

Research on Strengthening China's Economic Losses from Ship Oil Pollution Based on Compensation Mechanisms

Meiyi Gai *

Faculty of Law, Chulalongkorn University, Bangkok, 10330, Thailand

* Corresponding Author Email: gai927616131@gmail.com

Abstract. The oil pollution compensation system in China was established late, and the design of the legal system is not perfect, which exposes many problems in the practice of claim settlement. This paper analyzes the present situation and problems of compensation mechanism for oil pollution damage from ships in China, and draws lessons from the legislative experience of Canada and the United States, and puts forward some suggestions for improvement. The specific contents include the legislative status and existing problems of compensation for oil pollution damage from ships in China, the relevant legislative status of representative countries, the comparison of three major international compensation systems, and the legislative choice and specific system suggestions of China. By using the method of literature analysis, this paper systematically analyzes the legislative status, advantages and disadvantages of compensation for oil pollution damage from ships in various countries through the study of relevant legal documents and practical cases at home and abroad. Through comparative study and drawing lessons from international experience, it is suggested that China adopt a dual-track compensation mechanism.

Keywords: Legislation, Oil Pollution Fund, Compensation System, Responsible Party.

1. Introduction

The acceleration of globalization has led to a heightened concern among the domestic and international communities regarding any major oil pollution accident caused by marine vessels. Such incidents occur over a vast sea area and may persist for an extended period, resulting in significant harm to marine resources, the environment, and the ecological balance. Such incidents will have a profound impact on all aspects of social life and will require significant financial and human resources to repair. It is therefore of great importance to establish an effective legal framework for oil pollution damage compensation in order to protect the environment and the rights and interests of victims [1].

The objective of this study is to examine the deficiencies of the legal framework for compensation for oil pollution damage in China and to propose solutions to address these shortcomings. And this study draws upon the experiences of developed countries such as the United States and Canada, as well as international conventions, in order to propose improvements to China's relevant laws and regulations and oil pollution damage compensation system.

There are some problems in the compensation mechanism for oil pollution damage from ships in China, such as unclear liability system, vague compensation scope, imputation principle, exemption reasons, limitation of liability and imperfect evaluation system. These problems make it difficult to define the subject and object of claim, leading to legal contradictions and judicial disputes. It is important to strengthen relevant laws and regulations in time and establish a comprehensive system for evaluating environmental damage [2]. The International Maritime Organization has established a three-level compensation mechanism, which is the responsibility of shipowners and their insurance companies, and has continuously increased the liability limit to protect oil pollution victims and the environment. The domestic compensation mechanism of the United States is based on its own national conditions and protects the marine environment and the interests of victims. Canada's dual-track compensation mechanism combines international trends and actual national conditions to better protect victims and the environment [3].

This article aims to put forward specific suggestions to improve the legal framework of compensation for oil pollution damage from ships in China by drawing lessons from international

experience [4]. The key point is to translate the 1992 Act into domestic law as soon as possible, formulate a liability and compulsory insurance system in line with national conditions, and gradually establish a domestic oil pollution fund system to prepare for joining the international fund system in the future [5].

The innovation of this paper is to put forward the development direction that China should adopt the dual-track compensation mechanism, which is similar to the Canadian model but different. It is suggested to establish a domestic oil pollution fund system in line with the national conditions at this stage and join the international fund system when the conditions are ripe in the future.

By using the method of literature analysis, this paper systematically analyzes the legislative status, advantages and disadvantages of compensation for oil pollution damage from ships in various countries through the study of relevant legal documents and practical cases at home and abroad. And through comparative study, find out the compensation mechanism suitable for China's national conditions.

2. Deficiency of compensation mechanism for ship oil pollution in China

2.1. The subject in the liability system is not clear

The current laws in China are unclear about the subject and object of compensation for oil pollution damage from ships. There are restrictions and ambiguities regarding the subject of claim, including individuals, social organizations, and administrative organs. Public interest litigation excludes the individual claim subject. Regarding the claim's object, the current law mentions the responsible subjects, but there are disputes and contradictions regarding specific responsibilities. For example, there is uncertainty about the relationship between ship collision and oil pollution damage, as well as the identification and elimination of the polluter's fault. These issues complicate the litigation procedure for oil pollution damage compensation.

