#### 受講生へ

1 から 3 は既出と重複が多いので、4 以降を重点的に議論する。ただし、復習も兼ねてきちんと読んでくること。質問があれば講義にて受け付ける。

#### 1 Introduction

● The Torrey Canyon disaster 【セミナー国際法 21】 【ケースブック国際環境法 29】

#### 1(1) The 1982 UN Convention on the Law of the Sea

● 条約文

### 1(2) Agenda 21 and the marine environment

• 'a proposed 1982 UNCLOS implementing agreement...' → <u>2023 Draft Agreement</u>

#### 2 UNCLOS Part XII

- South China Sea Arbitration
- Chagos Marine Protected Area Arbitration

# 3 Regional seas

- 3(1) UNCLOS and regional rules
- 3(2) Regional seas agreements
  - (a) The North Sea and north-east Atlantic
  - (b) The Baltic
  - (c) The Mediterranean and the Black Sea

# 4 Marine pollution from ships

- 4(1) The nature of the problem
- 'flagging-out'とは?
- 'this balancing'とは?

#### **4(2)** Flag state jurisdiction over vessel pollution

- <u>MV Saiga (No 2)</u> 【判例国際法(第 3 版)52】 【国際法判例百選(第 3 版)31】
  - ▶ Saiga 号判決は「真正連関」についてどう述べたか。

- Lotus【判例国際法(第 3 版)52】【国際法判例百選(第 3 版)2】
- 国連海洋法条約はどのような radical changes をもたらしたか。
- 1973 MARPOL
- 1973/78 MARPOL 最初に 1978 年議定書、その後ろ (PDF 184 頁) に 1973 年条約
- SOLAS
- 'There is thus nothing novel in principle'は、なぜそうなのか。上で'radical changes' があると述べたこととの整合性は?
- ISM Code
  - ▶ 国土交通省解説
- 'the most revolutionary change'とは?
- Anti-Fouling Substances Convention
- Ballast Water Convention
  - ➤ IMOサイト

## 4(3) The 1973/78 MARPOL Convention

#### (a) The MARPOL annexes

- 'This undoubtedly complicates the question of what rules a non-party to MARPOL must apply under Article 211.' とはどういうことか。
- LC/LP との違い2点は?

# (b) Certification and inspection under the MARPOL Convention

- 'the practice, while novel in its application to pollution, is not a departure'とはどういうことか。
- 'An efficient scheme of port state inspection and control is in many respects a more practical means of deterring substandard vessels than flag state enforcement'であるのは なぜか。
- Tokyo MOU

#### (c) Jurisdiction under the MARPOL Convention

• 'The important point here'とは?

### (d) Assessing the impact of MARPOL

- 'What does appear tenable is the conclusion that...'という結論に至る根拠は?
- 'Quantifying MARPOL's impact'についてはどう説明しているか。

# 5 Coastal and port state environmental jurisdiction

# 5(1) In internal waters and the territorial sea

# (a) Environmental jurisdiction in internal waters and the territorial sea

### (b) Control of vessel pollution in the territorial sea

- 'What the coastal state cannot do'はどういうことか。
- 'At most'でできることは?

# (c) Arrest of ships for pollution in the territorial sea

• 'the mere violation of regulations will not necessarily deprive the vessel of its right of innocent passage or justify arrest'であるのはなぜか。また、ではどのような violation であれば、どのような根拠に基づき可能になるのか。

# 5(2) Environmental jurisdiction in the EEZ

'The effect of this new regime is less radical than some coastal states had sought'とのことだが、どのように less radical なのか。

### 5(3) Enforcement jurisdiction beyond the territorial sea

#### (7)(a) Enforcement of pollution regulations in the EEZ

- 'a compromise between the two extremes'はどのように図られているか。
- 'it is doubtful whether [...] Article 220 [...] has had any significant effect'とのことだが、220 条が持ち得る効果とはどのようなものか。

# (b) Port state enforcement of pollution regulations

- 'the more radical development'を説明せよ。
- 旗国が 'a right of pre-emption'を有しているとはどういうことか。

### (c) Safeguards and limitations

#### 5(4) Pollution of the continental shelf

# 6 Pollution of the high seas and deep seabed

- ISA
- 'The question [...] in 2020 was still the subject of ongoing negotiations'
  - ▶ <u>Draft agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction</u> →ほぼ規定なし

# 7 Pollution incidents and emergencies at sea

### 7(1) International cooperation and assistance

- OPPRC Convention
- HNS Protocol
- Bonn Agreement ページの下の方に条約文へのリンク

# 7(2) Controlling pollution emergencies at sea

(a) General obligations

# (b) Coastal state powers of intervention

- 'It is unrealistic to expect'であるのはなぜか。
- Convention on Intervention on the High Seas in Cases of Oil Pollution Casualties
  - ▶ この条約が沿岸国の権限に課している制約とは?
  - (c) Notification by vessels and offshore installations
  - (d) Salvage
- 7(3) Pollution response in the international seabed area
- 8 Responsibility and liability for marine pollution damage
  - 8(1) State responsibility

# 8(2) The polluter pays principle

● The polluter pays principle の限界は?

#### 8(3) Civil liability for oil pollution from ships

(この部分以下については、WAKASHIO 号事件を例に補論で具体的に議論する)

- Convention on Civil Liability for Oil Pollution Damage
- Convention on the Establishment of an International Fund for Compensation for Oil
  Pollution Damage
- 1992 Oil Pollution Liability Convention = Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage により改正された 1969 年条約(<u>リンク先</u> 255 頁以下)

# 8(4) Environmental damage

# 8(5) An assessment of the oil pollution liability and compensation scheme

- IOPC Funds
- アメリカ法の特徴は?
- ◆ さまざまなファンドが次々と設立された理由は?

# 8(6) Liability for other forms of pollution from ships

- 'the carriage of oil in bulk as cargo'しかカバーしていないというのはどういうことか。
- Bunkers Convention

#### 9 Conclusions

● 末尾の'That is a notable success.'とは?

# 補論 WAKASHIO 号モーリシャス沖座礁事故

- 事故の経緯
- 法的問題の概要
  - Convention on Civil Liability for Oil Pollution Damage は適用されない
    - ◆ 1条1項(定義)
  - ➢ Bunkers Convention
    - ◆ 1条1項(定義)、3条1項(補償責任)、6条(補償額制限の可能性)
  - ▶ 補償責任の制限
    - ◆ 教科書 565 頁 'limitation of liability […] make[s] the Oil Pollution Liability and Fund Conventions broadly acceptable'
    - ◆ <u>Convention on limitation of liability for maritime claims (1976)</u> 6条 (上限約 19 億円) モーリシャス当事国
    - ◆ Protocol of 1996 to Amend the Convention 3条(上限約 69 億円) 日本当事 国
- 企業の対応
  - ▶ 商船三井
  - ▶ 長鋪汽船
  - ▶ モーリシャス自然環境回復保全国際協力基金