

# Civil Liability for Ship-Source Oil Pollution: Russian Legislation and Reference to Vietnam

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## ABSTRACT

Several cases of oil pollution from ships happened in Vietnam, causing severe consequences. However, the compensation for ship-source oil pollution damage has not been really adequate and commensurate with the actual losses. It can be explained that, although Vietnam has participated in a number of relevant international treaties in this field, such as The Protocol of 1992 to the International Convention on Civil Liability for Oil Pollution Damage (CLC 1992), International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker 2001), the internal legalization has not been proper. Even if after joining CLC 1992, the legal system on compensation for oil pollution damage from ships at sea in Vietnam has been significantly improved in order to fully develop the legal system, it is indispensable to learn legal experience from other countries. Therefore, in order to address the limitations and find solutions in Vietnam's current regulations, this paper focuses on analyzing and comparing the Vietnamese and Russian legislation on civil liability for ship-source oil pollution, based on the main contents of CLC 1992 (both Vietnam and Russia acceded to CLC 1992) such as party involved, limitation and compulsory insurance. The author will make some recommendations from the analysis and the comparison in order to improve the civil liability law for ship-source oil pollution in Vietnam.

**Keywords:** *civil liability, ship-source oil pollution, Vietnam, Russia, CLC 1992*

## 1. INTRODUCTION

The Vietnam Sea and adjacent waters are home to important sea routes. The East Sea is located on the arterial sea transport route connecting the Pacific - Indian Ocean, Europe - Asia, the Middle East - Asia. These transported roads are considered the second busiest international transport route in the world.

Each day, there are about 150-200 ships of all kinds going through the East Sea. They are an essential way to transport oil and commercial resources from the Middle East, Southeast Asia to Japan, Korea, and China. Annually, about 70% of the volume of imported oil and about 45% of the size of Japanese exports is transported via the East Sea. About 60% of imports and exports and 70% of China's oil imports are transported by sea via the East Sea [1]. The usual transport activities associated with oil transportation cause severe oil pollution. For example, oil tankers discharged into the sea to 0.7% of their cargo during regular shipping [2].

According to statistics, from 1992 to now, there have been 190 oil spills in Vietnam [3]. As can be seen from statistics of International Tanker Owner Pollution Federation Ltd (ITOPF), among the 39 countries listed in the statistics, Vietnam is one of the three states (along with China and the United States) with the highest number of oil spills with the number of 10 incidents or more in the period from 2005 to 2014 [4]. On the other hand, the consequences of

marine pollution caused by oil from ships' accidents in very serious and catastrophic. Therefore, the control of marine oil pollution for coastal countries like Vietnam is essential from economic and social perspectives.

However, the claim for damages caused by the oil spill in Vietnam is very modest; 77% of the damage has not been compensated or is in the process of settling [4]. One of the most apparent causes is that the application of too many different normative documents in the identification of damages and the process of claiming damages from oil pollution at sea. It means there are many shortcomings in Vietnamese law with regard to civil liability for ship-source oil pollution.

Thus, the analysis of civil liability for ship-source oil pollution is an urgent and essential problem for Vietnam. Besides, Vietnam also needs to know the experience of other states that have the legal system of civil liability for damage from oil pollution done by ships, as well as the experience of handling and remedying for oil pollution harm. For the above reasons, the author will study Russia's legal system on civil liability for ship-induced oil pollution damage, then put forward some suggestions for Vietnam on learning Russia's experience in this area.

## 2. MATERIALS AND METHODS

The author uses several different materials during the study of the topic, as follows: the legal system can be divided into two groups:

- international legal systems are related conventions such as International Convention on Civil Liability for Oil Pollution Damage 1992, International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) 1992,

- national legal systems, contained system of Vietnamese and Russian legal documents.

Besides, in the article the author also uses other materials such as books and articles that in-depth research about the legal systems.

Based on the above materials, the author has used many different research methods, including the following specific methods:

- the analytical method applied to analyze the provisions on civil liability for marine oil pollution at the national and international levels and in theory and practical scope.

- an important method used is the comparative method applied when considering issues of law regulating civil liability for oil pollution from ships in Vietnamese, Russian, and international regulations.

As we can see from above studies the positive points in Russian law as well as the limitations in Vietnamese law, in order to make recommendations that can be applied to improve Vietnamese laws.

### **3. THE LEGISLATION SYSTEM**

#### **3.1. *International conventions***

a) The Protocol of 1992 to the International Convention on Civil Liability for Oil Pollution Damage, 1969 [CLC 1992];

CLC Convention first came into force in 1969 and was called CLC 1969. This Convention was amended in 1992. CLC 1992 was amended in 2000 to increase the amount of compensation. This Convention determines the liability of the parties in case of oil pollution damages. CLC refers to the pollution incidents of persistent oils. CLC convention can be summarized in four points.

