

# Chinese Law on Protection of the Marine Environment Caused by Ship Oil Pollution - Lessons Learned for Vietnam

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## Abstract

With the natural characteristics, geographic location, Vietnam maritime operations have favorable conditions development for the purposes of trade, tourism, services, exploration..., bring a lot of value to the development of the country. However, with the development of the maritime, the Vietnam sea is facing marine pollution by maritime operations, the marine resources are diminished. Although there are many solutions but the real effect is not high. Law on pollution control in the marine operations is limited. Thus the study of international law as well as law of some countries in the region to learn experience is necessary and urgent now. This article mainly study the Chinese law on oil pollution from ships as well as the actual situation of Vietnam law on protection of marine environment caused by oil pollution from ships. From which point out some lessons learned for Vietnam to improve the system of law protection of the marine environment caused by oil pollution from ships.

**Keywords:** Ship oil pollution, Protection of marine environment, Law, Chinese law

## 1. Chinese law on the protection of the marine environment caused by ship oil pollution

With a population of nearly 1.34 billion people, and country with trade sector is very developing, China has a very high demand for oil. Oil consumption in China increased rapidly and now, become the third largest oil consumer in the world, after the US and Japan. Currently, 90% of China's oil imports are transported by sea. Besides, the shipbuilding industry in China is also developing to meet the need to transport oil on the sea.<sup>1</sup>

According to statistics of the maritime safety agency of China, from 1967 year to 1996 year occurred 54 oil spill on the coast of China, average on each year occurred two oil spill and the largest oil spill is 257,000 tonnes, average 60,000 tonnes/case.<sup>2</sup>

China has signed international conventions on Oil Pollution Prevention such as: International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC 1990); International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 1992) and 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992); International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78); International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS 1996); International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION 1969); International Convention for the Safety of Life at Sea (SOLAS).<sup>3</sup>

### 1.1 Civil Law of China

Chinese Civil Law entered into force on 01/01/1987, have the general principle of liability for compensation for pollution damage, according to this principle, anyone causing environmental pollution and damage to others, infringe state regulations for environmental protection and prevention of pollution shall bear civil liability according to law.<sup>4</sup> These regulations, also appropriate with the principle: the person causing damage must compensate, this principle is issued by the Environment Commission of Organization of Economic Co-operation Development (OECD) and has become international practice.

### 1.2 Marine Environmental Protection Law of China

Marine Environment Protection Law (MEPL) of China was adopted in 1982 and was amended and supplemented in 1999. MEPL includes 10 chapters and 98 articles, regulates the basic content of the rights and obligations of the state agencies, organizations and individuals in the prevention of environmental pollution. In Article 62 of MEPL regulates: Vessels should not discharge pollution substances, ballast water, garbage and

<sup>1</sup> Wang Hui (2011), "Civil Liability for Marine Oil Pollution Damage - A comparative and economic study of the international, US and the Chinese compensation regime", *Doctorate thesis*, Erasmus University Rotterdam, p53.

<sup>2</sup> Wang Hui (2011), "Civil Liability for Marine Oil Pollution Damage - A comparative and economic study of the international, US and the Chinese compensation regime", *Doctorate thesis*, Erasmus University Rotterdam, p76.

<sup>3</sup> See <http://www.imo.org/About/Conventions/StatusOfConventions/Documents/statusx.xls>.

<sup>4</sup> Chinese Civil Law, Art. 124.

other harmful substances into the marine environment, and ship owners must equip equipments to treat garbage and waste from vessels.<sup>1</sup>

With regulation on the establishment of a fund to compensate for damage caused by oil pollution is stipulated in Article 66 as follows: The State shall establish a fund to compensate for marine pollution damage by oil, with general principle is responsible between shipowners and shippers<sup>2</sup> for damage compensation. Article 90 of MEPL provides that: The people makes environmental pollution will be responsible for those damages and be responsible for compensation. This provision also true with the principle of compensation for damage outside contract.

