

Lessons Learned for Vietnam from Studying Korean Law on Protection of Marine Environment from Ship Oil Pollution

Pham Van Tan

Abstract—Is a coastal country, with the natural characteristics, geographic location, Vietnam maritime operations have favorable conditions development for the purposes of trade, tourism, services, exploration and exploitation of natural resources and geodetic survey..., bring a lot of value to the development of the country. However, with the development of the maritime, the Vietnam sea is facing marine pollution by maritime operations, the marine resources are diminished. Although there are many solutions but the real effect is not high. Law on pollution control in the marine operations is limited. Maritime law of 2005 only have 4 rules stipulate the prevention of environmental pollution. Environmental Protection law of 2005, only stipulate principle of the protection of the marine environment in general. Management state system of control marine pollution in Vietnam have many shortcomings. Thus the study of international law as well as law of some countries in the region to learn experience is necessary and urgent now. This article mainly study the Korean law on protection of marine environment from ship oil pollution as well as the actual situation of Vietnam law on protection of marine environment from ship oil pollution. From which point out some lessons learned for Vietnam to improve the system of law on protection of marine environment from ship oil pollution.

Keywords—Korean law, Protection of marine environment, Law, Oil pollution.

I. KOREAN LAW ON PROTECTION OF MARINE ENVIRONMENT FROM SHIP OIL POLLUTION

KOREA has signed international conventions on Oil Pollution Prevention such as: International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC 1990); International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION 1969); International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 1992) and 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992); International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78); International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS 1996);

International Convention for the Safety of Life at Sea (SOLAS), etc.

To implement the commitments after becoming a membership of the international conventions, Korea incorporated the provisions of the international convention in the national law. Korea issued written system of marine environmental protection, prevention of oil pollution caused by ships, one of which may mentioned are: Environmental Conservation Law of 1977; Coastal Management Law of 1999; Environmental Protection Law of 1980 (amended 1986, 1999). Damage Compensation law of 2009; Marine pollution prevention law of 2004.

29 December 1995, South Korea adopted the marine pollution prevention law. Until now, this law was modified three times in 1997, 1999, and 2004. Marine pollution prevention law of Korea was issued with the purpose is the protection of the health and property of citizens through the protection of the marine environment by provisions on discharge of oil, hazardous substances or waste into the sea, and minimize the factors causing marine pollution.

Marine pollution prevention law of Korea has 8 chapters and 80 articles, provides the concept of “oil”, “liquid”, “hazardous liquids”, “hazardous material in packaged form”, “waste”, “ships”, “tanker”, etc; measures to prevent marine pollution; protection of the marine environment; provides for a claim for damage of the marine environment caused by oil pollution; the necessary measures to improve the marine environment and the provisions on punishment for organizations or individuals when they violate the provisions of this law.

A. Application scope

The scope of application of the marine pollution prevention law is stipulated in Article 3 as follows: The provisions of this law is applied with the following types of marine pollution:

- 1) Marine pollution in the sea area adjacent to the territorial of Korea.
- 2) Marine pollution caused by the exploitation of seabed under the Article 3 of the seabed resources development law.
- 3) Marine Pollution caused by Korean vessels under Article 2 of the marine vessels law.

B. General measures to prevent marine

General measures of prevention of marine pollution are stipulated in Article 4 as following: Minister of Aquaculture

and Fisheries will establish and implement general measures to prevent marine pollution after consultation with the heads of the government agencies involved, and such general measures including: The policy orientation for the prevention of marine pollution; implement prevention of marine pollution in present and future; measures to prevention of marine pollution; develop the technologies of marine pollution prevention; international cooperation in preventing marine pollution; and the necessary measures to protection of marine.

Marine pollution prevention law of Korea in 2004 stipulated the Minister of Aquaculture and Fisheries build the basic management plan to protect the environment marine and areas are stipulated special management, at the same time, the this law stipulates management agency of sea areas must use all necessary measures to prevent oil pollution caused by leakage or accumulation of waste, such as: Installation of the equipment to prevent leakage of sewage; cancellation and garbage treatment; and dredge the deposition waste. At the same time, the Marine pollution prevention law of Korea has the rules on compensation for marine environmental damage caused by oil, such as: If any damages caused by the discharge of oil or any noxious liquid, State may require the agency has made the discharge of oil must pay damages.

C. Provisions on discharge oil, hazardous liquid, or waste from ships

Marine pollution prevention law of Korea has very strict regulations on the discharge of oil, hazardous liquid or waste from ships. Prohibits any persons discharge oil from the ship into the sea, at the same time, this law stipulates the shipowners should be responsible for installing the equipment to prevent oil leaks (called the oil pollution prevention equipment), or the oil residues must be stored in containers on board, and make sure their vessels compatible with the standards of structural and stability are stipulated in the Circular of the Ministry of Aquaculture and Fisheries to prevent marine pollution.

