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The Comparative Legal Research on the Marine
Accidents and Pollution - Focus on the Legal Analysis of
the Major Countries : Japan

연구자: 유진식(전북대학교 법과대학 교수) Yoo, Jin-Sik

2008. 6. 30.



국문요약

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Abstract

International Convention on Civil Liability for Oil Pollution Damage, 1992(the Civil Liability Convention) imposed strict liabilities of ship's owner on Oil Spill Incidents and limited his liabilities. It also forced Liability Insurance. And the International Oil Pollution Compensation Funds(IOPC Funds), 1992 complemented the Civil Liability Convention. IOPC Funds provide compensation for oil pollution damage resulting from oil spills from tankers.

Afterward, Protocol of 2003 to the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the Supplementary Fund Protocol) was adopted and Japan signed up this Protocol in July 2004.

This protocol has come into effect since March 2005, the limit sum of compensation has come to 100 million dollar(100 billion Yen) according to the Civil Liability Convention, IOPC Funds and the Supplementary Fund Protocol.

Marine Environmental Management Act enacted as domestic law to discipline countermeasures for oil spill incidents. And Oil Pollution Damage Guarantee Act enacted as domestic law enacted to relieve victims from oil pollution damages.

In Japan the Marine Pollution and Marine Disaster Prevention Law enacted to discipline countermeasures for oil Spill Incidents and the Law for the Prevention of Pollution from Ships enacted to relieve victims from oil pollution damages.

Recently, there are a little marine pollution cases in the waters surrounding Japan according to the marine environment monitoring. But

Serious Marine pollution isn't being in progress. According to the results of observation of the waters surrounding Japan, there are little waste oil floater balls and average quantities of picking waste oil stuck on the rocks slightly increased. Pollution incidents cases from oil ships were 210 times, and they took 70% of the whole oil Marine pollution in 2006. Almost pollution incidents from oil ships were caused by careless handling.

Accidents occurred. Russian Tanker called Nahotoka was loading heavy oil type C, approximately 19,000kilolitre at the vicinity of approximately 106km NNE far from Ohkiseom, Shimane on January 2, 1997 through high waves at dawn. The stem of Nahotoka made 26 years ago was broken off. The Japanese government took 3 Steps to control Nahotoka's Oil spills accidents.

First, the Japanese government organized dedicated organizations and councils to handle and control the incident. In the concrete, Countermeasures Headquarters of marine Guard, Oil spills disasters Council, Nahotoka Countermeasures Headquarters of marine disasters and Oil spills disasters, Council of Ministers and Nahotoka disasters investigation committee.

Second, Japan spent general accounting preliminary expenses in 1996 and Oil spills disasters grant measures. Basing on contract of Disaster Prevention Centre, the Japanese government paid the cost of removing Oil spills and the wages of oil removing carriers, road construction contractor. The Japanese government also compensated fishermen's costs and wages. To finance these costs, Japan revised a part of Enforcement Decree. It paid 1 billion and 900 million Yen to Ohkiseom, Shimane and made Disaster Prevention Centre spend 9 billion Yen.

Third, the Japanese government organized Comprehensive Review

Committee of removing Oil Spills and made it write reports for the comprehensive review of accident's recurrence prevention measures and ways of removing oil spills. The Committee wrote interim report, 'In regards to strengthen the system of removing Oil Spills'.

Japan strictly regulated Marine pollution law and the law fits the criteria of international treaties. But the law has to complement the problems of Agency Relationships Transcontinental connection, quick and accurate systems of removing Oil Spills, the partnership of government, officials, and the people, cooperative system with neighboring countries and effective system of Volunteers.

Japan domestic law, Marine Pollution and Marine Disaster Prevention Law is elaborately regulated basing on the Civil Liability Convention and IOPC Funds. In this regard, Marine Pollution and Marine Disaster Prevention Law has comparable worth. But the regulations of indemnification's scope aren't yet sufficient. Marine Pollution and Marine Disaster Prevention Law has to adopt the concrete judging criteria just like the criteria of IOPC Funds.