In paragraph 2 of Article 90 regulates: if have severely damages for environment, destruct the environment, the state will come forward compensation for victims be damaged.

### *1.3 Maritime Code of China*

Maritime Code of China in 1993 have a chapter stipulate about "limitation of liability for maritime claims" (chapter XI), in this chapter stipulate about limits of liability Civil for maritime claims (Article 204 to Article 215). But also in the provisions of this Code do not stipulate limit of civil liability for damage compensation according to the provisions of CLC convention which China has signed.

Chapter XI about the limit of liability and compensation for oil pollution damage can apply article 204 or article 207, specific: In article 204 stipulates: shipowners (including charterers and captain) and helpmate on board may be limited civil liability for maritime claims according to regulations of article 207 of this law.<sup>3</sup>

The limits of liability is specified in article 210 Chinese Maritime Code as follows: The owner of a ship shall be entitled to limit his liability in respect of any one incident to an aggregate amount calculated as follows:<sup>4</sup>

- a) 333.000 units of account for a ship with from 300 to 500 units of tonnage.
- b) ship with a tonnage in excess 500, for each additional unit of tonnage will add as follows:
  - 500 units of account for a ship with from 500 to 3.000 units of tonnage.
  - 333 units of account for a ship with from 3.001 to 30.000 units of tonnage.
  - 250 units of account for a ship with from 30.001 to 70.000 units of tonnage.
  - 167 units of account for a ship with a tonnage in excess 70.000.

But under the regulations of CLC convention, the owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:<sup>5</sup>

- a) With a ship not exceeding 5,000 units of tonnage is 4.510.000 units of account.
- b) With a ship with a tonnage in excess 5,000 units of tonnage thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in subparagraph a).

However, that this aggregate amount shall not in any event exceed 89.770.000 units of account.

Thus, the limit of liability of the China Maritime law is lower than the limit of liability under the provisions of the CLC 1992.

### *1.4 Decree guide the implementation of the Law on Environmental Protection*

A decree on preventing marine pollution from vessels was issued in 1983 to guide the implementation of MEPL in 1982. In 2010, decree was amended and effected since 1 March 2010. The purpose of this decree is to establish comprehensive rules for preventing, responding and remedy when oil pollution occurs in the territory of China.<sup>6</sup> The decree have strict rules for the process of receiving, discharging of oil tankers and plans to respond with the oil spill occurred. This decree also stipulated the establishment of a national fund to compensate for damage caused by oil pollution. We can say, this is one action that China want transfer the provisions of international law into national law.

With the report when pollution occurs: When pollution occurs in the territorial waters of China, shipowners shall immediately report to the Bureau of Maritime Safety Administration of China with information about the accident. The report of accident must have the following information:

- 1) Ship name, nationality of the ship, the ship number.
- 2) Name and address of the owner, operator or manager of the ship.
- 3) The time, location, and weather where the accident occurs.

<sup>1</sup> Marine Environmental Protection Law of China, Art 62.

<sup>2</sup> Shipowners and shippers must responsible for compensation damage. See Marine Environmental Protection Law of China, Art 66.

<sup>3</sup> Chinese Maritime Code, art 204.

<sup>4</sup> See Chinese Maritime Code, art 210.

<sup>5</sup> See CLC convention, art V.

<sup>6</sup> Wang Hui (2011), "Civil Liability for Marine Oil Pollution Damage - A comparative and economic study of the international, US and the Chinese compensation regime", *Doctorate thesis*, Erasmus University Rotterdam.

- 4) Determine the preliminary cause of the accident.
- 5) Type, quantity of pollutants of the vessel.
- 6) The levels of pollution.
- 7) Proposed measures for pollution control and require rescue.
- 8) Any other information as request.

