

Pham Van Tan

Article

Civil liability for oil pollution damage caused by ships: Chinese legal system and reference to Vietnam

Cogent Business & Management

Provided in Cooperation with:

Taylor & Francis Group

Suggested Citation: Pham Van Tan (2019) : Civil liability for oil pollution damage caused by ships: Chinese legal system and reference to Vietnam, Cogent Business & Management, ISSN 2331-1975, Taylor & Francis, Abingdon, Vol. 6, pp. 1-17,
<https://doi.org/10.1080/23311975.2019.1699285>

This Version is available at:

<https://hdl.handle.net/10419/244766>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



<https://creativecommons.org/licenses/by/4.0/>

Civil liability for oil pollution damage caused by ships: Chinese legal system and reference to Vietnam

Pham Van Tan |

To cite this article: Pham Van Tan | (2019) Civil liability for oil pollution damage caused by ships: Chinese legal system and reference to Vietnam, Cogent Business & Management, 6:1, 1699285, DOI: [10.1080/23311975.2019.1699285](https://doi.org/10.1080/23311975.2019.1699285)

To link to this article: <https://doi.org/10.1080/23311975.2019.1699285>



© 2019 The Author(s). This open access article is distributed under a Creative Commons Attribution (CC-BY) 4.0 license.



Published online: 18 Dec 2019.



Submit your article to this journal [↗](#)



Article views: 2049



View related articles [↗](#)



View Crossmark data [↗](#)



Citing articles: 1 View citing articles [↗](#)



Received: 21 June 2019
Accepted: 25 November 2019
First Published: 30 November 2019

*Corresponding author: Pham Van Tan, Vietnam Maritime University, No. 484 Lachtray street, Haiphong city, Vietnam
E-mail: phamvantan@vimaru.edu.vn

Reviewing editor:
Len Tiu Wright, De Montfort University Faculty of Business and Law, UK

Additional information is available at the end of the article

MANAGEMENT | RESEARCH ARTICLE

Civil liability for oil pollution damage caused by ships: Chinese legal system and reference to Vietnam

Pham Van Tan*

Abstract: Along with the development of the maritime industry, the Vietnam's Sea is facing marine pollution caused by oil discharge from ships. The cases of insufficient and unsatisfactory compensation for pollution damage caused by ship's oil are increasing. Therefore, this paper focused on the analysis of the status and the weakness of Vietnam legal system on civil liability for oil pollution damage caused by ships. In order to find out solutions for such improvement of the legal system, this paper focuses on the systematic analysis of the Chinese laws of civil liability for oil pollution damage caused by ships. Through such analysis, the paper gives some lessons for Vietnam learned from the experience of China in the implementation of laws of civil liability for oil pollution damage caused by ships.

Subjects: Private International Law; Governance - Politics & International Relations; Shipping & Maritime Law

Keywords: civil liability; ships' oil pollution; compensation for oil pollution damage

1. Introduction

Vietnam is a coastal State with sea wider than the land area three times and more than 3260 km of coastline. The sea of Vietnam is located on the arterial sea traffic route connecting the Pacific Ocean with the Indian Ocean, Europe with Asia, and the Middle East with Asia. Five of the 10 major trade sea routes



Pham Van Tan

ABOUT THE AUTHOR

Dear Journal! I am PHAM VAN TAN, one lecturer of Maritime Training Center in Vietnam Maritime University. My major is in Marine Navigation, Maritime safety, Maritime law. I have got Bachelor and Master degrees in Faculty of Marine Navigation in Vietnam Maritime University. In 2013, I obtained Doctor degrees in Law school in Dalian Maritime University.

Currently, I focus on researching the topics regarding to maritime law, international law, civil liability regime for oil pollution damage caused by ships, regulation on prevention of ship-source pollution to marine environment.

I prepared and submitted my manuscript to your journal, this topic on civil liability for oil pollution damage is a new issue in Vietnam, so I focus on researching this topic to help Vietnam further improve the legal system in this issue.

I hope my manuscript can be reviewed soon and get good results from reviewers.

PUBLIC INTEREST STATEMENT

Along with the development of the maritime industry, the Vietnam's Sea is facing marine pollution caused by oil discharge from ships. The cases of insufficient and unsatisfactory compensation for pollution damage caused by ship's oil are increasing. Therefore, this paper focused on the analysis of the status and the weakness of Vietnam legal system on civil liability for oil pollution damage caused by ships. In order to find out solutions for such improvement of the legal system, this paper focuses on the systematic analysis of the Chinese laws of civil liability for oil pollution damage caused by ships. Through such analysis, the paper gives some lessons for Vietnam learned from the experience of China in the implementation of laws of civil liability for oil pollution damage caused by ships.

in the world related to Vietnam's sea, including from Western Europe, North America pass the Mediterranean, the Suez Channel, and the Middle East to India, East Asia, Australia, New Zealand; from the East Asia pass the Panama Channel to the East Coast of North America and the Caribbean; from the East Asia to the Australia and the New Zealand, the South Pacific; from the NorthWestern America to the East Asia and the South East Asia. It is considered as the second busiest international shipping route in the world. Every day, on average, there are about 150 to 200 ships of all kinds crossing this sea area, of which about 50% are ships with 5,000 tons and above, more than 10% are ships with 30,000 tons and above (East Sea—Endless source of life, 2010). Vietnam has 37 seaports, of which has nearly 170 small and big ports with the total length wharf is 39,674 m (Summary report of Vietnam Maritime Bureau, 2012). Currently, Vietnamese fleet has about 1,691 small and big ships with the total tonnage is nearly 7.4 million DWT (819/1,490 ships is over 500 GT) and is being ranked the fourth position of 10 ASEAN countries, the 28th position of 192 IMO member countries; especially the Vietnam national fleet has nearly half of ships that always operating on international maritime routes and the Vietnam's fleet goes to the ports of many countries on four continents (Summary report of Vietnam Maritime Bureau, 2012).

With the rapid development in maritime, the risk of marine pollution at Vietnam's sea is increasing, especially the marine pollution related to the oil of ships and maritime activities. Pollution caused by oil has always been considered as a dangerous source of the marine environment pollution, in which the oil pollution caused by ships is more interested. The consequences of marine pollution caused by ships carrying oil are very heavy. When an oil spill occurs, the people often compare it as a big disaster of the marine environment (Khee & Tan, 2005). We can't predict the disaster of the oil spill incidents and very difficult for us to be able to analyze all the damage¹ of the oil spill incidents. However, the compensation for oil pollution damage of Vietnam is weak. The cases of insufficient compensation are increasing, the compensation amount is not adequate with actual loss. According to statistics, up to 77% of oil spills² occurring at water areas under the jurisdiction of Vietnam are not compensated fully and satisfactorily or are in the process of settlement. Therefore, the study of the civil liability for oil pollution damage caused by ships is always an issue that is urgent and necessary for Vietnam. Moreover, Vietnam also needs to learn the experience of States who have the perfect legal system of civil liability for oil pollution damage caused by ships as well as the experience of addressing and remedy for oil pollution damage. With effectively incorporating the regulations of international conventions into her own national laws, China has the highlights in the legal system of civil liability for oil pollution damage caused by ships. For the above reasons, the author will analyze the China legal system on civil liability for oil pollution damage caused by ships, then put forward some suggestions for Vietnam on learning the experience of China in this field.

