The polluter pays principle and liability of non-spilling vessel in ship collision: Comment of Chinese Supreme Court's decision in the *CMA CGM Florida* case

Qin Tianbao*, Peng Xianwei*
Wuhan University Research Institute of Environmental Law
Dalian Maritime University Law School

Abstract: channeling of liability, developed from the polluter pays principle, is one of the key characteristics of the international civil convention for vessel source marine oil pollution liabilities. However, it is in heated dispute in China regarding, in terms of oil pollution caused by ship collisions, whether this channeling mechanism means that only the oil spilling vessel can be sued for pollution liabilities. On September 20, 2019, Chinese Supreme Court issued judgment regarding the CMA CGM Florida case and decided that the non-spilling vessel should also be liable as per its proportion of liability in the collision accident. Since the issue of liability of non-spilling vessel in ship collision is not clear in related international conventions, this landmark judgment will be a significant guide for interpretation and development of related international conventions.
Key words: channeling of liability, polluter pays principle, both-to-blame fault, non-spilling vessel in collision.

I. Introduction

On September 20, 2019, Chinese Supreme Court issued judgment regarding the case of Shanghai Salvage Company, Ministry of Transport vs. Provence Shipowner 2008-1 Limited and CMA CGM S.A (the *MV CMA CGM Florida* case, case no.: [2018] ZGFMZ No.368)[1]. In the original trial judgments, the lower courts decided that the spilling vessel should be liable for payment of salvage expense, but the non-spilling colliding vessel is not liable for reason of "*who leaks oil, who compensates*" (polluter

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* Prof. Qin Tianbao, Luojia Professor of Law, Director of the Research Institute of Environmental Law (RIEL), Prof. Qin is also Co-Chief Editor of the *Chinese Journal of Environmental Law* ,Secretary-General of Chinese Society of Environment and Resources Law (CSERL), and Vice President of Yangtze River Maritime Law Association.

* Peng Xianwei (Philip Peng), PhD candidate of Dalian Maritime University Law School; partner of Beijing DeHeng Law Offices, vice-chair of International Transportation Committee of ABA Section of International Law, and LMAA Supporting Member. Mr. Peng is also Legal Expert for Civil and Administrative Cases Advisory of the Supreme People's Procuratorate of China and Legal Expert of ICC Commission of Commercial Law and Practice. Mr. Peng is in the panel of arbitrators of China Maritime Arbitration Commission (CMAC), Nanjing Arbitration Commission, Hainan Arbitration Commission and other 15 arbitration commissions in China.

[1] Shanghai Salvage Co, Ministry Of Transport V Provence Shipowner 2008-1 Ltd and Others, [2020] 2 CMCLR 14

pays). In retrial instance, the Supreme Court reversed the original judgments and decided that the non-spilling vessel should be liable for payment of salvage expense as per its proportion of liability in the ship collision accident.

In China, regarding oil pollution caused in a both-to-blame collision accident, it has been in controversy for a long time as to, if only one of the colliding vessels leaked out oil, whether the non-spilling vessel should assume the pollution liability[2]. There is a popular slogan "*who leaks oil, who compensates*", but the specific meaning of this slogan is not clear and different Chinese courts may have different opinions. The Supreme Court's judgment in the *MV CMA CGM Florida* case is a landmark decision regarding who is the person liable under the polluter pays principle and liability of the non-spilling vessel in ship collision case. Meanwhile, since this issue is paid very little attention to when drafting the international civil liability system for oil pollutions, this judgment will also be a good referential case for the international community.

II. The myth of identification of the polluter under the polluter pays principle

As an economic instrument for deterring pollutions, the slogan polluter pays states that the costs of pollution should be borne by the person responsible for causing the pollution.[3]. Meanwhile, this principle has also earned legal status as a legitimate legal principle for international pollution policy and regulation having wide application in law and practice, such in combating waste landfills, packaging of wastes, climate change emissions reduction etc[4].

