

WORLD MARITIME UNIVERSITY

Dalian, China

**STUDY ON THE LAW SCHEME OF
INTERNATIONAL&CHINESE OIL
POLLUTION COMPENSATION FUND**

By

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DECLARATION

I certify that all the material in this research paper that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this research paper reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation:

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Following the rapid development of the economic globalization and the shipping industry, the import quantity of crude oil for China has increased year by year. As a crude oil consuming country, China has become the first in Asia, and second in the world. This has deeply accelerated the national economy.

However, in recent year years, ship oil pollution accidents take place frequently. From Tai-an crude oil leakage in Korea, Mexico-gulf drill platform of America leakage, Dalian oil pipeline catch fire and explosion in China, Peng-lai 19-3 drill platform leakage, in Bohai bay in China, and countless ships collision and marine drill platform leakage accidents bring huge catastrophe to human. It makes seriously pollution to the marine environment, and have bad influence to the developing of ocean economics and human living space. It results significant oil pollution damage loss. The Ship oil pollution has become the major pollution source to the marine environment.

China as an oil import dominant country, with huge quantity oil import, while, it has no perfect ship oil pollution compensation fund system. Although China as contracting party to the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC, 1992), however , it has not take part in the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Fund 1992) (except Hong Kong). For the imperfect ship

oil pollution compensation fund system, lead lots of oil pollution accidents into the trouble place, for having no suitable law to follow.

Therefore, in this dissertation, the author will mainly analyse the operating condition and existing problems, to *the Collection and Using Management Method for Ship Oil Pollution Damage Compensation Fund in P.R.C (Management Method , P.R.C)*, for which had implement almost four years. And the author consult the thread and legislation of perfect ship oil pollution compensation fund system in other countries, in order to figure out the good and rational idea for improving the *Management Method , P.R.C* .

KEYWORDS: ship oil pollution, damage compensation, fund .

TABLE OF CONTENTS

| | |
|--|-------------|
| DECLARATION | I |
| ACKNOWLEDGEMENTS | II |
| ABSTRACT | III |
| TABLE OF CONTENTS | V |
| LIST OF FIGURES | VII |
| LIST OF ABBREVIATIONS | VIII |
| CHAPTER 1: INTRODUCTION | 1 |
| 1.1 OIL POLLUTION– A THREATEN TO MARINE ENVIRONMENT | 1 |
| 1.2 OBJECTIVES OF RESEARCH | 2 |
| 1.3 METHODOLOGY | 3 |
| 1.4 STRUCTURE OF DISSERTATION | 3 |
| CHAPTER 2: SHIP OIL POLLUTION DAMAGE COMPENSATION FUND SYSTEM FOUNDATION THEORY AND OUTLINE | 5 |
| 2.1 BOUNDARY OF INTERRELATED CONCEPTION | 5 |
| 2.1.1 <i>Clear the Ship definition</i> | 5 |
| 2.1.2 <i>Oil pollution damage</i> | 7 |
| 2.1.3 <i>Ship oil pollution damage compensation</i> | 9 |
| 2.1.4 <i>Character of ship oil pollution damage compensation fund</i> | 9 |
| 2.2 FOUNDATION THEORY OF SHIP OIL POLLUTION DAMAGE COMPENSATION FUND | 12 |
| 2.2.1 <i>Marine environment pollution tort theory</i> | 12 |
| 2.2.2 <i>Environment damage compensation fund theory</i> | 14 |
| 2.3 DEVELOPING OF INTERNATIONAL SHIP OIL POLLUTION DAMAGE COMPENSATION FUND SYSTEM | 15 |
| CHAPTER 3: CONDITION AND PROBLEMS OF <i>MANAGEMENT METHOD , P.R.C</i> IN PREPARATORY CONSTRUCTION STAGE | 19 |
| 3.1 ENFORCEMENT BACKGROUND OF MANAGEMENT METHOD , P.R.C | 19 |
| 3.2 OPERATING AND PROBLEM EXISTING OF CHINA SHIP OIL POLLUTION DAMAGE COMPENSATION FUND | 22 |
| 3.2.1 <i>Discriminate and classify oil type</i> | 23 |
| 3.2.2 <i>Ship's prescribe unreasonable</i> | 24 |

| | | |
|-------|---|----|
| 3.2.3 | <i>The Lack of Emergency Response Fund</i> | 24 |
| 3.2.4 | <i>"Management Measures , .P.R.C " as departmental regulations established inappropriate for acting</i> | 27 |

CHAPTER 4: OPERATING AND EXPERIENCE REFER OF INTERNATIONAL SHIP OIL POLLUTION DAMAGE COMPENSATION FUND 29

| | | |
|-------|---|----|
| 4.1 | UNITED STATES | 30 |
| 4.1.1 | <i>Operation of America Oil Spill Liability Trust Fund</i> | 31 |
| 4.1.2 | <i>Consultation of America Oil Spill Liability Trust Fund</i> | 32 |
| 4.2 | UNITED KINGDOM | 33 |
| 4.2.1 | <i>Operation of U.K . oil pollution fund</i> | 33 |
| 4.2.2 | <i>Consultation of U.K. oil pollution fund</i> | 35 |
| 4.3 | CANADA | 35 |
| 4.3.1 | <i>Operation of Canada oil pollution fund</i> | 36 |
| 4.3.2 | <i>Consultation of Canada oil pollution fund</i> | 37 |
| 4.4 | THE EUROPEAN UNION | 38 |
| 4.4.1 | <i>Operation of E.U. oil pollution fund</i> | 38 |
| 4.4.2 | <i>Consultation of E.U. oil pollution fund</i> | 40 |

CHAPTER 5 : ADVICE ON PERFECTING CHINA SHIP OIL POLLUTION DAMAGE COMPENSATION FUND SYSTEM 41

| | | |
|-------|---|----|
| 5.1 | SUGGESTIONS ON IMPROVING THE <i>MANAGEMENT METHOD , P.R.C</i> | 41 |
| 5.1.1 | <i>Clear "oil" identification standards</i> | 41 |
| 5.1.2 | <i>Clear definition of "ship"</i> | 42 |
| 5.1.3 | <i>Established Special Emergency Response Fund</i> | 44 |
| 5.1.4 | <i>Improve Management Method , P.R.C as administrative enactment</i> | 46 |
| 5.2 | THE DEVELOPMENT DIRECTION AND FORM CHOICE OF SHIP OIL POLLUTION FUND IN CHINA | 47 |
| 5.2.1 | <i>The opportunity of China's entry into the fund Convention</i> | 47 |
| 5.2.2 | <i>To establish a dual fund in line with China's national conditions</i> | 53 |

CHAPTER 6 : SUMMARY AND CONCLUSION 56

REFERENCES 58

BIBLIOGRAPHY 62

LIST OF FIGURES

| | | |
|----------|---|-----------|
| Figure 1 | Compared Maritime Code, Rules of Ministry of Transportation in PRC and CLC 1992 civil liability restricted | 20 |
|----------|---|-----------|

LIST OF ABBREVIATIONS

| | |
|---------------------------|--|
| Bunker 2001 | International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 |
| CLC1969 | International Convention on Civil Liability for Oil Pollution Damage, 1969 and protocol 1992 |
| CLC 1992 | International Convention on Civil Liability for Oil Pollution Damage, 1992 |
| Fund 1992 | International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992(Fund 1992 Convention) |
| FMC | Fund Management Center |
| GT | Gross tonnage |
| IMO | International Maritime Organization |
| IOPC | International Oil Pollution Compensation Fund |
| Management Method , P.R.C | Collection and using Management Method for ship oil pollution damage compensation fund in P.R.C |
| Maritime Code | Maritime Code of The People's Republic of China |
| MPCF | Canada Shipping Act |
| MEL | Marine Environment Protection Law of the People's Republic of China |
| NPFC | National Pollution Funds Center |
| OPA90 | <i>America Oil Pollution Act of 1990</i> |

| | |
|-----------|---|
| OSLTF | Oil Spill Liability Trust Fund |
| SOPF | Ship source Oil Pollution Fund |
| SOPCFs | Ship Oil Pollution Damage Compensation Fund system |
| SOPFMC | Chinese Ship Oil Pollution Fund Management Committee |
| SDR | Special Drawing Rights |
| The Guide | Claims Guidelines for ships oil pollution damage compensation |

CHAPTER 1

INTRODUCTION

1.1 Oil pollution – A threaten to marine environment

Following the development of modern shipping industry, crude oil has become the major energy source. However, the distribution is unbalanced. Therefore, numerous crude oil was transported by vessel to the destination. ¹According to the related reports, in 2013, the quantity of crude oil import had reached to 0.289 billion tons, while total crude oil quantity reached to 0.305 billion tons.

But, in recent years, ship oil pollution accident take place frequently. From Tai-an crude oil leakage in Korea, Mexico-gulf drill platform of America leakage, Dalian oil pipeline catch fire and explosion in China, Peng-lai 19-3 drill platform leakage, in Bohai bay in China, and countless ship collision and marine drill platform leakage accidents bring huge catastrophe to human. It makes seriously pollution to the marine environment, and have bad influence to the developing of ocean economics and human living space. It results significant loss. The Ship Oil Pollution has become the major pollution source to the marine environment.

Take the extreme typical oil leakage accident, Penglai19-3 drill platform leakage as instance. June 4, 2011, Platform B,C of Penglai19-3 drill platform, located in Bo-hai bay, China. Marine environment, aquatic products, etc., related industry of Bo-hai bay surfer the vast catastrophe. This oil leakage accident polluted almost 5,500 square kilometer sea area. Resulting, the quality of sea water, almost 870 square

¹ The china information web site gives further information on courses:
<http://www.askci.com/news/201303/01/018522363424.shtml>

kilometer sea water, decline from class one to inferior class four.

However, 39 days later, after oil leakage accident, July 13, 2011, National Ocean Bureau barely promulgate notification to require the platform B,C stop product.

1.2 . Objectives of research

So, in this dissertation, the author will study on the national law of ship oil pollution damage compensation fund system as a core. Through analyzing the operating condition of *Management Method, P.R.C*, which after it had been implemented, summarize experience. And also refer to the perfect experience and regulation from other countries, such as U.S.A.,Canada,etc..

Describe the jurisprudence root for establishing the oil pollution fund system.

Enumerate and analyze the international practice on ship oil damage compensation.

Figure out, the probability for China participating the *Fund 1992*, the necessity for formulating compensation fund system inland, fund construction mode for reference, and compensation range. Hopefully, providing kinds of advice and experience for China to perfect the ship oil damage compensation fund system.

It has deeply theory and actual denotation for studying our national ship oil damage compensation fund system. In the first place, the author probe the theory foundation of establishing Chinese ship oil pollution damage compensation fund system, to promote the related law regime perfect.

Secondly, provide the law foundation for protecting marine environment and victim's profit. who suffering from ship oil pollution. Make sure that it has reliance of law and regulations could be followed, when the compensation dispute occurred. No more leading to happen, as Penglai19-3oilfield leakage , which emergency reaction sluggish. The masses appeal no way, far away to appeal awkward situation.