2.2. The scope of compensation is unclear

The laws in China regarding compensation for oil pollution damage from ships are ambiguous and imprecise. Although Article 9 of the Judicial Interpretation of Oil Pollution Damage from Ships provides a general statement on the scope of compensation, specific issues remain controversial. The legal nature of the cleaning fee has become a controversial topic, as it can be considered both administrative and civil responsibility. Defining it as administrative responsibility would allow the maritime safety administration to pay off pollution expenses more freely, but it may result in insufficient funds. On the other hand, defining it as civil liability would mean that the cleaning fee accounts for a small proportion in other claims, which could affect the outcome [6].

2.3. The principle of imputation, reasons for exemption, limitation of liability, and evaluation system are not flawless

Although the existing laws in China do not have specific provisions on the principle of imputation, they generally follow the principle of 'whoever pollutes will be treated'. The shipowner shall be subject to strict liability, and the third party shall be subject to fault liability. Article 68 of the Tort Liability Law limits the polluter's exemption. However, China's maritime law and judicial interpretation lack detailed provisions on oil pollution damage caused by the victim's intention or negligence. The limitation of cargo oil liability is regulated by international conventions, and domestic laws do not cover foreign-related factors. Currently, there is a contradiction between Article 52 of the Pollution Prevention Regulations and Article 208, paragraph 2 of the Maritime Code, which has led to a dispute regarding the application of CLC1992 to oil pollution damage from ships.

3. Comparative study on compensation system for oil pollution damage from ships

3.1. International Compensation Mechanism for Oil Pollution Damage from Ships

International conventions have been favored by many countries since they were introduced, which led most countries to choose to join these conventions and adopt the compensation mechanism for oil pollution damage from ships. This mechanism simplifies the complicated procedures after the oil pollution incident, speeds up the compensation, and makes the clean-up and other actions faster [7].

In addition, the international compensation mechanism has changed some previous principles, such as the "polluter pays" principle, which stipulates that the shipowner is responsible for marine pollution caused by ship accidents. However, in some cases, this principle does not apply, for example, the shipowner can't take full responsibility without knowing it. In this regard, the principle of shipper sharing proposed by the international compensation mechanism meets the needs of most countries.

If the shipowner can't pay huge compensation, that is, his financial resources are not enough to make up for all kinds of losses, the international convention also puts forward the principle that the shipowner should bear part of the compensation.

3.2. Domestic Compensation Mechanism in the United States

First of all, the Oil Pollution Act of the United States has improved the compensation system for oil pollution damage from ships, set up an oil pollution fund of up to \$1 billion, specified the source and use of the fund, ensured rapid response to oil pollution damage, and formulated rules for victims to seek compensation[8].

Secondly, the Oil Pollution Act of 1990 increased the shipowner's liability for oil pollution compensation by nine times, introduced the concept of unlimited liability, and encouraged crew members, captains and shipowners to be more cautious when sailing in American territorial waters to ensure the safety of ships and reduce oil pollution.

Third, the oil pollution compensation mechanism in the United States is more comprehensive, providing sufficient compensation in terms of scope, responsibility and amount, and including scientific research expenses to develop more effective oil pollution removal methods.

Finally, the US Oil Pollution Fund is under the jurisdiction of the Coast Guard, with a streamlined structure to avoid delays in accident handling, and to provide ship certificates, handle accident claims and compensation to minimize oil spill losses.

3.3. Canada's dual-track compensation mechanism

First of all, it is similar to the principle of the 1969 Liability Convention, which stipulates the liability of ship owners for oil pollution in Canadian territorial waters. Secondly, in order to supplement the funds that shipowners can't compensate, Canada has set up the Marine Oil Pollution Compensation Fund (MPCF), which charges 15 cents per ton of crude oil to transport ships entering Canadian territorial waters. These funds are deposited in the account of the minister of finance and earn interest through bank deposits [9].

In addition, based on Canada's experience in dealing with oil pollution incidents, Canada revised its shipping law, which came into effect in 1989, and expanded the scope of compensation, so that victims can get more compensation. The new shipping law applies to all ships in Canadian territory, extends the scope of compensation to Canada's territorial waters and internal waterways, and extends oil tankers to any type of ships. The shipowner's liability for compensation is the same as that of international conventions, with 133 special drawing rights per ton of crude oil, but less than 14 million.

