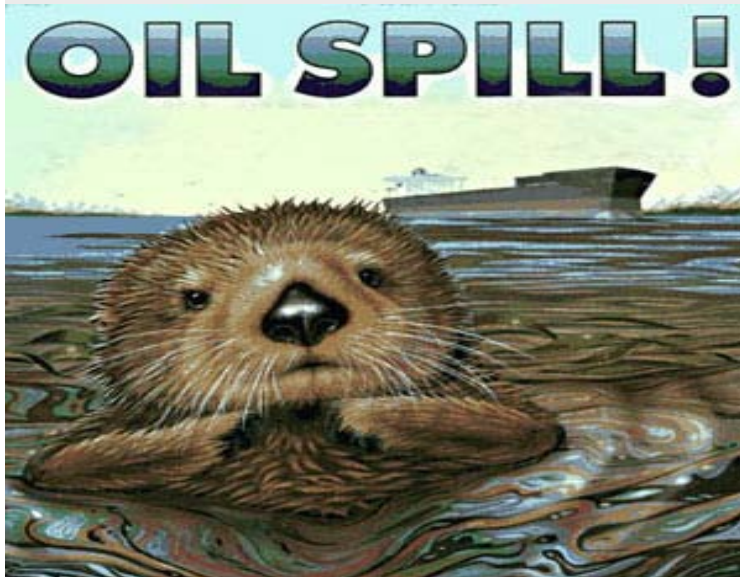


Law in the Book and Law in Practice: Criminal Liability over Vessel-Source Marine Pollution in China

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Introduction

- 1999 *Erika* oil spill disaster, 2002 *Prestige* oil spill disaster
- “Normal framework for international action on maritime safety under the auspices of the IMO falls short of what is needed to tackle the causes of such disasters effectively” (COM(2000)142 final)
- EU Directive 2005/35/EC, later on Directive 2009/123/EC
- European Court of Justice Case C-308/06 (Intertanko Case)
- 2007 *Hebei Spirit* oil spill disaster, South Korea



Introduction

- In 2010, **48000** km² of polluted sea areas within China's jurisdiction (State Oceanic Administration, 2010)
- In 2010, China imported **239.31** million tons of crude oil (National Bureau of Statistics, 2010)
- 95% was carried by maritime transport.
- Oil spills of more than 10,000 tons have yet to happen. However, between 1973 and 2006 a total of **2635** oil spill accidents have occurred. A total of **37,000** tons of oil has leaked into sea areas

Chinese Law in the Book

- China ratified the LOSC and MARPOL
- Marine Environment Protection Law (MEPL adopted 1982, amended 1999)
- Maritime Transport Safety Law (adopted 1983)
- 2009 Regulation on the Prevention and Control of Marine Pollution from Vessels (2009 Regulation), replaced 1983 Regulation
- Institution: Maritime Safety Administration, State Oceanic Administration, State Fisheries Agency

Chinese Law in the Book con't

- Chapter 9 of the 1999 MEPL, most of the sanctions that can be used for the prevention of vessel source pollution are administrative measures/fines
- From an environmental point of view, criminal liability is necessary since the maximum fine for marine pollution in sea areas under China's jurisdiction is only 200,000 RMB (around 25,000 Euro) (Art. 73, MEPL)
- From a shipping perspective, there might be different opinions. China is now the second largest seafarers-supplier in the world.

Chinese Law in the Book con't

- Art. 91 (3) of MEPL is the only link to the Criminal law
“In case of significant pollution of the marine environment resulting in major damage (great loss of public or private property/bodily injury or death of another person), criminal liability shall be imposed according to applicable law”
- This article was added to the 1999 MEPL in accordance with Chapter 6, Section 6 on Crimes of Impairing the Protection of Environment and Resources in the Criminal Law (Standing Committee of National People’s Congress)

Chinese Law in the Book con't

- In the Criminal Law, there is no specific offence of polluting the sea. It seems that Art. 338, 'Considerable Accident with Environmental Pollution' is the most likely offence that fits with MEPL. The Art. 338 was recently amended in 2011:

“In violation of the regulations of the State, discharges, dumps or treats radioactive waste, waste containing pathogen of infectious diseases, toxic substances or other hazardous waste, thus causing a major environmental pollution, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined”

Chinese Law in the Book

- Previous Art. 338: “Whoever, in violation of the regulations of the State, discharges, dumps or treats radioactive waste, waste containing pathogen of infectious diseases, toxic substances or other hazardous waste on the land or in the water bodies or the atmosphere, thus causing a major environmental pollution accident which leads to the serious consequences of heavy losses of public or private property or human casualties, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fine.”
- Serious consequences of heavy losses of public or private property or human casualties” is no longer a condition for the application of criminal sanctions

Chinese Law in Practice

Until now, there is no case in any Chinese court that imposed criminal liability over vessel-source pollution

Chinese Law in Practice: Reasons

1. Does Maritime Safety Administration want to impose criminal sanction over vessel-source pollution?
 - Fine is easier;
 - Shipping industry contributes greatly to the economy;
 - China is the second largest seafarers-supplier in the world (UNCTAD Report 2010). Protection of its seafarers' interests is the priority for the Chinese government

Chinese Law in Practice: Reasons

2. Problems exist of the link between the MEPL and the Criminal Law
 - Art. 91 (3) of 1999 MEPL describes that ‘significant pollution’ and ‘major damage’ can result in criminal liability. Those standards are very subjective and not easy to enforce in practice when MSA wants to bring criminal cases to the court
 - The provision not only requires the incident was caused “in violation of the MEPL”, but also that it caused “major damage”. In this case, not only the illegality, but also the required result, means that the law would only intervene at a very late stage
 - The burden of proof for the public prosecutor would be very onerous

Chinese Law in Practice: Reasons

3. Who can deal with the case?

- Which department can sue the captain or shipowner to the court?
MSA? Which level of MSA? Or work together with People's Procuratorates (Jian chayuan)

- Which court can handle the case?

There are special maritime courts besides local courts in important coastal cities (Tianjin, Dalian, Shanghai, Ningbo, Xiamen, Qingdao, Wuhan, Guangzhou, Beiha and Haikou)

Criminal cases on vessel-source pollution is not within maritime courts' jurisdiction

It is reasonable to think that specialized maritime courts may be more capable than other local courts.

Ways Forward

- There is a gap between law in the book and law in practice to impose criminal sanction over vessel-source pollution
- The Chinese government has to make a balance between its shipping interests and coastal interests.
- MEPL needs to be revised. It is not in compatible with the Criminal law. It is also not clear about imposing criminal liability over vessel-source pollution.
- Possible highlight of revisions: more details about “significant pollution and “major damage”; clear links to the Criminal Law; change of the burden of proof; identify competent departments and court.

**Thanks a lot for your
attention!**