1.3 Methodology

First of all, this dissertation adopts a comparative method, on the basis of analyzing and demonstrating, compared to different ship oil pollution damage compensation fund systems in different countries. such as the U.S.A. , Canada,etc . Contrary to the special developing situation of Chinese ship oil pollution damage compensation fund systems, and the author combine the ship oil pollution damage compensation fund systems established by the International Maritime Organization (IMO) and related Conventions. For China To seek for possible experiences and methods.

Secondly, in this dissertation the author will study from the historical sight. Everything should be go through endless improving process. By mean of studying the improving process of the ship oil pollution damage compensation fund systems in the world, then we will have a good view to analysis and perfect Chinese ship oil pollution damage compensation fund systems.

At last, in this dissertation the author will utilize case and system study, through introducing and analyzing special cases of ship oil pollution damage compensation fund systems. Combining theory and practice, the author discusses the special ways, which is suitable for Chinese ship oil pollution damage compensation fund systems. And use systematic method to study completely the international legislation practice, however, expect to grape the experience ,which can benefit the Chinese ship oil pollution damage compensation fund systems.

1.4 Structure of dissertation

This dissertation consists of six chapters. Except Chapter One Introduction, Chapter Two discloses the necessity of the research by introducing ship oil pollution damage compensation fund system foundation theory and outline.

Mainly, the author introduces the outline of related conception, ship oil pollution damage compensation fund system foundation theory, International Convention and ship oil pollution damage compensation system, liability undertake regime, analyzing the legal principle of oil pollution fund apportion. And finally, describe the characteristic of oil pollution fund.

Chapter Three are the conditions and problems of *Management Method, P.R.C.* In preparatory construction stage. Based on the promulgating background of the *Management Method, P.R.C.*, to analyze the operating condition of the *Management Method, P.R.C.*, and the existing problems for Chinese ship oil pollution damage compensation fund system.

CHAPTER Four is the operating and experience referred of International ship oil pollution damage compensation fund, and the author primarily introduces the state legislation and operating practice in those developed countries, for instance America ,U.K., Canada etc . Combine the Chinese special dominant condition to analyze and draw lessons from the relevant ship oil pollution damage compensation fund systems.

CHAPTER Five is advice on perfect China ship oil pollution damage compensation fund system. Mainly, advise how to perfect the legislation of *Management Method, P.R.C.* Rationalization is put forward, related to the developing of ship oil pollution damage compensation fund system.

Finally, the last Chapter discusses the overall summary and conclusion.

CHAPTER 2

Ship Oil Pollution Damage Compensation Fund system foundation theory and outline

Chapter Two discloses the necessity of the research by introducing ship oil pollution damage compensation fund system (SOPCFs) foundation theory and outline.

Mainly, introduce the outline of related conception, SOPCFs foundation theory, international convention and SOPCFs, liability undertake regime, analyzing the legal principle of oil pollution fund apportion. And finally, describe the characteristic of oil pollution fund.

2.1 Boundary of interrelated Conception

For the purpose to analyze and figure out clearly, we should make a distinct boundary of interrelated conception.

2.1.1 Clear the Ship definition

(1) Provision in CLC

CLC1969, Article I, regulate the definition of ship:

“Ship” means any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage oil in bulk as cargo (CLC1969, Article I, para. 1).

Ship excluded in CLC 1969, mainly included following classes:

- 1) Warship or state owned, operated, non merchant ship;
- 2) Non ocean shipping vessel carriage drums or can oil vessel;
- 3) Empty or ballast sailing vessel. As the ship empty or ballast sailing, loading oil in

bulk, when leakage or emission, resulting mixture oil pollution. The convention is still suitable. Provided, that a ship is capable of carrying oil and other. (Li Yong, 2006).

CLC1992 detailed the conception of ship: “Ship” means any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage in bulk aboard. (CLC1992, Article I, para. 1) . Simultaneously, it has similar regulation in International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND 1992). Obviously, CLC1992 is clearer than CLC1969 to distinct the ship conception. It has increased the adjust range of convention.

(2) provision in Bunker 2001

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker 2001), has tangible regulation, in its article 1, it regulates the general range for suitable ship, “Ship” means any seagoing vessel and seaborne craft, of any type whatsoever. In the Article 4, definite the range for unsuitable ship. “*Except as provided in paragraph 3, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.*” (Bunker 2001, Article 1 ; Article 4, para.2). Obviously, *Bunker 2001* has not restricted the ship according to the oil, which the ship carried, in other words, all marine pollution may select this convention to adjust, as the pollution arise by the ship bunker-oil leakage.

(3) America oil pollution act, 1990

The *Oil Pollution Act 1990* initiated by the United States has given a clear definition

for “ship”: all kinds of vessels, on-water carriage tools and sorts of man-made apparatus, except public vessel. (OPA90, Article 1001, para. 37). Public Vessel direct owned by the U.S.A., province or political department, or owned by foreign country or bare chart and operating public vessel, except engage in business. (OPA90, Article 1001, para. 29).

(4) regulation in our national legislation

Maritime Code of The People's Republic of China(Maritime Code). It gives the definition of ship: sea vessel and other marine mobile apparatus, except military vessel, government public vessel and vessel under 20 gross tonnage(Maritime Code, Article. 3, para.1), and include ship apparatus. *Prevent Ship Polluting marine environment management regulation*(Prevent Polluting Regulation), which Implementation In March 1, 2010, had not clear definite the conception of ship, just point out relative department, which in charge of, had the jurisdiction to the vessel, who made the ocean environment pollution, except for, military vessel and fishing vessel which out of port area . (Prevent Polluting Regulation, Article. 4) .

Through contrasting different provisions of international conventions, legislations, personally view, the conception of ship should be suitable to the CLC1992. For our country had taken part in this Convention, it has come into force to China in 2000. The definition of ship in CLC1992 is well recognize by the international society, although it has widen range, but it is in order .

2.1.2 Oil Pollution Damage

What is oil pollution damage? How to define it? It is vital important denotation for us to handle the dispute of ship oil pollution damage compensation. While the definition

of oil pollution damage has not yet achieved unity in each national legislation and related international conventions.

In CLC1969, the definition of oil pollution damage:(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;(b) the costs of preventive measures and further loss or damage caused by preventive measures (CLC1969, Article. 1, para. 6).

However, following the development of era and conversion of the environment protection idea , CLC1992 mentioned ecology environment damage conception. It is the era stride. Regulate 1: loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; (CLC1992, Article. 1, para. 6). Additionally, FUND1992 and BUNKER 2001 adopt the same definition with the CLC1992.

America law, in OPA90, has no clear conception of oil pollution damage, but has defined the Clean pollution expense and relative loss. The person in charge of vessel or installation, Toward to be open to navigate water area or adjacent seacoast or exclusive economic zone or water surface, emission oil, undertake the compensation burden for Clean pollution expense and damage regulated in this law. (OPA90, Article.1002). It broaden the definition range of oil pollution damage.

It is hard for us to find out the clear definition of oil pollution damage in our national law . Just in the *Marine Environment Protection Law of the People's Republic of China(MEL)* has defined “pollution damage to the marine environment”. Means any

direct or indirect introduction of substances or energy into the marine environment which results in deleterious effects such as harm to marine living resources, hazards to human health, hindrance to fishing (MEL, Article. 95, para. 1). Pollution to the marine environment in this part shall include oil pollution, while they are different, we can just point that oil pollution damage is one part of pollution damage to the marine environment.

2.1.3 Ship oil pollution damage compensation

Preamble we analyze the definition of ship and oil pollution damage. So, it is easily to understand ship oil pollution damage. But, absolutely, it is not simple fold up. They are mutual independent definition, but they have relevance. Ship oil pollution damage compensation mainly means: any vessel ,except ship which carrying oil, which initiate ship leakage or emission. Resulting pollution lead to health and property damage or the expense, which resort preventing measure and further damage by preventing measure.

2.1.4 . Character of ship oil pollution damage compensation fund

Every country to establish the Ship oil pollution damage compensation fund (SOPCF) is to guarantee the victim, who suffer from ship oil pollution damage. Risk apportion regime for compensate the loss to victim. The nature of SOPCF is a fund, which established by the crude oil owners together, who are the best benefit from crude oil shipping. Risk apportion regime according to the quantity of import crude oil. Therefore, the victim may seek for compensation from the fund, in case they can not get enough compensation.

The fund can be divided into two types: one, is trust fund ; the other is government

fund.

(1) Trust fund

Trust fund regime originate from common law system. While this regime was greet by the civil law countries. Trust means trustor based on trust to trustee. Delegate his property right to trustee. Based on the Desire of trustor, management or handle the property, for the profit of beneficiary or special purpose. Trust is the legal relationship based on trust. But the ownship right does not belong to trustee, the handle power of the property by the trustee was restricted and bind. (*Japan trust law*, Article. 1).

The character of trust fund investment mode, belong to “Interest share, risk together”. It collects scattering funds together, then invest and management it, as a form of company or contract, by the special entrust institution, when the funds reach to kind of scale.

Trust institution will utilize this funds to invest, generally. Simultaneously, get the profit and undertake the risk. Most of the legal relationship is pure civil matters, in trust fund. As an pure civil main body identity exert function. In the light of related regulation of trust fund, the property of the funds is independent. Oil pollution trust fund should be managed to invest and manage, according to the demand of trust.

All the crude oil company should apportion the trust fund. But the oil pollution accident victim could not appeal compensation to the crude oil company, while they can appeal to the oil pollution fund center, although the crude oil owners have undertake the second layer liability.

In case, the victim who suffer the oil pollution accident can not obtain the reasonable compensation from the fund, the victim has the right to appeal. (Liu Xianming, 2006). Recently, trust fund is vast widespread covering over the world. Lots of country adopt trust fund, such as America, the U.K. Australia etc..

(2) . Government Fund

Generally speaking , Government fund is the special fund for special usage. The fund aims at developing certain industries . The fund is levy under relevant legislation and criterion.

Government fund has deep financial characteristic color. (*Notify to enhance the management of Government fund, (Cai Zong zi No . [2000]22)*) Every year, every income and expenditure must be operated according to the regulations, and must be detailed. The administrative units or departments of the government funds must have a sound accounting and financial system. Submit relevant report to the relevant department regularly every year. This fund relies on the government as the main body, strong credibility, whether it is levied or use will have strict supervision, corporate and citizens of the country's level of trust is advantage of government funds. (*Notify to enhance the management of Government funds, Cai Zong zi No. [2000]22, Article. 6).*

However, the fund should have a strong regulatory mechanism to ensure that its implementation. The fundamental purpose of the establishment of the government fund is to compensate the victims of the oil pollution accidents, but the administrative is strong, easy to question whether the fund can be sure that, the victims of oil pollution obtain compensation .(Chen, & Liu, 2008).

As the government funds aimed at the function of protecting the oil pollution damage victims. China's domestic ship oil pollution damage compensation fund has been clearly defined as the government funds. According to China's relevant laws and regulations, the oil fund must be paid to the central treasury, by the Ministry of Finance unified management.

Although some experts(Si,2008)believe that if the ship oil pollution damage compensation fund in China as the nature of the trust fund, the management and

utilize of China's oil pollution damage compensation fund will be more effective.

The nature of some of foreign oil fund is trust fund, for instance, the United States fund is a trust fund, even directly called the "oil spill liability trust fund".

