

On the Liability of Owners of Non-Oil-Spill Ships for Oil Pollution Damage Resulting from Ship Collisions

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Abstract: There is a lack of clear provisions in international conventions and Chinese domestic law regarding liability for oil pollution damage caused by ship collisions with non-oil spill vessels. Theoretical perspectives on the responsibility to be borne by non-oil spill vessels vary, as do differences in maritime judicial practice. By reviewing relevant provisions of international conventions and Chinese domestic law, this paper proposes a clear framework for addressing theoretical viewpoints and the current state of maritime judicial practice concerning liability for oil pollution damage caused by ship collisions involving non-oil spill vessels. Additionally, the Maritime Law establishes rules governing liability for oil pollution damage caused by non-oil spill vessels and presents potential solutions.

Keywords: Limitation of Maritime Liability; Limitation of Carrier's Liability; Limitation of Liability

1. Introduction

As far as compensation for oil pollution damage caused by an oil spill resulting from a ship collision is concerned, the 1992 International Convention on Civil Liability for Oil Pollution Damage should be applied to regulate the subject of liability and the principles of attribution of liability for oil pollution damage related to ships.

1.1 Current Status of Research

If the entire process of handling disputes over oil pollution damage from ship collisions is divided into different stages, the issues of competence and jurisdiction can be considered as upstream issues, while the characterization of the act, identification of the liable party, and application of relevant laws are midstream issues. The downstream issues include the injured party's method of claiming, determination of damages scope, and

compensation for damages. In cases where oil spill pollution occurs due to a single-ship accident, solutions to these aforementioned issues are straightforward and less dispute arises in practice. However, in cases involving oil spill pollution caused by ship collisions, its unique and complex legal nature leads to mixed involvement of multiple subjects, objects, causes, and results; thus controversies arise regarding behavioral characterization, subject identification, and responsibility allocation. Particularly in situations where two ships share negligence resulting in an oil spill on one vessel, the academic community debates on what kind of civil liability should be borne by the non-oil spill ship.[1]

1.1.1. Provisions of international conventions and national law on non-oil spills in oil pollution damage from ship collisions

The international conventions signed by China have been widely used in maritime law academia and judicial trials to determine and define the liability of non-oil-spill ships, covering two important aspects. The 1992 CLC clearly stipulates the scope of application, including various circumstances that may lead to an oil pollution incident, such as oil pollution damage caused by ship collision. However, this provision only applies to ships transporting bulk petroleum-based cargoes, whether these mineral oils are carried on board as cargo or in the fuel tanks of the ship, which cause pollution damage by spilling or discharging persistent hydrocarbon mineral oils. The Convention establishes a general principle of liability for oil pollution but is applicable only to shipowners of oil-spill ships. The "damage due solely to the intentional act or omission of a third party" clause of the Convention applies specifically when a non-spill ship intentionally causes a collision with another ship resulting in an oil spill. In this particular case, the non-oil-spill vessel may be considered as a third party responsible for causing oil pollution damage and therefore liable for it. Hence, it is only

under such circumstances that the Convention involves the liability of non-spill ships. It should be noted that there are no other provisions in the Convention that can be used to interpret and recognize liability arising from ship collisions.

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (CLC 2001), expressly regulates the allocation of liability in relation to oil pollution damage. Article 3 specifically states that a shipowner shall be liable for accidental pollution damage arising from fuel oil carried on board or originating from a ship. Similar to the 1992 CLC, the Bunker Oil Convention also applies to situations where a non-spill ship intentionally or unintentionally causes a collision with another ship, thereby triggering oil pollution damage. It includes damage resulting from such intentional or omission in the exemption of the shipowner's liability for damages "arising solely from the intentional act or omission of a third party causing damage." This provision clarifies the liability of non-spill ships for oil pollution damage resulting from collisions. [2] However, it should be noted that the Bunker Oil Convention does not cover other provisions determining the liability of non-oil spill ships arising from collisions with ships apart from this provision. Based on these stated provisions of conventions related to oil pollution damage that have been enforced in China, it can be clearly concluded that these conventions do not clearly stipulate the assumption of responsibility by non-oil spill vessels regarding oil pollution damages caused by ship collisions.