2. Chinese legal system on civil liability for oil pollution damage caused by ships

With the fast development of trade sector, and with nearly 1.34 billion of population, China has a high need for oil. The consumption of oil in China has grown rapidly, and now the oil consumption of China is the third largest in the world only after Japan and the United States. In addition, China's shipbuilding industry is also developing to be compatible with the increasing transportation needs of oil at the sea (Hui, 2011).

China joined the conventions related to the oil pollution damage caused by ships, such as the *Fund Convention 1992* (only applied to Hong Kong); the *CLC 1992*; the *Bunker Convention 2001* (Status of Conventions, 2017). After joining international conventions in the field, China has built its domestic legal system on the issue of civil liability for oil pollution damage caused by ships with many provisions highlights. Although China has signed the international conventions about civil liability for oil pollution damage caused by ships, now China has not had a separate legislation to stipulate oil pollution caused by ships or to stipulate liability for oil pollution damage caused by ships which like United States, Japan, and Canada (Hui, 2011).

2.1. Marine environment protection law of china

In 1982, *Marine Environment Protection Law of China (MEPL)* was adopted, and it was amended in 1999, 2013 and 2016. The *MEPL* revised in 2016 has 10 chapters and 97 articles, stipulated the basic contents related to the obligations and rights of the individuals, organizations and the nation bodies to prevent pollution, as well as the issues concerning civil liability for oil pollution damage.

Article 66 of this Law provides to establish a fund to claim for compensation for oil pollution damage: The State shall establish a fund to pay for compensation for oil pollution damage caused by ships, with a general principle that the shipowners and owners of the cargo must be jointly liable for compensation for oil pollution damage caused by ships. We can say, these rules concretize the principle that polluters should be responsible for compensation for oil pollution damage. However, this only stops at the general principles and the *MEPL* also has requirements for State agencies to develop the measures to ensure implementation of the fund. In addition, this Article also stipulates that the establishment of ships' oil pollution insurance will be done by the State. Specific measures for the implementation of this insurance and compensation fund system will be built by the State Council.

Provided that the *MEPL* is the part of administrative law, Article 66 can be considered as an authority to the State Council to perfect and apply the system of compensation for oil pollution damage caused by ships (Han & Wei, 2014), it means that the promulgation of related measures as well as particular measures is done under the authority of State Council.

Paragraph 1 of Article 89 of the *MEPL* regulates that the person causing environment pollution damage will remove that pollution and be liable for compensation for such damage. The provision of this paragraph reflects the strict liability of the polluters. In Chinese academic circle, there are two different explanations for such regulation. The first explanation is that this regulation is a general principle, the person who causes the damage must bear legal responsibility, and the particular compensation amount in this case, as long as it is calculated under the provisions of the *CMC*³ for limitation of liability of the shipowners⁴, and it means that the shipowners have the right to limit their responsibility according to the regulations of the *CMC*. The second explanation is that the person who causes the damage must be responsible for full compensation for all damage and does not have any liability limit. Therefore, when pollution damage occurs, the person who causes damage often applies the provisions of the *CMC* in order to limit their legal responsibilities with a certain amount. Thus, there are still many controversial issues when the *MEPL* is applied. Some Chinese scholars maintain that compensation for loss caused by oil pollution is an issue concerning the civil law, while this Law belongs to an administrative law, therefore, only should apply the civil law for compensation for loss caused by oil pollution, should not apply the administrative law. And in fact, most articles of this Law are to manage, supervise the operations that can affect the marine environment, such as the issues on how the management bodies can use necessary measures to minimize or prevent pollution damage are stipulated in Article 70, it stipulates that if ships cause or likely to cause pollution damage to the marine environment, competent bodies will have the right to use the necessary measures to minimize or avoid pollution damage. And the issues concerning administrative fine are stipulated by Article 90.

Paragraph 2 of Article 89 of the *MEPL* stipulates that in the case there is any heavy loss resulted from the loss of marine aquatic resources, marine nature reserves, and marine ecosystems were suffered by the State, the departments of marine environment management and supervision will on behalf of the State to put forward the compensation request to the person who is liable for the damage. However, this regulation is only applied to "heavy loss". And this Law does not provide a definition or concept of the "heavy loss", or the standard of loss will be considered as the "heavy loss" or the level of damage is recognized as "heavy loss". Moreover, the *MEPL* does not have the regulation on how to pay for the compensation for damage as the "heavy loss".

Article 91 of the *MEPL* provides for exemptions from liability for pollution damage. It stipulates that the responsibility of the person who causes environment pollution damage can be exempted when the damage was caused by one of following reasons: Result of a war; or irresistible natural calamities; or wholly caused by the wrongful act, negligence of Government or authority bodies that are liable for navigation aids or maintain lights.

2.2. Chinese maritime code

The issue of “limitation of liability for maritime claims” is stipulated in Chapter XI of *Chinese Maritime Code (CMC) 1993*, this Chapter includes 12 articles (Article 204 to Article 215), the main articles and their provisions are as following:

Article 210 of the *CMC* stipulates the amount of limitation:

1. In respect of claims for loss of life or personal injury:

- (1) 333,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;
- (2) For a ship with a gross tonnage in excess of 500 tons, the limitation under (1) above shall be applicable to the first 500 tons and the following amounts in addition to that set out under (1) shall be applicable to the gross tonnage in excess of 500 tons:

For each ton from 501 to 3,000 tons: 500 Units of Account;

For each ton from 3,001 to 30,000 tons: 333 Units of Account;

For each ton from 30,001 to 70,000 tons: 250 Units of Account;

For each ton in excess of 70,000 tons: 167 Units of Account;

2. In respect of claims other than that for loss of life or personal injury:

- (1) 167,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;
- (2) For a ship with a gross tonnage in excess of 500 tons, the limitation under (1) above shall be applicable to the first 500 tons, and the following amounts in addition to that under (1) shall be applicable to the part in excess of 500 tons:

For each ton from 501 to 30,000 tons: 167 Units of Account;

For each ton from 30,001 to 70,000 tons: 125 Units of Account;

For each ton in excess of 70,000 tons: 83 Units of Account.

