

Suggestions for Improving Vietnam Laws on Marine Environment Protection from Contamination Caused by Ship's Garbage

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Abstract

Due to the fact that Vietnam legal system on marine environmental protection is still inconsistent and deficient, as focusing only on the protection of marine environment either in general or environmental pollution from oil and noxious liquid substances, but lacking a concentration on marine contamination caused by ship's garbage. It is explained that Vietnam only joined Annexes I and II of International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (hereinafter referred to as the MARPOL 73/78), which serves as a prerequisite condition and fundament of researches and legal system on protection of marine environment. Owing to the lack of in-depth study of the issues, this article is written to describe and analyze the current status of Vietnam laws on the marine environment preservation. Moreover, suggestions for improving the Vietnam legal system on the marine protection from ship's garbage are suggested in this paper.

Keywords: International conventions, improve, Vietnam laws, suggestions, ship's garbage

1. Introduction

In recent years, being conscious of the importance of marine environment protection, Vietnam has actively participated in many important international conventions on marine environment protection, such as International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78)-annex V, United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982). In addition, Vietnam is also making efforts to overview and to upgrade legal documents in this field. In general, the law of Vietnam on marine environment protection from contamination caused by ship-source as well as by ship's garbage achieved many encouraging achievements, however, there are still have many inadequacies that need to be further researched to improve. The achievements and limitations of Vietnam laws on this field will be discussed in the next part.

2. Literature review

Impacting directly on sustainable development of many coastal countries all over the world, marine environment protection has always been a focus of a number of scientific researches. There is a list of research papers dedicated to problems of marine pollution, caused by oil from ships, to the improvement of marine environment protection laws in general, and laws on compensation for oil pollution in particular. Wanghui (2011) analyses an issue of compensation for oil pollution in his comprehensive research "*Civil liability for oil pollution marine damage - A comparative study of the economic and international*". "*The International Legal Framework for the Prevention of Vessel-Source Pollution and Its Implementation in Chinese Legislation*" of Yan xiaoLu (2011) is dedicated to the overall analysis of marine protection from vessel-source pollution. Sony Vijayan (2014) focuses on the control system of vessel source pollution in maritime port in India in his study "*Indian law on control of vessel source pollution in maritime port*". Moreover, international marine laws and international conventions in general, as well as marine legal system of Vietnam in particular are discussed clearly in many researches, such as: Mai Hai Dang (2013), "*International and Foreign Laws on the Prevention of Oil Pollution at sea from Ships*", *PhD Thesis*, Hanoi National University; Nguyen Thi Hong Nhung (2013), "*Vietnam Law and International Conventions on Marine Environmental Protection*", *Master Thesis*, Hanoi National University; Pham Van Tan (2017), "*A Comparative Study of the Civil Liability Regime of International, China, Korea and Vietnam for Oil Pollution Damage caused by Ships*", *PhD Thesis*, Dalian Maritime University, etc.

However, there is apparent deficit of studies, dedicated directly to the problem of marine environment protection from the effects of ship's garbage, which is one of the potential causes of long-term pollution. The impact of ship's garbage on marine environment in the long run is only mentioned in an article "*Environmental protection at port area: A study on ship-generated garbage management system in Haiphong port, Vietnam*" of To Ngoc Thang (2015).

In addition, study the legal documents of China and Australia laws on the marine environment protection from the effects of ship's garbage, which give valuable experiences and lessons for Vietnam to improve the laws on this field, are considered reliable theoretical basis for this research.

3. Actual situation of Vietnam laws on the marine environmental protection from contamination caused by ship's garbage

3.1 Achievements

Over the past few years, Vietnam has become a member of many international conventions on marine environment protection and incorporated international treaties into the Vietnam legal system. Remarkably, in 2015, Vietnam officially became a member of annex III, IV, V, VI of MARPOL 73/78¹, as well as two appendices I and II. Vietnam has fully taken part in six annexes, controlling all sources from ships that potentially pollute the marine environment.

Noticeably, in 2016 Vietnam issued the guidance for the implementation of Annex V, as well as the Annex III, IV and VI of MARPOL 73/78², which is prerequisite and indispensable for national laws on marine environment protection caused by ship's garbage, as well as the other agents from ships. Especially, the government of Vietnam has initiated and actively issued a raft of legal documents on marine environment protection the sea strategy, such as Resolution No.48/NQ-TW by the Politburo on the Strategy for the Development and Improvement of the Vietnamese Legal System to 2010, with orientations to 2020³, which stipulates the necessity to improve the laws on natural resources and to continue joining international treaties on marine environmental protection, as well as to enhance the review, amendment, supplement or promulgate legal documents in this filed to conformity with international conventions, in which Vietnam has already participated.

In addition, the Prime Minister of the Socialist Republic of Vietnam has announced important decisions to implement two parallel objectives: developing the marine economy and demonstrating the determination of Vietnam to protect the marine environment. They are the Decision No.166/QĐ-TTg "*The implementation plan of national environmental protection to 2020, with orientations to 2030*"⁴ and Decision No.855/QĐ-TTg "*Approving the project on environmental pollution control in the field of transportation*"⁵.