1.1.2. Current Status of Chinese Maritime Law Legislation

Apart from the provisions of articles 22, 208, and 265, which expressly deal with claims for compensation for oil pollution damage, the other articles of the Maritime Law do not provide detailed specifics regarding liability for oil pollution damage. Although article 169 provides for liability in case of ship collision, it does not explicitly apply to liability for oil pollution damage caused by ship collisions. When addressing the issue of oil pollution damage resulting from ship collisions, two major deficiencies can be identified in the Maritime Law. Firstly, it has not been clarified whether article 169 is applicable to determining the liability of non-oil spill vessels for oil

pollution damage arising from ship collisions. Secondly, it has not been clarified whether the 1992 CLC (Civil Liability Convention), Bunker Oil Convention or domestic legal provisions relating to environmental pollution damage can be utilized to determine the liability of non-oil spill vessels concerning oil pollution damage resulting from ship collisions. In general terms, there are gaps in the Maritime Law when dealing with issues related to assuming liability for oil pollution damage caused by ship collisions involving non-oil spill ships.

Due to the legal uncertainty and deficiency, there has been controversy in the maritime law academic community on the issue of the responsibility of non-oil spill vessels for oil pollution damage caused by ship collision. The main views are as follows.

1. The oil spill vessel bears the liability for oil pollution damage

Oil pollution damage, as a special tort, invokes the principle of no-fault liability in its application. In the case of a ship collision, although the collision serves as the background of the incident, it leads to oil leakage and subsequently causes oil pollution damage. However, it should be clarified that the root cause of the oil pollution damage is not the collision itself but rather the resulting oil spill. While a collision does not necessarily result in an oil spill, once such a spill occurs, it inevitably leads to oil pollution. Therefore, responsibility for the oil spill lies with the vessel responsible for spilling it and they should be held liable. This viewpoint aligns with the "oil spillers are responsible" principle established in 1992 CLC (Civil Liability Convention). According to this principle, first and foremost, liability falls on the vessel causing an oil spill and then can be recovered from any non-spill vessel based on their proportionate liability for causing or contributing to a collision. Although a collision sets up the context for this incident, it is crucial to clarify that it was ultimately caused by an underlying factor - namely, an oil spill. In this case, allocation of liability should consider both compensating injured parties fairly and reflecting core responsibility attributed to vessels involved in causing an oil pollution problem.

2. Both ships involved in the collision are liable for oil pollution damage based on their respective shares of collision liability. The term

'third party property loss' mentioned in Article 169(2) of China's Maritime Law should be interpreted to include compensation for oil pollution damage. As a consequence of ship collision, oil pollution damage naturally falls within the scope of compensation for the collision. The main idea behind this provision is that if both ships are at fault and cause third-party property damage, their liability should be apportioned according to their respective levels of responsibility. This broad provision applies to all types of property damage, including oil pollution damage. Therefore, following the principle outlined in this provision, oil pollution damage resulting from a ship collision should also be considered as part of third-party property damage and compensated accordingly.

3. The collision of the two sides of the ship bears joint and several liability for oil pollution damage compensation. Article 1168 of the Chinese Civil Code clearly stipulates that "if two or more persons jointly commit a tortious act and cause damage to another person, they shall be jointly and severally liable." According to this view, oil pollution damage is considered a direct consequence of the ship collision. In this case, there is a clear causal relationship between both parties involved in the ship collision and the oil pollution damage. The occurrence of oil pollution damage was triggered by the shared action or intention of both ships, so it is reasonable to consider both parties as perpetrators of a common tort. Therefore, according to this perspective, both parties involved in the collision should be held liable for oil pollution damages. Based on the principle of joint torts, both parties should be jointly and severally responsible for compensating victims. This viewpoint emphasizes the shared responsibility of both parties in the ship collision incident and their direct role in causing oil pollution damages. According to relevant provisions in China's Civil Code, when multiple individuals commit a joint tort resulting in damages, all perpetrators are collectively liable for compensation to ensure appropriate restitution for victims. This mode of assuming liability not only maximizes the protection of victims' rights and interests, ensuring that they can recover compensation from non-oil-spill vessels even if the oil-spill vessel goes bankrupt, but also facilitates speedy settlement of oil pollution cases without waiting for judgment on

