Table of Contents

List of Contributors v

Summary of Contents vii

List of Abbreviations xxix

Chapter 1
Introduction 1
Michael Faure, Han Lixin & Shan Hongjun

1 Origin of this Book 1
2 Defining the Problem 2
   2.1 Social Relevance 2
   2.2 Legal Relevance 3
   2.3 Comparative Research 3
   2.4 Recent Evolutions 4
3 Methodology 5
   3.1 Focus 5
   3.2 Legal Multidisciplinary 5
   3.3 The Comparative Approach 6
   3.4 Empirical Research 7
4 Topics 7
   4.1 Implementation of Conventions in Europe and China 7
   4.2 Critical Analysis of the Current Structures 7
   4.3 Alternative Routes of Compensation 8
   4.4 Prevention and Enforcement 8
5 Framework of the Project 8
6 Structure of the Presentation 9
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>Legal History</td>
<td>15</td>
</tr>
<tr>
<td>3</td>
<td>Prevention</td>
<td>18</td>
</tr>
<tr>
<td>3.1</td>
<td>General Overview of MARPOL</td>
<td>18</td>
</tr>
<tr>
<td>3.2</td>
<td>Oil</td>
<td>19</td>
</tr>
<tr>
<td>3.2.1</td>
<td>Discharge Standards in MARPOL Annex I</td>
<td>19</td>
</tr>
<tr>
<td>3.2.2</td>
<td>Construction, Design and Equipment Standards</td>
<td>20</td>
</tr>
<tr>
<td>3.3</td>
<td>Hazardous and Noxious Substances</td>
<td>23</td>
</tr>
<tr>
<td>3.3.1</td>
<td>Definition of HNS</td>
<td>23</td>
</tr>
<tr>
<td>3.3.2</td>
<td>Annex II</td>
<td>24</td>
</tr>
<tr>
<td>3.3.2</td>
<td>Annex III</td>
<td>25</td>
</tr>
<tr>
<td>3.4</td>
<td>Fuel</td>
<td>25</td>
</tr>
<tr>
<td>3.5</td>
<td>Comparative Analysis</td>
<td>26</td>
</tr>
<tr>
<td>4</td>
<td>Civil Liability</td>
<td>28</td>
</tr>
<tr>
<td>4.1</td>
<td>Oil</td>
<td>28</td>
</tr>
<tr>
<td>4.2</td>
<td>HNS Convention</td>
<td>29</td>
</tr>
<tr>
<td>4.3</td>
<td>Bunker Convention</td>
<td>31</td>
</tr>
<tr>
<td>4.4</td>
<td>Comparative Analysis</td>
<td>34</td>
</tr>
<tr>
<td>5</td>
<td>A Critical Analysis</td>
<td>35</td>
</tr>
<tr>
<td>5.1</td>
<td>Regulation versus Civil Liability</td>
<td>35</td>
</tr>
<tr>
<td>5.2</td>
<td>Regulation</td>
<td>35</td>
</tr>
<tr>
<td>5.3</td>
<td>Civil Liability</td>
<td>37</td>
</tr>
<tr>
<td>5.4</td>
<td>Empirics</td>
<td>38</td>
</tr>
<tr>
<td>6</td>
<td>Concluding Remarks</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>References</td>
<td>40</td>
</tr>
</tbody>
</table>

## Chapter 2

### Prevention and Compensation for Marine Pollution

*Wang Hui*

1. Introduction
2. Legal History
3. Prevention
   3.1 General Overview of MARPOL
   3.2 Oil
      3.2.1 Discharge Standards in MARPOL Annex I
      3.2.2 Construction, Design and Equipment Standards
   3.3 Hazardous and Noxious Substances
      3.3.1 Definition of HNS
      3.3.2 Annex II
      3.3.2 Annex III
   3.4 Fuel
   3.5 Comparative Analysis
4. Civil Liability
   4.1 Oil
   4.2 HNS Convention
   4.3 Bunker Convention
   4.4 Comparative Analysis
5. A Critical Analysis
   5.1 Regulation versus Civil Liability
   5.2 Regulation
   5.3 Civil Liability
   5.4 Empirics
6. Concluding Remarks

## Chapter 3

### Marine Pollution and the Right of Entry in Maritime Ports for Ships in Distress

*Eddy Somers*

1. Introduction
2. Maritime Port Concept
Table of Contents

3 The Right of Access 42
4 A Right of Access to Maritime Ports Is Generally Based on Conventional Agreement (or National Legislation or Regulations) 43
5 Right of Access for Ships in Distress 44
  5.1 Multilateral Treaties 44
  5.2 Customary International Law 46
  5.3 No General Right of Access 48
6 Distress, Force Majeure and Immunity 49
7 Conclusion 50
References 51