The discharge of the oil residues (sludge) of the ship is stipulated in Article 8 as following: The oil residues (sludge) must be stored on board, and is only discharged by dedicated vehicles under Article 45 of Marine pollution prevention law, or is transferred to processing enterprises under the Article 37 or the individuals operate the vehicles used to store under the Article 46; Shipowners want to burn the oil residues (sludge) and other waste, the ship must be installed the combustion equipment compatible with the standards are stipulated in the Circular of the Ministry of Aquaculture and Fisheries; This provisions shall not apply to cases of oil residues (sludge) is discharged on land in accordance with provisions of the water quality protection law and the controlling waste law.

D. Regulation on inspect the equipment to prevent marine pollution for ships

Inspection of the equipment to prevent marine pollution for ships include:

Regular inspection: inspection is performed when the pollution prevention equipment installed on board for the first time, or upon expiry of the validity under Article 30; Preliminary inspection: inspection is performed at the time,

which is stipulated between the time of inspection by the Circular of the Ministry of Aquaculture and Fisheries; Temporary inspection: inspection is performed when pollution prevention equipment is replaced or repaired.

Marine pollution prevention law of Korea also has provisions on the supervision for foreign vessels operating in the Korea: If you see the pollution prevention equipment of foreign ship operating at sea ports of Korea does not meet the technical standards in accordance with international conventions, Minister of Aquaculture and Fisheries will require captain must replace or repair this equipment, and implementation of other necessary measures.

E. Regulations on measures to prevent and treat marine pollution

Article 48 stipulates the measures to prevent and treat the discharge of waste as oil:

In the case of the waste as oil is discharged illegally, the individual is stipulated following will done all necessary measures and immediately to prevention of the waste is split into the sea and treat this waste: Captain, or manager of waste discharge equipment or oil storage equipment; The person is not related to the vessel or equipment, but has committed acts such as discharge of this waste.

If the person in the cases are stipulated in above paragraph has not done any measures to prevent and treat, National Coast Guard Agency may request that person must perform.

Marine pollution prevention law of Korea stipulates the specific sanctions, in the cases of individual or organizations pollute in Article 71: Any person discharge oil that violated the provisions of Article 5(1) shall be punished with the imprisonment not exceeding 5 years or money penalty not exceeding 50 million won.

II. ASSESS THE KOREAN LAW ON PROTECTION OF MARINE ENVIRONMENT FROM SHIP OIL POLLUTION

Korean law on prevention of marine pollution caused by ship oil is relatively perfect. Korea not only is countries actively approve the international conventions on marine pollution prevention caused by ship oil, but also has incorporated effective the international law in the national law, on the basis of the provisions of international law, study the characteristics and specific circumstances of their country to compatible with international law, from this study build its own laws "marine pollution prevention law", which is consistent with the general trend of countries on the world.

The claim for compensation for damage caused by oil pollution at sea when the incidents occurred, Korea does not build its own legal process to apply for compensation for the damage, but apply the provisions of the Fund Convention, 1992. because Korea has signed the CLC Convention 1992 and Fund Convention 1992, at the same time, law on compensation for damage caused by oil pollution of Korea is built on the basis of the provisions of the CLC Convention 1992 and Fund Convention 1992. Moreover, Korea is one of the countries with a very important role in contributing to the Fund 1992.

III. ACTUAL SITUATION OF VIETNAM LAW ON PROTECTION OF MARINE ENVIRONMENT FROM SHIP OIL POLLUTION

A. Achievements

System policies and laws on the protection of the marine environment has been developed and perfecting. The state management agencies system to protect the marine environment from the central to local levels have gradually been strengthened and operational stability. Funding for the protection of the marine environment has been enhanced. Has a lot of the content on the prevention and control of pollution and conservation has achieved encouraging results.

Issued several policy: stipulates the management of marine protected areas in Vietnam, manage natural resources and protect the marine environment; combine between law enforcement involved and the protecting the marine environment has been gradually consolidating.

Have done some of projects with high efficiency such as: exploitation and sustainable use of marine resources; statistics, classification, assessment of marine natural resources, response, prevent oil spills.

Besides, actively promulgate legal documents on protection of the marine environment, Vietnam has gradually approve international treaties on the marine environment. Approving convention is an important prerequisite for the integration of the law of Vietnam with the standards and indicators of international law.