Few people could disagree with this principle, but sometimes it will be very controversial regarding who is the polluter and who should be liable[5]. Sometimes, the polluter may be the economic agent playing a decisive role in the pollution, rather than the agent actually originating it. For example, a vehicle manufacturer could be deemed the polluter, although pollution results from the vehicle's use by its owner. Similarly, a pesticide producer could be the polluter, even though the pollution is the outcome of proper or improper use of pesticides[6]. However, although it seems to be a good principle and not hard to be understood, legally speaking, it is not easy to find

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[2] Yu Xiaohan, *Oil Pollution Liability Of Colliding Vessels In China*, in Lloyd's Maritime and Commercial Law Quarterly, [2001] L.M.C.L.Q. 19

[3] Philippe Sands, Jacqueline Peel et al., Principles of International Environmental Law, Cambridge University Press (3rd Edition, 2012) , p.228.

[4] Priscilla Schwartz, The polluter-pays principle, in Michael Faure (eds.), Elgar Encyclopedia of Environmental Law: Volume VI, Edward Elgar Publishing, 2018, p.264-265

[5] Roy E. Cordato, *The Polluter Pays Principle: A Proper Guide for Environmental Policy*, available at: http://iret.org/pub/SCRE-6.PDF

[6] OECD ENVIRONMENT DIRECTORATE, THE POLLUTER-PAYS PRINCIPLE: OECD Analyses and Recommendations (OCDE/GD(92)81), available at: https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD(92)81&docLanguage=En

out, amongst the multiple persons in the pollution accident, who is the polluter.

In ship collision cases, identification of the polluter is also a complicated issue. It is common that in most cases, colliding vessels will both have fault, but maybe oil leaked out from just one ship. Under such circumstance, it will also be a big problem regarding whether the non-spilling ship is a polluter and whether the victims can sue the non-spilling ship as well.

III. The choices faced by the Chinese Supreme Court when drafting judicial regulations in trials of vessel source oil pollution cases

In China, regarding liability of marine pollution damages, there are different laws. Firstly, regarding pollution liability in general, Article 65 of the Tort Liability Law of the PRC (2009)[7] provides that: "*For damages caused by pollution of environment, the polluter shall bear tort liability*".

Regarding marine pollutions, Article 89 of the Marine Environment Protection Law of the PRC (2017) provides that: "*Any party liable for a pollution damage to the marine environment shall relieve the damage and compensate for the losses; in case the pollution damage to the marine environment is entirely caused by an intentional act or a fault of a third party, that third party shall relieve the damage and be liable for the compensation*".

However, concept of the said "*polluter*" in Tort Liability Law and the "*party liable*" in Marine Environment Protection Law is still not clear, especially regarding whether the non-spilling vessel is the "*polluter*" and the "*party liable*".

Article 68 of Tort Liability Law of the PRC (2009) provides that: "*For damages caused by environmental pollution due to the fault of a third party, the infringee may seek compensation from either the polluter or the said third party. After making compensation, the said polluter shall be entitled to claim reimbursement from the said third party.*" As such, under China's general tort law, the polluter (tortfeasor) should be liable, whilst if the tort (pollution damage) is caused by third party, *the infringee may seek compensation from either the polluter or the said third party*. In marine pollution tort, the "*party liable*" should be responsible for the compensation. As such, as per Article 68 of Tort Liability Law of the PRC (2009) and Article 89 of the Marine Environment Protection Law of the PRC (2017), it seems, regarding oil pollution caused by both-to-claim faults of two vessels, it is possible for the victims to claim against both the spilling vessel and the non-spilling vessel.

However, maritime law is deemed as a special law in China, which has a priority of

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[7] Tort Liability Law of the PRC (2009) has just been denounced by the Civil Code of PRC from January 1, 2021, but there is no change of tort liability legislation regarding pollution liability in the new law.

effect over general laws as per principle of *Lex specialis derogat generali*. Meanwhile, in consideration of related international conventions governing ship oil pollution, the issue of law application in such cases is rather complicated and it may not be so straightforward to conclude that PRC courts should apply general tort law or marine environment protection law to determine the pollution damage liability caused by ship collision accident.