We can see that, there was a difference between the “claims related to other than personal injury or loss of life” and “claims related to personal injury or loss of life”, the limitation amount for “claims related to other than personal injury or loss of life” are half of the limitation amount for “claims related to personal injury or loss of life”.

But this Code also does not stipulate limitation of civil liability for compensation for ships’ oil pollution damage that is regulated by the relevant articles of the *CLC 1992* which China has approved, because Article 208 provides: The regulations of Chapter XI does not apply to the claims concerning oil pollution damage according to the *CLC 1992* which China has approved. And according to Article 204 of this Code, the shipowners and salvors are entitled to limit their liability for maritime claims that are mentioned in Article 207 of this Code.

2.3. Regulations on administration of prevention and control of ships' pollution to the marine environment

In 2009, *Regulations on Administration of Prevention and Control of Ships' Pollution to the Marine Environment* was issued and came into force on 1 March 2010 (hereinafter referred to as the *Regulations on Prevention of Pollution*). The *Regulation on Administration of Prevention of Ship-source Pollution to Marine Environment in 1983* was repealed by it (Han & Wei, 2014). The purpose of the *Regulations on Prevention of Pollution* is to establish comprehensive provisions related to the prevention, remedy and respond to oil pollution accident when it occurs at the sea under China's jurisdiction.

The application scope of the *Regulations on Prevention of Pollution* includes any pollution originating from ships and any activities related to ships cause or maybe cause pollution damage in the water areas belonging to the inland, the territorial sea and contiguous zone, the exclusive economic zone, the continental shelf of China, and all other water areas belonging to the jurisdiction of China.

The issues concerning the compensation for pollution damage caused by ships accidents are regulated in Chapter 7 of the *Regulations on Prevention of Pollution*. The basic issues of liability and limitation of liability for damage caused by oil pollution incidents from ships are clearly regulated in this Chapter. Moreover, it also regulates the compensation for damage caused by oil pollution as well as the liability insurance for pollution damage caused by ship-source oil (Han & Wei, 2014). Article 51 stipulates that limitation of liability which stipulated in the *CMC* will be applied for the pollution originating from ships in general. However, for the pollution caused by a ship carrying persistent oil in bulk which is occurred in the territorial sea belonging to the Chinese jurisdiction, limitation of liability of such oil pollution damage shall be governed by the regulations of the relevant international conventions to which China acceded, in this case, is mostly the *CLC 1992*.

Article 52 stipulates that a ship (except a ship with gross tonnage below 1,000 units of tonnage (Ministry of Transport of People's Republic of China, 2013) carrying non-oil cargo) operating within the sea areas belonging to the territorial sea of China must have the financial security or mandatory insurance for oil pollution damage caused by ships, and it is appropriate with the articles of *Chinese Maritime Code* or relevant conventions.

The insurance amount is not less than the level of limitation that is calculated according to the *CMC*. Such calculation is similar to the calculation according to the *LLMC 1976*, or in accordance with the relevant international conventions that China adopted or approved (such as the *CLC 1992* and the *Bunker Convention 2001*).

We can see that the regulations of international laws have been incorporated into the national laws of China. The *Regulations on Prevention of Pollution* also has regulations on the mandatory insurance or financial security to ensure payment of their responsibility for the damage caused by oil pollution. Such provisions are also consistent with the provisions of the insurance stipulated in the *Bunker Convention 2001* that China signed in 2008, and are also consistent with the provisions of the insurance or financial security for the shipowners stipulated in the *CLC 1992* which China signed.

The amount contributed to the Ship Oil Pollution Compensation Fund for the persons (including the cargo owners or their agents) receiving the persistent oil is stipulated in Article 55 of the *Regulations on Prevention of Pollution*. And the finance authorities of State Council and the Ministry of Transport have the power to manage and collect this Fund. The management of this Fund belongs to the responsibility of a management commission that will be established by the State and including persons who represent for contributors and relevant government officials. And this article is the reason for the disputation on whether China should establish a domestic fund or should join the *Fund Convention* officially ended. It should be noted that a national fund for oil pollution damage compensation of China has been established in 2012. The provisions on how to use, collect and manage this Chinese domestic fund are stipulated by *Administrative Measures for the Collection and Use of Compensation Funds for Vessel-Induced*

Oil Pollution Damage (hereinafter referred to as the *Administrative Measures Vessel-Induced Oil Pollution Fund*).

2.4. Administrative measures for the collection and use of compensation funds for vessel-induced oil pollution damage

The *Administrative Measures of Vessel-Induced Oil Pollution Fund* is issued by the Chinese Ministry of Finance and the Chinese Ministry of Transport in 2012. It includes 5 chapters, 33 articles. The collection of the Chinese domestic fund is stipulated in Article 6 of Chapter II with clear provisions: Oil pollution compensation fund will be collected from the cargo owners or their agents by the Maritime Safety Administrations of China, and the level collection of oil pollution compensation fund is 0.3 Yuan per ton of persistent oil. Maritime Safety Administrations (MSA) will promulgate the financial bills for the cargo owners or their agents after this MSA has collected oil pollution compensation fund. In addition, Chapter III clearly stipulates the cases under which the Chinese domestic fund shall be allowed to use or not allowed to use for remedy or compensation for oil pollution damage (Ministry of Transport of People's Republic of China, 2014).

According to Article 15, the following cases will be compensated by the oil pollution compensation fund:

- (1) In the cases of the responsibility for compensation of the shipowners is exempted.
- (2) The aggregate compensation amount for oil pollution damage caused by ships more than the statutory limitation of the shipowners for oil pollution damage caused by ships.
- (3) The shipowners or the insurers cannot afford financially capable to perform their compensation obligation.
- (4) The ships that cause the pollution cannot be found.

And according to Article 16, the following cases will not be compensated by the oil pollution compensation fund:

- (1) In the cases of acts of rivalry, war cause the oil pollution, or warships, fishing ships, government ships for non-commercial purpose cause the oil pollution.
- (2) The plaintiff cannot give evidence to prove oil pollution caused by ships.
- (3) Oil pollution resulted from victim's fault partially or entirely.

Besides, the maximum compensation amount for a single oil pollution incident caused by ships that is paid by the oil pollution compensation fund is 30 million Yuan (Ministry of Transport of People's Republic of China, 2014). Moreover, penalties and measures of dealing with the cases of cargo owners not distribute to the oil pollution compensation fund are also stipulated in Article 28.

2.5. Measures of china for the implementation of civil liability insurance for ship-induced oil pollution damage

Measures of China for the Implementation of Civil Liability Insurance for Ship-induced Oil Pollution Damage (hereinafter called as the *Measures*) was issued by Chinese Ministry of Transport under the MEPL, the *Regulations on Prevention of Pollution* and the CMC. The *Measures* came into force on 1 October 2010 and was amended in August 2013. The *Measures* have provisions of civil liability insurance for oil pollution damage caused by ships and its amount of insurance of all types of ships. In addition, the *Measures* stipulates the procedure of applying for Certificates under the authority of the *Regulations on Prevention of Pollution*.