Because the government's leading role is China's overall social mode, if the fund of oil pollution from ships is adjusted by the "trust law", will affect the oil pollution fund scale, the operation of the fund and the fund supervision mode. Therefore, the trust fund is not suitable for our country, at least at this stage, the trust fund is not suitable for operation in our country.

2.2 Foundation theory of ship oil damage compensation fund

2.2.1 Marine environment pollution tort theory

Marine environmental pollution tort is a kind of expression of environmental tort, so it has the common character of environmental pollution tort. From the concept of environmental pollution tort, there is no unified definition. We can pass on the environmental tort meaning to understand. Environmental pollution infringement refers to the environmental pollution caused by the production activities or other man-made causes and the personal and property damage to others.(Li, 2009) In operations at sea or in the process of transportation, due to accidents at sea or man-made causes, to the marine environment caused by pollution or to persons and property damage. As a kind of special tort, the marine environmental pollution tort has its particularity, which is reflected in the following aspects:

Firstly, the diversification of the main damage. Because the marine pollution has its outstanding characteristic, different from the air and the land pollution. Mainly manifested as:

(1) the source of pollution is multiple. It includes environmental damage from the development and activities of the sea, environmental pollution caused by aquaculture,

coastal land pollution and frequent natural disasters , etc. ;

(2) the duration of the damage is long, the potential risk is greater. In addition the marine environment is fragile, once destroyed it is difficult to restore. Breadth of influence. A sea area of the marine environment will be destroyed after the rapid spread around, and then affect other areas, its scope is difficult to accurately estimate.

Secondly , it is difficult to estimate the damage. Marine environmental pollution tort results the loss of human life and death, property damage and resource consumption is difficult to estimate. One is the consequences of environmental damage, the other is difficult to estimate the cost of repair. Especially the damage of oil pollution to the marine environment and ecological environment. It is usually shown as follows:

(1) The oil will form the oil film floating on the sea water, isolated from oxygen, so that the marine life of suffocation death, which is a devastating blow to the marine fisheries, aquaculture industry;

(2) Toxic and harmful substances dissolved in the oil pollution by marine organisms . For example, on 20 April, 2010, the British oil company in the Gulf of Mexico leased the drilling platform “Deep-water horizon” exploded and caused the fire, after which the entire drilling platform sank to the bottom of the sea, resulting in a large number of crude oil spill into the Gulf of Mexico and quickly spread, as in a large area of crude oil pollution. Relevant experts pointed out that pollution may lead to the Gulf of Mexico 1609 km long destruction wetlands and beaches, fishing damaged, vulnerable species extinction. At the same time, the pollution may also pose a threat to the United States nearly 20 national wildlife reserve. (Revelation of the oil spill in the Gulf of Mexico, China marine). Finally, the amount of compensation for oil pollution damage is huge, and the compensation ability of the direct infringement person is limited.

Taking oil pollution accident of oil tanker with 1989 Valdez Exxon as an example. In

1989 Exxon Valdez, oil tanker oil pollution accident resulted in 1600 km of the coast, 7770 square kilometers of polluted waters, the United States Court made a corresponding decision in accordance with the OPA 90 Exxon company paid about \$8 billion for this. (He & Xie, 2007).

2.2.2 Environment damage compensation fund theory

With the development of economy and the improvement of people's living standards, people pay more and more attention to the quality of living environment. Many environmental aspects of the laws and regulations are introduced.

In most countries, the civil law is the origin of the environmental law. On the basis of this, the special legal system of environmental damage compensation law is developed. (Chen Ciyang , 2003). Among them, the environmental damage compensation fund, as a way of compensation, has become a supplement to the liability of environmental damages.

However, the idea of the traditional tort law is that the damage of the victim will be transferred to the perpetrators. This responsibility to bear emphasizes the legal relationship between the offender and the victim and the offender's behavior can be blamed as the imputation principle, flaunting individual responsibility. It is also known to transfer the damage. (Wang, 2001).

Environmental damage compensation fund is to raise through the collection of funds. It compensate the traditional civil liability cannot remedy responsibility, which transferred to the wider social benefit groups, through the government finance investment, social contributions and other taxes and fees collection and other forms. And by the special departments to manage, to achieve a personal standard to the social standard of change, maintaining the fairness and justice. Its performance mainly has the following several points:

First, the environmental damage compensation fund has the final guarantee function. That is to say, in the process of environmental damage, the victim has a variety of relief means, and cannot get the victim compensation in other ways. But the fund can be started when appeal the compensation. That is, there is no other remedy to be able to obtain, compensation the victim through the fund.

Second, the environmental damage compensation fund has a high efficiency in the economy. Applicable to the fund as long as they comply with the conditions stipulated by then, no matter how complex the environment tort at sea, even cannot be determined the infringer, or infringer cannot repay the actual case and the infringer refuses to pay. By way of appeal the fund for compensation, short time, lower cost, high efficiency, timely emergency treatment of oil spill accidents, and worry free.

Third, the environmental damage compensation fund is the foundation of the protection. Purpose of establishing the fund is to relieve and compensate the victim. And it is not to improve the quality of life of the victim, to obtain the proceeds, the fund is a kind of compensatory measures, focusing on personal injury compensation, as for the spirit loss and looking forward to the possibility of property interests is not specified.

2.3 Developing of International SOPCFs

International ship oil pollution damage compensation fund system, in essence, is to make up for the civil liability in the Convention on the lack of compensation for oil pollution damage. In March 1967, the tanker "Canyon Torrey" oil pollution accident directly contributed to the international ship oil pollution damage compensation system.

Ship oil pollution damage compensation fund is based on the principle of collective

burden, and in order to protect the rights of victims and beneficiary pays. The oil owner to share the risk of an accident of oil pollution from ships. The purpose of the fund is to prevent spilled oil accident victims of oil pollution loss compensation and devoted to the establishment of the fund to solve the insurer and the owner as the first responsibility main body, insufficient compensation problem.

The international ship oil pollution damage compensation fund consists of three inter-governmental organizations, Fund 1971, Fund 1992 , and The Supplementary Fund 2003.

If marine oil pollution incidents occur , then the oil pollution victims cannot get full compensation from the insured or the ship owner according to CLC 1969 , or damage caused by the accident of oil pollution from ships is beyond the limits of the provisions of the Convention , the Fund Convention Contracting State may , in accordance with the Convention to apply to the fund for oil pollution damage compensation.

The ship owner and the oil owner to share the responsibility of the dual responsibility mechanism is established by 1969CLC and 1971FUND. Additionally, the international oil pollution damage compensation fund system is established by them too. Although CLC 1969 has been clear for ship oil pollution damage compensation obligation subject is the owner of the ship. Undertake the obligation subject the scope of compensation, not only accident clean-up costs and taking preventive measures cost. Nevertheless, from March 1967 Libyan registered tanker “*Torrey Canyon*”oil accident, resulting marine oil pollution ecological loss is immeasurable, property loss is huge. Just by the owner to bear compensation for damage in the accident, has been unable to meet the actual requirements of the compensation.

Therefore, the IMO developed the *Fund 1971* and it clearly defined that the biggest beneficiaries of the offshore oil transport. The oil owner must be, according to a

certain proportion of contributions and work together to build a compensation fund, become the second main body on marine oil pollution compensation duty. So that it can compensate the owner, as the first subject of obligation of compensation defects.

In The FUND1971, Article. 3, clearly stipulates that, once the ship's oil spill resulting damage more than the owner's liability limit, or in accordance with statutory reasons, the ship owner is not liable. The damage of the accident should be compensated by the fund. The fund convention also requires that the member states of the fund convention must be, at the same time as the 1969CLC States parties, so as to form a double layer oil pollution damage compensation mechanism. Because of the rapid development of marine industry, the oil pollution victims suffered the actual damage in the sea is larger than the quantity regulated in the compensation required by CLC 1969 and FUND 1971. After a large number of IMO changes, the current use of the 1992 protocol, that is, CLC 1992 and FUND 1992.

Due to economic development, the amount of money ,which oil pollution victims, under the current CLC1992 and FUND 1992, apply for compensation, has been unable to make up for their actual losses. So the requirement to create a supplementary fund.

In 2003, IMO was officially adopted by the Supplementary Fund 2003, in London, England. The supplementary fund is a selective fund, independent of 1992FUND, countries have the right to choose to participate in or not. The compensation scope of the supplementary fund is far greater than the scope of the 1992FUND regulations. In other words, the supplementary fund is the main body of the third compensation for the oil pollution accident at sea.

According to the three layers of the main responsibility mechanism, the main responsibility should bear the compensation according to the actual situation. In this way, the victims of the oil spill can be fully and reasonably compensated.

Convention Member States once the occurrence of oil pollution accidents, the oil pollution victims can appeal compensation, in accordance with certain standards, conditions and procedures to the international oil pollution compensation fund center.

CHAPTER 3

Condition and problems of Management Method , P.R.C in preparatory construction stage

Based on the "Ship Oil Pollution Damage Compensation Fund collection and use Management Method, P.R.C" (hereinafter referred to as , Management Method, P.R.C), the introduction of background. Analysis the operation condition of the "Management Method , P.R.C"as it implement nearly four years. Figure out the problems of Chinese ship oil pollution damage compensation fund system .

3.1 Enforcement background of *Management Method , P.R.C*

With the continuous improvement of port throughput capacity, the scale of the tanker growing. the number of VLCC tankers, increased year by year. The degree of risk, increasingly high , for ship Oil pollution. In the event of a major oil spill accident , the person directly responsible - usually the owner is unable to pay huge compensation which would inhibit the healthy development of the shipping industry, is not conducive to social and economic development.

Additionally, in general, with the number of Chinese oil tankers till now, we can not meet our demands on oil imports. Therefore, we require tankers from other countries work for our country. There are a lot of single-hull oil tankers and oil tankers of the poor quality, persistence in domestic trade, such as on the Yangtze River, Pearl River, and this will increase the possibility of oil pollution accidents.(Liu Gongchen , 2005). Since the rescue costs associated with oil pollution incidents not guaranteed. Resulting in "who clean up, who lose" this phenomenon. From clean-up related data statistics during recent decades, China in rescue at sea oil pollution clean-up rate is very low. there are a lot of reasons lead to this situation. In addition, because there is no emergency relief funds, the overall quality of Chinese emergency rescue team also needs to be improved. Professional not enough the enthusiasm is not high, the whole emergency rescue system exists many shortcomings. together they led our

country can not make progress on emergency relief.

Even China has joined the CLC 1992, the mainland China is still not a member of 1992FUND, while, there is no sound unity in its domestic ship oil fund system.

And certain provisions related to ship oil are distributed in many branches of law, although now the new "prevent-pollution regulations" promulgated, but still some principled content, further details of the provisions to be introduced.(Si Yuzhuo, 2002). After the "Compulsory Insurance Implementation Measures" official implement. To the victims who suffer the oil pollution accidents, it means more than a layer of protection compensation mechanism is provided. But the loss of oil pollution accidents is immeasurable, plus the limitation of liability clause. Currently, the law applicable limit of liability for oil pollution damage mainly in China.