Chapter 4
Lost Ecosystem Goods and Services as a Measure of Marine Damages 55
James Boyd

1 Introduction 55
2 Liability for Damages to Public Trust Natural Resources 57
3 Current Damage Assessment Practices 59
4 Ecosystem Services Assessment 60
  4.1 Ecological Endpoints 62
  4.2 Causality and Biophysical Production Functions 64
  4.3 From Physical to Economic Damages 67
  4.4 Economic Damage Indicators 70
5 Conclusion 72
References 73

Chapter 5
Liability and Compensation for Environmental Damage Caused by Ship-Source Oil Pollution: Actionability of Claims 75
Proshanto K. Mukherjee

1 Introduction 75
2 Environmental Damage under the Convention Regime 77
3 Locus Standi 81
  3.1 Property Rights or Proprietary Interest 82
  3.2 Public Trust Doctrine 84
    3.2.1 Principles of Trust Law 84
    3.2.2 Ancient Origins of the Doctrine 84
    3.2.3 Roots of the Doctrine in English Law 85
    3.2.4 Application of Public Trust Doctrine in Various States 86
    3.2.5 Application of the Public Trust Doctrine in the United States 87
  3.3 Parens Patriae 88

References xiii
Table of Contents

3.4 Statutes and Case Law on Public Trust and *Parens Patriae* 89
3.5 *Locus Standi* of Private Entities 92
4 Summary and Conclusion 93
References 94

Chapter 6
Funds’ Admissibility Criteria for Pure Economic Loss Claims versus British Judicial Stand: Complementary or Contradictory? 97
Baris Soyer

1 Introduction 97
2 Funds’ Approach to Pure Economic Loss 99
3 British Courts’ Approach to Pure Economic Loss 102
4 Relationship between the Funds’ Admissibility Criteria and the Stand taken by British Courts 105
5 Conclusion 108

Chapter 7
Jason Scott Johnston

1 The Polluter Pays Principle and the Paradoxical Insignificance of Environmental Taxes and Liability 111
2 Environmental Taxes and Liability in the United States 113
3 Limits to Implementing the Polluter Pays Principle with Effluent Taxes and *Ex Post* Liability: Economic Lessons from the American Experience 115
3.1 Environmental Taxes 115
3.2 *Ex Post* Environmental Liability 116
4 Conclusion 118
References 119

Part II
The Bunker Convention 121

Chapter 8
The Era after the Bunker Convention: Is the Gap in China’s Regime for Compensating Victims of Vessel-Source Oil Spills Filled? 123
Shan Hongjun