As such, in judicial practice of the past years there are three different types of opinions regarding liability of non-spilling vessels in ship collision accidents, i.e., (1) the oil spilling vessel is solely liable, or (2) the oil spilling and non-spilling vessel should be jointly liable, or (3) the oil spilling and non-spilling vessel should be liable as per its proportion of liability in the ship collision accident[8].

In the 2005 Annual Maritime Law Seminar of Chinese Lawyers, Ms. Zhao Hong[9] presented a paper "Legal Issues in Trial of Vessel Source Oil Pollution Damage Case" to analyze this issue and Ms. Zhao's conclusion is that the principle of "*who leaks oil, who compensates*" is accepted by more people in theory and practice, because: (1) oil pollution liability is strict (non-fault liability), which is incompatible with the fault liability; if fault liability is to be adopted, the court will need to examine the issue of the parties' faults and this is in contradictory with the non-fault liability; (2) collision damage and pollution damage are two different legal relationships. Collision damage liability is relating to the legal relationships between the colliding ships, whilst the pollution damage relationship is relating to the legal relationships between the spilling ship and the victims. Different legal norms should apply to these different legal relationships. (3) So far there is no mechanism of mandatory insurance for non-spilling ships and although joint liability is better for protection the victims, this is not good for development of the shipping industry.

In year 2010, Chinese Supreme Court started to draft Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases involving Disputes over Compensation for Vessel Oil Pollution Damage (hereafter referred to as the Vessel Oil Pollution Damage Provisions)[10]. On December 2, 2010, the draft Vessel Oil Pollution Damage Provisions is released and Article 11 provides that: *if the oil spill is caused by the collision of ships, the injured person may request the owner of the oil spilling vessel to bear the liability. The injured person may also request the non-spilling vessel to bear the liability within the proportion of the fault in collision*.

On Jan. 10, 2011, the Vessel Oil Pollution Damage Provisions is formally promulgated and Article 4 provides that: *if the oil spill is caused by the collision of*

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[8] Si Yuzhuo, *Maritime Law Monograph* (3rd Edition, 2015, in Chinese), China Renmin University Press, p. 358.

[9] Ms. Zhao Hong was ex-judge of Chinese Supreme Court and ex-President of Shanghai Maritime Court, and now she is President of Shanghai Financial Court.

[10] Available at: http://www.court.gov.cn/shenpan-xiangqing-1845.html

ships, the injured person may request the owner of the oil spilling vessel to bear the full liability.

Afterwards, Supreme Court Judge Mr. Liu Shoujie and Yu Xiaohan (main drafters of the Vessel Oil Pollution Damage Provisions) wrote a paper to give an explanation to the Vessel Oil Pollution Damage Provisions. Regarding this issue, it is explained that[11]: "*In judicial practice, it is in disagreement regarding whether the injured person has right of claim simultaneously against the oil spilling vessel and the non-spilling vessel. The CLC (The International Convention on Civil Liability for Oil Pollution Damage, 1969) and the Bunker Oil Convention (The International Convention on Civil Liability for Bunker Oil Pollution Damage) only impose liability on the owner of the ship that spills oil, and the Conventions do not deal with the issue of the non-spilling vessel's liability. Considering that this involves complicated issues of law application and balancing of the parties' interests, the Vessel Oil Pollution Damage Provisions does not deal with this issue and it may be determined in the future after further progress of judicial practices*".

In summary, it seems Article 4 of the Vessel Oil Pollution Damage Provisions adopted the principle that "*who leaks oil, who compensates*", which is somewhat similar to the principle of channeling of liability to the oil spilling shipowner. However, Article 4 does not clearly provide whether the non-spilling vessel can be viewed as polluter as well and whether it is liable whereto. In the *MV CMA CGM Florida* case, Chinese Supreme Court now needs to examine and give an answer to this issue.

