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# Legal Aspects of the Cargo Ship Oil Spill Incident in Mauritius

## — From the perspectives of preventing marine pollution from vessels and compensation for damages

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NOTE: The following is an English translation of an original Japanese article issued in September 2020.

### 1. Introduction: Parties involved in this incident

On July 25, 2020, the cargo ship “MV WAKASHIO” (hereafter, “WAKASHIO”<sup>1</sup>), registered to Panama (substantially owned by Nagashiki Shipping Co., Ltd. and chartered to Mitsui O.S.K. Lines), ran aground off the coast of Mauritius. On August 6, cracks appeared in the hull of the WAKASHIO, and it leaked about 1,000 metric tons of fuel. In response, Mauritian Prime Minister Jugnauth declared a state of environmental emergency and issued a request for international assistance.<sup>2</sup> This accident occurred near waters and coastal regions that hold great importance for biodiversity and ecological systems, such as wetlands registered under the Ramsar Convention, and raised concerns over its adverse impact on biodiversity and endangered species, as well as on food security and people’s health in Mauritius.



Photograph 1: Oil spill from WAKASHIO (Source: IMO Photo collection<sup>3</sup>)

<sup>1</sup> Name of vessel: MV WAKASHIO, Class: Bulk carrier, Registration: Panama, Length: 299.95m, Gross tonnage: 101,932 tons, Ship owner: OKIYO MARITIME CORP. (Subsidiary of Nagashiki Shipping Co., Ltd.)

<sup>2</sup> Mizunari, Takeshi, “Chosa Repoto Morishasu Engan de no Kainan: Panama Senseki Kamotsusen WAKASHIO no Noriage Kainan/Abura Ryusyutsu no Keika ni tsuite,” [“Report on Investigation of Maritime Accident in Mauritius: Course of Events of Grounding Accident/Oil Spill from Panama-Registered WAKASHIO Bulk Carrier”], [https://www.spf.org/opri/sp\\_issue/mus-oilspill\\_event.html](https://www.spf.org/opri/sp_issue/mus-oilspill_event.html) (Accessed on September 14, 2020)

<sup>3</sup> <https://www.flickr.com/photos/imo-un/albums/72157715526190007> (Accessed on September 14, 2020)

The entities and countries involved in this accident are shown in Table 1 below. The “flag state” principle<sup>4</sup> adopted by the United Nations Convention on the Law of the Sea (UNCLOS) for vessels navigating internationally should be noted here. Generally, vessels can navigate freely through the high seas and the exclusive economic zones (EEZ) of other countries, and have the right of innocent passage in territorial waters. At the same time, UNCLOS has established regulations and supervisory obligations for countries (flag states<sup>5</sup>) toward the vessels that are registered under their respective flags, through which it seeks to maintain legal order.

In reality, flag states, and in particular the so-called “flags of convenience” states<sup>6</sup>, do not fulfill their obligations adequately<sup>7</sup>. In this incident, while the flag state of WAKASHIO is Panama, it has been pointed out that Panama is used as a flag of convenience.<sup>8</sup> Nagashiki Shipping Co., Ltd., the parent company of the subsidiary Okiyo Maritime Corp., which owns WAKASHIO, is in fact based in Japan.

As covered later in this paper, the liability for damages arising as a result of this accident shall be borne by the ship owner (in this case, the subsidiary of Nagashiki Shipping Co., Ltd., or Nagashiki Shipping Co., Ltd. itself), a private entity, rather than a country, based on international maritime law.

Table 1: List of relevant countries/entities

Relevant country	Relevant entity
Mauritius (Coastal country where the damage was incurred)	—Victim (Entity seeking compensation): National and local governments, fishery operators, those engaged in the tourism industry, etc.
Japan (Country where ship owner/ship charterer is based)	— Nagashiki Shipping Co., Ltd.: Parent company (substantial ship owner) of WAKASHIO’s ship owner — Mitsui O.S.K. Lines: WAKASHIO’s charterer
Panama (Flag state (Flag of convenience state))	— Okiyo Maritime Corp.: WAKASHIO’s ship owner (substantial ship owner)

<sup>4</sup> Vessels must sail with one flag hoisted. On the high seas, they are subject to the exclusive jurisdiction of the flag state (Article 92).

