

An Overview of Chinese Laws and Experiences for Vietnam on the Marine Environment Protection from Contamination Caused by Ships' Garbage

Nguyen Van Truong

Law school, Dalian Maritime University, No.1 Linghai road, High_tech Zone District, Dalian city, Liaoning province, China

Abstract

Situated on a crucial international maritime route, Vietnam has not only favorable opportunities to develop marine economy, but also challenges of responding to marine contamination caused by ship-source pollutants. Actually, Vietnam has strived to cope with this problem by enacting regulations on ship operations. Unfortunately, the current Vietnam legal system on marine environment protection is still limited and inefficient. Due to this issue, the article is written to give an illustration and analysis of legal system on marine environment protection of China, which has many similar conditions with Vietnam and actively participates in several international conventions on marine environment protection from pollution caused by ship-source. Furthermore, the main purpose of this paper is to synthesize useful and valuable experience for Vietnam to improve its legal system on marine prevention from contamination resulted by ships' garbage.

Keywords: International conventions, ships' garbage, prevention, marine pollution

1. Introduction

Owing to the increase in marine pollution caused by ships' garbage, reducing marine degradation is considered an important mission of Vietnam in recent years^{1,2}. Thus, it is highly encouraged to improve national legal system on marine environment protection by researching and accumulating experiences from neighboring more developed countries, in particular China.

In China, there are various problems of marine conservation, potentially devastating to its ecosystem. To control and prevent from marine pollution, China has actively taken part in many International Conventions on the protection of the marine environment from ships' garbage, 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); Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention 1972). Participation in international conventions has given China the opportunity to incorporate the provisions of the international conventions into its national laws in terms of marine protection.

Therefore, at the present time, the maritime law system of China has been formulated quite completely, which should be analyzed as an example for Vietnam to improve its laws on marine environment protection caused by ship-source pollution, as well as by garbage from ships.

2. Overview and analysis of Chinese laws on marine environment protection from pollution caused by ships' garbage

Marine environment protection is regulated in many different legal documents of the People's Republic of China:

a. General Principles of the civil Law of the People's Republic of China

The civil Law of the People's Republic of China, which was entered into force on 01 Jan 1987, is a fundamental law specifying responsibilities of all individuals for protecting the environment and coping with environment pollution incidents. For instances, in article 124, it regulated: "Any person who pollutes the environment and causes damages to others in violation of state provisions for environment protection and the prevention of pollution shall bear civil Liability in accordance with the Law"³.

b. Marine Environment Protection Law of the People's Republic of China

Beside the Chinese Civil Law, Marine Environment Protection Law (MEPL) of China, which was adopted in 1982, is considered an important legal document, mentioning the basic content of rights and obligations of the state agencies, organizations and individuals in terms of prevention from environment pollution. MEPL includes 10 chapters and 97 articles. Prominently, detailed rules on the incineration of waste, the penalties on subjects who infringe upon the provisions of this law are mentioned in chapter 7, and the responsibility for compensation for violations of marine environment pollution is defined clearly in chapter 9. Moreover, In Article 62, it is regulated that "No vessels and their related operations may discharge in the sea areas under the jurisdiction of the People's Republic of China any pollutants, wastes, ballast water, vessel garbage or other harmful substances into the sea in violation of the provisions of this Law"⁴.

c. Administrative Provisions of the People's Republic of China on the Prevention and Control of

Marine Environment Pollution by Vessels and Their Operations

In addition to the legal documents discussed above, it is important to have an overview over Administrative Provisions of the People's Republic of China on the Prevention and Control of Marine Environment Pollution by Vessels and Their Operations, which was issued by the Ministry of Transport on 16 November 2010 and came into force on 02 Jan 2011.

According to this provision, vessels navigating, berthing or operating within the sea areas of China must be equipped with garbage storage containers and hold certificates or documents related to the prevention and control of vessel-induced pollution to the marine environment. The garbage with toxic and hazardous substance or other dangerous elements must be classified and storage separately. If a vessel is to discharge garbage, sewage with toxic and other pollutants, it shall comply with the strict and specific regulations of this provision, as well as the international treaties concluded or acceded to by China⁵. Furthermore, chapter 6 of this provision also provides detailed and specific regulations on penalties in case a vessel fails to meet the above requirements.

d. The Provisions of the People's Republic of China on Marine and Maritime Administrative Punishments