The applicable scope of the *Measures* is stipulated in Article 2. It stipulates that for all ships more than 1,000 gross tonnage carrying on board non-oil substances, and all ships carrying on board oil substances operate within the water areas belonging to the territorial sea of China, the shipowners

must maintain the civil liability insurance for oil pollution damage caused by ships or other financial security under the *Measures*.

The civil liability insurance for oil pollution damage bought or other financial guarantee obtained by the vessels carrying persistent oil substances in bulk shall not be less than the following limits:

- (1) 4.51 million Special Drawing Rights (SDR) for ships less than 5,000 gross tonnage;
- (2) Ships more than 5,000 gross tonnage, 4.51 million SDR and for each additional gross tonnage will add 631 SDR, however, in any case, the aggregate limitation amount will not more than 89.77 million SDR.

The civil liability insurance amount for oil pollution damage is applied to ships carrying non-persistent oil substance or to ships more than 1,000 gross tonnage carrying non-oil substance will not below the following limitation amounts:

- (1) 27,500 SDR for ships from 20 to 21 gross tonnage;
- (2) Ships from 21 to 300 gross tonnage, 27,500 SDR and for each additional gross tonnage will add 500 SDR;
- (3) 167,000 SDR for ships from 300 up to 500 gross tonnage;
- (4) Ships from 501 to 30,000 gross tonnage, 167,000 SDR and for each additional units of tonnage will add 167 SDR;
- (5) Ships from 30,001 to 70,000 gross tonnage, the amount mentioned in the paragraph (4) and for each additional units of tonnage will add 125 SDR;
- (6) Ships more than 70,001 gross tonnage, the amount mentioned in the paragraph (5) and for each additional units of tonnage will add 83 SDR;

The civil liability insurance amount for ships operating in coastal or only between the ports of China will be calculated by 50% of the civil liability insurance amount that is applied to ships carrying non-persistent oil substance or to ships more than 1,000 gross tonnage and carrying non-oil substance (Article 6).

When we compare the regulations of the *CLC 1992* with the regulations of the *Measures*, we can find that compulsory insurance under the *CLC 1992* only applies for ships actually carrying more than 2,000 tons of persistent oil in bulk as cargo.⁵ Thus, the scope of application for ships of the *Measures* is larger than the *CLC 1992*. Moreover, the amount of civil liability insurance is same as the amount that stipulated in the Protocol of amendment *CLC 1992* in 2000. It proves that China was very concerned about the protection of the persons who suffer loss from oil pollution caused by ships as well as the protection of the marine environment (Han & Wei, 2014). However, the application scope of the *Measures* is in dispute as well. Some Chinese scholars hold that in China, the small ships transporting oil in domestic water areas will be affected by the application scope of the *Measures*, the owners of such small ships that within the application scope of the *Measures* must maintain a liability insurance. Therefore, the shipping company owning small ships can bear an incongruous economic burden. The Chinese shipping industry will be impacted by this rule. But, in the long term, the transport of oil in the domestic water areas of China will benefit from it. This provision of the *Measures* helps the shipping companies of China have the impetus to improve their management capacity, and the old ships that not meet the standard will gradually not be used (Wu & Han, 2016). The international competing capability of the shipping industry of China will increase and in the future, it will fit with international standards.

2.6. 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

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 (hereinafter referred to the *Provision of*

the Supreme Court) was adopted on 10 January 2011 by Judicial Committee of the Supreme People's Court of China, it entered force on 1 July 2011.

Limitation of liability: Under the *Provision of the Supreme Court*, limitation of liability of the shipowners is divided into two cases: One case is oil pollution damage caused by persistent oil originating from an oil tanker, the *CLC 1992* shall be applied. That means in this case, limitation of liability of the shipowners will be calculated under relevant regulations of the *CLC 1992*.

The other case is non-persistent fuel oil originating from an oil tanker, and fuel oil originating from ships other than oil tankers cause pollution, limitation of liability of the shipowners will be calculated under relevant regulations of *Chinese Maritime Code*.

The scope of compensation for oil pollution damage: Under Article 9 of the *Provision of the Supreme Court*, following damage will be paid by liable parties:

Costs for the use of prevention measures to prevent, limit the oil pollution damage caused by ships. These costs will be calculated based on equipment used, volume of oil spilled, and area of pollution, etc.

Damage to property caused by oil pollution from ships. According to Article 12 of the *Provision of the Supreme Court*, it includes the proper costs of cleaning and restoration of polluted assets, or the costs to buy alternative assets in the case polluted assets cannot be restored.

Damage to income caused by oil pollution from ships. According to Article 16 of the *Provision of the Supreme Court*, the loss of income will be calculated based on the plaintiff's average net income.

Costs to carry out or will carry out the appropriate measures to restore the environment pollution. According to Article 17 of the *Provision of the Supreme Court*, it includes the costs to research, supervise and evaluate the oil pollution damage.

Under Article 21 of the *Provision of the Supreme Court*, the establishment of a fund for limitation of responsibility for oil pollution damage is obligatory. It stipulates that for oil pollution damage, the fund for limits of liability for oil pollution damage caused by ships shall be established.

2.7. Special maritime procedure law of china

Special Maritime Procedure Law of China was adopted on 25 December 1999 and implemented on 1 July 2000. This Law stipulates about procedure and jurisdiction of the courts to address the disputes related to maritime claims. The claims concerning compensation for marine pollution damage, and disputes involving the implementation of contracts that related to carriage of goods at the sea also belong to the jurisdiction of Maritime Courts. Up to now, there are 10 Maritime Courts in China, which located separately in Tianjin, Qingdao, Dalian, Shanghai, Guangzhou, Wuhan, Xiamen, Ningbo, Haikou, and Beihai. And the Supreme People's Court of PRC issued *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*, and it entered force on 1 July 2011. Moreover, on 28 December 2015, the Supreme People's Court of PRC issued *Provisions of the Supreme People's Court on Issues concerning the Jurisdiction over Maritime Actions*, and *Provisions of the Supreme People's Court on the Scope of Cases to Be Accepted by Maritime Courts*, and it entered into force on 1 March 2016.

Jurisdiction: The claim for compensation for oil pollution damage caused ships (Standing Committee of the National People's Congress of People's Republic of China, 1999) will belong to the jurisdiction of Maritime Courts of the place where occurring the oil pollution, the measures for pollution prevention were carried out or the place where is suffering the harmful consequences. The cases related to an offshore exploitation and exploration contract implemented within water

areas of the territory of China or in the water areas in light Chinese jurisdiction will belong to the jurisdiction of Maritime Courts where such contract is being implemented.

