

Analysis on Ship Oil Pollution Damage Compensation System in China

Luzhen Ren

*Jimei University, China,
renluzhen@hotmail.com*

Luling Zeng

*Jimei University, China,
potala@163.com*

Abstract: Marine environmental protection is a worldwide crucial issue of common concerns. China has also actively involved in related Conventions of prevention and protection system. However, with respect to civil compensation for ship oil pollution damage, China lacks a perfect legal system. Through analyzing ship oil pollution compensation status in China and referring to international legislation, this paper analyses the differences between the Chinese system and international conventions, and the main problems, proposes the ideas in establishing a civil compensation liability system for oil pollution damage in China.

Keywords: oil pollution, compensation system, ship, China

1. INTRODUCTION

There happened a severe accident of explosion of oil tube in Dalian, China on 16th of July, 2010, which caused a tremendous damage of oil pollution to the sea in North China. It was said that approximately 60 to 90 thousands tones of crude oil were spilled into the area of Dalian harbour [Greenpeace, 2010]. There is no official statistics how much direct or indirect damage would be caused to the local economy. However, with respect to the civil compensation, according to the information declared lately, it is the local government who compensates the loss or damage suffered by the residents involved in fishing cultivation by the standard of their yearly average production in that area. It is not yet eventually solved so far as the oil pollution compensation, but it is clear that the civil compensation system to the oil damage is different from that in international conventions.

2. THE APPLICABLE LAW

China joined the International Convention on Civil Liability for Oil Pollution Damage 1969 (hereafter referred to as “CLC1969”) on 30th of January, 1980, and became a member of the International Convention on Civil Liability for Oil Pollution Damage 1992 (hereafter referred to as “CLC1992”) on 5th of January, 1999, which took into force to China on the 5th of January, 2000. Meanwhile, CLC1969 became void to China.

In addition, after notice the deficiency of CLC convention on the compensation to the oil damage, the International Maritime Organization (IMO) established the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (hereafter referred to as “FUND Convention”) which constitutes dual-layer liability system together with CLC1969 and was amended by its 1992 Protocol.

In general, the oil pollution compensation mechanism which consists of above said international conventions can basically compensate the sufferers promptly, effectively as well as sufficiently. However, this system does not perfectly apply to oil pollution takes place in China. Presently, only the CLC1992 apply to China while the FUND Convention 1992 and its 2000 protocol bind part of China, which is Hongkong Special Administrative Zone, China.[SHEN Lanlei, 2008]

In the regime of Chinese domestic law, there is no civil legislation specifically governing oil pollution compensation. In legal practice, judges normally seek legal basis from the provisions incorporated in different codes, such as Environment Protection Code, Marine Environment Protection Code, General Principles of Civil Law, Maritime Code and other ordinances. The former two Codes are administrative codes; the provisions concerning civil compensation to oil pollution are general while stipulations in the ordinances are more practical.

3. DIFFERENCES ON SPECIFIC ISSUES

3.1 *Applied Ship*

In CLC 1992, the “Ship” means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

In Chinese domestic legislation, especially Article 3 of Chinese Maritime Code, the “Ship” is defined as “sea-going ships and other mobile units, but does not include ships or craft to be used for military or public service purposes, nor small ships of less than 20 tons gross tonnage”. In certain administrative ordinances, although the types of applied ships have been mentioned, from overall view, there is lack of a clear definition of ships applied to oil pollution compensation system. As a member state of CLC, it is necessary for China to be accordance with CLC on this issue. [HU Zhengliang, 2009]

3.2 *Applied Oil*

With respect to the scope of applied oil, the same stipulations can be seen in Article 52.3 of the Ordinance of the Prevention of Pollution from Ships of PRC and article 95 of the Ocean Environment Protection Code of PRC, which is any type of oil and its refinery production

including any persistent hydrocarbon mineral oil, non-persistent hydrocarbon mineral oil, as well as cargo oil and bunkers. Comparing to Article 1 of CLC 1992, which is “any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship”, the scope of applied oil in Chinese domestic law is broader than that in CLC 1992, which means the prohibition of pollution to the ocean environment caused by any types of oil and its refinery production.

3.3 Subject to Compensate

According to Article 3.4 of CLC 1992, the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship are identified as the Subject bearing the burden to compensate the loss or damage caused by oil pollution. This way of stipulation is helpful not only to protect the interest of sufferers but also to control the cost and to avoid the multi-action to the claimant.

However, there is no any provision in Chinese domestic law concerning the subject of the compensation of oil pollution. Only in the Ocean Environment Protection Code of PRC, there is a provision, which is Article 90.1, requesting that the responsible person should take action to diminish the threats and compensate the damage in case of causing pollution; in the case of that the pollution is totally caused by third party’s intention or faults, this third party should be liable for the diminish of the threats and compensation to the damage. Even though the wording is different, the application in legal practice is quite same with CLC 1992.