### *1.5 Maritime Court of China*

In 1984, the Standing Committee of National Assembly of China has decided to establish the Maritime Court in the main port cities of China. Until now there were nine Maritime Court in China, including: Tianjin, Dalian, Qingdao, Shanghai, Guangzhou, Wuhan, Ningbo, Xiamen and Haikou. The Maritime Court has jurisdiction about the cases relate compensation for damage caused by marine pollution, and disputes arising in the contract of carriage of goods by sea, and other disputes relate maritime activities. On 25 December 1999, the Standing Committee of National Assembly issued the regulations about maritime procedures and rules entered into force in July 2000.

## **2. Assess Chinese law on the protection of the marine environment caused by ship oil pollution**

China is a country actively joining the international convention on oil pollution at sea, at the same time China also actively transfer the provisions of international law into national law.

Although China is very interested in building and improving the system of law on the protection of the marine environment, prevention of oil pollution from ships, but the law on prevention of oil pollution from ships of China just stop at some individual documents, inconsistent, and low normative.

Chinese law stipulates clearly settlement competence of the court is when a incident caused oil pollution damage in China, the lawsuit belongs to the competence of the Maritime Court. This is very convenient for the plaintiff's claim damages, and facilitate the investigation, gather evidence and assess damage after the oil spill.

Chinese law has not yet established the fully worked-out system of compensation for damage caused by oil pollution. Therefore, do not have the financial resources to resolve with the oil spill caused the environmental pollution<sup>1</sup>, so the victims of the oil spill have not yet received adequate compensation.

## **3. Actual situation of Vietnam law on protection of marine environment**

Since the implementation of the policies of international economic integration, maritime law on the protection of the marine environment began to be focused, and we can overview as follow.

### *3.1 Achievements*

System policies and laws on the protection of the marine environment has been developed and perfecting. The state management agencies system to protect the marine environment from the central to local levels have gradually been strengthened and operational stability. Funding for the protection of the marine environment has been enhanced. Has a lot of the content on the prevention and control of pollution and conservation has achieved encouraging results.

Issued several policy: stipulates the management of marine protected areas in Vietnam, manage natural resources and protect the marine environment; combine between law enforcement involved and the protecting the marine environment has been gradually consolidating.

Have done some of projects with high efficiency such as: exploitation and sustainable use of marine resources; statistics, classification, assessment of marine natural resources, response, prevent oil spills.

Besides, actively promulgate legal documents on protection of the marine environment, Vietnam has gradually approve international treaties on the marine environment. Approving convention is an important prerequisite for the integration of the law of Vietnam with the standards and indicators of international law.

### *3.2 Limitations and shortcomings*

Besides the achievements, there are a lot of limitations and shortcomings: from the fact, we see the pollution and degradation of the marine environment increasing. Have a lot of reasons but the most basic reason is because we do not have a complete legal system and synchronization in this field. On some fields missing high validity documents, the regulations are scatter, and are stipulated in the documents and a lot of different levels. The rules were still weak about ability adapt with changes occurring in reality. So, sometime the state management agencies run under the temporary solution, and really embarrassing in many cases because lack of regulations to handle, there are many duplicate content, even regulations contradicted with other documents, therefore difficult to apply in practice. Can point out the weaknesses of the laws system of the marine environment:

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<sup>1</sup> Include the cost of preventing and cleaning environment, compensation for victims are damaged by oil pollution.

Firstly, the law on environmental protection and other legal documents on natural resource or regulate activity in the manufacturing process and the business was still have some overlap and contradiction makes the application of the law very difficulties. Besides, the rules on environmental protection in the legal documents also quite general, especially in the other specialized legal documents very faint and difficult to implement.

Second, lack of law enforcement mechanism on the protection of the marine environment, a mechanism to ensure enforcement of national legislation as well as the implementation of international commitments, treaties on the environment is not high.

Third, the legal documents on the protection of the marine environment in adjust activities of human on the marine environment are issued slow and asynchronous in both of time and content.

Fourth, the law on the protection of the marine environment do not have the appropriate remedial measures for the offender, so difficult to apply in practice.

Fifth, do not have enough legal documents to raise the participation and contributions of all organizations and individuals in the protection of the marine environment.

