

Evolution of Marine Oil Pollution Law in China

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Abstract

Under the initiative of Maritime Silk Road, China Maritime Court is going through new judicial reform. This development will affect maritime legislation deeply, especially marine oil pollution law. China has made several laws, rules and regulations in the marine oil pollution area in the past thirty years. However, there is no rule to hold polluter criminally responsible for the pollution act up to now in China, and we need to revise *Criminal Law* and *China Maritime Code*. The low efficiency of separate management of maritime affairs prevents the disputes from solving efficiently, for improving the old administrative management pattern, it's wise to integrate the management departments and build joint-action mechanism as soon as possible. Oil spill damage could cause issues of jurisdiction in practice, it's important to give the criminal jurisdiction of the admiralty court and hold the polluter criminally liable.

Key words: Marine oil pollution; Judicial reform; Joint-action mechanism; Administrative management; Criminal liability

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INTRODUCTION

China is a country with abundant water resources. With the development of shipping economy and the initiative of

maritime silk road, more and more investments and vessel operators join the maritime economy industry of China. Oil shipping is one kind of shipping business which has caused severe pollution issues to China's ocean ecology. According to the historical statistics, the amount of oil import of China has continued to rise in the past 20 years. Oil is the main pollutants caused by ship and other mobile units in the ocean. Damage caused by oil pollutions is second after the damages of cargo loss carried by sea. From 1974 to 2000, there are about 50 accidents of severe oil spill in costal area of China. Only 9 of them, the polluters of those accidents compensated the damages in some way. Under the initiative of one belt one road, especially the goal of rebuild maritime silk road, the oil shipping industry will face the booming tread in the next ten years. That's why we need to focus on the study of marine oil pollution law in China, as a scholar, we need to analyze the current situation of what we are facing, find the solutions and countermeasures for theoretical and practical issues under marine oil pollution area.

1. LEGISLATION HISTORY

In the past thirty years, Chinese government has considered environmental protection legislation as top priority. We have made several laws and regulations related to marine environmental protection, including *General Principles of the Civil Law of P.R.C.*, *Rules of Preventing Coast Water Pollution of the P.R.C.*, *Law of the People's Republic of China on Maritime Environmental Protection*, *Regulations of the People's Republic of China on the Control over Prevention of Pollution by Vessels in Sea Waters*, *Law of the People's Republic of China on Prevention and Control of Water Pollution*, *The Environmental Protection Law of the People's Republic of China*, *China Maritime Code* and so on.

In 1974, the State Council (hereinafter SC) issued *Rules of Preventing Coast Water Pollution of the P.R.C.*

This is the response of Chinese government to the “Declaration on the Human Environment” proposed by Conference on the Human Environment in Stockholm. This Rule dedicates to protect coast water environment and punish the illegal pollution acts.

In 1982, Standing Committee of the National People’s Congress passed *Law of the People’s Republic of China on Maritime Environmental Protection*. This law is the first comprehensive law on maritime environmental protection (Fan, 2003, pp.93-94). This law has been modified for several times since approval, the revision year is 1999, 2013 and 2016. Article 66 is the structure of compensation system for marine environment pollution, which is the State shall make perfect and put into practice responsibility system of civil liability compensation for vessel-induced oil pollution, and shall establish vessel-induced oil pollution insurance, oil pollution compensation fund system in accordance with the principles of owners of the vessel and the cargoes jointly undertaking liabilities for vessel-induced oil pollution compensations.¹ Article 89 sets the liability for polluters, which is whoever causes pollution damage to the marine environment shall remove the pollution and compensate the losses.²

In 1983, State Council approved *Regulations of the People’s Republic of China on the Control over Prevention of Pollution by Vessels in Sea Waters*. Vessels caused severe pollution in sea waters during the operation of the voyage. Therefore, Chinese government made the regulations for prevention this pollution situation, not only the oil pollution but also other pollution caused by vessels.

General Principles of the Civil Law of P.R.C. was approved by the Sixth National People’s Congress in 1986 and became effective on January 1, 1987. Article 124 is the basic rule of compensation for environment pollution, which is any person who pollutes the environment and causes damage to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.³

In 1989, Standing Committee of the National People’s Congress passed *The Environmental Protection Law of the People’s Republic of China*. This law sets one chapter rules of legal liability in chapter V. Any violator of this Law shall, according to the circumstances of the case, be warned or fined by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management.⁴

China Maritime Code was adopted at the Seventh National People’s Congress on November 7, 1992 and became effective on July 1, 1993. Article 208 said

Claims for oil pollution damage under the International Convention is not regulated by China Maritime Code, which means International Conventions approved by Chinese government should be applicable for oil pollution damage in China.⁵

The above laws, regulations and rules are the main documents which regulate marine oil pollution act. It is clear that we have no systematic document and system to deal with marine oil pollution and compensate damages up to now. There are only the principles and basic rules for solving disputes in the existing legislation and it is difficult to operate and apply into real case in the legal practice.