Key words: the Marine Pollution and Marine Disaster Prevention
 Law, the Law for the Prevention of Oil Pollution
 from Ships, the marine environment monitoring,
 Nahotoka Ship Accidents, 3 Steps of the Japanese
 government to control Nahotoka's Oil spills
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목 차

Abstract ·	
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  定基準について、地球環境研究. Vol.8(2006), 55-56 .
              , [2008
                              (2008. 7.), 35-43 ,
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3) 矢崎真澄·後藤真太郎、
                            , 56 .
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4) ₅5) (前者) J⁶⁾(.) 가 .)7) 가 가 (Bright Line Rule)8) (純) , 1990 (Oil Pollution Act of 1990) 가 가 가 가 가 4) 1977 2007 19 , 2008 2 5) 1992 12 , 1993 「海洋汚染等及び海上災害の防止に関する法律」 6) 1970 12 25 (原題) 「船舶油濁賠償保障法」 7) 1975 12 27 (原題) 8) 가 가 (Economic loss)

. 新谷顕一、油濁損害の賠償の範囲に関する国海法会のガイドラインについて、「海法会誌」復刊 第38号 (1994年12月)、7 ,望月礼二郎、英米法、青林書院新社(1981)、154,273 , .

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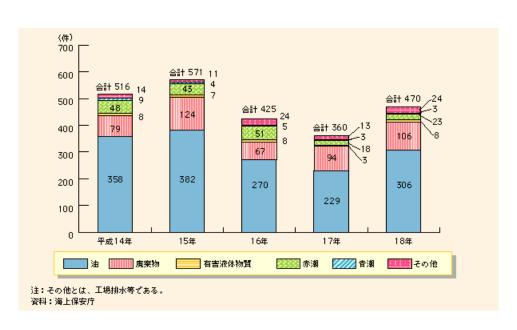
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9) 2007 4. (http://www.env.go.jp/policy/hakusyo/h19/html/hj07030101.html#3_1_1_4) (轉載) .

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¹¹⁾ 広部和也・臼杵知史、解説国際環境条約集、三省堂(2003)、90 .

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15) 広部和也·臼杵知史、上掲書、90 .

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¹⁶⁾ ジュリアナ号事件の諸問題-海洋油濁事故と救済-、ジュリスト1972.2.15.(No.499), 52 .

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²³⁾ 谷川久、ナホトカ号流出事故と法的問題点、ジュリスト(NO.1117)1997。8。1-15), 188 .

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²⁴⁾ 稲葉威雄、船主責任制限制度の改正— 船主責任制限法および油濁損害賠償保障法について—、海洋汚染の現代的諸問題(環境法研究第6号、1977。3。) 46 .

²⁵⁾ 稲葉, 47-48 , . .

Ⅱ.

. 1 ' 가

²⁶⁾ 相原隆、油濁損害賠償保障法第3条第2号にいう「異常な天災地変」の意義、法と政治(第5 巻第2号、2002.6., 関西学院大学法政学会)、293-294 .

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37) 時岡泰・谷川久・相良朋紀、 , 342-343 . , 343 .

³⁸⁾ 時岡泰・谷川久・相良朋紀、

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41) 時岡泰・谷川久・相良朋紀、 , 349-351 .

⁴⁰⁾ 時岡泰・谷川久・相良朋紀、 , 349 .

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, 가 .(石油海事協会、[第4版] タンカー の油濁責任と補償について、石油海事協会(1981)、7 .)

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 45) 時岡泰・谷川久・相良朋紀、
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⁴⁸⁾ 時岡泰・谷川久・相良朋紀、 , 356 .

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⁴⁹⁾ 谷川 久、油濁損害賠償補償法について上)、ジュリスト1976。3。1(No.607), 113-114 .

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51) 時岡泰・谷川久・相良朋紀、 , 365 .

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52) 時岡泰・谷川久・相良朋紀、 , 369-370 . 53) , . .

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55) 時岡泰・谷川久・相良朋紀、 , 374-375 .

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56) 時岡泰・谷川久・相良朋紀、 , 382-383 .

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⁵⁷⁾ 時岡泰・谷川久・相良朋紀、 , 384-385 .

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58) 時岡泰・谷川久・相良朋紀、

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^{, 388-389 .} 59) 時岡泰・谷川久・相良朋紀、 , 390 .