For a case of oil, pollution occurs at water areas not belonging to the territory of China, but causes oil pollution damage or threaten to the territory of China, this case will belong to the Maritime Courts of place where occurring the oil pollution damage or measures for oil pollution prevention were carried out (Supreme People's Court of People's Republic of China, 2011).

The establishment of fund for limitation of responsibility for oil pollution damage: The establishment of a fund for limitation of responsibility for oil pollution damage is mentioned in *Special Maritime Procedure Law of China*, 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*. It is a prerequisite for the shipowners to provide financial security or the insurance company in order to limit its liability.

If any party disagrees with such petition, that party will submit an application to the Maritime Courts within 7 days after receiving direct notification of the Maritime Courts, or 30 days after the public announcement. Within 15 days after receiving the feedback, the Maritime Courts must consider that case and make a decision to reject or accept. Within 7 days later after receiving such decision of the Maritime Courts, any party that disagrees can also complain to the Appeal Court, and this Appeal Court will resolve the complaint within 15 days after receiving the complaint. If there is no any complaint, the Maritime Courts will make a decision to permit the establishment of a fund for limitation of liability for oil pollution damage by deposit, or collateral assets that are approved by the Maritime Courts. And this fund does not be affected by any demur of the interested party against the shipowner's claim for limiting its liability. Besides, if the party who suffers the damage fails to register for the creditor's right within the time limit announced, it shall be understood that the party has abandoned their right to receive compensation from the fund for limitation of liability for oil pollution damage. And if this fund is not enough to pay compensation for all damage caused by oil pollution, this fund will be distributed among the relevant parties in proportion to the amounts of their established claims.

2.8. Assessment of chinese laws of civil liability for oil pollution damage caused by ships

China is a State that actively approves international conventions concerning civil liability for oil pollution damage caused by ships; moreover, China also effectively incorporates the regulations of international conventions into national laws. On the basis of the regulations of international laws, China researched their characteristics and particular circumstances to issue its own laws related to civil liability for oil pollution damage caused by ships, this conforms to the general trend of countries in the world.

From the current legal system on civil liability for oil pollution damage caused by ships in China, it shows that China has built the relatively sufficient mechanisms to ensure responsibility for compensation for oil pollution damage when a ship polluting the sea areas under their territorial waters and exclusive economic zone, and with the general principle is that persons who are responsible for the discharge of oil shall be held liable for oil pollution damage. Although China has not ratified the *Fund Convention 1992*, China has built its domestic fund with clear operating regulations of this fund. It helps the victims of oil pollution to have more compensation. China has built specific rules on limitation of liability, compensation, dispute resolution bodies, dispute resolution methods, financial security, insurance, assessment of damage, and procedures for the claim for oil pollution damage caused by ships. On the other hand, China also has clear regulations on the measures of remedy for oil spills.

For the issue of mandatory liability insurance for oil pollution, Chinese laws stipulate stricter than some other international regulations, namely the owners of a ship carrying oil substances, and a ship more than 1,000 gross tonnage carrying non-oil substances must buy civil liability insurance

for oil pollution damage, while the CLC 1992 only requires mandatory insurance for ships carrying more than 2,000 tons of persistent oil in bulk as cargo. Some Chinese scholars maintain that Chinese shipping industry will be impacted by this rule, but it is necessary because 87% of oil tankers operating in China's inland waters are less than 500 gross tonnage (Wu & Han, 2016). And those ships are usually old and equipment of the ships are poor, backward and limited. Moreover, the seafarers are not well trained and have poor qualification. Therefore, oil pollution risk from such ships is high. On the other hand, owners of such ships are usually small private companies. When pollution incidents occur, these companies may become bankrupt and owners of such ships may escape their responsibility for compensation for oil pollution damage.

Chinese laws regulate clearly jurisdiction of the Maritime Courts when an accident causing oil pollution damage, the dispute belongs to the jurisdiction of Maritime Courts. The Maritime Courts have separate jurisdiction for the cases related to compensation for damage caused by marine pollution, disputes concerning the contract of transport of goods at the sea, and other disputes related to maritime shipping claims. These provisions are very advantageous for the plaintiff when claiming for damage caused by oil pollution, and facilitate for collecting, investigating proof and assessing damage after oil pollution occurred. Moreover, the mandatory registration of plaintiff's complaint after the court announced an accident has been stipulated comprehensively and detailed. Procedures for negotiation between the plaintiffs about the division of auction price or the fund of limitation of liability with the support of the courts also contribute to ensure fairness and transparency.

3. Vietnam legal system on civil liability for oil pollution damage caused by ships and compare with china

Currently, concerning with laws of adjustment of civil liability for oil pollution damage caused by ships in Vietnam, in addition to legal documents issued by the State, there are international conventions concerning oil pollution damage caused by ships which Vietnam signed or approved; the international treaties; the general principles of law recognized by countries. In order to have an overview of current Vietnam laws of civil liability for oil pollution damage caused by ships, the author would like to provide an overview of current legal documents of Vietnam related to civil liability for oil pollution damage caused by ships, and the international conventions related to oil pollution damage caused by ships that Vietnam signed.

3.1. Law on environment protection of Vietnam

Law on Environment Protection of Vietnam was adopted in 2005 and was amended and supplemented in 2014. *Law on Environment Protection of Vietnam* has the definitions, concepts and important contents on the environment, such as the definition of environment, the composition of environment, environment pollution; this Law also has the principles of civil liability for pollution damage caused by ships, among of which includes the principle "the polluter pays". This principle is same as the general principle of relevant international conventions, namely Article 127 of this Law stipulates that any person, organization who infringing the law of environment protection cause environment pollution and cause loss to other person and organization must be responsible for remedying the environment damage under the provisions of relevant laws.

Recently, in order to concretize *Law on Environment Protection of Vietnam*, as well as implement it effectively, the Government issued the guidance documents of enforcement and handling the violation causing environment pollution, namely the *Decree No.117/2009/ND-CP* which stipulates the sanction of administrative violation in the field of environment protection. According to this Decree, a maximum fine of 500 million VND⁶ is applied to an act of administrative violation in the field of environment protection and must pay compensation for the environment pollution damage; and the *Decree 137/2004/ND-CP* which stipulates the sanction of administrative violation in the sea areas belonging to the jurisdiction of Vietnam, in this Decree, there are many provisions of the sanction of violation of marine pollution caused by oil, regulations of enforced measures to remedy environment pollution and if causing damage, must compensate for such damage.

Although *Law on Environment Protection of Vietnam* only has the general principle, and there are no clear regulations to distinguish between responsible for remediation, restoration of the environment under administrative law and liability for pollution damage under civil law, this Law and the above-mentioned Decrees have contributed to ensure the implementation of the laws of civil liability for oil pollution damage caused by ships in Vietnam.

