

# Study on the Limitation of Liability for Ship Oil Pollution Removal Costs

## -- Comment on "The First Accident of Condensate Leakage from a Tanker Carrying Condensate into the Sea"

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### ABSTRACT

Compensation for ship pollution cleanup costs belongs to civil liability, and there is a possibility of limiting liability for the non-persistent cargo oil carried by the vessel SANCHI. Currently, there are problems such as limitation of oil type, subject dispute, non-uniformity of compensation scope and rate standard, and low liability limit in the case of compensation for damage caused by ship pollution in China, etc. The system of limitation of liability in the Maritime Law should be further improved by authorizing the clean-up unit to claim compensation on its own, the subject of responsibility for the ship's clean-up fee should be jointly and severally liable, clarifying the scope and standard of the clean-up fee, and moderately increasing the limit of compensation.

### KEYWORDS

Ship Decontamination Charges; Oil Pollution Damage; Limitation of Liability; Ship Collision.

## 1. PRESENTATION OF THE PROBLEM

On January 6, 2019, in the waters of the East China Sea, the Panamanian tanker SANCHI collided with the Hong Kong oil tanker Changfeng Crystal, which burst into flames and sank to the bottom of the ocean. Sank to the bottom of the sea, "Changfeng Crystal" suffered serious damage. The SANCHI was carrying condensate and bunker fuel oil which leaked, making it the world's first incident of condensate leaking into the sea from an oil tanker. After the accident, both parties expressed different views on the nature of the compensation costs involved in the accident and the amount of the funds to be established. The Shanghai Municipal Higher People's Court approved the application of the shipowner of the vessel Changfeng Crystal to set up a Limitation of Liability for Maritime Claims (hereinafter referred to as LLMC) fund for non-personal injuries and deaths, to which the Shanghai Maritime Safety Administration objected, arguing that the costs incurred by the emergency measures taken by it had not been fully covered by the fund. The Shanghai Maritime Safety Administration objected to the application, arguing that the nature of the vessel's decontamination fee arising from the emergency measures taken was an unrestricted claim and should not be subject to the limitation of liability, and therefore the owner of the vessel Changfeng Crystal was not entitled to apply for the establishment of an LLMC fund in respect of the claim. In fact, both in theory and in practice, the administrative authorities incur expenses when they carry out maritime decontamination operations, and when they claim decontamination expenses from the person responsible for the pollution accident, such issues have caused a lot of controversy, and the legal nature of the ship decontamination expenses determines whether they are subject to limitation of liability or not. Therefore, it is of great

significance to clarify the legal attributes of the decontamination fee for the discussion of the limitation of liability for oil pollution damage.

Chinese practice of the emergence of special oil has not made specific provisions. For example, regarding the condensate loaded in this case, according to its volatile characteristics, the oil should belong to non-persistent oil, while China has successively acceded to the International Convention on Civil Liability for Oil Pollution Damage 1992 (hereinafter referred to as the 1992 CLC), the Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (hereinafter referred to as the 2001 FUND), as well as China's existing Maritime Law of the People's Republic of China (hereinafter referred to as the Maritime Law), which is the most important law in China. (hereinafter referred to as "Maritime Law"), the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Disputes over Oil Pollution Damage from Ships (hereinafter referred to as "Provisions on the Trial of Oil Pollution Cases from Ships"), and the Regulations on Administration of Prevention and Control of Marine Pollution from Ships (hereinafter referred to as "Anti-fouling Regulation"), all of them do not stipulate that, when a ship carries non-permanent cargo oil and leaks it, causing damage to the oil, the ship's clean-up costs incurred can be applied to the Limitation of Liability. However, the Administrative Measures for the Collection and Use of Ship Oil Pollution Damage Compensation Fund (hereinafter referred to as the "Fund Administrative Measures") and the Claims Guidelines for the Ship Oil Pollution Damage Compensation Fund (Trial Version) (hereinafter referred to as the "Claims Guidelines for the Fund"), which are two departmental normative documents, provide certain possibilities for the application of the limitation of liability in respect of the costs of decontaminating the ships arising from the damage caused by the spillage of non-permanent cargo oils by the oil carriers of oil tankers.