<sup>5</sup> The vessels of a country are registered to the country, and are given that nationality (registration). They are granted the right to hoist that flag. The country is the “flag state” of these vessels.

<sup>6</sup> In the maritime transportation industry, which is exposed to fierce international competition economically, ocean-going maritime transportation companies often register vessels to the ownership of local companies or subsidiaries established in countries with more relaxed conditions for granting a ship its nationality registration (such as Panama, Liberia, and the Marshall Islands), with the aim of cutting costs. Vessels registered under such conditions are known as “flag of convenience ships,” and their flag states are “flag of convenience states.”

<sup>7</sup> Hayashi, Shimada, Koga (ed.). *Kokusai Kaiyo Ho (Dai Ni Han)* [International Law of the Sea (Second Edition)], Yushindo, pp. 100-102.

<sup>8</sup> The International Transport Worker’s Federation (ITF) Website, “Flags of convenience” <https://www.itfglobal.org/ja/node/8545> (Accessed on September 14, 2020)

This paper offers commentary on the legal issues related to this case, based on the information leading up to the current point in time (beginning of September 2020). The next section (Section 2) introduces the frameworks of international law that are applicable to this accident by classifying them as public law regulations and private law regulations, based upon an overview of the legal system of the ocean. Section 3 explores the legal implications of this case based on past accidents. Section 4 discusses the legal issues of this case based on Sections 2 and 3. Finally, Section 5 sets out the future outlook.

## 2. Legal systems that are applicable to this accident

### (1) International law on marine pollution: United Nations Convention on the Law of the Sea (UNCLOS) and International Maritime Organization (IMO) conventions

International laws and systems on pollution from vessels, as in this case in Mauritius, are prescribed by both UNCLOS and IMO conventions

UNCLOS,<sup>9</sup> also known as the “the Constitution of the Sea,” comprehensively sets out provisions on the various systems related to the seas. It comprises a lengthy main body that covers 320 articles in 17 parts, as well as nine annexes, and two agreements that were added later. It classifies the seas into territorial seas, exclusive economic zones (EEZ), continental shelves, high seas, the deep seabed, etc., and sets out various rules related to the seas, such as the rights and obligations of flag states, coastal states, and port states, management of natural resources in continental shelves and the deep seabed, the passage of vessels, protection and preservation of the marine environment, and marine scientific research. With regard to marine pollution, it sets out comprehensive provisions on the general principles, prevention and control, remedial measures after an incident, and conflict resolution in relation to the protection and preservation of the marine environment, covering all sources of pollution.

The International Maritime Organization (IMO) is a specialized UN agency on maritime matters such as the safety of vessels and preventing marine pollution from vessels. Its work includes formulating conventions related to the seas and ensuring implementation to the conventions. It is an organization that has developed through a separate system from UNCLOS, and also has a longer history than UNCLOS.<sup>10</sup> Although UNCLOS mentions the IMO explicitly in only one part of the text<sup>11</sup>, the mutual relationship between the two frameworks

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<sup>9</sup> United Nations Convention on the Law of the Sea (UNCLOS). Adopted in 1982, entered into force in 1994. Number of contracting countries: 167 countries+ European Union (as of March 2020)

<sup>10</sup> Established in 1958 (“Intergovernmental Maritime Consultative Organization (IMCO)” at the time of establishment). Renamed as International Maritime Organization (IMO) in 1982.

<sup>11</sup> UNCLOS, Annex VIII, Art.2.

is assured<sup>12</sup> even if it is not stated clearly in the provisions. For example, a provision in UNCLOS states that “Specific obligations assumed by States under special conventions [...] should be carried out in a manner consistent with the general principles and objectives of this Convention.” (Article 237, Paragraph 2), and assumes that IMO is the “competent international organization” with authority on matters such as pollution from vessels.