3.2. Vietnam maritime code

Vietnam Maritime Code is a specialized law adjusting all legal relations in maritime activities in Vietnam. This Code stipulates the maritime activities, including provisions on ships, crews, ports, navigable channels, maritime transport, maritime safety, maritime security, prevention of environment pollution, limitation of civil liability for maritime claims, indemnification assurance fund, etc., and other activities related to use a ship for purposes of economic, cultural, social, sport, public service, and scientific research.

In order to ensure full and timely compensation for the persons or organizations who suffered loss from oil pollution damage caused by ships, the ships carrying oil, oil substances must have civil liability insurance for oil pollution damage. *Vietnam Maritime Code* stipulates the obligation of the shipowners to purchase civil liability insurance for oil pollution damage. Namely, Article 28 stipulates that ships used exclusively for the transportation of oil, petroleum products or other dangerous goods, the shipowners of such ships must buy the civil liability insurance for oil pollution damage when operating in seaport waters and water areas of Vietnam. This Article, on the one hand, asserts the civil liability for oil pollution damage caused by ships, on the other hand, also provides measures to ensure compensation for oil pollution damage caused by ships. However, this Article applies for “ships used exclusively for the transportation of oil”, but in this Code does not have the concept of “ships used exclusively for the transportation of oil”, how ships will be considered “ships used exclusively for the transportation of oil”. Compared with Chinese laws, China clearly stipulates that civil liability insurance applies to all ships more than 1,000 gross tonnage carrying on board non-oil substances and all ships carrying onboard oil substances operating within the water areas belonging to the territorial sea of China. That is a limitation of this Code, and it leads this Code is ineffective in practice.

Besides, Article 222 of this Code stipulates the limitation of civil liability for maritime claims. However, according to Article 221, claims for oil pollution damage caused by ships are not included in the list of limited maritime claims. Thus, in principle, these claims will be governed in accordance with the provisions of the *CLC 1992* which Vietnam signed. The *CLC 1992* only applies to persistent oil. Therefore, there will be no limitation of civil liability for other oils and oil preparations not within the scope of application of the *CLC 1992* under the provisions of *Vietnam Maritime Code*. That means the total actual oil pollution damage shall be compensated, and it is difficult to implement for large oil pollution incidents. Compared with the laws of China, China specifically stipulates that the limitation of liability of the shipowners is divided into two cases: One case is oil pollution damage caused by persistent oil originating from an oil tanker, and the other case is oil pollution damage caused by non-persistent fuel oil originating from an oil tanker, and fuel oil originating from a ship other than an oil tanker.

The establishment of a fund for limitation of liability for maritime claims was only mentioned generalizable. Article 223 stipulates “persons who are entitled to limit civil liability under provisions of this Code may establish a limitation fund to address maritime claims that they are entitled to limit liability. The limitation fund was established with the value equal to the sum of amounts stipulated in Article 222 of this Code and add interest from the date of occurrence incident arising a maritime claim to the date of this limitation fund was established”. It can be understood that for maritime claims, the shipowners or charterers or persons are entitled to limit civil liability “may establish a fund”, in other words, the establishment of limitation fund has not yet obliged. And under this Code, the maritime claims are those related to the marine operation, it means including the claim of ship oil pollution damage.

Compared to the establishment of the fund for limitation of liability for oil pollution damage under Vietnam laws and thereof Chinese laws, it is easy to find the difference between them. According to Chinese laws, the establishment of the fund for limitation of liability for oil pollution damage is mandatory, while under Vietnam laws, it is not mandatory, and it is a weakness of the Vietnam laws in this field.

This Code also mentioned the maritime lien. However, cases leading to maritime liens do not include environmental pollution, it only mentions damage related to the operation of ships in general. Under provisions of this Code, maritime claims leading to maritime liens includes claims for compensation for life or another injury to human health, claims for non-contractual property loss and damage directly relating to ship's operations.

3.3. Circular No. 2262 to promulgation the guidelines for remedy of oil spills

Circular No. 2262 to Promulgation the Guidelines for Remedy of Oil Spills (hereinafter called the *Circular 2262*) was issued on 29 December 2005, by the Minister of Science and Technology and Environment, with the purpose of laying out the basic principles in dealing with the consequences of pollution as well as claiming compensation for the pollution damage.

The *Circular 2262* stipulates that all Vietnam and foreign organizations or individuals, or joint ventures between Vietnam and foreign that pollute the environment caused by an oil spill incident, shall be responsible for any oil pollution damage in accordance with the laws. Section III.1.e of the *Circular 2262* provides that oil spill incidents often cause serious environmental consequences, the compensation for environmental damage is often so high that exceeding the financial capability of the owners of the vehicle causing oil pollution. In order to be able to pay for such damage, the owners of the vehicle regularly take part in national or international insurance.

The *Circular 2262* also stipulates the scope of damage or loss caused by oil pollution can be paid, namely costs for responding pollution incident; economic loss to organizations and individuals who directly damaged by oil pollution incident; costs for restoring the environment that is degraded by such oil pollution incident; costs for surveying and establishing basis for assessment of economic and environment damage. Compared with the provision of the *Fund Convention 1992*, this Circular does not mention the costs for using advisers. And it only regulates direct economic loss, not extending to pure economic loss.

The *Circular 2262* provided the basis for compensation for oil pollution damage caused ships, but it still has limitations. This Circular does not mention the dispute settlement principles and does not mention the issue of compensation when the damage exceeds the limitation amount that insurance allows.

3.4. Decision No. 02/2013/QĐ-TTg to promulgate the regulation on oil spill response

Decision No. 02/2013/QĐ-TTg to Promulgate the Regulation on Oil Spill Response (hereinafter referred to the *Regulation on Oil Spill Response*) was issued in January 2013 and amended on 11 November 2014. The *Regulation on Oil Spill Response* stipulates a principle for determination of damage, civil liability of organizations and individuals causing damage and addressing sequence of compensation for damage. It can be said that the *Regulation on Oil Spill Response* has contributed to strengthen Vietnam law system in relation to the civil liability for oil pollution damage caused by ships. The *Regulation on Oil Spill Response* includes the main following contents:

The principle of compensation: According to Article 5(7) of the *Regulation on Oil Spill Response*, the party causing the oil spill shall be liable for compensation for damage caused by that spill in accordance with the laws.

Financial security to compensate for oil pollution damage caused by ships: The owners of ships more than 1,000 gross tonnage must buy civil liability insurance for oil pollution damage caused by ships or obtain corresponding other financial security.⁷ Certificate of insurance or financial security for civil liability for oil pollution damage must obtain on board for presentation when required by the competent authority.