2. ISSUES AND MEASURES OF MARINE OIL POLLUTION LEGISLATION IN CHINA

Based on the above analysis, it’s clear that Chinese government never establishes criminal liability for regulating oil pollution act since the promulgation of *Criminal Law of the People’s Republic of China*. The court always applies economic damages to solve the oil pollution case and there is no case in which the responsible party has been seen as criminal up to now. 2011 Bohai Bay oil spill is one of the largest oil spill pollution cases in Chinese history. Although this accident causes devastating damages to the marine environment of Bohai, nobody and enterprises were held criminally responsible in the end. The relevant parties only concluded a compensation agreement for marine environment damages.⁶

The above situation is also the current status of our legislation in this area. The responsible party only can be held responsible under civil law and they undertake economic damages because of the pollution act. The cost of the violation act is not enough to stop the relevant party to pollute the environment. It’s really necessary to regulate the oil pollution act under criminal law without hesitation to prevent the marine environment from pollution. In my opinion, there are several issues under existing law that we should thoroughly consider.

2.1 No Rules Applied in Legal Practice

There is no clear rule now for regulating marine oil pollution act under criminal law. Article 338 of *Criminal Law* is Crime of Impairing the Protection of Environment, but this article has no definition about toxic substances, other hazardous waste or oil pollution substance.⁷ Referred to environmental protection law, for protecting state-owned companies, it sets a small amount of administrative fines and no rule to held the polluter criminal responsible.

¹ See Article 66 of *Marine Environmental Protection Law*.

² See Article 89 of *Marine Environmental Protection Law*.

³ See Article 124 of *General Principles of the Civil Law*

⁴ See Chapter V of *Environmental Protection Law*.

⁵ See Article 208 of *China Maritime Code*.

⁶ <http://baike.sogou.com/v85486231.htm?fromTitle=%E6%B8%A4%E6%B5%B7%E6%BA%A2%E6%B2%B9>

⁷ See Article 338 of *Criminal Law*.

The original goal for judicial interpretation of Criminal Law is to regulate land-based pollution under this crime. Considering the prohibition of analogy and principle of crimes and punishment stipulated by law (*nulla poena sine lege*) (Li, 2011, p.43), oil pollution act is not the subject of this article. Therefore, make the basic rule to hold polluter criminally liable for the pollution act should be our top priority. We'd better revise *criminal law* or *China Maritime Code* in the near future and define toxic substance, oil pollution caused by vessels and other important terminology.

2.2 Low Efficiency of Separate Management

According to *Marine Environmental Protection Law*, the competent administrative department in charge of environment protection, the Oceanic administrative department in charge of marine affairs, the State administrative department in charge of maritime affairs, the administrative department in charge of fisheries and the environmental protection department of the Armed Force are the administrative departments to deal with marine environment issues.⁸ However, if oil spill is from anchored vessel, it may damage cargo ports, fishery quay and exclusive economic zone. In this situation, several administrative departments have the duty to investigate and report this case. The low efficiency of the existing administrative system may cause many problems for the criminal suit.

Besides, there are several conflicts in the administrative enforcement procedural rules. For example, the assessment method and procedures for oil pollution damage is different under *Marine Environmental Protection Law*, *Calculating methods on the economic loss of fishery pollution accidents* and *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Compensation for Vessel-induced Oil Pollution Damage*. The assessment method and procedures of oil pollution damage may affect criminal penalty deeply, but the relevant oil pollution authentication organization did not pay enough attention on this point.

For solving those issues in practice, our administrative department should integrate jurisdiction of law enforcement and ensure the high efficiency of joint-action mechanism (Yang, 2014). Our legislation department should revise the relative laws and rules to realize the legal consistency. Most important of all, we'd better to consider marine oil pollution legislation and policy as one systematic project instead of pieces.

2.3 Separate Jurisdiction for Oil Spill Damages

The spill of oil is flowed with water and accident may involve with civil suit and criminal suit at the same time, this can lead to issue of jurisdiction (Xue, 2003, pp.409-

411). The first situation is separate jurisdiction in the same case. For example, two vessels collided with each other. One crew died because of collision, oil spills from one vessel and causes a severe damage to properties and marine ecology. The plaintiff pleads damage suit in the admiralty court and the prosecutor also plans to plead a criminal suit against the responsible party. According to our procedural law, our admiralty court only has civil jurisdiction, no jurisdiction for criminal case. Therefore, the prosecutor has to the plead the criminal suit in other local court. As we all know, judging this case is the advantage of admiralty court and judges of the admiralty court have much more experience inf this kind of case. From the experts and practitioners' view, the jurisdiction over oil pollution criminal case should be also judged by admiralty court instead of local courts. However, our existing law and rules will cause the separate jurisdiction in the same case.

The second situation is concurrent jurisdiction among countries. If the relevant countries have a big difference on the same case, it may damage the judicial sovereignty of State and parties' rights and interests. For example, *Marine Environmental Protection Law* and *Criminal Law* stipulate the rule of extraterritorial effect. Other country may also have jurisdiction for the same case. Let's assume the polluter will be held responsible under criminal law in this country, but he will not be seen as criminal in China. This situation will prevent the cooperation between relevant countries.

CONCLUSION

Therefore, how to set a clear boundary for jurisdiction between local courts and admiralty courts and set criminal liability for oil polluter are also important issues to solve. My suggestion is to give the full authority to admiralty courts to decide the disputes no matter criminal case or civil case. Furthermore, join the international conventions or bilateral agreements of legal recognition and enforcement of court decisions and implement the rules set by those documents.

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⁸ See Article 5 of *Marine Environmental Protection Law*.