proportionate liability in ship collision cases. The advantage of this approach is that it guarantees reasonable compensation for victims facing oil pollution damage regardless of whether the oil-spill vessel is insolvent or not. Additionally, it avoids long waiting times as victims do not need to wait for a percentage-of-liability trial outcome before filing a claim for oil pollution damages. This expedites case handling, improves judicial efficiency and reduces victim burden. Overall, this way of assuming responsibility significantly safeguards victims' rights and interests while promoting efficient case settlement.

1.2 Analysis of the Issue

According to the principle of "whoever spills oil, whoever pays", when a ship collision results in an oil pollution incident, the ship that spills oil is first required to assume full liability for oil pollution damage, which requires that the liability of the vessel that spills oil be prioritized in the compensation process. Subsequently, the oil spill vessel is needed to prove through suitable evidence that the non-oil spill party was negligent in the collision before it can seek partial recovery of damages. Although this compensation model increases the burden of the oil spill vessel in legal proceedings to a certain extent, in the case where the non-spill party has limited financial strength, the oil spill vessel may face the risk of failure to recover damages, which may lead to difficulties for the oil spill vessel in obtaining due compensation from the non-spill party.

If the oil spill vessel is unable to bear the liability and the non-spill parties do not share the joint and several liabilities, it will be difficult for the victims to be compensated for their losses. Therefore, adherence to the principle of "whoever spills oil, whoever pays" may give rise to unfairness, especially when the limit of maritime liability of the oil-spill vessel is relatively low.

Given these potential problems, it is necessary to further explore and improve the relevant compensation mechanism on the premise of ensuring the rights and interests of the victims. This may include raising the limit of liability of the oil spill vessel, setting up an appropriate recovery mechanism, and giving due consideration to the actual situation of the non-oil spill party in the recovery process to promote a fair compensation outcome.

The approach of sharing the oil pollution liability between the two parties to the collision in proportion to their fault may be motivated by the need to ensure that the liability limit of the oil-spill vessel will not be less than the amount of compensation, thereby more fully protecting the compensation interests of the oil pollution victims. However, in this case, in practice, oil pollution victims are not assured of adequate compensation. This is because the limit of liability for maritime compensation under the Maritime Law may be significantly lower than the portion of the liability for oil pollution damage to be borne by the non-oil spill vessel. Moreover, this limit of liability has to take into account not only oil pollution damage, but also other property damage, and therefore, in this context, oil pollution victims may be exposed to the risk of a reduction in the total amount of compensation. The original intention of this approach was to ensure that the liability of the oil spill vessel would not be lower than the actual amount of compensation, to better protect the rights and interests of the victims. However, taking into account the existence of limits of liability, especially in the case of multiple compensation scenarios including oil pollution damage, may lead to the dispersion of the total amount of compensation, thus limiting the actual amount of compensation received by the victims. In this case, it may be necessary to further examine the setting of limits of liability and how to balance different types of damages more effectively within the legal framework to ensure that victims can obtain just and adequate compensation.

In addition, if the method of sharing the liability according to the proportion of fault is adopted, it will lead to the problem of determining the proportion of fault and proof. The court must first resolve the issue of the proportion of responsibility shared by both parties to the collision before it can further hear cases related to oil pollution compensation. This may result in oil pollution victims not being able to obtain compensation promptly, which is not conducive to the protection of their rights and interests. In addition, it may also increase the burden of proof on oil pollution victims, who need to prove not only the causal relationship between the collision and the oil pollution but also the fault of the colliding party in respect of the oil pollution damage. However, this is contrary to the trend of modern tort law

which emphasizes the strengthening of victim protection.