Compared Maritime Code, Rules of Ministry of Transportation in PRC and CLC 1992 civil liability restricted.

| Regulation | GT | 20 | 100 | 200 | 300 | 500 | 1000 | 2000 | 5000 | 10000 | 100000 |
|-------------------------------------|----|------|------|------|------|------|-------|-------|-------|--------|--------|
| Maritime Code | | --- | --- | --- | 16.7 | 16.7 | 25.05 | 41.75 | 91.85 | 175.35 | 1677.8 |
| Rules of Ministry of Transportation | | 1.38 | 2.69 | 5.19 | 8.35 | 8.35 | 12.53 | 20.88 | 45.93 | 87.60 | 8738.9 |
| CLC 1992 | | 300 | 300 | 300 | 300 | 300 | 300 | 300 | 300 | 510 | 4290 |

Figure 1, mark: unit 10,000 SDR

Source: (Han Lixin, Research on Legal System of Compensation for Ship Pollution Damage [M.] Beijing: Law Press, 2007,73).

From the data in the table, we can conclude that small vessels less than 1000 gross tonnage, the limits of liability up to the Ministry of Transportation provided, only

125,300 special drawing rights;

From the point of view tonnage changes, there is a large gap, between maritime regulations and the provisions of the Ministry of Transport, in 1000-2000 tons of ships . But most limits of liability quota in CLC 1992.

In addition, due to differences in the applicability of the law, once the oil spill accident, if applicable the limitation of liability provisions, "Maritime Code" or the "Ministry of Transportation". the oil pollution victim may not be given practical compensation. Typically, the amount of compensation is a huge oil spill, even with the 1992CLC convention. The interests of victims of oil pollution can not be guaranteed.(Xu Guoping, 2006, p.178).

From the perspective of the interests of the victims of the Ship Oil Pollution damage, the Ship Oil Pollution damage Compensation Fund is particularly important. And compensation for oil pollution damage continues to improve, although the compensation obtained and the damage actually still exist some gaps.

According to investigation, Chinese victims, who suffered the ship oil pollution, compensation for oil pollution really get a percentage of the actual loss suffered by very low. Victims of oil spills at sea in China , in order to truly be effectively compensated, to create Chinese ship Oil Pollution damage Compensation Fund has become inevitable.

From a long term point of view, to establish the national oil pollution fund is to pave the way for our country with international standards. In the view of our country, in general, some of the provisions of principle and procedural provisions. It has no strong operability in judicial practice operability.

The problems of marine oil pollution damage compensation fund system in our law, is still a big vacancy. So that the victims, in frequent marine oil pollution accidents,

can not compensated properly.

In the light of the frequently occurs of Chinese marine oil pollution accidents, especially in the Bohai Bay oil spill Penglai 19-3 drilling platform. The exhortation of Urging China to establish the oil fund is increasing. Through the efforts of expert and researcher, "*Ship Oil Pollution Damage Compensation Fund levy and utilize Management Method , P.R.C*" in 2011, turned over to the State Council Legislative Affairs official, and on July 1, 2012 came into effect.

And, on June 18, 2015, Chinese Ship Oil Pollution Fund Management Committee was established in Beijing. Although the department complicated, after all, it is another step forward. This indicates that China in the new phase of oil pollution damage compensation, but also for the victims of oil pollution provides a layer protection. Another excellent thing is that on July 3, 2016, the Claims Guide for ship oil pollution damage compensation fund , officially announced, by the Maritime Bureau of the Ministry of Transportation in P.R.C.. In the future, in line with the legal conditions of the ship oil pollution victims can be subordinate to the Ministry of transportation under the China ship oil pollution damage claims transaction center to submit claims for application materials. Absolutely, it is a good news to perfect the Chinese oil pollution damage compensation fund system, for which it has details specification.(http://www.zgjtbc.com/shuiyun/2016-07/19/content_89997.htm)

3.2 Operating and problem existing of China ship oil pollution damage compensation fund

Since Chinese "*Ship Oil Pollution Damage Compensation Fund levy and utilize Management Method, P.R.C*" in 2011, officially handed over the State Council Legislative Affairs Office, and on July 1, 2012 came into effect. By now it has been four years.

However, Chinese ship oil pollution fund system implemented in practice, there are still many problems, such as the classification of oils identification, the collection of nodes Fund, the conception of ship is unreasonable, do not set an emergency fund. To establish the terms of the form as departmental rules and regulations inappropriate.

I will explain in detail:

3.2.1 Discriminate and classify oil type

In the provisions of Article V in Chinese "*Management Method , P.R.C*", the definition is not clear enough, the concept is likely to cause confusion. For example, defining issues, condensate oil, modified oil, asphalt etc.

First, crude oil is a hydrocarbon liquid mixture, natural arise from the ground, regardless of whether or not treated to facilitate transport. Also it includes some oil has been purified fractions (sometimes called "condensate" or "topped crudes") or some fraction of crude oil has been added (sometimes called "crude oil feed" or "crude modification"). For example: crude oil, topped oil ("About solicit persistent hydrocarbon mineral oil contains oils views of the notice"). According to the explanation of the crude oil, the condensate are included within the scope of the crude oil. ²However, depending on the material I have had access, the character of volatile for condensate is relatively good, it is a solvent oil production quality of raw materials.

Although the condensate has a strong volatility. However, in the "*Management Method , P.R.C*" stipulates the target fund levy is non-volatile persistent oil substances, and in the part of scope of oil, condensate is the volatile oils. so for this condensate oil substances in the end whether should be levied or not?

The second problem is that the modified oil. After, be modified, all the oil can be

²Baidu Encyclopedia: <http://baike.so.com/doc/877259.html>

known as modified oil. Such as: modified gasoline modified asphalt, etc.

The third is, Bitumen is impervious. And basically, it does not dissolve in water. the Asphalt, whether persistent oil substances or not? whether this kind of oils should be levied funds or not? As the "*Management Method , P.R.C*" and "(Trial) Regulations" have not given specific and explicit requirements of condensate, modified oil, asphalt etc., whether to levy pollution fund to them or not. Thus giving the staff in the collection process, often unable to identify the kind of oil. It makes the staff of fund levy in great obsession. Non-persistent oil substances is also an important cause of marine pollution, although the volatile nature of the non-persistent oil substances is strong. But volatile just change its physical properties, this change does not eliminate this kind of material on large influence of the ocean. so it seems, to identify and classify specific and clear provisions of the oil is even more necessary.

3.2.2 Ship's prescribe unreasonable

In the "*Management Method , P.R.C.*" Article VI, the definition of ship, only limited specialized in maritime transport tankers, while oil tankers sailing in inland shipping does not apply to this "*Management Method , P.R.C.*" However, such provision, lead the damages of as many of the river Yangtze and Pearl River in the busy shipping tanker oil spill to face that, no legal can be basis on. Trap in justice dilemma, as the rule of law is not perfect. Jurisdiction, it should be done regardless of international and domestic routes, by sea or inland shipping, any body of water. When oil spill disasters occur, it should ensure that the victims of oil spills can get a reasonable compensation in a timely manner.

3.2.3 The Lack of Emergency Response Fund

To acquaint the Importance of Emergency Response Fund. As we all know, after the oil spill occurred, timely clean-up process, avoid further expansion of damage initiated by the accident, it is the highest priority things should be handled. Compensation order regulated in Chinese "*Management Method , P.R.C* ", that is to take immediate emergency measures to carry out the clean-up operations, and monitoring to detect the accident, the final assessment of the damage suffered.

Costs associated with emergency response should be given priority.(*Management Measures.P.R.C, Article. 10*). In Article. XVIII of the "*Management Measures , .P.R.C* ",has clearly defined the specific sequence for the compensation. The implementation of specific cases, it is assumed there are multiple requests compensation for damages in the same order, the same order of the plurality of claimant In no particular order. it must be repaid. Once the balance is insufficient, in accordance with the respective proportions to be repaid. Although the "*Management Measures, .P.R.C* " the clean-up costs, which the emergency relief, on the repayment of the first order. Giving priority to emergency relief costs. However, it still can not effectively ensure the operation of the ship at sea oil pollution emergency response system.

Although Chinese "*Management Method , P.R.C*" to be clearly defined for this fee, but it is extremely complicated in the process of the operation. Any portion of money, wants to mobilized must be through the complex verification by the Fund Board. In order to actually use in the remedial action, so cumbersome procedures, how to emergency? So unreasonable rules is bound to have a lot of practical problems.

Thus often leads the Clean-Up Company trap in an embarrassing scene.For instance, when a ship oil pollution accident occurs, the relevant rescue companies must be taken immediately come forward to the rescue scene. The first time put a lot of

manpower and resources, arrangements for professional rescue teams carry out emergency clean-up work and testing to monitor the work.

Under normal circumstances, the relevant units will be calculated the costing actions arising, after the emergency clean-up aspects work to an end. And then apply to the allocation of the financial sector. It can be seen, the rescue costs actually, for disaster relief accident, must first be paid by the rescue company themselves.

However, often, the amount of the costs for emergency clean-up are relatively large. and no appropriate emergency clean-up special funds to support. Therefore, the first time to come forward to the rescue scene of the purge company often trap in cash flow problems. Severely, oil pollution victims cannot get enough compensation in the end. Besides, the maritime department does not give appropriate clean-up subsidies.

So "Who purge who lose" situation, the rescue department morale is broken. Easily missed most critical rescue time. Various types of losses caused by oil pollution disasters are often immeasurable. Resulting such unbearable situation , the cost of clean-up" *Management Measures,.P.R.C*" as stipulated becomes unworthy of the name. (Han , 2008 , 1 (18) , p. 308).

In addition, on the whole, for China, the performance of clean-up power is relatively poor, due to the funds invested in this area is very small, clean-up team lack of professional quality, service level, technical level on the whole far from other developed countries. From our average expenditures on clean up, can be seen: the average clean-up expenses of only 1,600 yuan per ton in our country, Even leaking 50 tons or more in a major oil spill, so far, has been spending 13,600 yuan per ton. It is the highest data.

Compared with the investigation data from the International Oil Pollution Compensation Fund (IOPC). Once the international oil spill accident occurs, the cost

of clean-up for their spending on average about 2090 pounds per ton, equivalent to 20,879 yuan, the equivalent of the average thirteen times of the cost of pollution in our country. It is not difficult to see that investment in the oil spill clean-up operations carried out in terms of costs, the gap between our country and the international community is relatively large. (Liu Gongchen, 2004).

Often, in reality, prepaid for the first clean up on its own company to carry out clean-up operations . After the end of the purge actions to recover those liability who made this oil spills. (Ke, 2011.2), During the decontamination company fully engaged in the process of clean-up operations, the relevant maritime authorities will not consider to provide the purge company with a certain amount of subsidies.

According to Chinese relevant laws and regulations, the purge company who advance the cost for the clean-up costs and damages, which must be responsible by the oil spill incident ship to bear. But, if the owner of the ship accident occurred insolvent bankruptcy or disappearance of the ship is hit and escape. Under such circumstances, it will inevitably lead to the result that, "Who purge who lose" tragic situation.

To sum up, resulting in such a miserable situation, the fundamental reason is the absence of financial security. Although Chinese " *Management Measures* , .P.R.C " in Article XVIII already provided emergency relief related costs, clean-up and preventive measures are included in the scope of oil pollution compensation fund, the most important thing is that the compensation does not have a clean-up costs nature advance payment.

3.2.4 ."Management Measures, .P.R.C " as departmental regulations established inappropriate for acting .

First, because the law is a distinction potency levels. According to Articles 78-80 of

Chinese Legislation Law , Constitution has the highest legal effect.