1 Preface 123
2 General Situation of China’s Regime before the Bunker Convention 124

xiv
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Pollution Damages Governed by CLC 92</td>
<td>126</td>
</tr>
<tr>
<td>2.2</td>
<td>Pollution Damages Governed by Domestic Laws</td>
<td>127</td>
</tr>
<tr>
<td>2.3</td>
<td>The Gap in the Chinese Regime before the Bunker Convention</td>
<td>131</td>
</tr>
<tr>
<td>2.3.1</td>
<td>CLC 92 Oil Pollution Situation</td>
<td>131</td>
</tr>
<tr>
<td>2.3.2</td>
<td>Non-CLC 92 Oil Pollution Situation</td>
<td>131</td>
</tr>
<tr>
<td>2.3.2.1</td>
<td>No Domestic Compensation Fund</td>
<td>131</td>
</tr>
<tr>
<td>2.3.2.2</td>
<td>No Compulsory Insurance Rule</td>
<td>131</td>
</tr>
<tr>
<td>2.3.2.3</td>
<td>No Freestanding Liability Limitation Rule</td>
<td>131</td>
</tr>
<tr>
<td>2.3.2.4</td>
<td>Unlimited Liability for Oil Pollution Caused by Seagoing Ships of Less Than 20 Tonnes Gross Tonnage</td>
<td>132</td>
</tr>
<tr>
<td>2.3.2.5</td>
<td>Unlimited Liability for Oil Pollution Caused by Inland-Water Ships</td>
<td>134</td>
</tr>
<tr>
<td>3</td>
<td>The Gaps in the International Regime Filled by Bunker Convention</td>
<td>134</td>
</tr>
<tr>
<td>4</td>
<td>Situation of the Chinese Regime after the Bunker Convention</td>
<td>135</td>
</tr>
<tr>
<td>4.1</td>
<td>Spills of CLC 92 Oil from CLC 92 Ships</td>
<td>136</td>
</tr>
<tr>
<td>4.2</td>
<td>Spills of Bunker Oil from Non-CLC 92 Ships</td>
<td>136</td>
</tr>
<tr>
<td>4.3</td>
<td>Spills of Persistent Oil as Cargo from Non-CLC 92 Ships (Coastwise Ships)</td>
<td>136</td>
</tr>
<tr>
<td>4.4</td>
<td>Spills of Non-CLC 92 Oil from CLC 92 Ships</td>
<td>137</td>
</tr>
<tr>
<td>4.5</td>
<td>Oil Spills from Ships of Less than 20 Tonnes Gross Tonnage</td>
<td>137</td>
</tr>
<tr>
<td>4.6</td>
<td>Oil Spills from Inland-Water Ships (Cargo/Bunker)</td>
<td>138</td>
</tr>
<tr>
<td>5</td>
<td>The Gap to Be Filled by the Vessel Pollution Prevention Regulations and the China Fund Regulations</td>
<td>140</td>
</tr>
<tr>
<td>5.1</td>
<td>Liability Limitation Rule for Non-CLC 92 Pollution Damages and Non-Bunker Pollution Damages Will Be Established</td>
<td>140</td>
</tr>
<tr>
<td>5.2</td>
<td>Compulsory Insurance Rule for Non-CLC 92 Vessels Except Those of Less Than 1,000 Tonnes Gross Tonnage and Carrying Non-Oil Cargo Will Be Established</td>
<td>140</td>
</tr>
<tr>
<td>5.3</td>
<td>A COPC Fund Will Be Established</td>
<td>142</td>
</tr>
<tr>
<td>6</td>
<td>Conclusion</td>
<td>142</td>
</tr>
</tbody>
</table>

### Chapter 9
**Discussion on Limitation of Liability and Compulsory Insurance of Compensation for Bunker Oil Pollution Damage from Ships in China**

*Han Lixin & Wang Dapeng*

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
<td>145</td>
</tr>
<tr>
<td>2</td>
<td>Shipowners’ Limitation of Liability Stated in Domestic Laws</td>
<td>147</td>
</tr>
<tr>
<td>2.1</td>
<td>When CLC 1992 Will Apply</td>
<td>147</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Ships under the Scope of the Conventions</td>
<td>148</td>
</tr>
<tr>
<td>2.1.2</td>
<td>Oil under the Scope of the Conventions</td>
<td>149</td>
</tr>
</tbody>
</table>
Table of Contents

2.2 The Application of Domestic Law: CMC and the Provisions Promulgated by Ministry of Transport of the PRC 150
2.3 The Amount of the Limitation of Liability in Domestic Laws 151
  2.3.1 Relevant Provisions in Chapter 11 of the CMC 151
  2.3.2 The Provisions Promulgated by the Pre-Ministry of Communication 151
3 The Limitation Regulated in the 1976 LLMC and Its Protocols 153
  3.1 Ships under the Scope of the Convention 153
  3.2 The Amount for Limitation of Liability 153
4 The Establishment of a Limitation Fund for Compensation for Bunker Oil Pollution Damage 155
5 Compulsory Insurance or Financial Security 156
  5.1 Ships Applied 156
  5.2 The Amount of Compulsory Insurance or Financial Security 157
  5.3 The Name List of the Insurers 157
6 Conclusion 158
Reference 158

Part III
Criminal Law 159

Chapter 10
Criminal Liability for Oil Pollution Damage: An Economic Analysis 161
Michael Faure

1 Introduction 161
2 Why Criminal Law for Oil Pollution Damage? 163
  2.1 Arguments in Favour of Public Enforcement 163
  2.2 Low Probability of Detection 164
  2.3 Administrative or Criminal Law? 166
  2.4 Alternatives? 168
  2.5 Criminal Law for Marine Pollution? 169
3 Optimal Sanctions for Marine Pollution 171
  3.1 Fines or Imprisonment? 171
  3.2 Determining the Optimal Sanction 172
  3.3 Non-Monetary Sanctions 173
    3.3.1 Imprisonment or Restoration? 173
    3.3.2 Publicity 174
    3.3.3 Forfeiture of Illegal Gains 174
    3.3.4 Confiscation 175
4 Corporate Criminal Liability for Oil Pollution? 175
  4.1 The Economic Case for Corporate Criminal Liability 175
  4.2 ... and on Individuals? 177
  4.3 Limits of Corporate Criminal Liability 177
5 Criminal Liability for Oil Pollution Damage: Legal Practice 178
# Table of Contents