It is also essential to mention the Provisions of the People's Republic of China on Marine and Maritime Administrative Punishments⁶, which was adopted at the 13th executive meeting of the Ministry of Transport on 20 November 2014, since these provisions stipulate punishments for polluting behaviors to encourage vessels utilize China's sea in a responsible way. These provisions consist of 5 chapters and 118 articles. In particular, administrative sanctions are detailed in chapter 3, section 8 of these provisions.

e. Maritime court of China

Analyzing maritime law of China, it cannot fail to mention maritime court of China, since it plays a significant role in dealing with maritime cases and raising the level of efficiency and effectiveness of handling of maritime incidents. The china maritime court system was established in 1984 according to a decision of standing committee of the people's congress. It consists of ten maritime courts, which are located in main port cities from north to south of China: Dalian, Tianjin, Qingdao, Wuhan, Shanghai, Ningbo, Xiamen, Guangzhou, Beihai and Haikou.

In China, defined by the National Supreme Court (NSC), maritime court has jurisdiction over any maritime dispute, including maritime pollution claims, maritime collision claims, maritime contractual claims, such as carriage of goods or passengers, employment of crew, and other disputes related to maritime activities⁵. Remarkably, on 25 December 1999, the Standing Committee of National Assembly issued regulations about maritime procedures. These regulations were entered into force in July 2000.

Recognized the importance of marine economics, China has adopted a number of measures to achieve two goals: develop marine economic and protect the marine environment. In addition to the legal above-mentioned documents, China has a relatively complete and effective legal system with many documents on the marine environment protection.

f. Evaluation of Chinese laws on the protection of the marine environment caused by ships' garbage pollution

Due to the fact that China is still a developing country, China is confronting the dual task of economic development and environment preservation, in particular, marine environment protection. Thus, Chinese government has paid great attention to the research and study in order to build a relatively comprehensive law system on marine environment protection.

China has actively taken part in International Conventions on the prevention from marine contamination caused by ship-source pollutants. It is important to mention that China has become an official member of Annex V of MARPOL 73/78 on the prevention of marine environment from ships' garbage in 1988. At the same time, China has issued the guidelines to implementation these conventions and also actively incorporation the provisions of international conventions into national laws.

China legal system on the prevention from marine contamination caused by ship-source pollutants, as well as by ships' garbage was adjusted in correspondence with actual conditions. Besides, Chinese administrative penalties are specified and quite detailed for each situation. Although the same problems are regulated in different legal documents, but there is no conflict between regulations.

China has taken many measures to boost investment in research, since, initially, China must have a good understanding of the trend of socio-economic development and its geopolitical characteristics to make appropriate adjustments, from which China can get the adequate direction.

Despite China is interested in building and improving the legal system on the marine environment protection in general and prevention from marine contamination from the ships' garbage in particular, the laws of China in this field are just included in some insignificant documents inconsistently, so the same problems are sometimes regulated in several legal documents scatteredly, resulting in a difficulty in applying these regulations. In addition, the law on marine environment protection is constantly changed, leading to the lack of stability and strategic vision. Instability of legislation created significant obstacles in implementation. It should be pointed out

that China's environment legislative work needs to be further improved, some contents should be amended or revised and there are still the phenomena of not fully observing or enforcing laws. Therefore, making uninterrupted efforts to strengthen activities of legislative development still remains an important strategic duty.

3. Actual situation of Vietnam laws on the marine environmental protection from contamination caused by ships' 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 73/78⁸, 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 73/78⁹, which is prerequisite and indispensable for national laws on marine environment protection caused by ships' 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 2020¹⁰, 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/QD-TTg "*The implementation plan of national environmental protection to 2020, with orientations to 2030*"¹¹ and Decision No.855/QD-TTg "*Approving the project on environmental pollution control in the field of transportation*"¹².

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 Gaps 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 few¹³. 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^{14, 15}. 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^{14, 15}.