3.4. Enlightenment from American and Canadian Legislation on Compensation for Oil Pollution Damage from Ships

3.4.1. Enlightenment of American Legislation

The extensive territorial waters and advanced manufacturing technology of the United States necessitate substantial oil imports, leading to frequent ship-related oil pollution incidents. In response to these issues, the Oil Pollution Act (OPA) of 1990 was enacted. This law is unparalleled globally in terms of the limitations on shipowners' liability and the high compensation provided by the fund, significantly reducing the burden and harm caused by ship oil pollution to carriers and the global marine environment. Although some scholars criticize the United States for not joining the Convention on Civil Liability, which isolates it from the international community and hinders the establishment of unified regulations for oil producers and transporters, the proactive measures and comprehensive framework of the OPA offer valuable lessons worth emulating.

3.4.2. Enlightenment of Canadian Legislation

By examining Canadian compensation legislation, it is evident that Canada was the first country to establish such laws, providing several key lessons:

Establishing a corresponding compensation mechanism through domestic legislation ensures that there are laws to follow once a ship oil pollution incident occurs.

When Canada legislated on oil pollution from ships, it ensured consistency with international conventions, even before these conventions came into force. The liability and limits for shipowners aligned with international provisions.

After joining the international convention, Canada maintained its domestic legislation, allowing both mechanisms to operate simultaneously. This dual approach addressed areas not covered by the international convention, providing supplementary compensation through domestic funds to ensure more comprehensive coverage.

3.4.3. Best Practices and Lessons from the Above Cases

The compensation mechanisms in the U.S., Canada, and the International Maritime Organization each have unique features and advantages. The International Maritime Organization has established a three-level compensation mechanism, where shipowners and their insurers bear responsibility, continuously raising the liability limit to protect oil pollution victims and the environment. The U.S. compensation mechanism is tailored to its national conditions, safeguarding the marine environment and victims' interests. Canada's dual-track compensation mechanism combines international trends with national conditions to better protect victims and the environment.

Canada's dual-track compensation system is notable for its legislative foresight, constantly revised and improved to reflect international developments. Chinese scholars commend this model, considering it beneficial for establishing a compensation system for ship oil pollution damage in China.

The author believes that China should adopt a dual-track compensation mechanism but with some differences from Canada. On one hand, the 1992 Act should be quickly translated into domestic law, and a liability and compulsory insurance system suitable for national conditions should be formulated. On the other hand, China currently lacks the conditions to join the 1992 Fund and the 2003 Fund. Therefore, it should first establish a domestic oil pollution fund system in line with national conditions and join the international fund system when future conditions permit.

4. The Suggestion to Improve the Liability System for Oil Pollution Damage from Ships in China

4.1. The scope of compensation

With regard to the scope of compensation, China should define the total and specific scope of compensation, and refer to the practice of the International Maritime Organization to formulate

detailed oil pollution guidelines. First of all, the civil liability nature of cleaning fees should be clarified. As the lower limit of the compensation mechanism in China is low, it is difficult to fully compensate the sewage charges, which affects the pollution clean-up and marine environment restoration. Therefore, it is suggested to gradually increase the compensation limit, set up a special clean-up fund and special clean-up insurance to ensure full compensation for cleaning fees. In this way, combined with the compensation of liability mechanism and oil pollution fund system, some risks will be transferred to insurance companies to protect the interests of shipowners. Sources of funds for pollution funds can include state subsidies, oil pollution insurance taxes and fees, etc. In addition, the compensation for long-term losses of natural fishery resources should be limited to reasonable expenses that can be scientifically calculated, and the existing unreasonable calculation methods of the Ministry of Agriculture should be abolished, and a scientific and comprehensive evaluation method should be established as soon as possible[11].

4.2. Object of claim

Regarding the object of claim, China should abide by the agreed international agreements and define the "shipowner" according to the actual situation. The author suggests that the definition of "shipowner" should be consistent with the 1992 Convention on Civil Rights. In addition, the author suggests that "negligence" should be ruled out in the aspect of third party infringement, especially in the aspect of oil pollution damage from ships [12].

Judging from the scope of damages, in the collision of mutually negligent ships, the fault liability of non-oil spill ships should be consistent with the overlapping liability of oil spill ships. Therefore, the theory of claim consistency is meaningless in this range.

At the level of substantive law, it should be clearly stipulated that the responsible person should choose the compensation method, and the oil spill party should only compensate if it is at fault, and the non-oil spill party can ask the oil spill party to compensate for the part exceeding the liability limit. Procedural law should be consistent with the creditor's rights and realization methods stipulated in substantive law, and overcome the problem of proof of fault liability principle in oil pollution caused by ship collision.