5.1 Insurance of Fines 178  
5.2 Ship Source Pollution in the EU 180  
5.3 *Erika* 183  
5.4 Empirical Evidence 185  
6 Conclusion 187  
References 188

Chapter 11  
*Liu Nengye & Frank Maes*

1 Introduction 193  
2 Practice of the European Union 196  
2.1 Background 196  
2.2 Relevant Cases 198  
2.2.1 Operational Discharges 198  
2.2.2 Accidental Discharges 199  
2.3 The European Court of Justice Case C-308/06 Concerning the Validity of EU Directive 2005/35/EC on Ship Source Pollution 200  
2.4 Conclusions 203  
3 Practice of the United States 204  
3.1 Background 204  
3.2 Domestic Legal Regime 204  
3.3 Relevant Cases 206  
3.3.1 Operational Discharges 206  
3.3.2 Accidental Discharges 207  
3.4 Conclusions 208  
4 What about China? 208  
4.1 Background 208  
4.2 Domestic Legal Regime 209  
4.3 Challenges 211  
5 Conclusion 212  
References 213

Chapter 12  
Criminal Liability of Master and Crew in Oil Pollution Cases: A Possible Conflict between the Law of the Sea Convention (UNCLOS), MARPOL and the European Directive 2005/35/EC 215  
*Marc A. Huybrechts*

1 Introduction 215  
2 General Features of Civil Liability in Oil Pollution Cases 216
Table of Contents

3 Some of the Special Features of the MARPOL Treaties 73/78 218
4 Ratifications of MARPOL 73/78 218
5 The Introduction of the EU Directive 2005/35 219
8 The Attack on the European Directive 2005 222
9 The Decision of the European Court on the Legality of European Directive 2005/35 – Case C-308/06 – Grand Chamber of 30 June 2009 223
10 How Did the Court Come to These Conclusions? 223
12 The Requirement of Legal Certainty 225
13 The Consequences of This Decision 226
14 The IMO Guidelines on the Fair Treatment of Seafarers 227
15 The French Erika Decision 227
16 Let Us Have a Look at the French Criminal Code 228
17 An Actual Assessment with Reference to the Treatment of Seafarers 229
18 Conclusion 229

References 230

Chapter 13
Criminal Liabilities for Ship-Source Pollution Based on the Laws of China 231
Jiang Yuechuan

1 Preface 231
2 What Kind of Ship-Source Pollution Accidents Will Involve Criminal Liabilities under the Present PRC Legislation? 233
  2.1 Legal Basis for Investigations into Criminal Liabilities for Ship-Source Pollution Accidents under the Present Laws of the PRC 233
  2.2 Conditions for Investigations into Ship-Source Pollution Accidents for Criminal Liabilities 239
    2.2.1 The Ship-Source Pollution Accident Causes Serious Consequences of Marine Environmental Pollution 239
    2.2.2 The Ship-Source Pollution Accident or the Pollution Consequence is Caused by a Violation of the Law Committed by the Actor 239
  2.3 Examples of Ship-Source Pollution Accidents That May Be Investigated for Criminal Liabilities 240
3 What Kind of Person Will Be Investigated for Criminal Liabilities as a Result of Ship-Source Pollution Accidents under the Laws of the PRC? 240
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Masters and Mariners</td>
<td></td>
<td>240</td>
</tr>
<tr>
<td>3.2</td>
<td>Shipowners</td>
<td></td>
<td>241</td>
</tr>
<tr>
<td>3.3</td>
<td>Ashore Executive Personnel of Shipowners</td>
<td></td>
<td>241</td>
</tr>
<tr>
<td>3.4</td>
<td>Functionaries of State Organs Responsible for Environmental Supervision and Control</td>
<td></td>
<td>242</td>
</tr>
<tr>
<td>3.5</td>
<td>Inspectors of Classification Society and Other Vessel Inspection Agencies</td>
<td></td>
<td>242</td>
</tr>
<tr>
<td>4</td>
<td>Criterion of Liability for Criminal Liabilities in Ship-Source Pollution Accident</td>
<td></td>
<td>243</td>
</tr>
</tbody>
</table>