Additionally, despite Vietnam has taken part in many international treaties, such as United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), MARPOL73/78 (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 ships' 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 5¹⁶. 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 island¹⁷. 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. Experiences for Vietnam on the marine environment protection from contamination caused by ships' garbage

Analyzed and evaluated Chinese laws on marine environment protection from contamination caused by ship-source pollutants, as well as ships' garbage, experiences for research and study of Vietnam in improving the legal system in this field can be enumerated as following:

Firstly, Vietnam has been a member of important International Conventions on marine environment protection from pollution caused by ship-source, as well as ships' garbage, such as United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), annex 5 of MARPOL 73/78. However, there is still have conventions, in which Vietnam has not yet joined, such as London Convention 1972, or as annex 5 of MARPOL 73/78. Since Vietnam just became an official member in 2015, Vietnam does not have enough time to make laws on this field efficient and adequate. Therefore, Vietnam needs to join other Conventions, incorporate the provisions of the International Conventions into national laws and improve the legal system on marine environment protection, in order to meet the requirements of these Conventions.

Secondly, to achieve above-mentioned goals, Vietnam needs to have an overview on the legal system related to marine environment protection, as well as to study International Maritime Organization (IMO) guidelines for the implementation of these regulations and accumulate experiences in building marine laws from other countries such as China.

Thirdly, many nations all over the world such as China have already built a specific court system to deal with maritime disputes, which is still absent in Vietnam. Thus, it is essential for Vietnam to establish such a specific court system from experiences of China. If Vietnam establishes this specific court system successfully, it will be more convenient for handling, settling, compensating and collecting documents, as well as investigating and assessing the extent of damage caused by pollution incidents.

Finally, apart from the general provisions of the law framework, China also enacted regulations, circulars on the protection from marine environment pollution originating from ship-source. These regulations specify preventive measures, the punishment and responsibility of the polluters, depending on the extent of damage to the environment. Therefore, it is also vital for Vietnam to issue specific regulations on marine environment protection, related to the ships-source pollution, as well as ships' garbage. Vietnam government should provide

the detail and measures to prevent and overcome marine environment pollution, offer remedies for the occurrence of marine environment pollution incidents and the liability of the subject for such damage, as well as definite clearly the functions and duties of both organizations and individuals, involved in environment pollution incidents.

It is undoubted that accumulating experiences in building laws on marine environment protection from other countries in the region is a crucial task. Thus, it is highly recommended for Vietnam to simply procedure and shrink time to improve the law on environment protection from pollution in general and marine contamination resulted by ships' garbage in particular, save time to participate in other important International Conventions on marine environment protection and international integration

5. Conclusion

The marine environment contamination caused by ships-source pollutants, as well as by ships' garbage are indeed focal points not only for Vietnam, but also for many other coastal countries all over the world. Along with the increase in marine pollution caused by ships' garbage, Vietnam law on marine environment protection is facing more challenges. Beside, participating in the important international conventions in this field, experiences of other countries in the region are also essential for Vietnam to improve national laws on marine environment protection from pollution, caused by ships' garbage. Especially, analyzing the marine laws of China and gaining experiences in marine environment preservation are what Vietnam should concentrate at the current time. In addition, Vietnam and China are neighbors, have many similar characteristics, cooperation in fields, studying China laws not only helps Vietnam improve laws on the field of marine environmental protection caused by ships' garbage but also can help Vietnam improve laws of protection of the marine environment by the impact of ship-sources pollution as well as laws on other fields. Moreover, it is uncontroversial that experiences from other countries not only become a motivation to standardize domestic policy mechanisms, but also improve Vietnam's position in the international arena.