However, the "*Management Method , P.R.C*" drew up by the Ministry of Finance, Ministry of Transport jointly, belong to departmental regulations. In China, "*Legislation Law*" Article 82 stipulates that between departmental regulations, has the same effect between the department regulations and local government regulations, within their purview purposes. (Wei, 2011).

According to relevant laws and regulations, under the joint efforts of various departments, "*Ship Oil Pollution Compensation Fund collection and use Management Method , P.R.C*" on July 1, 2012 came into effect. Moreover, on June 18, 2015, China Marine Oil Fund Management Committee was established in Beijing. It has not change it, in the form of departmental rules and regulations. Set the terms and effect of the law is not brought high, the deterrence is not enough, and will lack of stability.

If the relevant local governments have developed rules and regulations related to oil pollution fund. While governmental regulations and the Ministry of Finance, the Ministry of Transport to develop departmental rules in effect is the same, when specific oil pollution accident happens, which code should be implemented, follow the Maritime Administration regulations or governmental regulation department? This causes law enforcement personnel can not figure out weigh the embarrassment.

CHAPTER 4

Operating and Experience refer of International ship oil pollution damage compensation fund

In this chapter, the author focus on introducing domestic legislation and practice runs in the United States, Britain, Canada and other developed countries. The author will analyze and refer the Chinese special conditions.

As an branch of international oil pollution damage compensation legal system, the development of marine oil pollution compensation fund system in our country is still not perfect . Although Chinese " *Management Method , P.R.C* ", finally under the joint efforts of various departments and experts and scholars on July 1, 2012 , has been officially implemented, it means that Chinese Ship Oil Pollution Compensation Fund has been initially established. Ships oil pollution fund at the beginning of the establishment, many problems exist in all aspects, imperfect, unreasonable also been exposed. Therefore, in the application of "*Management Method, P.R.C*" must face their own shortcomings and continue to improve the fledgling oil fund system.

Fortunately, June 18, 2015, China Ship Oil Pollution Fund Management Committee was established in Beijing. This indicates that China in the new phase of oil pollution damage reparation. But there are still many problem. Claims, appealed by the victims of oil pollution in the oil accident, may still not be satisfied.

Today, many international countries, especially developed countries, have been worked out, it is possible to quickly resolve Ship Oil Pollution Compensation Fund approach. State institutions in each country and a different economic model, set up the way, they are formed in the oil fund is different. Internationally recognized,

which have a perfect oil pollution fund system, practice to run excellently, typical countries such as: USA , UK , Canada and the EU. In this para. I will highlight a few representative countries legislative model, and to analyze the problem.

4.1 United States

The United States did not join "Civil Liability Convention", did not join the "Fund Convention." But in their own country to establish a trust fund of oil pollution liability regime .

Occurred in 1989, " (Exxon Valdez)." (Colin De La Rue, Charles B.Anderson, 1998) US oil spill accident, second only to the 2010 US Gulf of Mexico - drilling platform oil spill, the most tragic oil spill disaster to today. Affecting the normal American marine ecosystems. So that the US government noted that:

First, the compensation limit, which can be provided, based on the International Convention, is not enough to pay for damage caused by oil pollution incidents. Adding 1992CLC and 1992FUND not materially protect their marine environment;

Second, is the rescue of the accident, there was no comprehensive contingency planning and other important rescue equipment and conditions, a serious shortage of emergency relief funds.

Thus, the United States did not join the relevant international conventions, but developed their own domestic law "*Oil Pollution Act of 1990*" (hereinafter referred to as OPA1990). More importantly, based on the relevant provisions of the 1990 Oil Pollution Act, the United States has created a very efficient maritime oil spill emergency response mechanism and the Oil Spill Liability Trust Fund, which include billions of dollars (referred OSLTF), and can pre-pay oil spill emergency response

costs. This is the most important feature of the United States Trust Fund, which provides funding for the rapid and efficient operation of emergency response mechanisms.

4.1.1 Operation of America Oil Spill Liability Trust Fund

US OSLTF contain two parts, the "Emergency Fund" (emergency fund) and "Basic Fund" (principal fund), a total of \$ 1 billion. OSLT funds mainly levy from the US National Petroleum environmental taxes, that imports, domestic production in the US this every barrel of oil collection 5 cents. Besides, also include: natural resource damages compensation, according OPA90 recover. Responsibility Fund which established under other legal provisions, fines and compensation fund.

"Sunset" (Sunset) provisions stipulate, environmental taxes of oil, whether suspension or re-imposed, changes to follow the remainder of the total of the Trust Fund. If the total amount of surplus OSLTF more than \$ 1 billion, will temporarily stop petroleum levy environmental taxes; If the remaining total OSLTF less than \$ 1 billion, it will begin to continue to levy the tax.

Based on the *US Oil Pollution Act of 1990* and its supplementary rules, the United States Coast Guard established the National Pollution Funds Center (National Pollution Funds Center, NPFC), and the fund center was formally established as an independent department on February 20 , 1993. The leadership of the US coast guard chief Executive give the direct command. Washington is its headquarters .

Oil Spill Liability Trust Fund is managed by the Fund center, mainly on the sources and uses of funds, emergency response pay and clean-up costs. After Oil Spill Trust Fund pay the fees, and compensate the corresponding loss, in advance. Recovery the loss to whom , responsible for the accident, the main work is the claim transaction.

Although the fund center is an important part of the Coast Guard Oil Pollution Response System. But it is in the nature of the trust fund, is part of a legal person. Independent of the trustee's responsibilities, differ from other agencies of Coast Guard Headquarters. Oil pollution in the event of an accident, dispatch centers must fund management team immediately rushed to the accident area for emergency treatment.

Various departments of the central fund have clear responsibilities. Such as the Legal Department, it is to provide legal support, such as providing funding for emergency clean-up operations, claims judicially, cost recovery and provide constructive legal advice for ship financial responsibility, etc. also have to take participate in the appeal proceedings. The purpose of set the emergency fund is to ensure the smooth and effective conduct relief work, after the event of oil spills from ships. and the establishment of this fund, emergency fund of not less than \$ 50,000,000 a year. In order to prevent financial problems.

In 2003, when the United States to basic Fund for funding , and this has just set up , has an emergency fund reach to almost \$ 100 million . The emergency relief teams can apply for early salvage charges related expenditures. Such accidents, this put an end to the funding problem with marine oil spill accident. Once the ships occur oil pollution accident, emergency fund, which managed by the fund management center , work 24 hours a day, ready to respond for the clean-up operations.

4.1.2 Consultation of America Oil Spill Liability Trust Fund

Through the foregoing description of the relevant legislation and practice, in the United States, runs oil spill fund shows that, the United States Oil Pollution

Compensation Fund than the International Oil Pollution Compensation Fund has a wider range, higher limit liability, compensation fuller.

US Oil Pollution Act 1990 has been set up the contingency fund, inside. The establishment of this fund will also help marine oil spill relief, so that the purge teams could to deal with accidents in the best rescue time. Control and reduce oil pollution in the greatest degree.

The experience, which is worth for us reference, are: first, to set up emergency relief funds for oil pollution incidents as soon as possible, and that the emergency relief funds can spend in advance. For the protection, in exceptional circumstances, timely and effective rescue operations. Moreover, this fund should suit for dealing with maritime oil pollution incidents, which occurred in navigable waters and the exclusive economic zone.

4.2 United Kingdom

The international community today, the Ship Oil Pollution Compensation Fund Operating System are consistent with the UK's fund system, in most countries. It is recognized as the most popular and most extensive coverage, for its ship oil pollution fund system. It is entirely in accordance with the "*Liability Convention*" and "*Fund Convention*" to establish the oil fund system.

4.2.1 Operation of U.K . oil pollution fund

Britain joined the "*Liability Convention*", and then joined the "*Fund Convention*". According to relevant provisions of the "*Fund Convention*" , the British established the nature of oil pollution damage compensation fund is liable for supplementary liability. It is the second responsibility. This is to compensate the victim, who suffer

from oil pollution. When the Oil spill victims, in no way, get the compensation from the shipowner. (Xu, 2006) .

The source of funding for the compensation fund for oil pollution damage, mainly oil shippers based on their proportion of the assessed contributions, the Fund Convention has to make provision at this point, so that, the shipowner's responsibility is relatively reduced, in the economy. According to such compensation mechanism, once a member of an international convention occurs oil spill accident, under normal circumstances, the victim can apply for compensation to the Fund and can get tangible compensation . (Yu, 1993) .

Ships oil pollution fund system established by the United Kingdom is entirely followed the "*1992Liability Convention*" and "*1992Fund Convention*". However, it is not a simple direct application of the two conventions, but the two, above-mentioned Convention directly change into its domestic law. In other words, the United Kingdom transfer the relevant provisions of International Conventions into their own national laws. And then develop it into its national law, such as 1995"*Merchant Shipping Act*". The existing UK international fund, which established based on International Fund Convention, also wrote in the merchant shipping law. Chapter IV .3(Wei, 2011) .

From the point of view, the definition of the concept of ship. The definition in merchant shipping law or in the Fund Convention, definition of the ship did not differ. But in the definition of the oils, the range of merchant shipping law has a wide scope than the funds Convention. Because in the Merchant Shipping Act, it not only include persistent oil substances but also contains a non-persistent oil substances .

³ Wei Feng. British oil pollution compensation fund system. Jiangsu Marine and Fisheries
Website: http://www.jsf.gov.cn/art/2011/3/25/art_79_70887.html

Basically, Merchant Shipping Act have no oils persistent and non-persistent classification

4.2.2 Consultation of U.K. oil pollution fund

British oil fund is to collect oil fund system, which is recognized by public, then through its domestic legislation to establish it. This form of Fund is the world's most widely used fund model, it has been recognized by public.

Although, British "*1995 Merchant Shipping Act*" no oil persistent and non-persistent distinction. However, due to the British "*Merchant Shipping Act, 1995*" has made it clear that the law does not adjust oil foreign oil case. If there are foreign-related cases, then, the two oil-related provisions of the Convention applies.

In contrast, Chinese "*Management Method , P.R.C*" is rather vague to define oil. Although clear that only persistent oil substances oil suitable for fund levy, however, in the specific operation, often, many kinds of oil can not recognized for there are no detailed provisions.

4.3 Canada

Canada is the national use of international, domestic compensation mechanism funds. Canada already participated in two international conventions , but also to establish a national Oil Pollution Compensation Fund. Two mechanisms operate simultaneously , complement each other. (Han ShaoGuang , 2009). Before CLC1969 and Fund1971 into effect, Canada revised "*Canada Shipping Act*" in 1971 (hereinafter referred to as MPCF), establishment of a national maritime oil Pollution compensation Fund. It is the first comprehensive national oil spill liability system in the world.

4.3.1 Operation of Canada oil pollution fund

Canadian levies assessments for almost all oil imported into, or on the way transport Canada. Assessments assume people, including oil companies, energy producers, pulp manufacturers, chemical plants and other heavy industries. (*February 2 , 1972 , MPCF begin to pay, in September 1, 1976 MPCF cease the levying of assessments until the new Fund SOPF substituted*).

Amendment "*Canada Shipping Act* " in 1987, the new ship source oil pollution fund (hereinafter referred to as SOPF) replaced the original MPCF. SOPF on April 24, 1989, entered into force, the fund MPCF had collected all transferred to SOPF.