**Chapter 14**

Civil and Criminal Liabilities Concerning Marine Pollution in Hong Kong

*Li Lianjun & Qin Mu*

1 Introduction
1.1 Ship-Source Marine Pollution
1.2 Relevant Legislations in Hong Kong

2 Marine Pollution Legislations of Hong Kong
2.1 Shipowners' Strict Liability
2.1.1 Provisions Regarding Strict Liability under the CLC 1992
2.1.2 Hong Kong Legislation
2.2 Limitation of Liability and Cover by the IOPC Fund
2.2.1 Provisions Regarding Limitation of Liability in the CLC 1992
2.2.2 Local Legislation Regarding Limitation of Liability in Hong Kong
2.2.3 Limitation Actions in Hong Kong
2.2.4 IOPC Fund 1992 Coverage of the Liability of Shipowners
2.2.5 Local Legislation Regarding IOPC Fund 1992 in Hong Kong
2.3 Summary

3 Criminal Liability
3.1 The Regime under MARPOL73/78
3.2 Local Legislation Regarding Criminal Liability in Hong Kong

4 Conclusion
References
Table of Contents

Part IV
United States 261

Chapter 15
A Comparison of the Recovery of Compensation for Injury to Natural Resources under the 92 CLC and Fund Conventions with the US Oil Pollution Act of 1990 263
Robert Force

1 Introduction 263
2 Overview of Major Differences Relating to Compensation 264
3 The Approach under the Conventions 267
4 The Approach in the United States 272
5 The Statutes: OPA 90 274
6 Regulations and Judicial Decisions 276
7 Loss of Services Pending Restoration and the Concept of ‘Compensatory Restoration’ 278
  7.1 Loss of Use 278
  7.2 Compensatory Restoration 278
8 The Future 281
9 Conclusion 282
References 283

Chapter 16
National Interests Influence in Compensation for Damages Resulting from Oil Pollution: The Experience of the United States and Its Reference to China 285
Li Tiansheng & Han Lixin

1 Introduction 285
2 The US Development of Compensation for Pure Economic Loss Resulting from Oil Pollution and its Reference to China 286
  2.1 The US Development of Compensation for Pure Economic Loss Resulting from Oil Pollution 286
  2.2 Lessons from the US Development Concerning the Compensation for Pure Economic Loss Resulting from Oil Pollution for China 288
3 The US Practice in Compulsory Insurance and Fund for Damage Resulting from Oil Pollution and its Reference to China 292
  3.1 The US Practice in Compulsory Insurance and Fund for Damage Resulting from Oil Pollution 292
3.1.1 The US Practice in Compulsory Insurance for Damage Resulting from Oil Pollution 292
3.1.2 The US Practice in Establishing a Fund for Damage Resulting from Oil Pollution 294
3.2 Lessons from the US Practice Concerning Compulsory Insurance and the Fund for Damage Resulting from Oil Pollution for China 295
3.2.1 The Regime of Compulsory Insurance in China and Ways to Improve It 295
3.2.2 Establishing a Fund for Oil Pollution in China 296
4 Conclusion 297
References 297

Chapter 17
Study on Ocean Pollution Damage Legislation between the United States and China: A Comparative Perspective 299
Guo Ping

1 Introduction 299
2 The Legislation of the United States on Marine Pollution Damage 300
3 The Main Provisions of American Legislation on Liability for Marine Pollution 303
3.1 Scope of Application 303
3.1.1 Section 1321(b)(3) of the CWA 303
3.1.2 Section 2702 of OPA 1990 304
3.1.3 Section 9601(8) of CERCLA 304
3.2 Scope of Claims for Marine Pollution Damages 304
3.3 Persons Liable for Marine Pollution Damage 305
3.4 Defences for Marine Pollution Liability 306
3.5 Limitation of Liability for Marine Pollution 307
4 The Legislation of China on Marine Pollution and Damage 309
5 The Main Provisions of Chinese Legislation on Liability for Marine Pollution 311
5.1 China Maritime Code 311
5.2 MEPL 311
5.3 Vessel Pollution Prevention Regulation 312
5.4 Ship-Breaking Pollution Prevention Regulation 314
5.5 Offshore Oil Exploration and Exploitation Regulation 314
5.6 Dumping Regulation 315
5.7 Land-Based Pollution Regulation 316
5.8 Coastal Construction Pollution Regulation and Ocean Construction Pollution Regulation 316
6 Comments on the Characteristics of American Laws and Chinese Laws 317
Table of Contents

6.1 Characteristics of US Law 317
6.2 Characteristics of Chinese Laws, Regulations and Rules 318

7 Conclusion 319
References 320

Part V
China 321

Chapter 18
China and International Protection of Marine Environment 323
Song Ying