In addition, the Chinese administrative authorities often encounter a lot of difficulties in the process of claiming compensation after the ship's decontamination operation. If the decontamination cost cannot be reasonably compensated, the decontamination unit's motivation to decontaminate the ship will be greatly affected, and it will be difficult to ensure that the decontamination work will be carried out normally, which will have a negative impact on the environmental protection of the state's marine resources. The decontamination fee discussed in this paper refers to the expenses incurred by the maritime administration organization in launching the emergency mechanism and taking necessary measures such as removal, salvage and pilotage to mitigate the pollution damage from the decontamination operation. Article 11 of the Provisions on the Trial of Ship Oil Pollution Cases divides the cost of decontamination into the cost of preventive measures and the cost of salvage operations. The oil pollution clean-up operations of ships led by maritime administration organizations are mainly aimed at mitigating the pollution and damage caused by oil to the environment. Therefore, the cost of compulsory clean-up should be realized through the cost of preventive measures in the vast majority of cases. This is the case with the meaning of pollution removal costs discussed in this article. The article tries to sort out the international conventions and Chinese domestic laws, analyze the existing problems in the system of limitation of liability for ship pollution clean-up costs, and put forward a realistic path to solve the problems, so as to provide ideas for China's legal treatment and regulation of the relevant issues in cases of claims for damages to the marine environment.

## **2. LEGAL NATURE OF SHIP DECONTAMINATION CHARGES**

The Law of the People's Republic of China on Marine Environmental Protection (hereinafter referred to as the Marine Environmental Protection Law), while providing for a civil compensation system for damage caused by marine pollution, emphasizes that maritime administrations have a certain degree of administratively mandatory decontamination power. According to articles 53 and 55 of the Regulations on Pollution Prevention, after a ship's oil spill has caused pollution, the necessary costs incurred by the government in organizing the relevant departments to carry out emergency response

and clean up the pollution have priority in compensation for oil spill pollution from ships. At the same time, the national maritime administration takes necessary measures to mitigate the pollution damage, during which the party responsible for the accident has a mandatory obligation to the administration, i.e., it must pay the corresponding decontamination fee. The above article blurs the administrative nature of the pollution removal costs and civil nature, making the ship pollution removal costs claim a more prominent contradiction: ship party in accordance with the international convention to claim pollution removal costs belong to the civil liability, then the liable person has the right to apply for compensation limitation of the claim for "restricted claims", can not be limited to the liability of the claim for non-restricted claims. Generally speaking, the amount of payment for "restricted claims" should not exceed the maximum amount of compensation payable by the China LLMC Fund. The administration, on the other hand, claimed under domestic law that the sewage charges were administrative in nature and that it had the right to demand full and mandatory payment from the vessel. Therefore, clarifying the mutual internal logic between the legal relationships and the nature of the ship's pollution removal costs is the starting point and entry point for dealing with the legal issues related to the compensation for the ship's pollution removal costs. For the administrative environmental authorities of oil pollution removal costs of legal attributes of the understanding of the problem, there are administrative liability, civil liability, administrative liability and civil liability competing views.

This paper argues that the legal nature of the administrative environmental authority's cleanup costs should be both administrative liability and civil liability. In the decontamination operation, the environmental administrative authority's compulsory decontamination action has administrative color, and the person responsible for the accident also needs to bear the civil liability for environmental pollution. Therefore, the administrative authorities have very great autonomy in dealing with such incidents, and the administrative authorities can either claim through administrative channels or complete the claim through civil procedures.

### **3. THE SHIP CLEANUP FEE COMPENSATION LIABILITY LIMITATION SYSTEM INVESTIGATION**

#### **3.1. Applicable Ships and Types of Pollutants**

The use of oil, there are fuel oil and cargo oil, according to the chemical nature of persistent oil and non-persistent oil, different types of oil have different impacts on the marine environment, therefore, the international treaties and domestic laws are different for shipowners and cargo owners to assume responsibility for the scope of the administrative authorities to claim compensation and the amount of compensation.