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(7 2) 60) 時岡泰·谷川久·相良朋紀、 , 396-397 .

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70) 時岡泰・谷川久・相良朋紀、 , 423 .

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73) 時岡泰・谷川久・相良朋紀、 , 431-432 .

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74)時岡泰・谷川久・相良朋紀、 , 434-435 .

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79) 時岡泰・谷川久・相良朋紀、
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81)	Agean Sea	n (1992 12	2 ,), Braer (1	993 1 ,		
82)) 新谷顕一、油濁損害	『の賠償の範囲	目に関する国	国海法会のガイ	(ドラインについ	て、「海法会	会誌」
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03)	小口鸡、	, 0-/ .					

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84) 新谷顕一、 , 8-9		

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⁸⁵⁾ 谷川久、油濁損害の賠償・補償の範囲、古室直人外編、企業と法(下)、有斐閣(1995)、337 .

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86) 谷川久、
               , 340-341 .
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⁸⁷⁾ 谷川久、 , 342 .

⁸⁸⁾ 谷川久、 , 342 .

89) 1 7 (any reasonable measures), (査定) 가 ① (査定) 가 가 (2)가 10 (a), (b) 90) 10 (a)) (兩者)가

PART III: PREVENTIVE MEASURES, CLEAN-UP AND RESTORATION

- 10. (a) The cost of preventive measures (including clean-up and disposal) is recoverable insofar as both the measures themselves and the cost thereof were reasonable in the particular circumstances.
- (b) In general compensation is payable where the measures taken or equipment used in response to an incident were likely, on the basis of an objective technical appraisal at the time any relevant decisions were taken, to be successful in avoiding or minimising pollution damage. Compensation is not to be refused by reason only that preventive or clean-up measures prove ineffective, or mobilized equipment proves not to be required. A claim should however be refused if the steps taken could not be justified on an objective technical appraisal, in the circumstances existing at the relevant time, of the likelihood of the measures succeeding, or of mobilized equipment being required.

^{89) (}原文) 「"Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.」

^{90) (}原文)

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(裝備)가 (b) 가 (輕減) 가 가 가 가 가 (諸) 가 가 (査定) 가 가 가 가 가 10 $(d)^{91}$

91) (原文)

^{10. (}d) Where any plant or equipment owned by a claimant is reasonably used for the purpose of preventive or clean-up measures, the claimant may claim reasonable hire charges for the period of the use, and any reasonable costs incurred to clean or repair the plant or equipment after its use provided always that the aggregate of such charges and/or costs should not exceed the acquisition cost or value of the plant or equipment concerned.

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가 10 (c)⁹³⁾

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⁹²⁾ 谷川久、 , 344 .

^{93) (}原文)

^{10. (}c) Where a government agency or other public body takes an active operational role in preventive measures or clean-up, compensation may be claimed for an appropriate proportion of normal salaries paid to their employees engaged in performing the measures during the time of such performance, and such a claim will not be rejected on the sole ground that the salaries concerned would have been payable by the claimant in any event.

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⁹⁴⁾ 谷川久、 , 344 .

⁹⁵⁾ 谷川久、 , 345 .

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96) 谷川久、 , 344-345 . 97) . .

- 3. For the purpose of these Guidelines the following definitions are employed:
- (a) "Economic loss" comprises both consequential loss and pure economic loss, as defined below;
- (b) "Consequential loss" means financial loss sustained by a claimant as a result of physical loss of or damage to property caused by contamination by oil;
- (c) "Pure economic loss" means financial loss sustained by a claimant otherwise than as a result of such physical loss of or damage to property;
- (d) "Property" means anything in which the claimant has a legally recognised interest by virtue of a proprietary or possessory right.
- 6. (a) Pure economic loss will be treated as caused by contamination only when a reasonable degree of proximity exists between the contamination and the loss.
- (b) In ascertaining whether such proximity exists, account is to be taken of all the

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circumstances, including (but not limited to) the following general criteria:

⁽i) the geographic proximity between the claimant's activities and the contamination;

⁽ii) the degree to which the claimant is economically dependent on an affected natural resource;

⁽iii) the extent to which the claimant's business forms an integral part of economic activities in the area which is directly affected by the contamination;

⁽iv) the scope available for the claimant to mitigate his loss;

⁽v) the foreseeability of the loss; and

⁽vi) the effect of any concurrent causes contributing to the claimant's loss.