- The shipowner shall be liable for the oil spills originating from his ship

- There are very few exceptions to this shipowners' liability in the event of oil spills from their ships

- There is a limitation of liability set out in CLC according to the tonnage of the ship. This limit will not be applicable if the owner is at fault

- Shipowners are obliged to take out insurance to cover their liabilities in the event of oil leakage from their boats.

b) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1969 [Fund 1969]; the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1969 [Fund 1992], Protocol establishing an International Oil Pollution Compensation Supplementary Fund, 2003 [SF 2003];

Fund Convention 1969 set up an international fund which provided compensation over the vessel owner's liability under the CLC, or where the owner is insolvent or not liable under the CLC. Fund Convention 1969 is amended by the Fund Convention 1992. Fund 1992 – IOPC 1992 is a global intergovernmental organization established to run the compensation system according to FUND Convention 1992. Besides that, SF 2003 was created to supplement the inadequacy of CLC 1992 and Fund 1992.

Fund convention is not a stand-alone convention. It is related to the CLC convention. Countries that have ratified the CLC convention only become eligible to ratify the Fund Convention. Scope of application for fund convention is the same as the CLC convention.

c) The Convention on Limitation of Liability for Maritime Claims, 1996 [LLMC 1996];

For participating countries, LLMC 76 replaces and provides significantly higher levels of a liability than the LLMC 1957. Amendments to increase the limits of liability in the 1996 Protocol to the LLMC were adopted by the Legal Committee of the International Maritime Organization (IMO). The LLMC Convention sets specified limits of liability for two types of claims against shipowners - claims for loss of life or personal injury and property claims (such as damage to other ships, property, or harbor works).

d) International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 [Bunker 2001];

The Bunker 2001 is an addition of CLC and FUND systems to marine pollution caused by other oils not covered by CLC and FUND. CLC and Fund's regime applied to "any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil, and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship," Bunker Convention 2001 filled the gap in "any residues of such oil," according to Article 1 (5) of Bunker Convention 2001, left behind by the CLC and FUND.

e) International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 [HNS 1996] and its 2010 Protocol [HNS Prot 2010] <sup>1</sup>

The HNS provides a liability and compensation regime based on a two-level system such as the CLC and Fund Conventions for oil pollution: The first compensation level is the responsibility of the shipowner, the second is paid by the HNS Fund contributed by the parties involved in the cargo. The Convention covers not only pollution but also other risks such as fire and explosion caused by Hazardous and Noxious Substances (HNS).

The compensation is not only for pollution damage occurring in the territory, territorial waters but also extending to the exclusive economic zone. The HNS Convention places strict liability on ship owners, liability limits that are higher than the general limitation regime, and a compulsory insurance system and certificate.

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<sup>1</sup> Not yet in force

Among the above conventions, Russia has currently participated in CLC 1992, FUND 1992, LLMC 1996, BUNKER 2001, HNS 1996, and Russia is not a party to the 2010 Protocol to the HNS Convention. Meanwhile, Vietnam has been a member of CLC 1992, BUNKER 2001.

### **3.2. Russian and Vietnamese legislation**

- Russia has implemented the conventions, to which Russia acceded, to federal law, in most cases under the Merchant Shipping Code of the Russian Federation (MSC).

MSC Chapter XVIII implements the terms of the CLC 1992. MSC Chapter XIX.1 applies the terms of the Bunker Convention. MSC Chapter XIX fulfills the terms of the HNS Convention, but that Convention has not yet come into force. LLMC 1996 is implemented in MSC Chapter XXI. The 1992 Fund Convention is implemented in a separate law.<sup>2</sup>

- In Vietnam, the civil liability regulations on ship-source oil pollution are distributed in different legal documents. So, when there are related lawsuits or complaints, the applicable law is mostly based on the rules of general laws governing matters, which are scattered in Civil Code 2015, a law on protection environment 2015, Law of Maritime Code 2015, along with other bylaws.

## **4. PARTY INVOLVED**

In general, there are two parties involved in civil liability and marine oil pollution claims: one party is responsible for claims, while the other party is harmed and is entitled to a lawsuit (the claimant).

The person who suffered damage and has a right to a claim is the same among most countries of the world. Russia and Vietnam also follow the same general principle, that is, any person who suffers losses from marine oil pollution is entitled to claim damages, including the competent authorities on behalf of the state, any organizations and individuals.

For those responsible for compensation, the regulations on liable parties are governed by international conventions, Article III of the Convention CLC 1992, stipulates the owner of a ship shall be liable for any pollution damage caused by the ship as a result of the incident. On the other hand, the shipowner in Article 1, (3) of the Bunker convention is defined more broadly than in CLC, "the

owner, including the registered owner, bareboat charterer, manager, and operator of the ship." Both Russia and Vietnam are members of CLC 1992 as well as Bunker 2001, but there is a difference in the internal legislation.