IV. The MV CMA CGM Florida case decided by Chinese Supreme Court

On 19 March 2013, MV CMA CGM Florida (owned by Provence and bareboat chartered by CMA CGM) collided with MV Chou Shan (owned by Rockwell Shipping) at about 124 nautical miles to the northeast of Yangtze Estuary Lightboat. This accident caused severe damage to the hull of MV CMA CGM Florida, which leaked large amounts of bunker oil[12]. Shanghai Salvage Company took various salvage measures for this accident. Thus Shanghai Salvage Company requested the

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[11] Liu Shoujie and Yu Xiaohan, *Explanatory Note to the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases involving Disputes over Compensation for Vessel Oil Pollution Damage* (in Chinese), in the Fourth Civil Trial Division of the Supreme Court (eds.), Guide on Foreign-Related Commercial and Maritime Trial, Issue 1 of 2011, p. 70.

[12] For details of this collision accident, please refer to UK Marine Accident Investigation Branch: Report on the investigation of the collision between CMA CGM Florida and Chou Shan 140 miles east of Shanghai, East China Sea on 19 March 2013, available at: https://assets.publishing.service.gov.uk/media/547c6f36e5274a4290000017/CMACGMFlorida_Report.pdf

court to order Provence, CMA CGM and Rockwell Shipping to jointly pay the salvage expense of RMB 20,864,170.50 and interest.

In first instance judgment of Ningbo Maritime Court and in the second instance judgment of Zhejiang Province High People's Court, the courts just held the oil spilling vessel liable for reason that: according to Vessel Oil Pollution Damage Provisions, regarding the oil spill damage caused in collision accident in which both vessels had negligence, as per the rule of "*who leaks oil, who compensates*", the party liable should be the owner of the oil spilling ship. In this case, MV CMA CGM Florida was the oil spilling vessel, and Rockwell Shipping, as the owner of the non-spilling vessel, was not liable.

In the retrial instance by Chinese Supermen Court, the judge made a very thorough/detailed analysis of the related provisions in the Bunker Convention and Vessel Oil Pollution Damage Provisions. Finally the judge reversed the original judgments and determined that owners of MV Chou Shan should be liable as per its proportion in the collision accident. The judge's core reasoning is that:

(1) Art.3(1) of the Bunker Convention provides that: "*The shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship*". This is a positive statement about the liability of the oil spilling vessel's shipowner, but it cannot be inferred from this article that no other person shall be liable. Meanwhile, this clause does not exclude the possibility of pursuing claims against other liable persons. As a matter of legislation intent of the Bunker Convention, the Convention only provides liability for oil spilling vessels. In case of oil spill caused by the ship collision accidents, the liability for pollution damages of the non-spilling ship shall be resolved in accordance with the domestic law of the country concerned.

(2) Art.4 of Vessel Oil Pollution Damage Provisions is modeled on that of the related Conventions, and it also does not have the intent to exclude other faulty persons who may be held liable. Rockwell's argument regarding "*who leaks oil, who compensates*" does not fully reflect the basic connotation of the principles of no-fault liability and fault-liability for polluters and third parties in relevant international treaties and domestic laws. In principle polluters are fully liable, and those who have contributory faults shall be liable accordingly.

(3) Article 5 of Interpretations of the Supreme People's Court on Several Issues concerning the Application of Law in the Hearing of Cases of Disputes over Environmental Tort Liabilities (Fa Shi [2020] No.17) provides that: "*Where the infringed party, according to provisions of Article 1233 of the Civil Code, files separate lawsuits against the infringer and a third party, or files a single lawsuit against both the infringer and a third party, the people's court shall accept the separate lawsuits or the single lawsuit.*"

In the ship pollution accident involved in the case, although MV Chou Shan did not leak oil, it collided with MV CMA CGM Florida due to negligence in navigation and caused pollution. As such, MV Chou Shan is the third party as stipulated in the above-mentioned Chinese law and judicial interpretation, and should bear the responsibility of pollution damage in accordance with the 50% fault ratio.