In dealing with the issue of joint and several liability for oil pollution damage shared by both parties to the collision, some difficulties do exist. First of all, the establishment of joint and several liability needs to be stipulated by law. Only when the law expressly provides for joint and several liabilities under certain circumstances will the tortfeasor be forced to assume joint and several liabilities? For example, Article 169 of China's Maritime Law provides that joint and several liability must be assumed in the event of a collision resulting in personal injury or death. However, on the issue of joint and several liability about oil pollution damage caused by collision, the 1992 CLC provides that joint and several liability applies only in the case of multi-ship oil pollution damage caused by an accident that cannot be easily separated. However, in the case of an oil spill from only one vessel, it is not possible to explicitly include the non-oil-spill party in the scope of joint and several liability together with the oil-spill party, and it is difficult to reasonably apply to such a situation.

In addition, at the time of the ship collision, the possibility of prior agreement between the two parties was almost non-existent, so it is difficult to argue for the establishment of joint and several infringements. These issues indicate that in cases involving oil pollution damage resulting from collisions, there are challenges to the rationality and feasibility of sharing joint and several liabilities between the colliding parties.

2. Solution Paths

Against the background of the current emphasis on the rights and interests of victims in tort law and environmental protection law, due consideration should be given to the fact that oil-spill ships are able to rely on the support of the Ship Oil Pollution Damage Compensation Fund. Therefore, in formulating the law, it is not appropriate to directly define the non-oil spill ship as the main bearer of responsibility for oil pollution damage compensation. In order to better meet the needs of maritime justice, it is necessary to actively seek new solutions to the problem.

2.1 Clear Ship Collision and Oil Pollution Damage Legal Relationship

Ship collision and ship oil pollution behavior of the legal relationship between the ship collision is properly dealt with by the ship collision of oil pollution damage caused by the necessary prerequisite for compensation. As a general tort, ship collision should be dealt with by applying the principle of fault liability; however, pollution caused by ship collision is a special tort and should be dealt with by adopting the principle of strict liability. This legal definition will provide clear legal guidelines for those cases involving ship collision and oil pollution damage, and help to ensure that the rights and interests of the victims can be fully protected. However, there is no fixed direct link between ship collision and oil pollution damage. One correlating factor between the two is oil spillage, and collision may lead to oil spillage, thus becoming a possibility for oil spillage to occur.[3] However, collisions do not necessarily trigger oil pollution problems. Therefore, the collision of ships and the oil pollution damage caused by it can be regarded as two independent legal issues.

2.2 Clarifying the Claims Application Process of Ship Oil Pollution Damage Compensation Fund

It is recommended that the maritime courts at all levels strengthen the communication and cooperation at the practical level with the relevant management organizations of the ship oil pollution compensation fund when dealing with disputes involving ship collision and pollution cases. This close cooperation mechanism will help to establish a close link between the court proceedings and the fund's claims handling, thereby better-guiding oil pollution victims who are unable to obtain adequate compensation from the oil spill vessel to apply to the fund. In this way, the Fund can more effectively play a complementary role in the field of compensation for oil pollution damage from ships and ensure that the rights and interests of victims are fully protected. This

coordinated and cooperative approach will help realize reasonable compensation for victims and maintain fairness and justice in the maritime field.

3. Applying the Bunker Oil Convention to Supplement and Improve the Legal Adjustment Path in China

The Bunker Oil Convention also adopts an innovative approach to the assumption of pollution liability. According to the provisions of Article 3 of the Convention, the registered owner, bareboat charterer, ship operator, and manager of the ship that caused the pollution shall jointly and severally be liable for the resulting fuel oil pollution. The innovation of this provision is that it specifies the scope of the subjects responsible for pollution and requires these subjects to be jointly liable in order to ensure that victims can obtain adequate compensation. This innovation in compensation helps to promote environmental awareness and the safety of maritime transportation, thus safeguarding the marine ecological balance and the common interests of mankind. Given that China has become a member of the Bunker Oil Convention and that its domestic law does not conflict with it, consideration should be given to adopting and implementing this provision.

References

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