Russia: According to Article 8 of MSC, the shipowner is understood to be "a person who operates the vessel in his own name, whether being the owner of it or on any other lawful basis." Article 1079 of the Civil Code establishes that only the shipowner and no other persons (the possessor ship, his employees) are liable for damage caused by pollution. MSC does not exempt the owner of the vessel (the insurer of his liability or persons who provided other financial support) from liability for damage if the vessel has dropped out of its possession as a result of unlawful actions of other persons, and does not place it on such persons. In some cases, such actions may fall under the provisions of Article 317 MSC, exempting the owner of the vessel from liability for other reasons.

Vietnam: Currently, Vietnamese law does not have a specific regulation on the liable party for compensation for marine oil pollution from the ship. The 2015 Civil Code provides for the liability for environmental damage, whether or not there is an error, but the entity polluting the environment and causing damage must pay compensation following the law. Article 602 of the 2015 Civil Code provides for compensation for damage caused by environmental pollution: "Any entity polluting the environment, thereby causing damage, must compensate following the law, including when the entity polluting the environment was not at fault." The Law on Environmental Protection also has the same provisions.

In the Maritime Law, there is no explicit provision on this issue. Still, the regulation on the legal status of the shipmaster in Article 52, states: "The shipmaster works under the direction of the shipowner or charterer, operator." Alternatively, Article 286 (liabilities of the shipmaster associated with a collision) mentioned the responsibility of the shipowner. Along with Vietnam's participation in CLC 1992, it is understandable that the shipowner is a civil liability. According to Article 15: Ship owner refers to the person who owns a ship, and "bareboat manager, operator, or charterer shall be allowed to exercise rights and fulfill obligations as a shipowner prescribed by this Code as agreed upon with a shipowner." As such, the liable party may be the shipowner, bareboat manager, operator, or charterer.

## **5. LIMITATION OF LIABILITY**

The consequences of maritime oil pollution are diverse and complex. Moreover, the compensation and remediation sometimes go beyond the ability of the shipowner, even the ability of the nation. The consequences of maritime oil pollution can be broken down into damage to the environment and loss of profit (for example, fishing, tourism, transportation industries). In terms of the main conventions regarding this issue, pollution damage includes both damages. Of course, liability for maritime oil pollution also covers both damages.

<sup>2</sup> Federal Law N 26-FZ of 02/01/2000, On the Accession of the Russian Federation to the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, and the Denunciation by the Russian Federation of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

The liability of the shipowner is strict, i.e., if a causal link can be established between the oil spill and the pollution damage, the shipowner shall be liable for pollution damage, even though there are some exceptions. According to Article III, (2) of CLC 1996, Article 3 (3) Bunker 2001, No liability shall attach to the ownerships if they prove that:

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by any act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

Furthermore, when considering the actual circumstances, in a situation not entirely the fault of the shipowner. If the shipowner demonstrates that the pollution damage resulted in whole or in part either from an action or omission has done with intent to cause damage by the person suffering the damage or from the negligence of that person, the shipowner may be freed wholly or partially from liability to such person.

Nowadays in the international level, the compensation regimes for persistent oil pollution damage from tankers have a three-tier system, follows as:

- The CLC 1992 provides the first tier of compensation which is paid by the shipowner

**Table I Limitation of shipowner’s liability to an amount established by ship’s size under the clc 1992**

Ship’s tonnage	CLC Limit
Ship not exceeding 5000 units of gross tonnage	4 510 000 SDR <sup>3</sup>
Ship between 5000 and 140 000 units of gross tonnage	4 510 000 SDR plus 631 SDR for each additional unit of tonnage
Ship 140 000 units of gross tonnage or over	89 770 000 SDR

- FUND Convention 1992 provides a second tier of compensation when the amount available under the CLC 1992 is insufficient and also when the shipowner is exempt from liability or is financially incapable of meeting its obligations under the CLC 1992. FUND 1992 currently offers up to 203 million SDR in coverage for each oil spill incident, which includes any compensation paid by or on behalf of a shipowner under the 1992 CLC.

- Supplementary FUND Protocol 2003 offers a third tier of compensation in cases where the protection afforded

<sup>3</sup> Special Drawing Rights: an international reserve asset created by the International Monetary Fund (IMF) in 1969 to supplement the existing official reserves of member countries.

under the 1992 CLC and the 1992 Fund Convention is insufficient. The maximum amount of compensation available under the 2003 Supplementary Fund is 750 million SDR, which includes any compensation paid under the 1992 CLC and the 1992 Fund.