In comparison, in the Sincere Navigation Corporation vs. Shanghai Maritime Safety Administration of China (hereafter referred to as Shanghai MSA) case, due to the MV CMA CGM Florida pollution accident, Shanghai MSA fined RMB300,000 against Sincere Navigation Corporation (operator of MV Chou Shan) for reason that MV Chou Shan violated International Regulations for Preventing Collisions at Sea 1972, and caused this pollution accident. Sincere Navigation Corporation argued that it was not the oil spilling vessel and as per principle of "*who leaks oil, who compensates*", it should not be liable for the pollution damage and Shanghai MSA should not set this administrative penalty against it.

Sincere Navigation Corporation filed administrative lawsuit against Shanghai MSA to Shanghai Hongkou District People's Court. Shanghai MSA argued that the pollution is caused due to the collision accident, and the two have a direct causal relationship; the plaintiff as the collision accident responsibility party, should be jointly responsible for the pollution accident; administrative punishment does not conflict with civil liability; regarding administrative responsibility of the ship pollution accident, it should follow the principle of "*who violates the law, who is responsible*", rather than "*who leaks oil, who compensates*".

Finally, Shanghai Hongkou District People's Court issued (2014)HXCZ no. 115 administrative judgment and dismissed Sincere Navigation Corporation's lawsuit for reasons that: (1) MV Chou Shan had fault in the collision accident with MV CMA CGM Florida and it should be viewed as the polluter who caused pollution damage to the marine environment; (2) whether subjectively intentional or negligent, directly or indirectly, for the liable persons who caused marine pollution, the corresponding responsibility should be assumed; (3) oil spill from MV CMA CGM Florida was caused due to collision with the plaintiff's ship and the plaintiff should be liable for marine pollution caused by it indirectly; (4) civil liability is not the precondition for assuming of administrative liability.

Although this is an administrative lawsuit case, instead of civil lawsuit, the legal logic is somewhat similar in these two cases that the person who indirectly caused the marine pollution should also be liable.

V. Analysis of Chinese Supreme Court's judgment in context of related international civil liability conventions

In China, as a matter of doctrine of *pacta sunt servanda*, international treaties will

generally be deemed as having a priority effect than that of Chinese domestic law. Meanwhile, Article 268 of Chinese Maritime Code (1993) also provides that: "*where an international treaty concluded or acceded to by the People's Republic of China has different provisions from this Law, the provisions of the international treaty shall apply*". As such, in judicial practice Chinese courts may need to apply international conventions when trying foreign-related civil and commercial cases. Naturally, if there is dispute regarding how to properly interpret international conventions, wording of the convention, or legislation documents of the conventions (Travaux Préparatoires) may need to be carefully examined/reviewed for a proper conclusion.

China is a contracting state to the International Convention on Civil Liability for Oil Pollution Damage 1969/1992 (hereafter referred to as CLC Convention) and the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (hereafter referred to as Bunker Convention). As such, for proper understanding of this case, related provisions in the CLC and Bunker Convention will need to be examined.

As early as in the beginning of the 1950s, the risks and problems of marine pollution caused by shipping operation was already being paid attention to by the international society. However, at that time, the seriousness of pollution to the marine environment has not been paid sufficient to until the disastrous MV Torrey Canyon accident in year 1967[13]. For purpose of finding a global solution to such issue, IMO (International Maritime Organization) convened International Legal Conference on Marine Pollution Damage in Brussels, from 10-29 November 1969. Regarding civil liability, three key issues were considered by the member states' representative groups, i.e., who should be liable (cargo owner, or vessel owner, or both), the basis of liability (strict or fault liability) and limitation of liability[14].