Regarding the 1992 CLC and 2001 BUNKER to which mainland China is currently a party, the 1992 CLC only contains persistent hydrocarbon mineral oils, including persistent cargo oils and persistent fuel oils, so the condensate loaded on the SANCHI was extremely high in volatility, and did not meet the requirements of the "Persistent Hydrocarbon Mineral Oils". Therefore, for the condensate oil loaded on the SANCHI, its volatility is extremely high, and it does not meet the attribute of "persistent hydrocarbon mineral oil", and the CLC cannot be applied to the compensation for damages. In addition, in the SANCHI case, condensate was transported by SANCHI as cargo in the tank, not as bunker fuel, so the pollution of the marine environment caused by condensate also does not belong to the scope of 2001 BUNKER. Among the above treaties, there is room for application of 2010 HNS because condensate can be included in the category of "toxic and hazardous substances" stipulated therein, but regrettably, the Convention has not yet entered into force, and China is not a member of it, so it cannot be used as an international treaty that can be applied by China after the occurrence of ship accidents. Unfortunately, the Convention is not yet in force and China is not a member, so it cannot be used as an international treaty that China can apply in the event of a shipping accident.

As far as domestic law is concerned, the Maritime Law, the Provisions on the Trial of Ship Oil Pollution Cases, and the Anti-fouling Regulations all exclude the application of damage caused by non-persistent oil pollution, and the Ningbo Maritime Court, in the case of the Sovereign Honors' Liability for Ship Pollution Damage Dispute in which it was also held that non-permanent cargo oils do not have the conditions for the establishment of an LLMC fund. Only the Fund Claims Guidelines and the Fund Claims Guidelines, which are sectoral regulatory documents, are included in the provisions that allow the application of liability limitations. However, at the same time, the Fund Claims Guide indicates in the preamble that the Guide does not constitute an interpretation of the laws and regulations relating to oil pollution damage to ships and is not suitable to be used as a legal basis for the courts or arbitration organizations to hear the relevant cases, but is only for the reference and use of the relevant departments. From the viewpoint of existing laws, "for other maritime oils such as non-persistent cargo oils and non-oil maritime pollution damage compensation disputes, the Marine Environmental Protection Law, the Maritime Law and the Tort Liability Law of the People's Republic of China, and other relevant laws and regulations shall be applicable". However, the scope of application of the above provisions is large, and they are mainly applied as touting clauses, which are unable to accurately assess the environmental hazards caused by other oils, and it is difficult to regulate their negative impacts with a considerable degree of strength.

### **3.2. Subjects of Limitation of Liability**

#### **3.2.1. Subject of Claim**

Almost every dispute over liability for pollution damage from ships has a dispute over the subject of the claim. In the claim for the Maritime Department organization of Clean and Prevent Pollution Emergency Action cost, if the Maritime Department to bring a lawsuit, the defendant will be the Maritime Department did not participate in Clean and Prevent Pollution Emergency Action, not have the right to claim on behalf of the cost of the clean unit for the reason that the subject of the plaintiff does not qualify for the defense. If the clean-up unit claims, the defendant will defend that it has no contractual relationship with the clean-up unit, did not infringe the interests of the clean-up unit, and the clean-up unit has no right to claim. From the current case, the maritime sector claims by its organization of emergency operations generated by the clean and prevent pollution costs are generally supported by the court, but whether the clean unit can claim a claim on its own has caused greater controversy. For the clean-up unit to claim their own claims, the court does not support the majority of cases. For example, the Xiamen Maritime Court, Fujian Higher People's Court, Wuhan Maritime Court and Hubei Higher People's Court did not support the claim of the decontamination unit on its own, but the Shanghai Maritime Court supported the filing of lawsuits by the decontamination units. It can be seen that the courts have different understandings of the law, resulting in very different judgments.

#### **3.2.2. Responsible Subjects**

##### **(1) Connotation of Shipowner**

As can be seen from the above table, the subjects of liability stipulated in the international conventions 1992 CLC and 2001 BUNKER are all shipowners, the difference is that 2001 BUNKER has expanded the connotation of shipowners. In China's Maritime Law and relevant judicial interpretations, the definition and responsibility of the registered owner of the ship and the bareboat charterer are clear, while the concept of the operator and the manager is not clearly defined, and whether the operator and the manager should bear joint and several liability for the pollution damage of the ship has triggered a lot of controversy. In the "SANCHI" accident, the clean-up unit will be the ship operator and manager of the ship NATIONAL IRANIAN TANKER COMPANY as a defendant, the company defended that the law does not provide for the ship operator and manager of the ship should bear any responsibility for the damage caused by ship pollution, and it is not a suitable defendant. It was not a

proper defendant. Therefore, the concept of the subject of liability for ships under domestic law needs to be further elaborated and clarified.