Russia: Chapter XVIII of MSC, which is based in the CLC Convention, gives provisions on liability for oil pollution and the limitation of liability; and chapter XX.1 of the Code put in to effect the provisions of the Bunker 2001. According to them, owners of all vessels with a gross tonnage of 1,000 tons and above have the right to limit their liability, which is also in line with Convention LLMC 1996. Individually, the limitation of liability is regulated in Chapter XXI of the MSC (article 354-366), where the provisions of the Convention LLMC are implemented. In 2016, the applicable liability limits were those set by the 2012 Amendments to the LLMC, which are executed into article 359 of MSC [5].

Article 331 of MSC regulates a shipowner shall be entitled to limit his liability toward one incident by the total sum calculated as follows:

- 10 million units of account for a ship with a tonnage of not more than 2,000 tons;
- for a ship with a tonnage of over 2,000 tons, it is necessary to add the following units of account to the amount, for each subsequent ton of capacity (for a ship from 2,001 to 50,000 tons - 1,500 units of account; for a ship of over 50,000 tons - 360 units of account) provided that the total sum under the circumstances exceeds 100 million units of account.

In opposition to the provisions of the CLC Convention, Russian legislation prescribes compensation for marine oil pollution damage (or other pollutants) based on a formula, in which the size of the compensation depends on the amount of oil spilled. Nevertheless, in cases within the scope of the CLC, the CLC shall prevail over national legislation.

Vietnam: According to Article 300 of the 2015 Maritime Law, claims for oil pollution damage excepted from the limitation of liability. This may explain that the damage caused by oil pollution is often considerable, if civil liability limits apply to these claims, then Vietnam will not receive full compensation. Such grievances must thus, in theory, be addressed in compliance with the terms of the 1992 CLC Convention to which Vietnam has acceded. However, CLC 1992 applies only to a small range of oils that are not soluble. Therefore, for other types of oil that are not within the scope of CLC 1992, according to the provisions of the Vietnam Maritime Code 2005, it will be done in the direction of the damage to the extent of compensation there.

## 6. COMPULSORY INSURANCE

In most countries and even at the international level, to meet the potential liability risks, a shipowner is required compulsory insurance or financial security. Maritime insurance has a particularly vital role to play in the development of transportation, for ship owners and for

nations. It is the means “by which those who own or are interested in or responsible for a maritime property seek to protect themselves in respect of loss of or damage to it and against liabilities to other parties falling upon them arising out of their ownership, interest or responsibility” [6].

Under the 1992 CLC, to cover shipowner’s liability for pollution damage under the Convention, the owner of a ship registered in a Contracting State and carrying more than 2,000 tons of persistent oil in bulk as cargo must maintain insurance (or other financial security). Insurance must also be applied to any ship, wherever registered, entering or leaving a port or terminal within the territory of a Contracting State. A Contracting State must certify insurance, and ships must carry a state-issued certificate confirming that the ship is so insured (or covered by other financial security) [7].

Russia: Insurance or other financial assurances shall be needed of vessel owners carrying HNS [8]. Article 334 of the MSC provides: the owner of the ship carrying dangerous and harmful substances shall insure or provide any other financial security of liability (a bank guarantee or a guarantee of any other credit organization) to the amount equal to the limit of his liability following Article 331 of this Code, to ensure the liability of the shipowner when damage occurs.

Vietnam: Article 105 (4) of Maritime Law 2015 states: Ships specially engineered to transport oil and petroleum products or other hazardous goods are required to have civil liability insurance purchased by the shipowner against environmental pollution issues when underway within the Vietnamese port water area and waters. This provision, on the one hand, affirms the legal obligation to compensate for damage caused by oil pollution from ships, on the other hand, it provides measures to ensure compensation, which is that the shipowner must have civil liability insurance for environmental pollution when the ship is specially used to transport oil.

## **7. LESSONS FOR VIETNAM LEARNED FROM RUSSIA**

We realize that the process of internalization of Russian international conventions is evident and specific. However, Vietnam has not performed well. Vietnamese laws need to be updated to comply with the 1992 CLC convention to which Vietnam is a contracting member, such as the liable party, establishment of a limited fund, limits on liability for shipowners [9].

Vietnam needs to enact a special law regarding civil liability for oil pollution damage caused by ships. Such specialized law will provide Vietnam with a legal basis for assessing losses, calculating the extent of damages, and compensating for adequate damages when oil pollution occurs. Special laws need to be consistent with the conventions Vietnam has acceded to, especially the 1992 CLC Convention. The purpose of this law is to compensate and adequately protect the interests of organizations and individuals for damage caused by oil pollution caused by

ships and to establish a legal framework to ensure compensation for oil spill victims in Vietnamese waters.

## **8. CONCLUSION**

From current Russian and Vietnamese legal research on civil liability issues for marine pollution caused by oil from ships, along with the actual situation of inadequate compensation in the above cases in Vietnam, the author recognizes the need to improve the Vietnamese law in the field of oil pollution caused by ships. The author has proposed several solutions to perfect the Vietnamese legal system in this regard.

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