Finally, regarding the party liable for the oil pollution, under CLC 1969, liability was "channeled" solely to the shipowner (or his insurer) in order to simplify the claimants' task of identifying appropriate defendants to sue[15]. In this regard, Article III of CLC 1969 provides that:

> *1. Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or where the incident consists of a series of occurrences at the time of the first such occurrence, shall be liable for any pollution damage*

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[13] Thomas A. Mensah: Prevention of Marine Pollution: The Contribution of IMO, in Jürgen Basedow, Ulrich Magnus (eds.), Vessel-Source Marine Pollution The Law and Politics of International Regulation, Springer-Verlag Berlin Heidelberg, 2007, p.44

[14] Fabio Serena, Civil liability of the shipowner for oil pollution damages in the context of the 1969 International Convention on Civil Liability for Oil Pollution Damage [D], McGill University Master Thesis, 1981,p.55

[15] Alan Khee-Jin Tan, Vessel-Source Marine Pollution The Law and Politics of International Regulation, Cambridge University Press, 2005, p.296

caused by oil which has escaped or been discharged from the ship as a result of the incident.

4. No claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with this Convention.

However, Art. III. 1 is not clear regarding who is the so called "*the owner of a ship at the time of an incident*" and whether this includes the non-spilling vessel's owner, or it just refers to the owner of the oil spilling vessel.

Article IV of CLC 1969 provides that: "*When oil has escaped or has been discharged from two or more ships, and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable"*. However, the scenario under Article IV is that both vessels leaked out oil. If just one vessel leaked out oil, Article IV is not applicable.

Afterwards, in CLC 1992, wording of this channeling provision has no change. As such, since the convention's wording itself is not clear on this issue, we may need to resort to the related Travaux Préparatoires to find out the legislation background and the intention of the drafters of the convention.

It is noted that in the CMI (Comite Maritime International) website regarding Yearbooks & Documentation, there is a "Tokyo Documentation-1969-V", which recorded the member state representatives' comments in the Tokyo Conference of 3rd April 1969 regarding the draft CLC convention. Throughout these comments, it seems there is very little attention on the issue of liability of non-spilling vessels and there is just some scattered mentioning of this issue. For example, Mr. Etienne GUTT (representing Belgium) said that: "*I am afraid that if we cut out this sentence: a . . . against persons other than those concerned in the operation, navigation or management of the ship... », it would mean, and that it is not our intention, that the victim would not be entitled to sue the other colliding ship in a both-to-blame situation*"[16]. Mr. Francesco Berlingieri (representing Italy) also said that: "*The modification of Article 3 was originally decided in order to permit action of victims against the non-tanker in case of collision and in case the non-tanker were liable for the collision*".[17]

Although Mr. Etienne GUTT and Mr. Francesco Berlingieri mentioned these issues during the conference, there is almost no response from the member states' delegation groups regarding their comments. Nobody said yes or no regarding whether right of claim against the non-spilling vessel should be vested to the victims. However, considering that nobody had objection regarding their comments, from another point

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[16] CMI DOCUMENTATION-1969-V p.8

[17] Supra, p. 88

of view, it may be deemed that the member states' delegations impliedly agreed.

In year 1992, a seminar was arranged by the CMI in Genoa in October 1992 to assess and appraise the convention legal system as provided in the CLC convention. In this seminar, regarding CLC's channeling of liability, Prof. EMOND-GOUILLOUD commented that[18]: *The Brussels Convention of 1969, in so far as it sought to channel the pollution burden on to the owner of the tanker, had left its effort half finished. The channeling of liability does not mean the naming of a liable person; so long as actions remain possible against others, either directly or by means of indemnity claims, the mechanism is of only limited value.....However this second part of the exercise had been largely neglected by the draftsman in 1969. Apart from "servants or agents", who are specifically excluded, all other persons remain exposed to the risk that their liability will be involved despite the Convention*.

As such, it seems the from these earlier commentaries that, CLC's channeling mechanism is just half finished and it is not intending to absolutely barring claims against persons other than the oil spilling vessel' owners.