Temporary detention of ships to investigate and identify the causes of oil spills: In the case of necessity, port authorities may decide the temporary detention of ships for investigation of accidents and identification of causes of oil spills.⁸ Thus, the *Regulation on Oil Spill Response* clearly stipulates the competent authority for the temporary detention of ships for investigation of accidents and identification of causes of oil spills, it is port authorities. However, the *Regulation of Oil Spill Response* only stipulates in “case of necessity”, there is no clear provision in which case is “case of necessity”. Therefore, the temporary detention of ships is difficult in practice.

Determination of the damage caused by oil spills: The damage that caused by an oil spill means the loss of human, property, economy or the environment, including injury or death caused by oil spills; property loss of any organization or individual; loss of environment, aquaculture, tourism, and ecology; costs used for response of organizations and individuals that involved in responding to oil spills; costs for taking reasonable measures to restore the environment; loss of profits due to the effects of oil spills.

Claim for compensation for damage: Organizations and individuals suffering damage from oil spills shall have the right, directly or through their lawyers, claim against the owners of ships that causing oil spills to pay compensation for damage caused by oil spills. Thus, the victims of oil pollution damage can only claim against the shipowners, while the insurers and other persons providing financial security are not mentioned. Comparing with Chinese laws, that is the limitation of Vietnam laws on the claim for compensation for oil pollution damage, Article 97 of *Special Maritime Procedure Law of China* stipulates that the victims suffering damage from oil pollution can claim directly against the insurers and other persons providing financial security.

3.5. Other relevant documents

On the basis of the *CLC 1992* and the *Bunker Convention 2001* to which Vietnam is a Member State, the Minister of Transportation has issued the *Circular No. 12/2011/TT-BGTVT* to stipulate the issuance and revocation of the certificate of insurance or financial security under the *CLC 1992*, and the *Circular No. 46/2011/TT-BGTVT* to stipulate the issuance and revocation of the certificate of insurance or financial security under the *Bunker Convention 2001*, namely:

With the case of transporting oil on board as cargo: Under the *Circular No. 12/2011/TT-BGTVT*, Vietnam ships and ships flying the foreign flag that carry in exceed 2,000 tons of oil in bulk are required to have insurance or financial security for civil liability for oil pollution damage, and the competent authority shall issue certificates of insurance or financial security for civil liability for oil pollution damage.

For fuel oil used to operate the ships: Under the *Circular No. 46/2011/TT-BGTVT*, Vietnam ships with a tonnage more than 1,000 gross tonnage operating in international routes are required to have insurance or financial security for civil liability for fuel oil pollution damage. Vietnam ships with a tonnage more than 1,000 gross tonnage operating in domestic routes and foreign ships with a tonnage more than 1,000 gross tonnage if requested by the shipowners, shall be issued the certificate of insurance or financial security for civil liability for fuel oil pollution damage. Although the purpose of this Circular is to effectively implement the *Bunker Convention 2001*, it does not mention the limitation of liability for bunker oil pollution, while the *Bunker Convention 2001* doesn't provide a clear limit amount for it. This is the limitation of this Circular, which may cause the ineffective implementation of the *Bunker Convention 2001* in Vietnam. Compared with Chinese, there are clear provisions of limitation of liability for bunker oil pollution. According to *Provision of*

the Supreme Court of China, the limited amount of liability for bunker oil pollution shall be calculated according to the relevant regulations of general maritime claims under *Chinese Maritime Code*.

These certificates of insurance or financial security are issued by the ship registration agency, and ships must carry onboard its originals when ships navigating to prove that these ships have purchased insurance or financial security for civil liability for oil pollution damage. In the case of lack of this certificate, the shipowners shall be sanctioned for administrative violations according to the provisions of law. The sanction provided in those Circulars is only administrative punishment, and it does not specify the extent of the penalty but only stipulates in general that will penalty under the law.

Vietnam Law of the Sea in 2012: Vietnam National Assembly adopted *Vietnam Law of the Sea in 2012*, which is to institutionalize relevant contents recorded in previous legislation documents, to improve legal framework on using, management and protection of the sea in general, protection of the marine environment in particular, and to develop Vietnam marine economy. *Vietnam Law of the Sea in 2012* recorded management principles and unified protection of marine according to provisions of Vietnam laws, appropriate with the United Nations Charter and other international treaties that Vietnam is a Member State. This Law also has provision of responsibility for oil pollution damage, but like some other legal documents, it just provides a general principle, namely Article 35 of this Law stipulates that ships, organizations, and individuals who violated provisions of Vietnam laws and relevant international laws cause to affect resources and marine environment in the sea areas, ports, sheltering and anchoring place of Vietnam shall be punished under the provisions of Vietnam laws and international laws to which Vietnam is a Member State. If causing damage by such violation, they must clean, restore the environment and compensate for damage in accordance with provisions of law.

Decision No. 103/2005/QĐ-TTg stipulates the principles of determining the oil pollution damage, civil liability for oil pollution damage of organizations and individuals who caused oil pollution, and the procedures of claim for compensation for oil pollution damage. This Decision identifies the agency to be responsible for dealing with the oil pollution damage, this agency means the Provincial People's Committees when oil spills occurred in the scope of that provincial. However, its limitation is that it does not mention oil pollution incidents occurred in the range of many provinces.

4. Lessons for vietnam learned from china

Based on the study and comparison of provisions of Chinese laws and Vietnam laws on civil liability for oil pollution damage caused by ships, the author offers some lessons for Vietnam as following:

4.1. Strengthen the signing and implementing the international conventions related to civil liability for oil pollution damage caused by ships

Like China, Vietnam joined the *CLC 1992*. The joining of the *CLC 1992* has contributed to improving mechanism of compensation for oil pollution damage in Vietnam. However, if Vietnam just joined the *CLC 1992* but not joined the *Fund Convention 1992* and its amendment by Protocol of 2003, when oil pollution occurred, it would be very difficult to claim full compensation or equivalent with actual damage occurred, especially when an accident caused serious pollution damage. Vietnam's sea is located on important international shipping route with the number of ships arriving and leaving is increasing, the risk of marine pollution caused by ships is also increasing. The joining of the *Fund Convention 1992* and amended by Protocol of 2003 is necessary for Vietnam, then if oil pollution damage occurs in Vietnam's sea, we can claim full and satisfactory compensation from the IOPCF.

From experience of China, Vietnam had signed the *Bunker Convention 2001*, in order to create favorable condition for identifying the responsibility of the shipowners when an oil pollution incident occurs, we need to actively incorporate regulations of the *Bunker Convention 2001* into

the regulations of the national laws. And on the foundation of regulations of international conventions, we should issue its own law that is appropriate with our particular characteristics and circumstances, this is necessary for Vietnam in the present stage. Moreover, Vietnam should continue to approve other international conventions concerning civil liability for oil pollution damage caused by ships.