## (2) Limitations of the Domestic Oil Pollution Fund

Together, the 1992 CLC and the 1992 Fund Convention constitute a claims regime for oil pollution from ships to ensure appropriate and effective compensation for victims of oil pollution on board ships. Specifically, the former establishes the first liability of the shipowner, while the latter provides the second liability of the oil cargo owner to the victims of oil pollution incidents, and finally, the 1992 CLC does not enable the victims of oil pollution incidents to be adequately compensated in the event of a major oil pollution incident but rather increases the additional financial burden on the shipowner. Therefore, the former Intergovernmental Maritime Organization (IMO) adopted the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (IFCPD) as a supplement to the 1969 CLC, which apportioned civil liability for compensation for oil pollution damage to oil cargo owners. Its 2003 Protocol established the International Oil Pollution Damage Supplementary Fund (IOPD Supplementary Fund), which, in accordance with the 1992 CLC and the 1992 Fund Convention, creates a third tier of oil pollution damage compensation mechanism based on that agreement.

"In the case of China, the mainland's late accession to the latest protocol of the 1992 CLC and its non-accession to the 1992 Fund Convention have prevented victims of oil pollution damage from being compensated in ways other than the shipowner's liability limits." Later, with the development of the shipping industry, the Ministry of Transport and the Ministry of Finance jointly issued the Measures for the Administration of the Fund, and China established a special oil pollution damage compensation fund (referred to as the "Oil Pollution Fund") to compensate victims of oil pollution from ships in specific circumstances and to provide compensation for removal costs. The oil pollution fund is a national public fund, which belongs to the scope of government appropriation and implements a "unified budget and unified distribution". After its collection, it is difficult to operate independently in accordance with the fund's operating rules, and it is difficult to smoothly carry out value-added and value-preservation operations, resulting in a situation where the total amount of the fund is too small, the payout capacity is insufficient, and it does not carry out adequate market-oriented operations, and in the process, there are also deficiencies in the government's management, which have accumulated larger problems.

In addition, in the China Oil Pollution Fund, according to the Measures for the Administration of the Fund and the provisions of the Fund's Claims Guide and the Fund's Guidelines for Settlement of Claims, priority should be given to the compensation of contingency costs. If the total amount of funds for oil pollution losses at sea is very restricted under the conditions, then the possibility of compensation for clean-up costs and other costs will be drastically reduced, which is not only unfavorable to the protection of the marine ecosystem, but will also make it difficult to achieve the purpose of restoring the ecology and protecting the environment, which is established by the mechanism of compensation for oil pollution losses at sea. After the occurrence of an accident, the first to arrive at the scene of the incident is usually a government department or some marine department. Instead of removing the contaminated oil, their most urgent task is to rescue the crew and the ship's property and to minimize casualties and property losses. From this point of view, emergency response costs are usually the first costs to be incurred in the event of an emergency due to its urgency. In the face of serious emergencies, the cost of handling them is usually enormous, resulting in the relevant departments in some countries having to pay very high handling costs for emergency relief. The Oil Pollution Act passed by the United States in the 1990s of the last century, apart from compensating for the losses caused by oil pollution, has also established a compensation mechanism other than the Oil Pollution Damage Compensation Fund, which is the contingency fund. The contingency fund mainly compensates for losses in two areas: emergency response fees, and natural resource damage assessment fees. This can ensure the professionalism and purposefulness of the compensation for oil pollution damage from ships at sea. At the same time, it can also prioritize the

payment of emergency expenses incurred after the occurrence of emergencies, so as to ensure that the response to emergencies can be implemented quickly and to minimize the losses in the shortest possible time. China, however, currently has no specialized emergency relief funds, which has severely limited the already small fund for compensation for oil pollution damage to ships. In addition, in practice, direct economic losses due to oil pollution are usually very high, and oil pollution damage accidents are frequent enough for many enterprises and individuals to file claims, which has resulted in very little compensation being available for the cleanup costs of oil spill pollution from ships.

Today, more than two decades later, China is gradually moving towards the ranks of a major maritime power, and as the country steadily strengthens the construction of an ecological civilization and the building of a community of maritime destiny in the new era, it is also necessary to re-examine the relationship between the China Oil Pollution Fund and the International Oil Pollution Fund.