As described earlier, international laws on pollution from vessels, as in this incident in Mauritius, are prescribed by both UNCLOS and IMO conventions. The contents of these can be classified as prevention, reduction and control of pollution (public law regulations), and compensation for damages caused by pollution (private law regulations). Accordingly, the following provides an overview in the order of (2) Public law regulations, and (3) Private law regulations.

(2) Public law regulations: Prevention, reduction, and control of marine pollution from vessels  
(i) UNCLOS

Matters related to the general preservation of the marine environment are prescribed in Part XII of UNCLOS. Article 192, which is the first article in this Part, stipulates the general obligation of parties as follows: “States have the obligation to protect and preserve the marine environment.” Section 5 of Part XII classifies the seas based on sources of pollution, and sets out provisions for the respective sources of pollution. Provisions related to the prevention, reduction, and control of pollution from vessels are mainly established in Article 211 (refer to Table 2 below). “Competent international organization” in Table 2 refers to IMO, as explained above.<sup>13</sup>

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<sup>12</sup> Tomioka, Hitoshi. *Senpaku Osen Kisei no Kokusaiho* [International Law on Ship Pollution Regulations], Shinzansha Publisher Co., Ltd., pp. 191-192.

<sup>13</sup> Tsuruta, Jun. “Dai 9 Sho, Kaiyo Osen” [“Chapter 9: Marine Pollution”], *Kokusai Kankyoho Kogi* [Course on International Environmental Law], Yushindo, pp. 118-119.

Table 2: Main provisions in UNCLOS on the prevention, reduction, and control of marine pollution from vessels

Classification of states	Rights and obligations of states
All parties to the Convention	<ul style="list-style-type: none"> <li>• Establish “international rules and standards” through the competent international organization (Article 211, Paragraph 1).</li> </ul>
Flag states	<ul style="list-style-type: none"> <li>• Ensure compliance by vessels with applicable international rules and standards, and with the domestic laws of the flag state (Article 217).</li> <li>• Adopt domestic laws that have the same effect as that of international rules and standards recognized by competent international organizations and other entities (Article 211, Paragraph 2).</li> </ul>
Coastal states	<ul style="list-style-type: none"> <li>• Coastal states may, in the exercise of their sovereignty, adopt domestic laws to prevent, reduce, and control pollution from vessels within their territorial seas (Article 211, Paragraph 4).</li> <li>• Coastal states may adopt domestic laws to prevent, reduce, and control pollution from vessels within their exclusive economic zones (EEZ). However, these should conform to international regulations and standards established by competent international organizations and other entities. (Article 211, Paragraph 5).</li> <li>• When violation of laws and regulations by a vessel occurs in the territorial seas or EEZ of a coastal state, the coastal state may institute proceedings in respect of violation of its laws and regulations if the vessel is within a port, etc., of the state (Article 220, Paragraph 1).</li> <li>• Where there are clear grounds for believing that a vessel navigating in the territorial waters of a coastal state has violated the laws and regulations of that state during its passage in those waters, it may undertake physical inspection of the vessel and institute proceedings based on evidence (Article 220, Paragraph 2).</li> <li>• Where there are clear grounds for believing that a vessel has violated the laws and regulations of a coastal state while navigating in its EEZ, the state may require the vessel to give the relevant information (Article 220, Paragraph 3). Where there are grounds to believe that the vessel has committed a violation resulting in significant pollution of the marine environment, or if the vessel refuses to give the information required, the state may undertake a physical inspection (Article 220, Paragraph 5).</li> <li>• Where there is clear objective evidence that the violation has resulted in a discharge causing major damage to the coastline or related interests of the coastal state, or to any resources of its territorial sea or EEZ, the state may institute detention proceedings (Article 220, Paragraph 6).</li> <li>• Monetary penalties only may be imposed with respect to violations committed by foreign vessels beyond the territorial sea; monetary penalties only may be imposed with respect to violations committed by foreign vessels in the territorial sea, except in the case of a willful and serious act of pollution in the territorial sea (Article 230, Paragraphs 1 and 2).</li> </ul>
Port states (States with vessels in their ports, etc.)	<ul style="list-style-type: none"> <li>• States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of vessels into their ports shall give due publicity to such requirements and shall communicate them to the competent international organization (Article 211, Paragraph 3).</li> </ul>