SOPF will undertake pollution damage compensation liability, including ship oil spills occurred and foreseeable damage, in anywhere on the field within Canada waters, which include the exclusive economic zone. while, applied Ship in FUND1992 the scope will be limited as navigation oil tank, the suitable oil is sustainable. SOPF is suitable for all kinds of oil spill.

In 2001, when Amendment "*Canada Shipping Act*", the Canadian Parliament transfer the content of marine pollution liability and compensation, oil pollution funds from "*Canada Shipping Act*" deleted, adjusted to the " *2011 Canadian Marine Liability Act* ".

In 1998, Canada, revised the maritime liability para. of " *Canada Shipping Act*", and then to become a party to the CLC1992 and FUND1992 . Therefore , Canada has an international funds and a domestic funds. Funds, which contributed by Oil company and other assessments undertaker, managed by the SOPF unified. One is contribute for FUND1992, Another part is reserved for domestic funds. Domestic funds, mainly used for compensate claimants, which FUND 1992 can not be applied

by the claims. And compensate the victim, which failed to get satisfied from the FUND1992.

All claims first place in the field of oil pollution incidents arising in Canada. After the two compensation of CLC1992 and FUND1992. You can also get compensation from the third stage of SOPF. After the occurrence of oil pollution incidents, the claimant can appeal, in advance, owner, guarantor or FUND 1992 claims. SOPF administrator as a third party take part in the proceedings, the claimants can also seek compensation directly to SOPF. SOPF administrator has the responsibility to investigate and assess the damage, and then decide whether to grant compensation. When the administrator to pay compensation , the manager can replace the claimant's status, to take all reasonable measures to shipowners, FUND1992 or any other persons responsible for recovery.

4.3.2 Consultation of Canada oil pollution fund

Canada, both domestic and international oil pollution compensation scheme run. Domestic oil fund could pay the fee, in advance to the accident rescue and clean-up, etc., while the International Oil Pollution Fund have appropriate funding guarantee. This two complementary mechanisms, are a more comprehensive system of ship oil pollution fund, in global scope.

Our country can learn from the experience

1 Establish the domestic Ship Oil Pollution Compensation Fund, and then joined FUND 1992 ;

2 When creating their domestic Ship Oil Pollution Compensation Fund will not only increase the portion not covered by the International Oil Pollution Fund Points, and attaches importance to the relations with the related convention.

3 Domestic and international funds operate simultaneously. Domestic funds can advance to the rescue unit expenditure corresponding to oil pollution incidents salvage charges, clean-up costs. To ensure that the organization can deal with oil pollution clean-up at the best time, to minimize accidents caused by damage to the marine environment.

Recently, It is not appropriate for our country to join the International Oil Pollution Compensation Fund, while our country domestic oil fund has just set up. Consult Canada, how to establish national oil spill response funding system, is helpful.

4.4 The European Union

Due to the special nature of the European Union, the relevant provisions of the ship's oil pollution fund is also rather special, the EU has an independent position in the international arena, and has the supranational nature of the regional organization. The independence of the member states within the EU's international position, will not be affected by the international status of the European regional organization. In the field of maritime security, on the one hand, the EU is committed to improvement and development of policy within the Union, on the other hand, it will be unified, under the IMO and the corresponding specifications, continuously.

4.4.1 Operation of E.U. oil pollution fund

In 1993, the EU developed a "*general maritime security policy*", the policy is mainly to regulate the European Commission will give priority to implement the international

conventions. Ships entering EU ports will be suffered strengthen supervision. (Tian Yanfeng, 2007). Its purpose is to better assist the IMO to manage oil pollution accident. The EU, as a regional organization, are not "*Fund 1992*" members, but individual countries within the EU, there are 13 parties to "*Fund 1992*".

The EU Council allows EU member states to join or be signed, ratified the two international conventions and protocols in 2003, on the basis of considering the overall interests of the EU. As of March 2009, EU member states, such as Germany, Britain and other 17 countries have been joined in "*Fund 1992*" and the *2003 Protocol*.

In November 2002, the M/V "Prestige" sunk in North coast of Spain, then developed a number of plans and programs in order to improve the safety performance of the ship. The EU has taken many measures to strengthen the EU, in terms of efforts to monitor the waters and environmental protection. In case of oil spills in the waters of the EU, in addition to share the International Oil Pollution Compensation Fund, the EU will provide, up to 100 million euros fund for compensation. (William Trevor, 2005) .

Oil pollution fund was created by the EU, and its sources of funding is tax . The mode of tax collection rate, not only makes the oil fund levy a guarantee, but also help improving the owner voluntarily to pay various contaminants consciousness. In some sense, it has reduced or even further eliminated the environmental pollution (Zhang Fang , 2009) . Oil victim can make a claim through the following channels: First, the application to the International Oil Pollution Fund. Second, appeal a civil action in accordance with the general tort law. Wherein, in the case of the shipowner within the CLC1969 exemption clause, the victim is still entitled to claim to the oil fund.

4.4.2 Consultation of E.U. oil pollution fund

European Union because of its special nature, is a regional organization, the Community has to estimate the interests of multi-party. But the oil fund, set up by the EU successfully break through these barriers, the EU oil fund is to follow fully the principle of autonomy. Not only for the victims of a capital increase in the chain , but also help the victims as soon as possible to obtain reasonable compensation from the fund .we can learn the experience to make China big oil funds.

CHAPTER 5 :

Advice on perfecting china ship oil pollution damage compensation fund system

CHAPTER 5 is a proposal for the just preliminary compensation fund for ship oil pollution damage, in china .

This proposal is mainly to improve the legislation of the *Management Method, P.R.C.* And put forward some reasonable suggestions on the future development of the *Management Method, P. R .C.* As mentioned above, since July 1 , 2012, *Management Method , P.R.C* has been implemented for almost four years. There are still many imperfect places in the process of running. For example, the definition of the ship and the oil, not set up special emergency response fund and other issues, supervision and legal effect level problem.

In the process of perfecting it, focus on the actual problems existing in our national oil fund, we should absorb and draw lessons from the legislation and operation mode of the oil pollution fund in developed countries. Efforts to make up for the defects of China's oil fund. In order to minimize and control the occurrence of oil spill disaster, better protection of the actual interests of the victims,who suffer the oil pollution damage .

5.1 Suggestions on improving the Management Method , P.R.C

5.1.1 Clear "oil" identification standards

Because our country absorbs and blends the relevant content of 1969CLC and "*Bunker 2001*".

In 2011, *The Provisions of Several Issues* implement, the oil is defined as persistent oil, in it. Although, the Article. fifth of China's *Management Method* , P.R.C provisions, the fund is also levied on crude oil, fuel oil. But due to the definition of these persistent oil substances is not clear enough, as already described including crude oil has been put forward some fraction of the crude oil, also known as "condensate", and has added some fraction of the crude oil. Also known as the "modified crude oil", and I have expounded the "condensate", "modified crude oil" belongs to the volatile oil substances, due to the definition of these persistent and non persistent oil substances is not clear, leading to a fund staff cannot determine the "condensate", "modification of crude oil" whether the collection of the fund or not ?

Therefore, the relevant departments of the State shall , on "condensate", "change oil", oil volatile nature, make corresponding explanation, and suggested, *Management Method, P.R.C, for Trial Implementation* Regulations, should definite special and clear of condensate oil, medium oil, asphalt and other oil substances.

And should be included in the *Management Method, P.R.C, for Trial Implementation Rules*" oil class fund levy range. In this way, regardless of the persistence or condensate oil and oil quality oil, asphalt and other non persistent oil. Once the oil spill accident occurred, victim can to the relevant departments appeal for the compensation from the oil pollution fund.

5.1.2 Clear definition of "ship"

Clear the definition of "ship", in order to clear, after the ship oil pollution accident, who is responsible for the damage compensation of the accident.

China is a member of CLC 1992. While, CLC 1992 and China' s Maritime Code, has made a clear definition of the applicable ships. CLC 1969 and FUND 1971 has clear

defined the applicable of the ship, specifically for the carriage of oil tanker. In addition, after unloading the no-load ships and multi-functional ships, military and Government ships are not included. After the fund Convention entry into force, because of the frequent occurrence of marine oil spill disaster, especially the 1976 Olympic bravery tanker incidents, the IMO in CLC1969 protocol of 1992, redefines the concept of ship, clearly stipulates that ship means "the tanker ", and the oil tanker include the vessel load oil and other goods. (Xu Guoping, 2006).

The United States, 1990 oil pollution act, clearly applicable to, in oil and non oil tankers and engaged in the carriage of goods by sea vessel or similar device, rather than the "ship" is limited for tankers. That is to say , the 1990 oil pollution act the scope of ship applicable is greater. But one thing must be clear is that, government ships and military vessels are excluded from outside.

And China "*Management Method, P.R.C*" in the definition of "ship " also made a provision. (*Management Method , P.R.C, Article. 10*). Obviously, China's "*Management Method , P.R.C*" applies to the ship is only the oil tankers, which transport on the sea, does not include the inland waterway transport tanker. However, China's inland transportation capacity is very large, such as Yangtze River and Pearl River oil transport capacity should not be underestimated. If the oil spill accidents occur in inland, the whole environment of inland, regardless of the environment and hydro-logical environment, its immeasurable impact. facing such a huge loss, a relevant word of the tort law provisions, let ship owners and the insurance company for compensation, unable to assure that, the pollution victims are practical and reasonable compensation .

Because of these regulations of China's "*Management Method, P.R.C*" for ship, resulting many of China's inland waterway tanker oil spill damage compensation to face the judicial dilemma

Therefore, the author in this paper recommends that China can follow the example of the United States, and combines with its own national conditions. We can definite the "ship" as: oil and non oil tanker, including inland navigational ship, but does not include public service ships and military vessels. And for the vessels under 20 GT is not applicable in China "*Management Method , P.R.C*". Because vessels under 20 GT belong to the small ship. For this kind of small ship, China has special requirements. Due to vessels under 20 GT carrying oil less, even in the event of an oil spill, area of pollution of the marine environment is relatively limited and victims of the oil pollution damage will is relatively small.

So, if vessels under 20 GT occur the oil spill accident, the responsibility person will be the ship owners and the insurance company. Under normal circumstances, funding is sufficient for victims of the oil pollution of tangible compensation.

5.1.3 Established Special Emergency Response Fund

1) Funding sources of emergency response funds

Special Emergency Response Fund and the fund source of oil pollution fund are the same, so the emergency fund should also be shared by multi-party. The major funding for the emergency fund: all the oil companies pay contributions, government allocation of fund to start, oil pollution damage civil liability insurance fee to extract a certain proportion of the funding.

As mentioned earlier, the owners of oil according to a certain proportion pay contributions not only in accordance with the law, and the support of international experience, with practical feasibility. Funding source of emergency fund for the United States and Canada contains contributions at the owners of oil import, also. Therefore, oil owner, in accordance with the payment of assessed contributions, as the establishment of the main source of special emergency response fund, also applies to China. So learn experience from other countries, China Special Emergency Response Fund can set corresponding collection standards. From within the water areas under the jurisdiction of China, the oil owners and agents, who received a sustained oils from the sea, will be as the person who has the responsibility to give the assessed contributions to the fund. Other oil substances, in accordance with the provisions of the "*Management Method , P.R.C*" to operate. (*Management Method , P.R.C, Article. 10*). So the relevant scholars said that the establishment of China's Emergency Response Fund should be applied in inland waterway shipping oil companies.(Chen Bowei , 2009.3).