### **3.3. Scope of Compensation and Rate Criteria**

#### **3.3.1. Scope of Compensation**

China's Marine Environmental Protection Law does not provide a specific definition of the standard and scope of compensation for oil pollution losses from vessels, but the Fund Management Measures make specific provisions for the items that can be compensated for, with the top-ranked types of costs in order of priority being emergency disposal costs, decontamination costs (including the costs of various types of treatment measures taken to control pollution), and direct economic losses. However, in specific cases, the costs of various losses are often interrelated, and in some cases, the emergency disposal costs often include the cleanup costs.

As the scope of the vessel decontamination fee is not clearly defined in Chinese law, the court may, to a certain extent, include a set of reasonable costs in the scope of compensation for the vessel decontamination fee based on the justification of preventive measures. It is precisely because of such a provision that there are some uncertainties in the definition of the scope of ship decontamination charges in judicial practice, which has resulted in differences in the definition of ship decontamination charges in judicial practice.

#### **3.3.2. Compensation Rates and Criteria**

The determination of rates when claiming for the costs of decontamination contingency operations is another challenge. Although there are many benchmarks suggested by experts and scholars for the compensation of cleanup costs, the size of these benchmarks is not consistent and is subject to skepticism due to the lack of statutory provisions and wide application. The ship involved in the accident, as the real bearer of the ship's oil spill cleanup costs, often proposes to compensate with reference to the cost price and the agreed cleanup price in order to reduce the cost. Due to the large differences in the determination of liability, some cases are still inconclusive. The case of "Midsum" and "Competitive Sailing 1" (including the cost of decontamination and loss of fishery resources) has been on trial for more than five years and is still in the first instance. And Dispute on Liability for Compensation for Damage Caused by Pollution from Ships (Loss of Fishery Resources) between M/V Duffy and M/V Zhoushan. A judgment of the first instance was rendered after five years of litigation and then entered into retrial proceedings. In practice, some courts have decided on their own rates on the basis that there is no standardized rate for decontamination. For example, in the case of Dispute over Liability for Compensation for Pollution Damage to a Ship (Decontamination and Rescue Fees) between the vessel Dafei and the vessel Zhoushan, the court of first instance did not conduct a comprehensive investigation and study of the market for decontamination and lacked an objective and reasonable basis for determining the rate, which led to a judgment that the rate was too high. The standard of the judgment was too high. There are also a number of clean-up companies that have gone bankrupt and closed down because the cases have been pending for a long time and it is too difficult for them to claim compensation, which is extremely unfavorable to the maintenance of the marine ecology.

As for the cleanup and pollution prevention cost standards, although there are currently "water pollution preparedness and emergency disposal charges recommended standards" "Pearl River Estuary Regional Marine Ship Oil Spill Contingency Plan Cooperative Arrangements" and "disposal of oil pollution from ships at sea operations reference price (trial version)" and other by the local maritime sector, the Commission to develop the cleanup and pollution prevention cost standards can be used as a reference, as mentioned, the above standards have not been authorized by the law, the court is not highly recognized. For this reason, it is necessary to formulate a set of unified norms for the cost of ship cleanup and pollution prevention that is suitable for China's national conditions.

### **3.4. Limits of Liability for Compensation for Oil Pollution Damage**

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Noxious and Deleterious Substances by Sea, 1996, and its 2010 Protocol (hereinafter referred to as the "1996 HNS Convention") were established to provide adequate compensation to victims of pollution caused by the carriage of noxious and deleterious substances by sea. The Convention provides for two types of safeguards: one is the shipowner's obligation to pay damages, with the shipowner being held strictly liable, with a limit of liability for damages not exceeding 115 million SDRs; and the second safeguard is established to provide an auxiliary means until 250 million SDRs are obtained if the shipowner does not assume the obligation to pay damages or fails to adequately compensate the victim for the damages.