(ii) IMO conventions

With regard to preventing marine pollution by oil discharged from vessels, the establishment of international laws had been advancing even before UNCLOS. After the enactment of the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) in 1954 (entered into force in 1958), the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties was adopted in 1969 in response to the SS Torrey Canyon incident in 1967<sup>14</sup>, and the International Convention for the Prevention of Pollution from Ships (MARPOL) was adopted in 1973. Although the latter has still not entered into force, the protocol for the implementation of the Convention (hereafter, "MARPOL 73/78") was adopted upon revisions and additions to the 1973 Convention, and entered into force in 1983. Since then, through the expansion of the vessels and substances that are subject to regulation, MARPOL 73/78 has developed as a comprehensive system for prevention of marine and air pollution from vessels. Furthermore, in light of the oil spill accident<sup>15</sup> that occurred as a result of the grounding of the Exxon Valdez in 1990, treaties were established<sup>16</sup> with the aim of preventing oil pollution, such as the adoption of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) (entered into force in 1995)<sup>17</sup>. (Refer to Table 3)

In the oil spill accident in Mauritius, as of now, no controversy has arisen over the public law regulations, that is, the prevention, response, and cooperation toward damage caused by oil pollution, as well as the obligations and responsibility of states in this respect. Compared to the civil liability covered in the next section, the public law regulations were mostly not covered by the Japanese press.

With regard to the actions of the countries involved in this accident, the Mauritian government declared a state of environmental emergency as a coastal state (victim state), after which it arrested and detained the captain of the vessel and conducted an investigation

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<sup>14</sup> In March 1967, the tanker SS Torrey Canyon (registered to Liberia) ran aground near the British Isle of Scilly, resulting in a massive oil spill. Based on demands from the victim countries of United Kingdom and France, discussions were held in the Intergovernmental Maritime Consultative Organization (IMCO), predecessor of IMO, the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, civil liability systems targeted at oil tankers (1969 CLC and 1971 International Fund Convention), and MARPOL Convention (and later, the MARPOL 73/78 Convention), were enacted.

<sup>15</sup> that occurred in March 1989. The tanker, Exxon Valdez, ran aground at Prince William Sound in Alaska, resulting in the leakage of about 41 million liters of crude oil.

<sup>16</sup> The OPRC sets out provisions obligating flag states to equip vessels registered under them with oil pollution emergency plans (Article 3), and to submit reports (Article 4). In this case, the flag state, Panama, has not ratified the convention, while Japan, which is the actual country that the ship owner is based in, is not the flag state and therefore is not required to fulfill this obligation. Although not a problem in this case, Panama's non-ratification of OPRC may be considered a manifestation of the skewed nature of the flag state doctrine and "flag of convenience" states.

<sup>17</sup> In 2000, the Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances (OPRC-HNS Protocol) was also adopted, with the aim of expanding the scope of hazardous substances that the convention is applicable to, unbased on the principles of the OPRC (for oil pollution).

into the cause of the accident. The flag state, Panama has announced that it will dispatch experts to provide assistance in the investigation of the accident by Mauritius.<sup>18</sup>

Table 3: Public law regulations (related conventions and membership status)<sup>19</sup>

Convention	Year of entry into force	Number of contracting parties	Mauritius	Japan	Panama
1982 United Nations Convention on the Law of the Sea	1994	167	○	○	○
MARPOL 73/78	1983	159 (98.95% of global shipping tonnage)	○	○	○
MARPOL Annex I (Prevention of Pollution by Oil)	1983	159	○	○	○
1990 OPRC	1995	113 (77.63% of global shipping tonnage)	○	○	×

(3) Private law regulations: Civil liability system for compensation toward damage from pollution