Besides, Vietnam has also accumulated many studies, researches on the legal systems of developed countries in the region, then compared, evaluated and determined the limitations and shortcomings in Vietnam legal system, such as: Luu Ngoc To Tam, (2012), "Law on Marine Environmental Pollution Control in Maritime Activities in Vietnam", *PhD Thesis*, Hanoi Law University; Nguyen Thi Nhu Mai, (2004), "Theoretical and Practical Issues in Improving Maritime Laws in Vietnam", *PhD Thesis*, Hanoi National University; Tran Ngoc Toan, (2011), "Law on prevention of marine environmental pollution and implementation of Marpol 73/78 convention in Vietnam", *Master Thesis*, Hanoi National University, etc. As a result, there is a great progress in Vietnam legal system and regulations on marine environment protection.

Moreover, the law system, in terms of marine environment protection, from central to local level has been step by step strengthened and more stably operated; the legal provisions have also become relatively timely and complete. It is apparent that the main legal documents in this field are always updated, supplemented and amended, according to the changes and requirements of reality, such as Vietnam Maritime Code 2015, Law on Environmental Protection 2014, Law on Natural Resources, Environment of sea and Islands 2015. In addition, there are subordinate legal documents issued to enforce the provisions of these laws.

Many activities on control and prevention from pollution, as well as marine environment preservation have been implemented and achieved encouraging results. At the same time, the national marine legal systems are continuously upgraded to and promote sustainable marine development.

Generally, growing marine environmental consciousness, Vietnam has taken many efforts to develop and improve the system of policies and legislation on environment protection, in particular, the marine environment preservation, so at present, Vietnam has relatively comprehensive legal documents in this field.

3.2 Limitations and shortcomings of Vietnam laws on marine environmental protection

In spite of above-mentioned encouraging achievements, there are many limitations and shortcomings in the marine legal system of Vietnam. Marine environment is still witnessing an increase in pollution and environmental deterioration, owing to many reasons; but the most basic reason is that Vietnam does not have a complete and synchronized legal system in this field. The weaknesses of the system laws of marine environment protection can be pointed out as follows:

Initially, there are many legal documents on marine environment protection, but the specific legal documents on the impact caused by garbage, as well as the waste water or exhausted gas from ships are few⁶. The regulations on environment protection from ship's pollutants in these documents are quite general. The same problems are regulated scatteredly in many documents, making the law unclear and more complicated^{7, 8}. Thus, it is difficult to understand and apply it effectively.

Apart from the shortage in the number of legal documents, the law of marine environment protection is constantly changed, leading to a lack of stability and strategic vision. Instability of legislation created significant difficulties in implementation. Moreover, the change is slow and backward, compared to the level of socio-economic development. Even some legal documents are not up to date, and there is no change according to the actual situation⁷.

Furthermore, there is a limitation in enforcement of the law on marine environment protection. The mechanism of ensuring national law enforcement, as well as the implementation of international commitments and international agreements on environment are not so high.

Besides, many laws on protection of marine environment are low normative. The low penalties sometimes can reduce the effectiveness of legal documents, so the subjects do not hesitate to violate^{7, 8}.

Additionally, despite Vietnam has taken part in many international treaties, such as United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), MARPOL 73/78 (Annexes I and II of MARPOL 73/78 are two mandatory appendices), Vietnam is only involved in voluntary annexes when environment pollution caused by ship is increasing. Furthermore, at present, Vietnam still does not join any international convention, related to the protection of the marine environment caused by ships, such as Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Convention 1972).

Moreover, Vietnam has not yet building a specific legal document on the protection of the marine environment from impacts of ship's garbage as well as other sources of pollution, such as; ballast water, air pollution and noxious substances. The main documents related to this field can list are; the Vietnam Maritime Code 2015, however this document only has some general provisions mentioned in chapter II section 5⁹. The other legal document on this field is Law on Environmental Protection 2014. In the chapter V of this law have some general regulations for the control, treatment and protection of the marine environment and island¹⁰. However, there are no clearly and not enough regulations on the protection marine environment from the impact of ship-source pollutions.

Finally, there are not enough regulations and strategies to encourage the participation and contribution of organizations and individuals to the marine environment protection. It is the reason why the protection of marine environment in Vietnam seems not to be the responsibility of entire nation, but only of administrative organizations.

Overall, facing difficulties and challenges, it is urgent for Vietnam to study and accumulate the experience of countries in the region in building the laws on protection from the marine contamination caused by the impact of ship-source pollutants, so that Vietnam can create progressive legal documents, apply and implement it effectively, when environment incidents occur.