4.3. Limitation of liability

A chapter on limitation of liability should be set up in special legislation, and the limitation of liability for oil pollution damage should replace the limitation of liability in the Provisions on Limitation of Compensation for Coastal Transportation and Chapter 11 of Maritime Law, the latter as the general limitation of liability for damage. In addition, the limitation of liability of ships in the same accident should be used according to their respective tonnage, especially when inland river ships collide with ocean-going ships, the limitation of liability for maritime claims can be put forward.

In the aspect of raising the limitation of liability for ships in China, the legislative department should cooperate with experts and scholars in maritime law, refer to the 1992 and 1996 Protocols and relevant international treaties, raise the limitation of liability for ships according to the national conditions of China, and unify it with the amount of compulsory oil pollution insurance for ships, so as to truly transfer risks. The specific amount and level should be adapted to the 1992 Convention and be more detailed and specific.

5. Conclusion

China is a big maritime country. Frequent ship trade leads to an increase in ship collisions, which seriously damages the marine ecosystem and damages accident victims. Therefore, it is necessary to establish a systematic legal system to regulate this phenomenon. At present, there is no specific legislation on compensation for oil pollution damage from ships in China, and the relevant provisions are scattered in various legal documents, which makes practical application difficult. The author thinks that the international treaties to which China is a party should be applicable to both foreign-

related and non-foreign-related cases, but at present they can only be applied to foreign-related cases, while domestic laws are applicable to non-foreign-related cases.

China should improve the legislation of compensation for oil pollution damage from ships, so as to fully realize the compensation for victims and protect the environment to the maximum extent. The legal system needs to balance the interests of all parties, taking into account the bearing capacity of the responsible person and the protection of the victims. The compensation system for clean-up costs and pure economic losses not only protects the rights of victims, but also protects the natural environment. Legislation should pay attention to the determination of compensation right and obligor for oil pollution damage, the definition of compensation scope (including cleaning cost, property loss and pure economic loss) and the setting of compensation limit.

However, at present, the shipping industry in China is underdeveloped, and its ability to transfer and disperse oil pollution damage is limited. The compensation level stipulated in the current legislation still lags behind the actual demand. Therefore, it is necessary to constantly revise the legislation to adapt to the development of the shipping industry and protect the marine environment and the legitimate rights and interests of oil pollution victims.

References

- [1] Wang Jia. Discussion on the dispute over the application of law to compensation for oil pollution damage caused by non-foreign-related persistent oil ships in Chinese waters [J]. *The Pearl River Water Transport*, 2020 (16): 83-85.
- [2] Shen Jun. The application for adding the executor to the ship oil pollution damage fund-China Ship Oil Pollution Damage Claims Center applied for adding the executor [J]. *Navigation*, 2023(04):11-15.
- [3] Wang, L. Highlights of environmental pollution and ecological destruction in civil code. *Guangdong Social Sciences*, 2021. (1) 216-225.
- [4] Dong, B., & Zhu, L. Civil liability and compensation for damage in connection with the carriage of hazardous and noxious substances: Chinese perspective. *Ocean Development and International Law*, 2019. 50(2-3), 209-224.
- [5] Li Wenwen. On the necessity and feasibility of China's ship oil pollution damage compensation fund for inland waters and inland ships-from the perspective of the Yangtze River basin [J]. *Haida Law Review*, 2022(00):137-151.
- [6] Yang Cheng. Research on the compensation system for oil pollution damage of ships under the revision of maritime law [J]. *China Maritime Affairs*, 2022 (09): 64-68.
- [7] Shen Jun, Cenqi. Construction of judicial connection mechanism of China oil pollution compensation fund-from the perspective of the first subrogation case of oil pollution compensation fund in China [J]. *Essays on Business and Law*, 2020, 5(01):153-160.
- [8] Wang Jia. Discussion on the dispute over the legal application of compensation for oil pollution damage of ships carrying persistent oil in China waters [J]. *Pearl River Waterway*, 2020 (16): 83-85.
- [9] Pan Pai. Research on the liability system of oil pollution damage caused by ship collision in China [D]. Jiangnan University, 2023.
- [10] Qu Hongling. Research on the limitation of liability for compensation for ship cleaning fees [D]. Zhongnan University of Economics and Law, 2019.
- [11] Zhang Zheng Research on the Legal Status of the Mainland China's Oceangoing Islands System [D]. Wuhan University, 2022.
- [12] Dao Changxin. International Law Issues of Ship Oil Pollution Control in Arctic Sea Area [D]. Foreign Affairs University, 2020.