⁹⁹⁾ 谷川久、 , 345 .

^{100) (}原文)

^{7.} Whilst the result in practice of applying the foregoing general principles

가 7. (前項) (a) (目) (沿岸) (者) (i)(ii) (淡水化) (鹽田), (冷却) (iii) (目) (b) (i) (稅收) (ii) (逸失) 가

will always depend on the circumstances of the individual case, recovery will not normally extend:

- (a) to parties other than those who depend for their income on commercial exploitation of the affected coastal or marine environment, such as, for example, those involved in:
- (i) fishing, aquaculture and similar industries;
- (ii) the provision of tourist amenities such as hotels, restaurants, shops, beach facilities and related activities;
- $\label{eq:continuous} \mbox{(iii) the operation of desalination plants, salt evaporation lagoons, power stations and similar installations reliant on the intake of water for production or cooling processes;}$
- (b) to parties claiming merely to have suffered:
- (i) delay, interruption or other loss of business not involving commercial exploitation of the environment;
- (ii) loss of taxes and similar revenues by public authorities.

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¹⁰¹⁾ 谷川久、 , 345 .

^{102) (}原文)

^{9.} Compensation may be paid for the costs of reasonable measures taken by a claimant to prevent or minimise economic loss, where such loss would itself have qualified for compensation under the terms of these Guidelines. In determining what is reasonable for this purpose, it will normally be required that:

⁽a) the costs of the measures were reasonable;

⁽b) the costs of the measures were in proportion to the loss which they were intended to prevent or minimise;

⁽c) the measures were appropriate and offered a reasonable prospect of being successful; and

⁽d) in the case of a marketing campaign, the measures related to actual targeted markets.

.105)

- 11. Compensation for impairment of the environment (other than loss of profit) shall be limited to the costs of reasonable measures of reinstatement actually undertaken or to be undertaken. It is not payable where the claim is made on the basis of an abstract quantification of damage calculated in accordance with theoretical models.
- 12. (a) Admissible claims for the cost of reasonable measures of reinstatement need not be limited to the removal of spilt oil, but may include appropriate steps to promote the restoration of the damaged environment or assist in its natural recovery.
- (b) Specific studies may be necessary to quantify or verify pollution damage and to determine whether or not reinstatement measures are in fact feasible and will accelerate natural recovery. Contributions may be paid to the reasonable costs of such studies, provided they are reasonably proportionate to the actual damage, and provided they produce, or are likely to produce, the required data.
- (c) A claimant may recover a reasonable sum in respect of the estimated cost of reinstatement measures, before they have actually been carried out, provided always that the measures could not otherwise be carried out due to lack of financial resources, and provided an undertaking is given, or other satisfactory evidence is provided, that the proposed measures of reinstatement will actually be carried out.
- (d) In determining whether measures of reinstatement are reasonable, account is to be taken of all the relevant technical factors including (but not limitedto) the following:

¹⁰³⁾ 新谷顕一、 , 25 .

¹⁰⁴⁾ 谷川久、 , 345 .

^{105) (}原文)

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11. () 가 (算定) (認容) (認容) 12. (a) 가 가 (b) 가 가 가 (c) 가 가 (財源)

(i) the extent to which the observed state of the environment, and any changes therein, are to be regarded as damage actually caused by the incident in question, as distinct from other factors whether man-made or natural;

⁽ii) whether the measures are technically feasible and likely to contribute to the re-establishment at the site in question of a healthy biological community in which the organisms characteristic of that community are present and are functioning normally;

⁽iii) the speed with which the affected environment may be expected to recover by natural processes and the extent to which the reinstatement measures concerned may accelerate (or inadvertently impede) natural processes of recovery; and

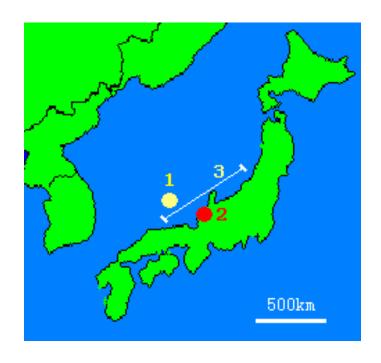
⁽iv) whether the cost of the measures is in proportion to the damage or the results which could reasonably be expected.