1 Introduction 323
2 Overview of the International Law for the Protection of the Marine Environment 324
  2.1 Historical Evolution 324
  2.2 Treaty Regime 325
    2.2.1 Ocean Dumping 326
    2.2.2 Vessel-Based Pollution 326
    2.2.3 Land-Based Pollution 327
    2.2.4 Intervention in Accidents or Emergency of Oil Pollution 327
    2.2.5 Liability and Compensation for Pollution Damages 327
    2.2.6 Conservation of Marine Living Resources 328
  2.3 Competent Institutions 328
3 China: Challenges and Legal Responses 329
  3.1 Challenges of the Costal and Marine Environment 329
    3.1.1 Polluted Marine Areas 329
    3.1.2 Eutrophication 330
    3.1.3 Oil Spills 330
    3.1.4 Habitats Destruction 331
    3.1.5 Overfishing 331
  3.2 Legal Responses: External 331
  3.3 Legal Responses: Internal 333
  3.4 Select Issues in the Legal Responses 334
    3.4.1 Land-Based Sources of Pollution 334
      3.4.1.1 Environmental Impact Assessment 334
      3.4.1.2 Land-Use Planning 335
    3.4.2 Water Resources and Water Pollution 336
      3.4.2.1 Other Sources of Pollution 337
    3.4.3 Vessel-Based Pollution 337
      3.4.3.1 Regulatory Authority 337
      3.4.3.2 Implementation of MARPOL 73/78 337
    3.4.4 Dumping of Waste and Other Matters 338
    3.4.5 Exploitation of Marine Resources 338
      3.4.5.1 Living Resources 338
      3.4.5.2 Non-Living Resources at the Sea-Bed 338

xxii
Table of Contents

3.4.6 Protection of Critical Areas 339
3.4.7 National Marine Environmental Policies and Strategies 339
   3.4.7.1 General Economic, Social and Environmental Policies 339
   3.4.7.2 Policies and Strategies for Marine Environment and Coastal Development and Management 339

4 Conclusion 340
Annex 342
References 344

Chapter 19
On the Application of CLC 92 in China 347
Chen Qi

1 Introduction 347
2 Reasons to Apply CLC to Chinese Purely Domestic Oil Pollution Cases 350
   2.1 The View That ‘International Conventions Only Regulate Legal Relationships with Foreign-Related Factors’ Is Inaccurate 350
   2.2 The So-Called ‘Principle of Inside-Outside Distinction’ Should Not Be the Basic Principle for Applying International Conventions in China 352
   2.3 Applying CLC to Purely Domestic Cases Could Accelerate the Development of Chinese Shipping Industry 353
   2.4 Applying CLC to Purely Domestic Oil Pollution Cases Could Resolve Some Practical Issues in Chinese Judicial Practice 354

3 Conclusion 355
References 357

Chapter 20
Compensation for the Domestic Oil Pollution in China’s Coast: Which Law Shall Apply? 359
Zhang Liying

1 Introduction 359
2 The Application of CLC in the Domestic Oil Spills 360
3 The Reasons for the Application of the Domestic Law 363
4 The Rationale for the Application of Domestic Law 364
   4.1 The Limitations of the Marine Environment Protection Law 364
   4.2 The Strict Liability and Compensatory Damage in the General Principles of the Civil Law Is Not Applicable to Domestic Oil Spill Disputes 365
   4.3 The Application of the Maritime Code in the Coastal Oil Spills Compensation 366

xxiii
Chapter 21
Compulsory Liability Insurance on Carriage of Liquid and Dangerous Cargo by Coastal and Inland Waters in China
Chu Beiping & Zhang Jinlei

1 Introduction
2 The Functions of the Compulsory Liability Insurance
   2.1 The Function of Strong Social Administration
   2.2 The Function of Extensive Economical Indemnification
3 Necessity of Compulsory Liability Insurance on Carriage of Liquid and Dangerous Cargo Transportation
4 Glance on the Current Laws on the Prevention of Pollution to the Ocean
   4.1 International Conventions
      4.1.1 MARPOL73/78
      4.1.2 CLC 1992
      4.1.3 HNS Convention 1996
      4.1.4 The Bunker Convention 2001
   4.2 Domestic Laws
5 Obstacles
   5.1 The Scope of Liquid and Dangerous Cargo Is Difficult to Define
   5.2 Companies’ Lack of Strong Sense of Responsibility for Obtaining Public Liability Insurance
   5.3 Disadvantages of Compulsory Liability Insurance
   5.4 Limitation of Insurance Product
   5.5 Obstacles in Law
6 Prospect
   6.1 The Joint Effort of the China Insurance Regulatory Commission and the Ministry of Transport of China
   6.2 Experiment on Selected Industries
   6.3 Development of Insurance Product
7 Conclusion
References