References

- [1] To Ngoc Thang, (2015), "Environmental Protection at Port Area: A study on ship-generated garbage management system in Haiphong port, Vietnam", Master Thesis, University of Kitakyushu, Japan
- [2] Ministry of Natural Resources and Environment, (2015), "Report on the status of national environment in the period 2011-2015", Hanoi [Online] Available: <http://cem.gov.vn/Portals/0/2016/TinBai/Phan%20dau.pdf> (April 18, 2018)
- [3] General Principles of the civil Law of the People's Republic of China [Online] Available: <http://www.lawinfochina.com/display.aspx?id=1165&lib=law> (April 18, 2018)
- [4] Marine Environment Protection Law of the People's Republic of China [Online] Available: <http://www.lawinfochina.com/display.aspx?lib=law&id=1208&CGid=> (April 18, 2018)
- [5] Administrative Provisions of the People's Republic of China on the Prevention and Control of Marine Environmental Pollution by Vessels and Their Operations [Online] Available: <http://en.pkulaw.cn/Display.aspx?lib=law&Cgid=141265> (April 18, 2018)
- [6] The Provisions of the People's Republic of China on Marine and Maritime Administrative Punishments [Online] Available: <http://en.pkulaw.cn/display.aspx?cgid=250221&lib=law> (April 18, 2018)
- [7] Maritime court of China [Online] Available: <http://encemt.court.gov.cn/chinamaritimetrial/index.html> (April 18, 2018)
- [8] Notice No. 263 + 264 "The effect of International Treaties", Ministry of Foreign Affairs, Hanoi, 20 Feb 2015. [Online] Available: <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Quy-dinh-1533-QD-BGTVT-2015-tiep-nhan-xu-ly-chat-thai-tau-theo-Cong-uoc-MARPO-274199.aspx> (Jan 8, 2018)
- [9] Decision No.795/Decision-Prime Minister 2016 "Approving the Implementation Plan for Annex III, IV, V and VI of the International Convention for the Prevention of Pollution from Ships", Hanoi, 11 May 2016. [Online] Available: <https://thuvienphapluat.vn/van-ban/Giao-thong-Van-tai/Quy-dinh-795-QD-TTg-thuc-hien-Phu-luc-III-IV-V-VI-Cong-uoc-quoc-te-ngan-ngua-o-nhiem-tau-gay-ra-2016-311371.aspx> (April 10, 2018)
- [10] Resolution No.48 "On the strategy of building and improving the Vietnam legal system up to 2010 with orientation to 2020" [Online] Available: <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-quyet-48-NQ-TW-chien-luoc-xay-dung-va-hoan-thien-he-thong-phap-luat-Viet-Nam-den-nam-2010-dinh-huong-den-nam-2020-54373.aspx> (Jan 21, 2018)
- [11] Decision No.166/De-Prime Minister "Issue the plan for implementation of national environmental protection strategy by 2020, with a vision to 2030" [Online] Available: <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Quy-dinh-166-QD-TTg-2014-Chien-luoc-bao-ve-moi-truong-quoc-gia-den-nam-2020-219922.aspx> (Jan 10, 2018)
- [12] Decision No.855/De-Prime Minister "Decision approving the scheme on control of environmental pollution

- in transportation activities” [Online] Available: <https://thuvienphapluat.vn/van-ban/Thue-Phi-Le-Phi/Quy-dinh-855-QD-TTg-phe-duyet-de-an-kiem-soat-o-nhiem-moi-truong-125247.aspx> (Jan 10, 2018)
- [13] [Online] available: <http://vanban.monre.gov.vn/DocViewer.aspx?IDLV=7> (December 29, 2017)
- [14] Decree No.30/Decree-Government “On regulation for foreign vessels to operate on sea areas of the socialist republic of Vietnam”, Hanoi, 29 Jan 1980. [Online] Available: <https://thuvienphapluat.vn/van-ban/Giao-thong-Van-tai/Nghi-dinh-30-CP-quy-che-cho-tau-thuyen-nuoc-ngoai-hoat-dong-tren-cac-vung-bien-cua-nuoc-Cong-hoa-xa-hoi-chu-nghia-Viet-Nam-44136.aspx> (April 10, 2018)
- [15] Decree No. 162/Decree-Government "Regulation on administrative sanctions in sea areas, islands and continental shelf of the Socialist Republic of Vietnam", Hanoi, 12 Nov 2013. [Online] Available: <https://thuvienphapluat.vn/van-ban/Vi-pham-hanh-chinh/Nghi-dinh-162-2013-ND-CP-xu-phat-vi-pham-hanh-chinh-vung-bien-dao-them-luc-dia-213099.aspx> (April 10, 2018)
- [16] Vietnam Maritime Code 2015. [Online] Available: <https://thuvienphapluat.vn/van-ban/Giao-thong-Van-tai/Bo-luat-hang-hai-Viet-Nam-2015-298374.aspx> (April 10, 2018)
- [17] Law on Environmental Protection 2014. [Online] Available: <https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Luat-bao-ve-moi-truong-2014-238636.aspx> (April 10, 2018)

Acknowledgement

I would like to express my deepest gratitude to my supervisor Prof. ChubeiPing-Dean of Law School-Dalian Maritime University (DMU), who encouraged and provided insight and expertise that greatly assisted the research. Moreover, I would like to take this opportunity to show my gratitude and sincere thanks to the Government of the People’s Republic of China for financial support. I also thank the Government of the Socialist Republic of Vietnam, Vietnam Maritime University and Dalian Maritime University, as well as officers and staffs of Law School-DMU for giving me the good opportunity and favorable conditions during the course of this research.