4. Suggestions to improve the Vietnam laws on the marine environmental protection from contamination caused by ship's garbage

Analyzed and evaluated the practical application of laws on environmental protection in Vietnam, as well as synthesized and compared international laws and the laws of some countries in the region on anti-pollution of marine environment, some of solutions can be suggested to improve Vietnam legal system on prevention from marine contamination resulted by ship's garbage, as well as other sources of pollution:

Firstly, Vietnam should modify and complete the current laws, related to prevention from marine pollution caused by ship's garbage. Owing to the above-mentioned limitations, it is essential to add a separate chapter, including sections related to ship's garbage, into the Vietnam Maritime Code 2015 on the marine environment protection from the effects of pollutants from ship-sources. Besides, adding new regulations is necessary to ensure consistency in the legal system of Vietnam, avoiding overlapping and conflicting with other laws, such as Civil law, environmental protection law, etc¹¹. Especially, after becoming an official member of the main international conventions on this field, such as MARPOL 73/78 of six Annexes, UNCLOS 1982, in the Chapter V of Law on Environmental Protection 2014 and chapter II of Vietnam Maritime Code 2015, more detailed regulations in this field should be added. Vietnam, on the one hand, strengthens and improves national legal document in the field of marine environment protection, on the other hand, demonstrates effective implementation of international conventions

Secondly, it is imperative for Vietnam to strengthen the participation, signature and incorporation of international treaties into Vietnam laws on prevention from marine pollution caused by ship's garbage. In particular, it is necessary to study and propose Vietnam's accession to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Convention 1972) and the 1996 Protocol on the Control and Management of Marine Submarine Activities.

Thirdly, according to the Decision No.795, Vietnam has opportunity to learn the experience from the implementation of Annexes I and II of MARPOL 73/78, which carries out the guidelines for implementing Annex V, as well as Annexes III, IV and VI of MARPOL 73/78 quickly, accurately and effectively.

Fourthly, it is highly recommended to build a new specific regulation on the prevention from marine pollution by ship's garbage and to create a new mechanism for effective implementation of these laws. In order to build up the new regulations, Vietnam should study the laws of other countries in the region, then collect valuable lessons and experiences to shorten the time and distance for building and improving national laws in this field. Thanks to such a legal fundament, it would be easier to assess, estimate and claim damages due to marine contamination.

Fifthly, the Vietnam laws on the protection of the marine environment related to marine environmental protection has not been clearly defined, in terms of cooperation with other countries in the region to prevent, limit and control cross-border pollution sources. Nowadays, marine environmental protection is a global issue since a nation cannot resolve itself, so it is essential to have a combination of both internal and external resources. It is also required to take initiative and actively participate in international conferences and conventions on marine environmental protection, which Vietnam has signed, as well as to enhance cooperation in the fields of education and training, science and technology. It is also vital to associate with oversea communities to seek out international supports in protecting the marine environment and biodiversity, coping with climate change, and preserving the Earth-the common home of mankind. Vietnam law has also not included provisions for the right to apply the measures to protect their marine environment on the basis of respects to sovereignty and territorial integrity of the country, where potential threats and damages to the marine environment are arising.

Finally, it is important to take into account that the human is the decisive factor in the implementation of the law. Currently, leaders and staffs in the field of environment protection do not have much experience in solving problems. At present, in Vietnam there are few universities offering advanced training in the field of environment, in particular, marine environment. Some schools have training codes, but students have not been equipped with enough legal knowledge and human right about environmental protection, especially in-depth knowledge of maritime international law¹². Thus, when a problem occurs, staffs assigned to deal with environmental problems are usually embarrassing, cannot timely and thoroughly solve it due to the lack of professional performance. Therefore, it is necessary to raise the interest in training human in field of virtual environment protection.

All in all, coping with marine contamination is not an easy task, so not only government and administrative organization, but also commercial organizations and individuals must take responsibility for protecting marine environment from pollution. The above-mentioned suggestions are expected to be the basic suggestions to improve the laws of Vietnam on the protection of the marine environment from the impact of the ship's garbage.

5. Conclusion

Undoubtedly, marine contamination is considered an increasingly serious problem, which brings both directive and indirect impacts on human society as a whole. Recently, this issue is addressed in many researches, articles, newspapers and dissertations as an urgent topic not only for Vietnam, but also for other coastal countries all over the world.

On the one hand, Vietnam has paid much attention and efforts to develop and improve the laws on marine environmental protection. On the other hand, Vietnam is still facing many obstacles such as, the limitation of legal basis, complicated governmental bureaucracy, the low quality of facilities, equipment and the reception at seaports, which leads to limitation of the handling and remedy for marine pollution. It is essential to continue overhauling the laws on marine environment protection, raising awareness of people, regarding human as the central factor of this field, calling for cooperation, assistance, investment from developed countries, learning from countries which have more modern and effective marine management policies, as well as measures to protect the marine environment. It is also important to pay more attention to the issue of accession and implementation of international conventions on the protection of the marine environment. With the determination and efforts of agencies, organizations as well as individuals, it is believed that in the near future, Vietnam can build a complete scientific and modern legal system on protection marine environment from contamination caused by ship's garbage as well as by other agents from ship-source.

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