a) *Yes I agree* b) *No I don't agree*

c) *I don't know* d) *I am not sure*

Do you agree that Merchant Shipping Act of 2003 does not include adequate provisions to enable efficient enforcement and implementation of marine pollution laws that is both national and international laws?

a) *yes I agree*

b) *no I don't agree*

c) *I don't know*

d) *I am not sure*

Please in whichever answer give reason(s)

.....  
.....

Is the enforcement of Tanzania marine pollution laws specifically sufficient enough to protect the marine pollution in Tanzanian coast? *Please give your opinion*



Do you agree that enactment of new law on marine pollution, as well as amendment of the existing laws will be possible solution for marine industry in Tanzania?

- a) Totally Agree                      b) Agree                      c) Partially Agree  
d) Disagree                      e) Totally Disagree      f) None of the above

Do you agree that the Constitution of the United Republic of Tanzania of 1977as amended from time to time does not take positive concern on marine pollution at all?

- a) Totally Agree                      b) Agree                      c) Partially Agree  
d) Disagree                      e) Totally Disagree      f) None of the above

**PART D: OTHER ASSISTANCE**

Dear respondent, you may wish to extend your intellectual assistance you think is relevant in this study to the researcher, this may include advice, criticisms, and other intellectual materials like text books, case laws, journals, articles and other information you think are necessary and may deem fit this work.

*THANK YOU FOR YOUR COOPERATION and ASSISTANCE*

**PART E:**

**PARTICULARS OF THE RESEARCHER**

NAME: Leonard Lauden

INSTITUTION: Mzumbe University (MAIN CAMPUS)

FACULTY: Law

COURSE: LLM- International Law

P O. BOX 35 Mzumbe-Morogoro Mobile No. +255 712 700 466

**APPENDIX B: SAMPLE OF INTERVIEW**

**PART ONE: PARTICULARS OF THE INTERVIEWEE**

Name of the Interviewee.....

Occupation.....

Age.....

Address.....

Date of Interview.....day of.....2013

**PART TWO: SET OF THE QUESTIONS**

1. Have you ever travelled by water transport specifically by ship?

YES [ ] or NO [ ]

2. Which government agency control water transport

a. SUMATRA

b. Port authority

3. Is there any need of protecting water from pollution by ships

YES [ ] or NO [ ]

4. Are you satisfied with SUMATRA in the protection of marine industry in Tanzania from ships?

YES [ ] or NO [ ]

5. What are the roles of SUMATRA in protection of marine pollution caused by ships in Tanzania?

.....  
.....

6. What should be done to improve the marine industry from pollution by ships in Tanzania?

.....  
.....

7. Is the current legal framework sufficient enough to protect marine industry from ships activities in Tanzanian coast?

YES [ ] or NO [ ]

8. Is it possible to institute claims against the polluter of marine by ships in Tanzania

YES [ ] NO [ ]

If yes what are the chances of success in regards to the established standards of proof against each liability?

.....  
.....

9. What are your views with regard to the legal framework controlling marine pollution by ships?

.....  
.....