3.4 Civil Liability to oil pollution

As to the liability system of oil pollution from ship, international conventions and domestic laws adopt the strict liability system. China is absolutely the case on this respect. “Who spills the oil; who is responsible” is a globally accepted principle. However, according to the Ocean Environment Protection Code of PRC, in the case of both-to-blame ship collision causing oil pollution while the accident is totally caused by third party’s intention or faults, the shipowner should be exempt from the compensation.

Because of the relatively high risk of shipping industry, majority of the shipping countries impose the special protection to certain extent on shipping by legislation, which is the principle of limitation of compensation. But in Chinese domestic law, it is a vacuum. In legal practice, the loss or damage can claim includes physical loss or damage suffered by persons or legal bodies, loss or damage of interest or profit, expenditure of preventive measures as well as the further loss or damage etc.. [HU Zhengliang, 2009]

As far as the limitation of compensation is concerned, in 2000 protocol to CLC 1992, the limitation of compensation has been increased to 897,700,000 Special Drawing Right (SDR). The existing provisions in china mainly exist in Chapter 11 of CMC of PRC. This is the situation should be corrected as soon as possible.

4. OVERALL DISCUSSION AND RECOMMENDATIONS

In the last decade, the oil transportation increased rapidly. According to the Development Report of Oil-gas industry for 2010 republished by CNPC Research Institute of Economics and Technology recently, the amount of imported oil is moving upward continuously and

has exceeded 200 million tons in China. The probability of the oil spill accident also gradually increases. That is a new challenge for state's response to environmental pollution emergencies and the ability for compensation.

Marine Environment Protection Code of PRC amended in 1999 is the Legal basis of establishing the oil pollution compensation mechanism. According to Article 66 of this Code, the State shall put into practice responsibility system of civil liability compensation for vessel-based oil pollution, and shall establish vessel-based oil pollution mandatory insurance, oil pollution compensation fund system in accordance with the principles of owners of the vessel and the cargoes jointly undertaking liabilities for vessel-based oil pollution compensations. Specific measures for the implementation of vessel-based oil pollution insurance and oil pollution compensation fund system shall be formulated by the State Council. [The Ministry of Communication, 2009]

Regulations on Prevention and Control of Pollution to the Marine Environment by Vessels came into force on 1st of March, 2010, which has been voted by the Committee of State Council on 2nd of September, 2009.

Based on the Marine Environment Protection Code of PRC and Regulations on Prevention and Control of Pollution to the Marine Environment by Vessels, the damage compensation system of oil pollution would be further clarified. Ship oil pollution insurance and oil pollution damage compensation fund are the double protection for domestic oil pollution damage. Mandatory civil liability insurance is emphasized and regulated. It is important for China to enter a substantive stage of ship oil pollution damage compensation system.

According to Regulations on Administration of Prevention and Control of Pollution to the Marine Environment by Vessels, ships traveling in China's territorial sea must covered oil pollution insurance, besides the ship with a gross tonnage under 1000 tons and not carrying oil in bulk.

Further provisions are listed in the Enforcement Measures of the Mandatory Civil Liability Insurance for Oil Pollution Compensation, which is the supporting regulations of the Regulations on Administration of Prevention and Control of Pollution to the Marine Environment by Vessels.

It should be noted that applied ships in Chinese regulation are much stricter than in relevant international conventions, such as the applied gross tonnage. A stricter regulation would be bad for small oil vessels, but good for the industry and environment protection.

In addition, ministry of finance and ministry of communication of PRC jointly drafted a administrative regulations about the utilization methods for oil pollution compensation funds, including the source of fund, applied ships, applied oil, limit of compensation, Subrogation, time of validity and so on. But it has not been officially published yet. [SUN Yanli, 2009]

According to the regulation mentioned in last paragraph, the compensation fund is collecting from oil companies as per the contributions oil. The contribution rate is 0.3RMB per ton. Of course, the rate will be adjusted due to the oil pollution compensation situation.

Furthermore, Chinese relevant authorities endeavors to establish a relatively perfect system regarding compensation fund and mandatory insurance system, however it has long time to go from legislation to practical enforcement. Therefore, it is strongly recommended that the maritime administration in large city might suggest the local government to establish a port oil pollution prevention budget fund, which is specifically for the response to the contingency, from governmental finance by local legislation.

In addition, according to the statistics of International Oil Pollution Compensation Fund, it is Japan, Italy, Netherland, Korea, France, United Kingdom etc. 13 countries pay

more contribution which take approximately 93.4% of the total contribution. But these countries obtain less compensation than the contribution they pay. For china, from the total number of contribution, in is temporarily not the good time to join the international fund. But the unification of international oil pollution compensation system is inevitable. China should take active action, step into the shoes of international society on this issue.

5. CONCLUSION

Ship oil pollution damage compensation System in China is composed of the provisions in different codes, and referring to the relevant international conventions. Mandatory civil liability insurance is emphasized in new regulations, which is stricter than CLC in some respects. Anyway, Establish the oil pollution compensation system which is conforming to the national conditions and international practices is the aim of China.

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