Chapter 22
The Factors Affecting Judicial Authentication on Maritime Oil Pollution and Relevant Solving Measures
Sun Guang

1 Introduction
2 Basic Legal Provisions of Judicial Authentication
Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Factors Affecting Impartiality of Judicial Authentication</td>
<td>388</td>
</tr>
<tr>
<td>4 Controversy on the Scope of Maritime Oil Pollution Authentication</td>
<td>389</td>
</tr>
<tr>
<td>5 Difficulties of Determining Authentication Reports and Relevant Solving Measures</td>
<td>392</td>
</tr>
<tr>
<td>References</td>
<td>395</td>
</tr>
<tr>
<td><strong>Part VI</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Case Studies</strong></td>
<td>397</td>
</tr>
<tr>
<td><strong>Chapter 23</strong></td>
<td></td>
</tr>
<tr>
<td>Legal Issues from the Hebei Spirit Oil Spill Incident</td>
<td>399</td>
</tr>
<tr>
<td><strong>Hu James Zhengliang</strong></td>
<td></td>
</tr>
<tr>
<td>1 Introduction</td>
<td>399</td>
</tr>
<tr>
<td>2 The Incident</td>
<td>400</td>
</tr>
<tr>
<td>3 Investigation into the Incident and Litigations</td>
<td>402</td>
</tr>
<tr>
<td>3.1 Investigation into the Incident</td>
<td>402</td>
</tr>
<tr>
<td>3.1.1 Investigations Conducted by KMST</td>
<td>402</td>
</tr>
<tr>
<td>3.1.2 Investigation Conducted by MARDEP</td>
<td>403</td>
</tr>
<tr>
<td>3.2 Criminal Litigations in Korea</td>
<td>404</td>
</tr>
<tr>
<td>3.2.1 The First Trial</td>
<td>404</td>
</tr>
<tr>
<td>3.2.2 The Second Trial</td>
<td>404</td>
</tr>
<tr>
<td>3.2.3 The Third Trial</td>
<td>404</td>
</tr>
<tr>
<td>3.2.4 Strong Reactions from the International Community</td>
<td>405</td>
</tr>
<tr>
<td>3.3 Civil Litigations in Korea</td>
<td>406</td>
</tr>
<tr>
<td>3.3.1 Claims for Pollution Damages against SHI Etc. and SHI's Application for Limitation</td>
<td>406</td>
</tr>
<tr>
<td>3.3.2 Owners' Application for Limitation of Liability</td>
<td>406</td>
</tr>
<tr>
<td>3.4 Recourse Litigations in China</td>
<td>407</td>
</tr>
<tr>
<td>4 Assessment and Settlements of Oil Pollution Claims</td>
<td>407</td>
</tr>
<tr>
<td>5 Measures Taken by Korean Government</td>
<td>408</td>
</tr>
<tr>
<td>5.1 Special Law for the Support of the Victims of the Hebei Spirit Oil Pollution Incident</td>
<td>408</td>
</tr>
<tr>
<td>5.2 Korean Government's Decision to 'Stand Last in the Queue'</td>
<td>408</td>
</tr>
<tr>
<td>5.3 Hardship Payments Made by the Korean Government</td>
<td>408</td>
</tr>
<tr>
<td>6 What May Be Learnt in Legal Perspectives by China?</td>
<td>409</td>
</tr>
<tr>
<td>6.1 Oil Water-Borne? Transport and Legislations in China</td>
<td>409</td>
</tr>
<tr>
<td>6.2 The Necessity of Setting up a Domestic Oil Pollution Compensation Fund</td>
<td>410</td>
</tr>
<tr>
<td>6.3 Improvement of Statutory Provisions Regarding Compensation for Oil Pollution Damages from Ships</td>
<td>411</td>
</tr>
<tr>
<td>6.4 Improvement of Law Regarding Criminal Liability of Offending Seafarers</td>
<td>411</td>
</tr>
<tr>
<td>6.5 Improvement of Emergency Response System</td>
<td>411</td>
</tr>
<tr>
<td>7 Conclusion</td>
<td>412</td>
</tr>
</tbody>
</table>

xxv
Table of Contents

Chapter 24
A Review and Critical Analysis on the MSC Ilona Oil Spill Incident at Pearl River Estuary 413
Li Zhonghua & Zhou Zhujun