4.2. Build a specialized law of civil liability for oil pollution damage caused by ships

Vietnam has some legal documents stipulate the civil liability for oil pollution damage caused by ships, but the legal documents related to this issue are still inadequate, non-consistent and ineffective, which cause Vietnam often meeting difficult when addressing and placing the responsibility for polluters, especially placing the responsibility for source causing oil pollution and a person who is responsible for compensation for damage. Therefore, Vietnam needs to have a plan to assembles all of the legal documents of civil liability for oil pollution damage caused by ships into a unified legal document, from which to build a specialized law, law of civil liability for oil pollution damage caused by ships.

In order to have the basis for placing the responsibility and calculating the damage when oil pollution occurs, the law of civil liability for oil pollution damage caused by ships should clearly define the function, duty, and right of an institution and relevant individual when oil pollution occurs. Moreover, Vietnam needs to have clear provisions of costs of oil pollution damage caused by ships which can be compensated, including environmental damage caused by the oil spills; actual costs for reasonable measures to restore environment which have been taken or will be taken; the costs of prevention measures and loss or damage arising from prevention measures taken after an incident occurred, or even if an oil spill does not occur, as long as it has a serious threat, etc.

4.3. Establishment of maritime judicial system

Currently, Vietnam has not had a specialized court to deal with maritime disputes, the complaint about marine pollution, oil pollution caused by ships, compensation for oil pollution damage caused by ships, etc. Moreover, oil pollution caused by ships has its own characteristics and often causes major consequence for the environment. When oil pollution occurs, it is still difficult to address maritime disputes due to lack of specialized court. Therefore, Vietnam, learning the experience from China, should carry out quickly the establishment of a specialized court to resolve maritime disputes, in which include oil pollution damage caused by ships. Under *Special Maritime Procedure Law of China*, the settlement of disputes related to maritime claims, the claims concerning compensation for marine pollution damage, and disputes involving the implementation of contracts that related to carriage of cargo at the sea belong to the jurisdiction of Maritime Courts.

When Vietnam carried out the establishment of a specialized court to resolve a case related to the maritime claims, it will be very advantageous for plaintiffs to claim for damage and also facilitate gathering, investigating proof and assessing damage when oil pollution occurs. Because the oil pollution damage caused by ships usually is great, it needs experts to offer the right decisions about the level of indemnification corresponding with actual damage.

In China, for the issue of the process of the claim for compensation for oil pollution damage, there are not only the provisions of *Civil Procedure Law* but also the provisions of *Special Maritime Procedure Law of China*. *Special Maritime Procedure Law of China* has its own provisions on procedure for addressing the lawsuit related to maritime claims, such as jurisdiction, application of ensuring measure, arrest and auction a ship, preservation of maritime evidence, etc. This is an issue that Vietnam needs to study, apply as soon as possible. And in order to implement it, first of all, we should amend *Vietnam Maritime Code*, adding the necessary regulations related to this issue. Then, we should research to build a specialized law in this field—like China.

5. Concluding remarks

Research the Chinese laws from which to draw lessons for Vietnam learning in the field of law of civil liability for oil pollution damage caused by ships is necessary. These experiences may be valuable lessons for Vietnam because these countries have a comprehensive enforcement mechanism and a complete legal system in this field. However, when learning experiences from other countries, we should consider these factors in accordance with the economic condition, science, technology, and in accordance with specific situation and characteristic of Vietnam.

Funding

The author received no direct funding for this research.

Author details

Pham Van Tan
E-mail: phamvantan@vimaru.edu.vn
Vietnam Maritime University, No. 484 Lachtray street,
Haiphong city, Vietnam.

Citation information

Cite this article as: Civil liability for oil pollution damage caused by ships: Chinese legal system and reference to Vietnam, Pham Van Tan, *Cogent Business & Management* (2019), 6: 1699285.

Notes

1. Including the economic loss, the loss of natural resources.
2. According to statistics of Vietnam Maritime Bureau in 2015.
3. CMC means *Chinese Maritime Code*.
4. Including operator and charterer.
5. CLC 1992, Article VII (1).
6. VND means Vietnam dollar.
7. *Regulation on Oil Spill Response*, Article 9.
8. *Regulation on Oil Spill Response*, Article 30.

References

- East Sea - Endless source of life. (2010). <http://biendong.net/gioithieubiendong/155-bien-dong-nguon-song-vo-tan.html>
- Han, L., & Wei, K. (2014). Law and practice of civil liability insurance for ship-source oil pollution damage in China. In Eds., J. Hjalmarsson & D. Huang *Insurance Law in China* (221–235). London: Informa Law from Routledge. doi:10.4324/9781315768021.
- Hui, W. (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.
- Khee, A., & Tan, J. (2005). *Vessel-source marine pollution. The law and politics of international regulation*. New York: United States of America: Cambridge University Press. doi:10.1017/CBO9780511494628
- Ministry of Transport of People's Republic of China. (2013). Measures of China for the implementation of civil liability insurance for ship-induced oil pollution damage of China. www.lawinfochina.com
- Ministry of Transport of People's Republic of China. (2014). The Notice of the ministry of finance and the ministry of transport on issuing administrative measures for the collection and use of compensation funds for Vessel-Induced Oil Pollution Damage of China.
- Standing Committee of the National People's Congress of People's Republic of China. (1999). Special maritime procedure Law of China.
- Status of Conventions. (2017). <http://www.imo.org/About/Conventions/StatusOfConventions/Documents/status-x.xls>
- Summary report of Vietnam Maritime Bureau. (2012). <http://www.vinamarine.gov.vn/Index.aspx?page=detail&id=630>
- Supreme People's Court of People's Republic of China. (2011). 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 of China.
- Wu, H., & Han, L. (2016). Legal issues arising under the direct action framework in relation to oil pollution damage. In Eds., J. Hjalmarsson & J. Zhang *Maritime Law in China*. London: Routledge(158–172). doi:10.4324/9781315618296



© 2019 The Author(s). This open access article is distributed under a Creative Commons Attribution (CC-BY) 4.0 license.

You are free to:

Share — copy and redistribute the material in any medium or format.

Adapt — remix, transform, and build upon the material for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Under the following terms:

Attribution — You must give appropriate credit, provide a link to the license, and indicate if changes were made.

You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.

No additional restrictions

You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits.



***Cogent Business & Management* (ISSN: 2331-1975) is published by Cogent OA, part of Taylor & Francis Group.**

Publishing with Cogent OA ensures:

- Immediate, universal access to your article on publication
- High visibility and discoverability via the Cogent OA website as well as Taylor & Francis Online
- Download and citation statistics for your article
- Rapid online publication
- Input from, and dialog with, expert editors and editorial boards
- Retention of full copyright of your article
- Guaranteed legacy preservation of your article
- Discounts and waivers for authors in developing regions

Submit your manuscript to a Cogent OA journal at www.CogentOA.com