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106) 42 25 2 (延燒)

107) 谷川久、ナホトカ号流出油事故と法的問題点、ジュリスト(1997.8.1-15)(No.1117), 185-186 . 108) 谷川、 , 186 .

П. •

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42 27 110) 谷川、 , 186-187 .

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¹¹¹⁾ 谷川、 , 191 .

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	28	4100	13	4400	47%
	71	4300	56	3800	79%
	11	2900	7	7400	69%
	27	4800	22	6500	82%
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7000 . 34%

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③ (審査)

(Claims Manual)

가

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¹¹²⁾ 矢崎真澄・後藤真太郎、ナホトカ号重油流出事故における地方公共団体の補償請求の 査定基準について、地球環境研究。Vol.8(2006), 56 (轉載).

Ⅱ. •

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113) 矢崎真澄・後藤真太郎、
                      , 57-60
                                 (轉載).
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¹¹⁵⁾ 矢崎真澄・後藤真太郎、ナホトカ号重油流出事故における地方公共団体の補償請求の 査定基準について、地球環境研究。Vol.8(2006), 55 . 総務省、海上災害対策に関する 行政評価・監視結果に基づく勧告(2003。4。)、http://www.soumu.go.jp/s-news/2003/030418 _2.html, .

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가 (Claims Manual) 가

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참고문헌

, (2001). , 2 (2006).*-* , (2007). ,環境汚染賠償責任保險研究, (2001).(IMO) (2004. 12.) • , [2008 (V) -(2008. 7.). 가 (2008. 1.). ,油槽船 油濁損害賠償責任 · - 油濁民事責任 協約 中心 , 1987. ,海上油濁事故 保險・補償 研究. , 1987.

阿部泰隆・淡路剛久編、第3版環境法、有斐閣(2004)。

大塚直、第2版環境法、有斐閣(2007)。

松村弓彦、第2版環境法、成文堂(2004)。

城山英明・山本隆司編、融ける境 超える法⑤ 環境と生命、東京大学出版会(2005)。

- 石油海事協會,タンカ―の油濁責任と補償について(第4版),石油海事協會, 1981. 10.
- 新井真,油濁問題の現代的課題 エクソン・ヴァルィ—ズ号裁判と懲罰 的損害賠償 - , 早稲田大学法研論集 第八九号(早稲田大学院法学 研究科), 1994.
- 消防通信編集部、外国籍タンカーによる油濁事故と損害賠償.「消防通信」 第625号、2006. 3.
- 當舍裕己, タンカーと油濁補償, PETROTECH 22卷 10号, 1999.

常木徹,油濁補償制度の動向,「海上防災」第110卷,2001.7.

杉浦淸司,ナホトカ号の油濁損害補償, COMPASS 1997(5)券, 海事プレス社, 1997.5.

, 国際油濁補償法をめぐる動き,「海運」石油海事協会, 1999.2.
, 油濁補償制度の拡充 -エリカ号油濁事故の波紋-海事産業研究所報 No. 422. 2001.8.
,油濁条約の補償限度引き上げをめぐつて,「海運」石油海事協会 2001.2.
, 油濁補償制度とプレステ―ジ号事故の影響, 「海運」, 2003.4.
, ナホトカ号の油濁事故の補償問題,「海運」, 2002.9.

河端一郎, この10年における油濁補償制度の推移と今後の課題, 「海と安全」第41巻 第532号, 日本海難防止協会, 2007.