China's Maritime Law does not directly provide for a limit of liability for oil pollution damage from ships, and under the "two-track system" provided for in Article 210(2), the limit of liability for maritime compensation is differentiated into a limit of liability for personal injury or death and a limit of liability for non-personal injury or death. From the comparative analysis, it can be seen that China's legal provisions on the limit of liability are still at the stage of the end of the last century, and the gross tonnage of the ship, the unit increase of the limit of liability for non-personal injury or death, and the limit of liability are all far lower than the provisions of any international convention. In the case of oil pollution incidents from ships at sea, too high a limit of liability is conducive to the protection of the legitimate interests of the victims, but too low a limit of liability will prevent the victims from receiving appropriate compensation, which is also contrary to the "polluter pays principle".

## **4. IMPROVEMENT OF LIABILITY LIMITATION SYSTEM FOR CHINESE SHIP SEWAGE CHARGES**

### **4.1. Non-persistent Cargo Oil Pollution Fee Recognition Path**

"The oil pollution in the collision accident of the SANCHI included the cargo oil condensate carried by the ship as well as the diesel fuel oil of the cargo ship, and there are difficulties in identifying the attributes of the two types of oil pollution, and there is no incident related to the leakage of condensate from the ship in the international maritime transportation to draw reference from. With reference to China's relevant judicial decisions, if the condensate in the leakage of SANCHI belongs to non-persistent cargo oil, it is more necessary to conduct an in-depth study on whether the relevant provisions of China's LLMC can continue to be applied and how to get reasonable compensation. In order to effectively deal with this issue, it is necessary to use the means of legal interpretation to make up for the gap in China's legislation on the characterization of this issue.

As mentioned above, the scope of applicable oil pollution of the 1992 CLC to which China has acceded does not include non-persistent cargo oils, and the LLMC excludes the application of the international oil pollution damage conventions to which it is a party, according to Article 208 of the

Maritime Law. Therefore, for non-persistent cargo oil pollution, there is a possibility of applying the LLMC to claims for damages.

"When the scope of LLMC is recognized, it should firstly confirm whether the loss suffered by the victim belongs to the scope of restricted claims, and secondly, it should exclude the special provisions for non-restricted claims in order to be subject to the LLMC limitation." Meanwhile, according to the theory of legal interpretation, the methods of legal interpretation include textual interpretation, system interpretation, purpose interpretation and historical interpretation. From the perspective of textual interpretation, firstly, it does not conform to the content of Article 207(2) of the Maritime Law; secondly, the content of both subparagraph 1 and subparagraph 3 is limited to "directly related to the operation of the ship or salvage operations". Since the removal of marine hazardous substances is mainly an exercise of mankind's obligation to protect the marine ecological environment and is not directly related to the "salvage operations" stipulated in Article 207 of the Maritime Law, the application of the first three subparagraphs of the provision is therefore excluded. According to the exclusion provision of Article 207 of the Maritime Law, the claim of the other party, except the responsible party, for the act of preventing or mitigating the damage caused by the type of restrictive claim is a restrictive claim, but if there is a contractual agreement between the person who takes the measure and the responsible person, then the contract has the effect of priority, and the claim for the measure does not fall into the category of restrictive claim. In this kind of case, the maritime administration agency in the accident after the mandatory clean-up and has the qualification of oil pollution removal operation unit, according to their previous and the operator of the ship to sign the pollution removal operation agreement and clean-up operation is different, the maritime administration department usually in accordance with the mandatory provisions of the relevant laws to activate the emergency response mechanism, this is a kind of need to reduce the pollution hazards of the pollution through the necessary means of clean-up operation. In the process of decontamination treatment, the administrative authority usually does not confirm in writing with the responsible person on the expenses of its decontamination operation, so this kind of decontamination expense claim cannot be regarded as an exception clause but should be regarded as a restrictive claim. In addition, according to the provisions of Article 17, paragraph 1 of the Provisions on the Hearing of Maritime Cases, the cost of removing non-persistent cargo oil is not a request for compensation for oil pollution damages in the unrestricted claims, nor is it a claim for harmlessness, and should be recognized as a restrictive claim accordingly.

In addition, for non-persistent cargo oils, claims for costs of disposal of oil pollution damage caused by ships do not fall within the scope of the 1992 CLC and thus do not comply with the provisions of the Chinese Maritime Law on unrestricted claims. For oil pollution outside the scope of the 1992 CLC, the courts are more inclined to recognize it as a toxic and hazardous substance, and thus the claims for costs arising from it are subject to the limitations of the LLMC Fund. For example, in the court-guiding case of Ningbo Maritime Bureau v. Zhoushan City Hexing Shipping Co. Ltd. and other companies, a contractual dispute over maritime distress relief, the court categorized the cost of emergency disposal of spilled ethylene glycol as a restrictive claim. Non-permanent cargo oils are therefore subject to the LLMC Fund.