Although, pipeline oil transportation, increasingly in our country. But this does not mean that the inland waters, there is no accident of oil pollution from ships, in China. So the author agrees with that, the Owners of the oil Tanker, whose ships navigate in Chinese inland river, should be included in the scope of emergency fund to levy on.

2) The scope of application of Special Emergency Response Fund

The main purpose of the establishment of the emergency fund is, for the oil pollution accident, and the rescue company can have sufficient relief funds, advanced rescue equipment, a sound system of cleaning. With the combination of these hardware and software, the emergency fund to a certain extent, can also reduce the scope of the expansion of oil pollution damage.

Specific as follows:

(1) . To pay all the expenses in advance. Once the marine oil pollution accident occurs, the emergency fund will provide a strong financial support for the emergency response operations in the waters of the accident to provide monitoring, cleaning operations, etc. Once the Court determine the person, who is responsible for oil pollution accident, the Fund will be, in accordance with the statutory procedures, recovery from the responsible person after the accident.

(2) .Because of the owner of the oil spill ship,wants to prevent the loss of further expansion of the measures taken, resulting in the corresponding costs can be compensated to the emergency fund.

(3) Once, the oil pollution accident occurs, the responsible party cannot be find after the event, the non main oil spill cleanup costs paid by the emergency fund.

(4) The emergency fund will pay the corresponding training costs, such as the ability to exercise, professional training, experience, etc.

3) The management of emergency response fund .

If, China set up special emergency response fund. The management of the emergency fund can be modeled as the United states. The establishment of oil spill emergency response center, 24 hours on standby, in each area of our country set up the corresponding office as permanent institutions, clear division of labor and cooperation and coordination at all levels. In the event of an oil spill disaster at sea, the best quality to handle the oil pollution accident, at the fastest speed. And improve the overall effectiveness of the rescue operation.

5.1.4. Improve Management Method , P.R.C as administrative enactment

In the traditional legal theory, the effectiveness of our country's law can be divided into several levels, and the effectiveness of the several levels together constitute the whole legal system of our country. The legislation law of our country has already made clear the supreme legal status of the constitution, and any other legal norms can not be compared with it. It is well known that, at the level of effectiveness, the law is higher than the code and regulations.

However, the "*Management Method , P.R.C*" belongs to departmental rules and regulations. Problems may arise in the practical application of the process, in the above, has been discussed. The author suggests, "*Management Method , P.R.C*" from the departmental rules and regulations up to the administrative rules and regulations, and directly by the state Council in accordance with the Constitution and the law.

In accordance with legal procedures formulated and issued normative documents, the effectiveness of the normative documents must lower than the Constitution and the laws. But compared with departmental rules and regulations, the effectiveness of the normative documents is higher. There are administrative regulations to protect the implementation, it can avoid the department rules and regulations conflict with the government rules and regulations. This will enhance the "*Management Method , P.R.C*" deterrence, but also conducive to the implementation stability of the "*Management Method, P.R.C*".

5.2 The development direction and form choice of ship oil pollution fund in China

5.2.1 The opportunity of China's entry into the fund Convention

1 . At present, it is not suitable for China to become a member of the fund convention. Although, the *Liability Convention* and the *fund Convention* have been

affirmed by the majority of the countries in the world. The experience of many countries has proved that the international oil pollution compensation system is also effective. The fund Convention provides second levels of protection for the victims of oil pollution, corresponding to the relief of the compensation liability of the owners of the first level, and also helps to protect the marine environment which is increasingly polluted.

But, according to China's specific national conditions and the "*Fund Convention*" in the international community at the current state of operation. China has basically formed a consensus, domestic oil pollution fund , in accordance with the relevant provisions of the fund convention, is not suitable. For, it is not the best time for China to join the *Fund Convention*. Some scholars believe that, if China added to the *Fund Convention*, now. There may be more harm than good for China. The main reasons for this situation is:

- (1) A lot of imbalance phenomenon in the process of the operation of the fund.

First, the compensation condition, in the developing countries and the developed countries, is not the same. In the International Fund for compensation for oil pollution damage, the individual members on the surface are equality. Member State allocation Fund amount standards are all the same. But in fact, many areas of each Contracting State existing many differences, especially for developing countries, its rescue costs actually less than developed countries.

Therefore, it received from the International Fund for compensation for oil pollution damage compensation certainly less than, which in those developed countries. In accordance with the standard of compensation of the fund convention, a ton to compensation 2612 pounds, while in China only the one thirteenth, (Lin Kehe,

2011) .While, from the international point of view, Chinese claim level is still relatively low. There is a direct relationship between Chinese claim level is not high and the cleaning capacity low. China exist a serious shortage of pollution equipment. In the small scale marine oil can use fence, dispersants. But for the bad sea conditions, operating in open waters, the large oil spill recovery is almost incapable to force, just rely on throwing the straw and the suction linoleum and other simple methods to clean.

Secondly, the imbalance of rights and obligations. Due to the requirement in the Fund Convention , it only levy corresponding contribution to those oil import countries, especially in the previous years, the amount of oil import, is at least 15 million tons. But, for oil exporting countries, there are no requirement to levy contributions. From this point, we can see, the importer of oil and the oil exporters in the expropriation of their assessed contributions to the fund requirement is not equal.

Again, after the oil spill accident, the amount of compensation for the victims of oil pollution is very limited. Fund was set up to provide a second level of protection to the victims of oil pollution. And the shipowner is the first responsibility subject of oil spill. The oil pollution victims, only to the first main responsibility- the shipowner claim, cannot get the actual compensation, then he can appeal to Oil Pollution Fund.

As the "*Fund Convention*" has been clear that, only in the amount of oil victims in excess of the "*Liability Convention*" provisions of the ship owner liability limits , then victims can get compensation from the oil pollution fund. (1992 CLC, Article. 5, para. 1). Because of the relatively high level of some developed countries claim. Obviously, the amount of claim for compensation of the developed countries are much more than the developing countries. As to the limitation of liability of owners

of ships must accept the same standard, so the developed countries can get the fund for compensation for oil pollution damage compensation.

With respect to the developing countries, due to the relatively low level of its claim , while he must pay the corresponding fund contributions. Thus, lower levels of these claims of countries most likely obtained from the fund compensation far below their already paid fund contributions, even the claim amount may be less than the amount regulated in the limit of *Liability Convention*. And for these countries no way to appeal to the Fund for compensation.

According to the statistics, in 2011, China's crude oil imports reached 25378 million tons, if China's accession to the Convention of the fund, according to the relevant provisions of the Convention on the fund, in our country it must pay more than 0.15 billion yuan of oil pollution fund contributions. But from the China Sea oil spill accident, recognized by the court of Chinese, the amount of the claim can not reach the stipulated in the *Convention on the liability* of the lowest limit of liability. But China have to pay 0.15 billion yuan of Fund Contributions, due to the limitation of liability. But cannot obtain compensation from the fund.

At present, China is still a developing country. After the accidents of ship oil spill, claim mechanism for the victims of oil pollution is not perfect. Chinese oil fund has just set up, there are many shortcomings, the International Fund for compensation for oil pollution damage in the process of the operation is so sharp unbalanced. Now , add into the *Fund Convention*, it will bound Chinese produce with many harmful effects.

(2). At this stage , China join the " Fund Convention " not practical

First, from the current transport situation, the inland waterway ship does not apply to the "*Liability Convention*", the Convention is only applicable to the marine ships. According to the statistical analysis of the relevant departments of China. In China's inland river, the oil transportation ships are very frequent. The unit of measure is 1000 unit. Therefore, the ship oil spill accidents occurred in the Yangtze River and the Pearl River, must be attention-ed by the relevant departments. Protection of water resources is an important part of China's environmental protection. But, currently, due to the inland ships does not apply to the *Liability Convention*, in the inland river shipping event of oil spill, the oil spill victims only can appeal for compensation, according to Chinese domestic laws and regulations.

In this case, even if China is a member of the Fund Convention. Although, China has many inland waterway transport ship. But, in the event of oil spill accident, the victims can not appeal compensation according to the Fund Convention, too. Therefore, in this regard, the Fund plays no effect in this situation. (Shen, 2008) .

Second, in the point of view the ship size, in recent years, with the rapid development of Chinese shipping industry, the number of large oil tanker has grown significantly. However, overall, small tankers transport oil, accounts for a large part, too. And these small tankers, many of which are a high breakage rate old ship. And most of them are abandoned single hull ship, came from the EU countries. This kind of oil tanker occurs oil spill accident, with an extremely high rate, when during transporting. In addition, due to the owners of these small tanker only have limited compensation capacity, once the oil spill accident occurs, the owner cannot pay in full. Even though, China is now joining the Fund, the amount of the limits for these small oil tankers may not exceed the limits of the owner's liability in Chinese special situation.

Therefore , Even though , China is now joining the fund , it obtains compensation from the fund with the lowest possibility, or even can not get compensation. While, every year, China still have to pay huge fund contributions. Obviously, to join the Fund Convention for China is not practical, right now. (Li Ang, 2007) .

Third, as the application of the law, our country has joined the the Liability Convention. In dealing with conflict between the International civil commercial convention and domestic laws. China set up "foreign elements" of the conditions, that is not all ship oil pollution damage compensation cases are applicable to the *Fund Convention*. On the contrary, in the case, who wants to apply the *Fund Convention*, must meet the conditions concerning foreign affairs. If the ship only on China's domestic route, which occurred oil spill disaster, then the oil pollution accident is unable to suitable to the fund convention.

China's foreign-related legal norms, have been identified with foreign factors. Therefore, hypothesis, the oil spill accident occurs within the territory of China, or the collision between the two sides, do not include foreign elements. Then the accident do not apply the Liability Convention. In this situation, the victims of the oil spill cannot rely on the requirements of the Convention, but only according to the relevant laws of the domestic claims. Therefore, at the present stage, China's accession to the "*Fund Convention* " is very unsuitable.

2 Find the right opportunity to join the Convention

In the preceding discussion, according to China's current oil shipping industry existing situation. Regardless, from the point of view the amount of contributions , or the level of compensation. At the present stage, China joins in the fund Convention is very unsuitable.

China will keep pace with the times. And it will make effort in the oil pollution accident constantly, to adjust inadequate compensation system. Perfecting the Chinese oil pollution fund system. To keep up with the pace of the International, until Chinese claim level rises to a certain extent, then to find a proper opportunity to join the *oil pollution Fund Convention*.

The Fund is to compensate the victim again, based on the victim obtain the primary compensation from the ship owner and the insurer. To some extent, requirements of all oil company contributions, not only to the development of the petroleum industry with the a force, but also promoted the rapid development of the shipping industry. And for China, once, as a member of the Convention on the fund. The Fund would provide the protection of the spill accidents which include oil produced huge clean-up costs. In the event of a large ship oil spill accident, adequate relief fund turnover, and clean-up company will also be more active.