- 栗山浩一,油濁事故による生態系破壊と損害賠償 CVMによる損害評価 -, 海と安全」第41卷 第532号,日本海難防止協会,2002.
- 境和彦, 環境事故と拡張責任 油濁汚染損害に対する最適責任分担ルール -, 地域学研究 第35券 3号, 日本地域学会, 2004, 2005.
- 福善俊雄,油濁事故の民事責任をめぐる問題,金沢経済大学論集 第11卷・ 第2号,1977年12月.
- 稲葉威雄,責任制限制度の改定-船主責任制限法および油濁損害賠償保障 法について、環境法研究 第7号、1977年 3月.
- 相原陸,油濁損害賠償保障法第三條一1項二2号にいう「異常な天災地変」の 意義、「法と政治」第三券 第二号、関西学院大学法政学会、2002年 6月.
- 落合誠一、国際的油濁事故賠償・補償制度の見直し、鴻常夫編「海法会誌」 復刊第42号、2004年12月.
- 高橋淸,最近における油濁補償制度の現況について(上),「海運」石油海事協会、1996.6.
- ______,最近における油濁補償制度の現況について(下),「海運」石油海事協会、1996.7.
- UKP&-セミナー、油濁補償体制の今後、「海運」、2001. 2.
- 井口俊明,油濁損害の賠償に関する国際的法制 その発展の歴史の現状 , 「海運」, 1997.4.
- 小山內智,油濁補償制度に関する若干の考察,海事産業研究所報 No. 369. 1997.3.

- 野口夕子,油濁損害により蒙ったに対する補償問題 -Ballard Shipping, In Re, 1994 AMC 2705 (U.S.C.A.1st Cir. 1994)-, 産大法学 33卷 1・2号, 1999.10.
- 谷川久, 国際的油濁損害補償制度の二十年, 成蹊法学 第28号, 1998年 6月.
- ______, ナホトカ号流出油事故と法的問題点、ジュリスト(No.1117), 1997. 8. 1.-15.
- ____、油濁損害賠償補償法について(上)、ジュリスト(No.607), 1976。3。1。
- ____、油濁損害の賠償・補償の範囲、古室直人外編、企業と法(下)、 有斐閣(1995).
- ____、油濁損害賠償・補償制度について、損害保険研究第59巻第2号(1997.8.).
- 新谷顕一, 油濁損害の賠償の範囲に関する国海法会のガイドラインについて, 海法会誌」復刊 第38号, 1994年12月.
- 高尾厚,油濁災害と補償制度-ナホトカ事故の場合,日本リスク研究学会誌」 第11号・1卷,1999年11月.
- 矢崎真澄・後藤真太郎、ナホトカ号重油流出事故における地方公共団体 の補償請求の査定基準について、地球環境研究。Vol.8(2006)。
- 望月礼二郎、英米法、青林書院新社(1981)。

- 広部和也・臼杵知史、解説国際環境条約集、三省堂(2003)、90 .
- ジュリアナ号事件の諸問題 海洋油濁事故と救済 、ジュリスト 1972.2.15.(No.499).
- 我妻栄、新版法律学辞典、有斐閣(1983).
- 稲葉威雄、船主責任制限制度の改正— 船主責任制限法および油濁損害 賠償保障法について—、海洋汚染の現代的諸問題(環境法研究第6号、 1977。3。).
- 時岡泰・谷川久・相良朋紀、逐条船主責任制限法・・油濁損害賠償保障法、 商事法務研究会(1976).
- 久保真一郎、海洋汚染等及び海上災害の防止に関する法律の一部を改正 する法律、法令解説資料総覧、303号。
- 吉田文和、油濁汚染による損害の賠償補償問題、一ナホトカ号事故を事例として一、http://search.yahoo.co.jp/search(油濁汚染)。
- 寺西俊一・大島堅一・除本理史、環境費用の負担問題-国際油濁補償基金の分析を中心に-、1998。9。14。http://search.yahoo.co.jp/search(油濁汚染)。
- 長谷部正道、国際補償体制と国際油濁補償基金の活動、http://search.yahoo.co.jp/search(油濁汚染)。
- 大須賀英郎、油濁損害賠償に関する国際条約について(現状と展望)、 http://search.yahoo.co.jp/search(油濁汚染)。
- International Oil Pollution Compensation Fund 1992, Claims Manual(April 2005 Edition) Adopted by the Assembly in October 2004.

Masashi Tomioka, Current Situation and Challenges of the Legal System Related to Protection of The Marine Environment: A Review of Regulations on Sea Pollution from Vessels, 名経法学 第21号 (2007年).

부 록

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