In terms of the Bunker Convention, during drafting of this Convention, there was also some suggestion of adopting similar channeling mechanism as that of the CLC 1969. However, as submitted by Japan to IMO[19], as regards (bunker pollution) liability of the shipowner, at the eightieth session of the (IMO) Legal Committee, a traditional liability system was preferred in the proposed convention dealing with liability and compensation for pollution from ships' bunkers, since the convention, different from the Civil Liability or Fund Conventions, would apply to all ships regardless of their type and there are no reasonable grounds to channel the liability to the registered owner. Accordingly, due to absence of a fund similar to the IOPC Fund in providing a second-tier compensation, the Bunker Convention eventually adopted the approach that encourages pollution victims to pursue a range of persons.[20] As such, in the Bunker Convention, there is no mechanism of channeling similar to that of the CLC.

VI. Conclusion

In summary, the key issue in the MV *CMA CGM Florida* case is relating to the proper interpretation of the principle of polluter pays and channeling of liability. Under the convention system, liability is channeled to the spilling vessel's owners and this might

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[18] Prof. EMOND-GOUILLOUD: The Future of The Compensation System As Established By International Convention, in Colin De La Rue (eds.): Liability For Damage To The Marine Environment, Lloyd's of London Press, 1993, p.95

[19] Consideration of a draft international convention on liability and compensation for bunker oil pollution damage (Submitted by Japan), IMO LEG/ CONF.12/16, 16 March 2001

[20] Dr. Ling Zhu, Compulsory Insurance and Compensation for Bunker Oil Pollution Damage, Springer-Verlag Berlin Heidelberg, 2007, p. 28-29.

be the reason why there is a popular slogan "*who leaks oil, who compensates*" in China. However, although "*who leaks oil, who compensates*" seems to be a simple and straightforward summary of the international civil liability regime regarding the person liable, this slogan does not resolve the issue regarding whether the pollution victims can *only* pursue claims against the oil spilling vessel. In this regard, Mr. Mans Jacobsson, ex-Chairman of International Oil Pollution Compensation Fund also points out that[21]: "*This (channeling mechanism) does not preclude victims from claiming compensation outside the Convention from persons other than the owner*".

Accordingly, the "polluter pays" may not be equivalent to that of "*who leaks oil, who compensates*", and this slogan "*who leaks oil, who compensates*" may be a misinterpretation of the convention system. Meanwhile, in the Bunker Convention, since there is no similar channeling mechanism as that of CLC, the victims should be entitled to sue the persons other than the owners of the oil spilling vessel.

Practically speaking, in most cases the owners of the spilling ship will incur strict liability (i.e. irrespective of fault) and this strict liability regime generally enable claims against the spilling ship to be enforced by direct action against its insurers or other guarantors of financial security. This means that the pollution victims have normally been able to obtain full compensation by relatively straightforward statutory remedies, and that generally they have had little if any incentive to pursue additional and more complex claims against other ships involved in collisions. Consequently there have been few cases where the owners of such ships have incurred liability directly to parties suffering pollution damage, and in practice their main exposure has arisen in subsequent recourse actions. However, this does not mean that the CLC or Bunker Convention intends to prevent the victims from pursuing remedies under domestic tort law and the traditional fault liability system[22]. Accordingly, the so called slogan "*who leaks oil, who compensates*" might be a misunderstanding of related conventions and might need to be clarified to the proper interpretation of the principle of polluter pays.

On September 27, 2020, Chinese Supreme Court published "Top Ten Maritime Trial Judgments 2019" and the *MV CMA CGM Florida* judgment is flagged as the first one of these top judgments, which means that this is a very important judgment in China's maritime trials. Although this judgment is made out on basis of Chinese domestic law, it will ultimately turn to be a case of interpretation of international convention. This judgment has set out a vivid indication regarding interpretation of the principle of polluter pays and channeling of liability, which should be a good guiding case in application of the related international civil liability conventions by courts of other

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[21] Mans Jacobsson, Compensation for Oil Pollution Damage Caused by Oil Spills from Ships and the International Oil Pollution Compensation Fund, Marine Pollution Bulletin, Vol. 29, Nos 6-12, pp. 378-384, 1994

[22] Colin De La Rue and Charles B Anderson, *Shipping and the Environment* (2nd Edition, 2009), Informa Law from Routledge, p.668.

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