Once the Fund Convention as the second level of security. China will certainly pay more attention to establish the rescue facilities, to improve Chinese assistance clear dirt team's overall quality and enhance Chinese overall cleaning level, to make China to get more benefits from the Fund. (Wang, 2011).

5.2.2 To establish a dual fund in line with China's national condition.

Dual mode fund form, that is, to establish an oil fund at home, at the same time, joined the "Fund Convention".

In the front, the author has described Canada's oil pollution Fund, which is joining the fund convention, and has a domestic fund for compensate oil pollution damage. The author believes that China's future can reference the dual form of the Canada's

fund system. Because this form the domestic law and international law, the combination with a lot of rational elements for China.

Specific to China, at present it has initially established a national fund for oil pollution, which has begun operation, but there are many problems. Then start a ship oil spill economic security system. Therefore, not only, the oil pollution victims can obtain compensation effectively, but it also can reduce the degree of pollution of marine ecology.

1 . Domestic fund and international fund complement each other .

Firstly, because of the small scope of compensation for ship oil pollution damage by the fund convention, the domestic oil pollution fund in China can make up for the deficiency of compensation scope. Canada is a very obvious example, its domestic fund compensation scope more than the compensation scope of the fund convention . The scope of application of domestic funds to expand the domestic waters under the jurisdiction of all ships. So, in this regard, China can increase the applicable range of the fund to inland navigation vessels as refer to Canada. Thus, when China handle the compensation of ship oil spill accident, which occurred inland river of China, and other issues, will be ease.

Secondly, with the backing of the national oil fund, the clean-up company need not to worry about the cost of cleaning up. As the International Fund compensate oil pollution damage. The compensation fund for oil pollution can be paid in advance, include rescue and other emergency expenses. In this way, it can, not only improve the morale of the Rescue Department, but also would not miss the best rescue time when oil pollution accident occurred. To certain extent, it can also reduce the extent of damage to the marine environment.

Finally, through recent years development, the international oil pollution compensation system is now no longer naive trend. But, China has just set up the fund for compensation for oil pollution damage, which is very fragile. Because of many factors have to consider, such as, input costs, the economy and the environment. Only in the national oil fund perfect to a certain level, apply to become parties to the Convention of the Fund.

2 "Double fund " coexistence .

On the basis let the China's domestic ship oil pollution fund smoothly operation, and become a member of the *Fund Convention*. which is the way to double fund coexistence. But two fund existence must complement each other, and not just the domestic funds and international fund, the double-layer superposition together. While, more specific mode of operation can refer to Canada, in the event of an accident of oil spill at sea, the victims of oil pollution accidents has the right to apply for compensation to the Fund SOPF compensation. The domestic Fund then appeal to the International Fund for compensation for oil pollution damage.

In addition, Fund SOPF have rights to compensate the domestic several ship spilled oil accident firstly, then, it can appeal to the international oil pollution fund for compensation. This will benefit the victims for claims procedures, for providing convenient. Of course, if China's domestic situation has changed. We can also adjust the domestic oil pollution fund system, with the international oil fund system to coordinate with each other, to minimize the impact of various unforeseen changes brought.

CHAPTER 6

SUMMARY AND CONCLUSION

It can be said that the implementation of *Management Method, P.R.C*, shows China's progress in oil pollution damage compensation. On June 18, 2015, China Ship Oil Pollution Fund Management Committee was established in Beijing. Although the Departments are complicated, after all it is a kind of progress. This marks a new stage in China's oil pollution damage compensation.

On July 3, 2016 Claims Guidelines for ships oil pollution damage compensation (the guide) officially announced, there are several highlights in The Guide:

First, the court hearing the whole cycle is not included in the oil pollution damage occurred within 3 years after the deadline.

Second, the Guide" to establish a "claim registration announcement system" ,which could urge victims, as soon as possible to fund management committee submitted claims.

Third, the first payment system. The"Guide" provisions, for temporarily unable to find the offending ship in oil pollution accidents, the victims can directly to the Fund Management Center(FMC) for claim application. After investigation and verification, FMC can first compensate the victims.

Fourth, claims people have the right to review. If the claimant disagree with the fund payment amount or the decisions made by the FMC, the victim can claims again in written form, within 10 workdays, with the relevant materials of proof.

Fifth, timely update the system. The "Guide" to set up a timely update requirements, this is a trial version. According to the development of the practice of legal changes and claims, in a timely manner to the "guide" revised and at least every two years to modify, in principle.(The Guide, July 3, 2016, Maritime Bureau of the Ministry of

transportation)

However, the ship oil pollution damage compensation fund system has been established in China, and the oil pollution fund has achieved good results in the collection work. However, currently, there still exist many defects, such as classification identification problems of oil, encountered in the practical operation. And how to set up the special emergency fund. For China should face up to the reality of the oil compensation fund. The definition of "oil" and the definition of "ship", should not only include the maritime transport ships, but also cover the inland waterway vessels.

Because according to the relevant provisions of the legislation law of our country, the effect of department rules and government regulations is the same. In order to avoid the conflicts between the provisions of the content of the oil fund in the department rules and government regulations. China's oil pollution fund should not be set up in the form of departmental rules and regulations, but should be rise up to the administrative rules and regulations. In this way, the effectiveness of administrative regulations is higher than that of department regulations, and it is higher than the efficiency of government regulations. This can improve its deterrent. From a certain point of view, it can maintain its stability.

Finally, As the ship oil spill event occurs , the most urgent work is a professional rescue team in a timely manner to participate in rescue. Only the timely rescue, can reduce the oil pollution damage. Otherwise, the damage caused by oil pollution will be more and more serious. Therefore , the establishment of China's special emergency response fund, for the marine oil spill rescue preparations for adequate funding. From the future development direction, China should directly join the "fund Convention", and establish the "double fund" system that conforms to the situation of Chinese, in due course.

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REFERENCES

- Chen Ciyang , (2003 edition) ,Environmental Protection Law , Yuan zhao publishing company , p. 244.
- Chen Bowei ,(2009.3) , accelerate the obliged eliminate the single hull oil vessel in inland line , [J] , water transport management .
- Colin De La Rue, Charles B.Anderson, (1998),Shipping and Environment: Law and Practice, LLP, pp . 55-58 .
- Chen Longjie, Liu Xianming ,(2008),Construction of China oil system model [J]. China Maritime Chinese Law Yearbook, 1 (18) , p . 315 .
- Guangzhou Daily , China , (2011) , as the world first , dependent on foreign oil and trap in curse .
- He Lixin , Xie Meishan ,(2007) the liability for maritime compensation limit research , Xiamen University Press , P. 330 .
- Han Lixin,(2007) , Research on Ship Pollution damage Compensation Legal Issues [M.] Beijing: Law Press, p . 73 .
- Han Lixin , perfect proposal for Ship Oil Pollution Damage Compensation Fund collection and use management approach [J] Maritime Code annual , 2008, 1 (18) , p . 308
- Han Shao Guang , (2009) , Ship Oil Pollution Compensation System Comparative Study , China Ocean University , p. 8 .
- International Convention on Civil Liability for Oil Pollution Damage, 1992, Article. I, para. 1.

International Convention on Civil Liability for Oil Pollution Damage, 1969 , Article. I, para. 1 .

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 , Article. 1 ; Article. 4, para.2 .

International Convention on Civil Liability for Oil Pollution Damage, 1969 ,Article. 1, para. 6 .

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 , Article. 1 , para. 6 .

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 , Article. 5 , para. 1.

Japan ,(2006), *trust law* , Article. 1 .

Ke Qing ,(2011.2), From Dalian oil pipeline explosion time to look at the oil legislation and improvement [J]. Journal of Guangxi Administrative Cadre Institute .

Liu Xianming , (2006), study on the chinese Ship oil pollution damage compensation fund law system, master degree thesis.xia-men ,xiamen university .

Liu Gongchen ,(2004), Establishment of Ship Oil Pollution Compensation System [D]:. [MS Thesis] Dalian: Dalian Maritime University.

Li yong , (2006) ,study on the ship oil pollution nature resource damage compensation , shanghai , shanghai maritime university .

Li Maofu , (2009) ,the environmental pollution damage compensation fund system , Hunan Normal University Master's degree thesis , p. 6 .

Liu Gongchen , (2005.2) , establish ship oil pollution damage compensation system in line with China's national conditions [A] . Ministry of Transport Maritime Bureau: Shanghai International Maritime Forum Proceedings [C] .

Lin Kehe , (2011) , the status quo of poor Chinese ship oil pollution damage compensation and perfect strategy [J] , p . (291) : 90 .

Li Ang , (2007) , analyze the Chinese ship oil pollution damage compensation fund system , [D]:master thesis , shanghai .

Management Method , P.R.C , (2012) , Collection and using management method for ship oil pollution damage compensation fund in P.R.C , Article. 10 .

Notify to enhance the management of Government fund, 2000,Cai Zong zi No.22 .

Notify to enhance the management of Government fund,, 2000,Cai Zong zi No. 22 , Article. 6.

Revelation of the oil spill in the Gulf of Mexico , China marine , p .4.

Si Yuzhuo, (1993), Chinese Maritime Code ,Article. 3, para. 1.

Si YuZhuo ,(2002) ,International Maritime Legislation Trends and Countermeasures [M] Beijing: Law Press, p.237 ~ 241.

Shen Lanlei ,(2008), study no ship oil pollution damage compensation fund system , [D]:master thesis ,shanghai, east china political law university .

Tian Yanfeng ,(2007) ,On the Ship Oil Pollution Compensation Law application , China University of Political Science, p. 29 -30 .

William Trevor (Canada) , Zhang Yongjian translated , (2005) , international Maritime Code [M] Beijing : Law Press , p .380 .

Wang Zejian , (2001 edition), tort law , China University of Political Science and Law press , p .8 .

Wei Wei , (2011) , study on the Ship Oil Pollution Damage Compensation Fund Legal Issues [D]:. [MS Thesis] Dalian: Dalian Maritime University, p.14

Xu Guoping , (2006) , Research on Ship Oil Pollution Damage Compensation Legal

System , Beijing : Peking University Press , p .178 .

Xu Guoping , (2006) ,study on the law of ship oil pollution damage compensation system [M].Peking :Peking university press , p .30 .

Yu shicheng , (1993) , International Oil Pollution Compensation Fund and Practice of oil pollution damage claims [J]. Chinese Journal, p.243 .

Zhang Fang , (2009) , study on the Chinese research ship Oil Pollution Fund [D]:. [MS Thesis] Dalian: Dalian Maritime University .

[Http://www.zgjt.com/shuiyun/2016-07/19/content_89997.htm](http://www.zgjt.com/shuiyun/2016-07/19/content_89997.htm)

BIBLIOGRAPHY

America oil pollution act , 1990 (OPA90) .

Chinese Prevent Polluting Regulation , (March 1,2010)

Claims Guidelines for ships oil pollution damage compensation,(July3,2016),
Maritime Bureau of the Ministry of transportation .

International Convention on Civil Liability for Oil Pollution Damage , 1969 and
protocol 1992 (CLC1969) .

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
(Bunker 2001) .

Management Method , P.R.C -collection and using management method for ship oil
pollution damage compensation fund in P.R.C,(2012) .

Maritime Code of The People's Republic of China (1993), (Maritime Code) .

Marine Environment Protection Law of the People's Republic of China (2015,01,01).

Japan trust law , (2006) , author .