## **4.2. Extending the Subjects to Which the Limitation of Liability for Ship Sewage Charges Applies**

### **4.2.1. Subject of Claims**

It is recommended that the subject of the claim for cleanup and pollution prevention be more open rather than closed. For the clean-up unit in the maritime sector organization to participate in the clean-up situation, the maritime sector as a maritime administrative authority has the right to make clean-up and anti-fouling measures in accordance with the provisions of Article 71 of the Marine Environmental Protection Law mandatory, and the person responsible for the pollution shall bear the

liability in accordance with the law. However, in the event that the maritime authorities are unwilling to unify the claims, the pollution clean-up unit should be allowed to claim compensation on its own. In addition, any reasonable measures taken by any person to reduce the loss of farms, tourist areas, living quarters, etc., not organized by the maritime authorities, should also be supported. This is in line with the provisions of Article 1(7) of 2001 BUNKER, which is not only conducive to the protection of the marine environment but also protects the interests of the decontaminator.

#### 4.2.2. Subject of Liability

The Dictionary of Maritime Law defines "ship operator" as "ship operator means the owner of a ship or bareboat charterer or an enterprise or legal person that has been formally transferred to assume the responsibility of the owner or bareboat charterer. It includes an enterprise corporation entrusted by the shipowner with the operation and management of his ship." This definition is consistent with the 1986 United Nations Convention on Conditions for Registration of Ships, and ship manager means "a person who is entrusted by the owner or charterer of a ship or the operator of a ship to engage in the operation and management of the ship, including the provision of services such as the provision of qualified personnel, the guarantee of the technical condition of the ship and normal navigation." The author believes that this definition is quite reasonable. As mentioned above, 2001 BUNKER, to which China is a party, regards the registered owner of the ship, demise charterer, ship operator, and manager as the owner of the ship and stipulates the joint and several liabilities among them. Therefore, the ship operator and manager should be the main body to bear the responsibility for the damage caused by fuel oil pollution. In addition to fuel oil pollution, pollution by toxic and hazardous substances has become more and more common in recent years. However, the 1996 HNS Convention (to which China has not acceded) does not give the victim of pollution the right to sue the ship operator or manager directly. Similarly, the definition of ship owner in the 1992 CLC does not include the abovementioned ship operators and managers, therefore, for the pollution caused by cargo oil transported by ship, the victim of oil pollution can not claim compensation directly from the ship operators and managers. Compared with the 1992 CLC, the Oil Pollution Act of 1990 (Oil Pollution Act of 1990) of the United States on the scope of ship pollution liability is more extensive, involved in the ship operation and management of the relevant subjects should be strictly liable. It is undeniable that the United States has achieved remarkable results in the prevention and control of marine pollution since the establishment of the Act.

Although the concept of "owner" is different between the 1992 CLC and the 2001 Bunker Convention, it is reasonable. China is a State party to the above-mentioned conventions and should be consistent with them in formulating its legislation on compensation for pollution damage from ships. Therefore, it is suggested that in practice, the definition of "shipowner" should be consistent with or similar to that of 2001 BUNKER, i.e., the registered owner of the ship, the demise charterer, the operator and the manager should also be included, so as to strengthen the liability for the pollution of cargo oil and toxic and hazardous substances, and not to exempt the relevant operators and managers from the responsibility. It would be more conducive to the protection of the marine ecosystem if the above subjects were required to bear joint and several liability for pollution damage.

### 4.3. Clarify the Scope and Standard of the Sewage Charges

#### 4.3.1. Scope of Decontamination Charges

Although the Fund Claims Guide lists the appropriate costs that should be borne for prevention and cleanup in the event of an accidental incident of oil pollution at sea, it is only a local sectoral specification and lacks a legally binding and solid foundation. For this reason, the authors suggest that China should, on the basis of the 1992 CLC, draw on the U.S. Oil Pollution Act 1990, and in conjunction with the Provisions on Trial of Oil Pollution Damage from Ships and the court's determination of the scope of ship cleanup costs in judicial practice, define the scope of the ship cleanup costs, allowing for the inclusion of the costs of the personnel and equipment actually invested

in, the loss of property caused by the cleanup operation, the salvage acts and preventive measures as well as the Research costs for preventive measures, etc.