1 Incident Review 413
2 Critical Analysis to the Incident Emergency Treatment 414
   2.1 Potential Efficiency of Regional Emergency Resources Has Not Been Fully Deployed 414
   2.2 Establishing a Collaboration System of Oil Spill Emergency Treatment at the Pearl River Estuary Could Greatly Enhance the Oil Spill Emergency Treatment Efficiency 416
3 Lodging of Claims Exposes the Distemperedness of Compensation Laws and Systems 417
   3.1 The Process of Claim Lodging 417
   3.2 Divergence on How Entity Responsible for Incident Should Assume Liability Is the Main Barrier to Compensation Negotiations 417
   3.3 Analysis on How to Assume Liability 418
   3.4 Divergence on Whether Cleanup Cost Has the Priority of Gaining Compensation Leads to Dispute on the Distribution of Compensation 419
4 Countermeasures and Suggestions 419
   4.1 To Accelerate the Completeness of Relevant Legislations Such as ‘CMC’ in Order to Effectively Protect the Benefit of Aggrieved Party of Pollution and Participants of Cleanup Operations 420
   4.2 To Implement Measures as Establishing Exclusive Funds for Oil Spill Damage to Increase the Emergency Power to Deal with Oil Spills 421
   4.3 To Enhance Efficiency of Emergency Treatment by Rationalizing the Managing System and Completing Emergency Evaluation System 421

References 421

Chapter 25
A Case Study of Compensation for Marine Oil Pollution Damage: Centring in the Compensation Claim of the Amorgos Oil Pollution Accident 423
Wang Yuh-Ling

1 MV Amorgos Claims Process 423
   1.1 Background 423

xxvi
Table of Contents

1.2 Disputes
1.2.1 An International or Domestic Case 425
1.2.2 Time-Consuming Nature of International Maritime Claims 426
1.2.3 The High Cost of International Maritime Claims 426
1.2.4 The Amount Claimed for Damages 426
1.2.5 Regulations Limiting the Liability of the Country in Which the Shipowner and the Ship Operator Are Registered 427
1.2.6 Wreckage Removal 428

1.3 Relevant International Regimes 428
1.3.1 Scope of Application 429
  1.3.1.1 Ship 429
  1.3.1.2 Bunker Oil 429
  1.3.1.3 Geographical Coverage 429
1.3.2 Party or Parties Liable for Compensation 429
1.3.3 Basis of Liability and Criteria of Exclusions 430
1.3.4 Scope of Compensation 430
1.3.5 Limitation of Liability 431
1.3.6 Compulsory Insurance or Financial Security 432
1.3.7 Direct Litigation Regime 432
1.3.8 Time Limits for Claiming Compensation 433
1.3.9 Jurisdiction 433

1.4 Analysis and Assessment of the Case 433
1.4.1 Applicable Laws and Court with Jurisdiction 433
1.4.2 Who Should Be the Claimant 433
1.4.3 Claim for Compensation and Scope of Liability 434
1.4.4 Party or Parties against Which Pollution Damage Is Claimed 435
1.4.5 Appropriateness to Restrict the Crew from Leaving Taiwan 435

2 Discussion on Applicable Taiwan Legal Regimes of Compensation for Marine Oil Pollution 436
2.1 Liability to Damage Compensation for Tort in the Civil Law of Taiwan 436
2.2 Application of International Conventions on the Oil Pollution Cases in Taiwan 437
  2.2.1 Restricted Affirmation 437
  2.2.2 Affirmation 437
  2.2.3 Negation 437
2.3 Discussion and Review of Taiwan’s Legislation on Marine Oil Pollution 439

3 Conclusion 441
## Table of Contents

**Part VII**  
Comparative Conclusions 443

**Chapter 26**  
Comparative Conclusions 445  
*Michael Faure, Han Lixin & Shan Hongjun*

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
</tr>
<tr>
<td>2</td>
<td>Prevention</td>
</tr>
<tr>
<td>3</td>
<td>Compensation Issues</td>
</tr>
<tr>
<td>4</td>
<td>The Bunker Convention</td>
</tr>
<tr>
<td>5</td>
<td>Criminal Law</td>
</tr>
<tr>
<td>6</td>
<td>The United States as Example?</td>
</tr>
<tr>
<td>7</td>
<td>Damage Assessment, Claims Handling and Insurance in China</td>
</tr>
<tr>
<td>8</td>
<td>Case Studies</td>
</tr>
<tr>
<td>9</td>
<td>The Way Forward</td>
</tr>
</tbody>
</table>