Estuarine, Coastal and Shelf Science 140 (2014) 76–82

Contents lists available at ScienceDirect

Estuarine, Coastal and Shelf Science

journal homepage: www.elsevier.com/locate/ecss

Compensation for the damages arising from oil spill incidents: Legislation infrastructure and characteristics of the Chinese regime

Peng Zhang, Ruijun Sun, Linke Ge*, Zhen Wang, Hong Chen, Ziwei Yao

Key Laboratory of Coastal Ecology and Environment of State Oceanic Administration (State Oceanic Administration), National Marine Environmental Monitoring Center, Linghe Street 42, Shahekou District, Dalian 116023, China

ARTICLE INFO

Article history:
Received 10 October 2012
Accepted 8 October 2013
Available online 16 October 2013

Keywords:
oil spill incidents
Chinese compensation regime
environmental losses
compensation scope
theoretical calculation models

ABSTRACT

In this paper, the current Chinese regime focusing on the compensation for the environmental damages arising from the seaborne oil spill pollution was introduced, with respect to legislation infrastructure and characteristics. By now, a two-tier compensation regime, consisting of a liability scheme and a fund scheme, has already been established in China through referring to the international conventions and other states' regimes. Although its essential parts were almost identical to those of international conventions, several significant differences exist, including the norms about liability exemption and the third party liability, the fund collection and usage, as well as the amount of the levied contribution and the Special Drawing Right ceiling. With the broadens of the environmental liabilities, the longstanding issues of environmental losses arising from oil pollution have been increasingly involved in intense debates since the international conventions and some states' legislation covered them into the claim scope. A Chinese technical guideline dealing exclusively with the environmental losses was presented in detail; moreover, the differences between this guideline with the US approach were compared with respect to the compensation goals, the calculation methodologies and the compensation pathways. In the past decades, the Chinese authority has successfully settled down some famous major oil spill incidents in courts under its domestic legislation and local regulations, but the arguments on these litigations kept heated, which prompted some eco-economical experts to resolve several issues urgently, such as the compensation scope, the compulsory claim procedures, and the assessment methods of ecological compensation. Hence, some continuous efforts should be taken to explore these solutions, which are truly helpful to satisfy the requirements of the full compensation for the oil pollution damage and the marine environment protection.

1. Introduction

The oil spill incidents, a class of the most serious human-made ecological disasters, generate devastating consequences of the eco-environment damage, public food sanitation anxiety and economic losses. These incidents have also given impetus to the developments of maritime standards and safety legislation, which have often been updated as a direct response to major incidents (Vanem et al., 2008). The *Exxon Valdez* incident (Alaska, 1998), one of the best-known oil spill incidents in the world, drew some denunciations of the compensation adequacy issue under the international regime and subsequently induced the US to take a domestic-legislation-oriented approach instead of participating in the international conventions (Kim, 2003). *Prestige* oil spill (Spain, 2002) made the scientists and official authorities realize that the huge environmental damages had been neglected, so that the legislation amendment was put forward to considering a comprehensive methodology including the non-commercial compensation (García et al., 2007). Consequently, a lot of the international and governmental agencies take efforts in elevating the efficiency of clearing polluted environment, assessing the environmental damage, as well as constructing claim proposal. Nevertheless, the universal liability and compensation regime coping with the oil spill incidents is still being searched for (Kim, 2003).

Recently, the amount of petroleum and its refined productions transported in the seas of China was ranked the third in the world, immediately following the US and Japan; therefore, China increasingly suffers the oil pollution incidents in marine and coastal environment. It was reported that 14 major oil spill incidents,

* Corresponding author.
E-mail addresses: zhp04@mails.gucas.ac.cn (P. Zhang), rjsun@nmemc.gov.cn (R. Sun), lkge@nmemc.gov.cn (L. Ge), zwang@nmemc.gov.cn (Z. Wang), hchen@nmemc.gov.cn (H. Chen), zwyao@nmemc.gov.cn (Z. Yao).

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http://dx.doi.org/10.1016/j.ecss.2013.10.004

where the major incident referred to an incidents with over 50 tons oil released into the coastal area, were caused by foreign-flapped tankers and 29 incidents were caused by domestic tankers from 1973 to 2004. All of the responsible parties of foreign tankers have paid compensation for the oil pollution, with the average amount of ¥8.28 million. However, only the losses of 11 of 29 incidences resulted from domestic tankers were compensated with the subpar financial amends. The reasons why the compensation rate of these incidences was unsatisfying low and the victims failed to receive adequate compensation were in that the responsible parties could not afford these damages and the legislation regimes of compensation for oil pollution were not established by then, the latter of which is the overarching issue (Han, 2008).