B. Limitations and shortcomings

Besides the achievements, there are a lot of limitations and shortcomings: from the fact, we see the pollution and degradation of the marine environment increasing. Have a lot of reasons but the most basic reason is because we do not have a complete legal system and synchronization in this field. On some fields missing high validity documents, the regulations are scatter, and are stipulated in the documents and a lot of different levels. The rules were still weak about ability adapt with changes occurring in reality. So, sometime the state management agencies run under the temporary solution, and really embarrassing in many cases because lack of regulations to handle, there are many duplicate content, even regulations contradicted with other documents, therefore difficult to apply in practice. Can point out the weaknesses of the laws system of the marine environment:

Firstly, the law on environmental protection and other legal documents on natural resource or regulate activity in the manufacturing process and the business was still have some overlap and contradiction makes the application of the law very difficulties. Besides, the rules on environmental protection in the legal documents also quite general, especially in the other specialized legal documents very faint and difficult to implement.

Second, lack of law enforcement mechanism on the protection of the marine environment, a mechanism to ensure enforcement of national legislation as well as the implementation of international commitments, treaties on the environment is not high.

Third, the legal documents on the protection of the marine environment in adjust activities of human on the marine environment are issued slow and asynchronous in both of time and content.

Fourth, the law on the protection of the marine environment do not have the appropriate remedial measures for the offender, so difficult to apply in practice.

Fifth, do not have enough legal documents to raise the participation and contributions of all organizations and individuals in the protection of the marine environment.

Lacks a lot of legal documents, mechanisms, policies for management and protection of the marine environment; management capacity natural resource and protecting the marine environment is limited; equipment, facilities serve management integrated marine environmental and resources is lacking; environmental pollution of coastal water is increasing, oil pollution has become widespread, heavy metal pollution has occurred in some places.

IV. SOME LESSONS LEARNED FOR VIETNAM TO IMPROVE THE SYSTEM OF LAW ON PROTECTION OF MARINE ENVIRONMENT FROM SHIP OIL POLLUTION

Vietnam has joined the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention, 2001), from the experience of Korea, we need to quickly incorporate the provisions of the Bunker Convention 2001 in the national law to facilitate the determination of liability of the shipowner when pollution occurs. At the same time, Vietnam need to actively join other international conventions related to marine pollution, and to strengthen international cooperation on the protection of the marine environment. International cooperation should be conducted in the field of education and training, building law, signing and implementing international treaties, organizational structure of the management, oil spills, communication, science and technology.

In the maritime field: Advantages of building and improve the law on prevention of marine pollution in the maritime field is the content of MARPOL Convention 73/78. Vietnam laws in this field less concerned is: Applying the regulations of the Convention, stricter enforcement, and conversion of these regulations of the Convention on the law of Vietnam. Must stipulate measures to verify thoroughly investigated for violations of the Convention, and stipulate stricter sanctions with violations. In addition, the regulations on civil liability of shipowners for environmental damage must also be consistent with the International Covenant and civil Vietnam laws. These regulations must be clear and concrete. Need to study the characteristics of Vietnam, determine fully of the relationship that the Convention has not mentioned to supplement in the Law. To resolve these requirements, should continue to promulgate additional documents on the prevention, treatment and remediation of oil pollution that the Maritime Law of 2005 is still missing - especial is the regulations on liability compensation for damage caused by oil pollution.

With the Environmental Protection Law: Amend and supplementing the Environmental Protection law towards

identifying marine environmental protection is a separate part, and prevention of marine pollution by oil are stipulated in a chapter with the basic content: concept of environmental sea, marine pollution, marine pollution by oil and other concepts related; the primary source can pollute the sea, marine pollution caused by oil pollution originating from land (operating in the industrial sector), from the operation of ships, from exploration and exploitation of oil and gas, fishing ...; the main measures for the prevention, troubleshoot of marine pollution by oil; rights and fundamental obligation of organizations and individuals in the implementation of the regulations on the prevention, troubleshoot of marine pollution by oil ... In the troubleshooting pollution by oil will have basic contents include: Rights and obligations of organizations and individuals in response, troubleshoot of oil pollution, coordination with international organizations, foreign in troubleshoot of oil spills, as well as remedy the consequences caused by oil.

With the procedures for dispute resolution: Need soon issue arrest ship ordinances serve for resolving maritime claims, including complaints about compensation for damage by oil pollution at sea. Currently, the procedure for resolving civil lawsuits for compensation for damage by oil pollution is still applied Civil Law. However, research characterized of the compensation for damage related to maritime operations to take toward building Maritime Procedure Law and establish specialized courts resolve disputes related to the sea. Also, need to study the regulations on the organization and operation of international courts, international arbitration on maritime law to resolve according to the procedures instead of resolve according to negotiation, diplomacy as current.

V.CONCLUSION

The marine environment pollution caused by oil is a matter of concern not only in Vietnam but also in many other countries. With increasing oil pollution, Vietnam marine environmental protection law is facing new challenges. The study the law of some countries such as Korea to learn experience, from such experience will help Vietnam improve the system of marine environmental protection laws. Moreover, learning experience of other country is needed to help ensure the rights and legitimate interests of Vietnam, is motivation to standardize domestic policy mechanisms and improving the position of Vietnam in the international area.

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