Lacks a lot of legal documents, mechanisms, policies for management and protection of the marine environment; management capacity natural resource and protecting the marine environment is limited; Equipment, facilities serve management integrated marine environmental and resources is lacking; Environmental pollution of coastal water is increasing, oil pollution has become widespread, heavy metal pollution has occurred in some places; Marine biodiversity is receding. The prevention of marine pollution and response to oil spills has been stipulated in the general laws and specialized laws, but just stop at some disjointed documents, inconsistency and legal nature is low. The laws system in protecting the marine environment still scattered, lacks a lot of documents and guideline documents is limited; and responsibility of the organization and individuals engaged in maritime operation has not been stipulated specified, do not have separate mechanism on compensation for damage by oil pollution, the most of enforcement measures is administrative sanctions, fines is not enough to deter a large oil spills.

#### **4. Some lessons learned for Vietnam to improve the system of law protection of the marine environment caused by ship oil pollution**

With Maritime Court: Learn experience of China, Vietnam should establish a specialized court to settlement of maritime claim, including oil pollution. Chinese law stipulates maritime courts have competence with the lawsuits concerning compensation for damage caused by marine pollution and disputes arising in the contract of carriage of goods by sea, and the other disputes concerning maritime activities.

If Vietnam establish a specialized court to settlement of lawsuits concerning maritime disputes will be very convenient for the plaintiffs claim compensation for damage and also facilitate the investigation and gather evidence and assesses damage after the oil spill, because: damage caused by oil pollution from ships usually is large and often require costly time and money to prevent, remedy the marine environment. Therefore, need to have professionals study this field to have right decisions about the level of compensation corresponding to the damage occurred; also need to have special judicial regime, flexibility, consistent with international practice.

With the Environmental Protection Law: Amend and supplementing the Environmental Protection law towards identifying marine environmental protection is a separate part, and prevention of marine pollution by oil are stipulated in a chapter with the basic content: concept of environmental sea, marine pollution, marine pollution by oil and other concepts related; the primary source can pollute the sea, marine pollution caused by oil pollution originating from land (operating in the industrial sector), from the operation of ships, from exploration and exploitation of oil and gas, fishing ...; the main measures for the prevention, troubleshoot of marine pollution by oil; rights and fundamental obligation of organizations and individuals in the implementation of the regulations on the prevention, troubleshoot of marine pollution by oil ... In the troubleshooting pollution by oil will have basic contents include: Rights and obligations of organizations and individuals in response, troubleshoot of oil pollution, coordination with international organizations, foreign in troubleshoot of oil spills, as well as remedy the consequences caused by oil.

With the Criminal Law: Research to complement the offense of polluting the marine environment, which have discharge sea oil offenses causing serious consequences.

With the Civil Law: add the regulation for compensation for damage caused by oil pollution in part 3, Chapter XVII, the Civil Law, for acts causing marine pollution by oil.

With the procedures for dispute resolution: Need soon issue arrest ship ordinances serve for resolving maritime claims, including complaints about compensation for damage by oil pollution at sea. Currently, the procedure for resolving civil lawsuits for compensation for damage by oil pollution is still applied Civil Law. However, research characterized of the compensation for damage related to maritime operations to take toward building Maritime Procedure Law and establish specialized courts resolve disputes related to the sea. Also, need to study the regulations on the organization and operation of international courts, international arbitration on maritime law to resolve according to the procedures instead of resolve according to negotiation, diplomacy as

current.

## 5. Conclusion

The marine environment pollution caused by oil is a matter of concern not only in Vietnam but also in many other countries. With increasing oil pollution, Vietnam marine environmental protection law is facing new challenges. The study of law of some countries in the region, in which including China to learn experience help Vietnam improve the system of marine environmental protection laws. Also, learning experience of other country is needed to help ensure the rights and legitimate interests of Vietnam, is motivation to standardize domestic policy mechanisms and improving the position of Vietnam in the international area.

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