In this paper, we will present the framework and characteristics of the Chinese regime. Special emphasis is put on the current theoretical model of eco-environmental damage calculations under Chinese Technical Guideline, which is a novel approach to determine the eco-environmental damages and worthwhile to discuss its rationality and feasibility. Thus, the main aims of this paper are to:

- briefly introduce three kinds of compensation regimes in the world, including International Civil Liability Convention–International Oil Pollution Compensation Fund (CLC–IOPC Fund) regime and the Chinese regime;
- present the Chinese two-tier structure compensation regime and compare the differences among Chinese liability and fund schemes with those of international conventions;
- define the environmental loss scales as well as their calculation methodology, especially for the ecological damage;
- and point out the defections and development perspectives according to the discussion aforementioned in order to satisfy the requirement of protecting the environment and keeping sustainable development of the marine environment.

2. The general compensation regimes in the world

The states in the world are generally categorized to three groups on the basis of the characteristics of the regime they adopting. The states belonging to the first group fully accept CLC and IOPC Fund Conventions, so that they deal with the seaborne oil spill incidences based on these conventions. The majority of leading maritime states in the world adopts this legislation regime, such as South Korean and Japan (Cho, 2010). The states of the second group depend on their own domestic laws instead of taking part in any international conventions organization. For example, the US applies a unilateral approach under its domestic laws, which is characteristics of the significant differences on the broader liability limits and the scopes of recoverable damages, as well as the usage of theoretical equivalency methodology for evaluating the natural resource damages. The other states establish a class of complex regimes combining the international conventions and domestic laws, such as Canada and China.

2.1. The international CLC–IPOC Fund regime

The international regime consists of two sets of co-existing internationally conventions, i.e., CLC and IOPC Fund Conventions, both of whose objectives are to compensate the victims of oil pollution damage from tankers in the respective contracting states through a tiered or layered system, whereby liability of the owner of the polluting vessel is supplemented by additional compensation available from a fund, which is financed by oil cargo receivers in contracting states. The CLC 69, which entered into force in 1975, established the first tier of compensation for oil spills from ships that carry oil as cargo. The Fund 71, which entered into force in 1978, provides the second tier of compensation in respect of damage in excess of the liability available under the CLC 69 but, once again, subject to an overall monetary cap per incident. Accordingly, the 2003 Supplementary Fund Protocol was adopted to introduce an optional third tier of compensation for Contracting States to the CLC 92 and Fund 92 (UNCTAD, 2012).

2.2. The Chinese regime

CLC 92 and International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention) are now the primary sources of international conventions exclusively for dealing with the oil spill damage induced by the non-domestic tankers in China. With respect to Chinese domestic legislation system, several laws and regulations compose Chinese legislation regime, including Marine Environmental Protection Law of the People's Republic of China (Marine Law), Water Pollution Prevention and Control Law of the People's Republic of China (2008 revision) and its implementation provisions, Maritime Code, Tort Law, Regulations on the Prevention and Control of Vessel-induced Pollution to the Marine Environment (Prevention Regulations), Provisions of the People's Republic of China on the Prevention and Control of Vessel Pollution of the Inland Water Environment, and Administrative Provisions on the Emergency Prevention and Handling for Vessel-induced Pollution to the Marine Environment as well as the Supreme Court of China in the year 2011 issued a Judicial Interpretation as supplements.

As a member state of CLC 92, China definitely adopts the two-tier structure composed of a liability scheme and a fund scheme. Meanwhile, some norms of domestic laws and regulations are also slightly different to the international conventions in order to reduce Chinese shipowners' financial burden and protect the interests of the transport industry.

2.2.1. Liability scheme

As a developing country, China is impeded to fully accept the international conventions coping with the oil spill incidents because the transport industry is not capable of affording the heavy levied contributions. For the purpose of protecting the interests of seaborne transportation industry and the marine environment, Chinese regime generally absorbs the essential parts of CLC, but it still adopts a particularly limited liability scheme under the domestic Laws, i.e., the limited liability scheme stipulated by CLC 92 should be applied when the facts of a vessel-induced oil spill incident meet the requirements of the conventions, but when the oil pollution incidents are beyond CLC 92's scope, Maritime Code should prevail.[1] The Prevention Regulation[2] and the aforementioned Judicial Interpretation[3] also favor that opinion. Except for the different usage scenario, several distinct differences in the liability schemes of CLC–IPOC Fund regime and Chinese schemes with respects of the responsible parties' definition, reliabilities limits, third party responsibility, the ceiling Special Drawing Right (SDR), and so on (see Table 1 and Fig. 1).

2.2.2. Fund scheme

Since Fund 92 is not under the obligation to provide compensation for the damages occurring in a non-contracting member

[1] Specifically, Article 210 of Maritime Code stipulates the limitation of liability for maritime claims, while Article 208 excludes its application when the case is covered by CLC 92.

[2] Article 52.

[3] Article 5.