#### 4.3.2. Standard of Decontamination Fee

The author notes that the relevant maritime administrations of Japan, Singapore, and the United States have made detailed classifications based on the cleanliness and anti-fouling capability of the ships and the specifications of the equipment and materials, etc., and marked out clear prices, so as to differentiate between the cleanliness and anti-fouling capability classes of the ships and to bring the prices of the ships and the services provided to the same level, so as to better reflect the degree of marketization. The SCALE OF FEES formulated by the British Oil Spill Response Company (OIL SPILL RESPONSE LIMITED) even puts forward the view that the utilization fee of the equipment should be charged according to the corresponding proportion of the purchase price, which is more rational and objective. In addition, although the aforesaid SCOPIC clause is a special compensation clause for unsuccessful salvage and inability to obtain salvage remuneration, the rates of fees for ships, labor and equipment inputs in the SCOPIC clause were negotiated by the International Rescue Alliance, the International Shipowners' Mutual Assurance Association, the property insurer and the International Chamber of Shipping, which is a result of combining the interests of all parties, therefore, there is a certain degree of fairness and reasonableness in this clause. There exists a certain degree of fairness and reasonableness. Therefore, many foreign standards for the compensation of cleanup and anti-fouling costs, including the SCOPIC clause, can also provide a reference for China to set the cleanup and anti-fouling rate standard.

#### 4.4. Raising the Liability Limit for Compensation for Vessel Pollution Charges

As a member of the 1992 CLC, China's oil pollution damage compensation limit is far less than the amount stipulated in the convention, which makes the dangers and obligations faced by Chinese ships sailing overseas greatly increased, and at the same time, the ecological safety of China's near-shore waters is seriously threatened. This paper proposes that, in view of the wide range of oil pollution hazards, the difficulty, time, and cost of treatment, non-persistent oil pollution hazards should be excluded from the general rules of maritime law by special legislation.

"China's appropriate increase in the limits of liability for various categories in the Maritime Law (Revised Exposure Draft) reflects the general tendency of the liability system. However, under the accounting method of the amount system, inflation is regarded as the main reason leading to the upward adjustment of the liability limits." The adjustment made on this basis is still a continuation of the original balance of interests, so it is necessary to pay full attention to the consideration of the "actual loss" of the environmental pollution by ships when raising the limit of liability for ship pollution, so that it can be enlarged. In addition, China has already excluded the application of the limit of liability in judicial practice, such as the cost of decontamination. In this paper, we believe that we can take Article 20 of the Provisions on the Trial of Ship Oil Pollution Cases and Article 17 of the Provisions on the Trial of Maritime Cases as the basis, and according to Article 20 of the Provisions on the Trial of Ship Oil Pollution Cases and Article 17 of the Provisions on the Trial of Maritime Cases, we can list the provisions on exclusion from the application of the limitation of liability as supplemental provisions, and apply them along with the norms on the increase of the limitation of liability, so as to build up a more complete compensation Limit system.

### 5. CONCLUSION

With the increasingly louder call for marine environmental protection, the issue of marine environmental pollution has attracted unprecedented attention. Some of the provisions of the Maritime Law and Marine Environmental Protection Law have been detached from the real needs and level, and the existing problems in China such as the limitation of the application of oil, subject

dispute, non-uniformity of the scope of compensation, and rate standard, and low limit of liability have been highlighted in the field of compensation for damage caused by pollution from ships. In this regard, there is a possibility of applying LLMC regulations to non-persistent cargo oils, and at the same time, measures such as authorizing decontamination units to claim compensation on their own, joint and several liability of the responsible parties for ship decontamination fees, clarifying the scope and standard of decontamination fees, and moderately increasing the compensation limit should be allowed. In addition, the State will also conduct in-depth analysis and summarization of disputes over compensation for oil pollution damage from ships, and continuously amend and improve the rules for dealing with various disputes over compensation for marine pollution damage, so as to continuously strengthen the judicial protection of the marine environment.

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