(i) UNCLOS

Based on UNCLOS, in the event of damage arising as a result of marine pollution, the country that the vessel is registered to or the private entity affiliated with the vessel bears the responsibility for the damage, and state liability and individual liability exist concurrently based on violation of Part XII (Article 235). On the other hand, parties to UNCLOS are obligated to establish and extend domestic and international laws to ensure prompt and adequate compensation for damages (Article 235, Paragraph 2-3). This is a system based on the assumptions of civil liability, based on the IMO conventions that were established prior to UNCLOS. In reality, looking at state implementation of the system to date, there have been cases, although only a few, where the flag state of a vessel provided compensation for pollution caused by a tanker registered to the state. However, generally, cases of pollution caused by a vessel are not subject to claims between countries. Rather, such cases have been

<sup>18</sup> Press release from the Panama Maritime Authority (dated September 7), <https://amp.gob.pa/notas-de-prensa/delegacion-panamena-de-expertos-en-accidentes-maritimos-asiste-en-investigaciones-sobre-el-accidente-de-la-embarcacion-wakashio-en-isla-mauricio/> (Accessed on September 14, 2020)

<sup>19</sup> IMO website, "Status of IMO Treaties" (18 August 2020),

<http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx> (Accessed on September 14, 2020)

addressed through compensation frameworks and civil compensation for damages by private entities under IMO’s civil liability conventions, which are introduced in the next section.

Table 4: Main UNCLOS provisions for the compensation of damages caused by marine pollution from vessels

	Rights and obligations of states
All parties to the Convention	<ul style="list-style-type: none"> <li>• States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law. (Article 235, Paragraph 1)</li> <li>• States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction. (Article 235, Paragraph 2)</li> <li>• With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability [...]. (Article 235, Paragraph 3)</li> </ul>

(ii) IMO conventions

Under the IMO, compensation systems for damages caused by oil spills from vessels have developed since the time of the IMCO, which was the predecessor of IMO. The system is based on the International Convention on Civil Liability for Oil Pollution Damage (CLC<sup>20</sup>) and the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992<sup>21</sup>), which complements the former. However, vessels that are subject to these systems, centered around the CLC, are limited to oil tankers.<sup>22</sup> This is because a single accident involving an oil tanker can cause a massive volume of oil to spill into the sea; in view of this, the respective countries called for the establishment of a special civil liability system. However, in recent years, there has been growing need for a civil liability system that can be applied to general vessels, due in part to the increase in the number of oil pollution incidents caused by fuel (bunker oil) from general vessels. Hence, in 2001, the International Convention on Civil Liability for Bunker Oil Pollution

<sup>20</sup> Comprises the Convention of 1969, and the Protocol of 1992.

<sup>21</sup> Comprises the Convention of 1971, and the Protocol of 1992.

<sup>22</sup> Article 1, Paragraph 1 of the CLC defines "Ship" as "any sea-going vessel and any seaborne craft of any type what so ever, actually carrying oil in bulk as cargo."

Damage (Bunker Convention) was enacted as a civil liability convention for oil pollution damages caused by vessels other than oil tankers. WAKASHIO, which caused an oil spill in Mauritius, is a cargo vessel and falls under the category of general vessels. Therefore, the Bunker Convention is applicable to it. The international conventions that are related to the civil liabilities in this incident are shown below (Table 5).

Table 5: Status of membership of the relevant countries for the related conventions

Convention	Year of entry into force	Number of contracting parties	Mauritius	Japan	Panama
2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention)	2008	99 (95.06% of global shipping tonnage)	○	○ (Deposited on July 1, 2020. Entered into force on October 1, 2020)	○
1976 Convention on Limitation of Liability for Maritime Claims (LLMC) 1976)	1986	56 (58.34% of global shipping tonnage)	○	×	×
1996 Protocol (LLMC 1996)	2004	61 (69.45% of global shipping tonnage)	×	○	×
2007 Nairobi International Convention on the Removal of Wrecks	2015	53 (75.90% of global shipping tonnage)	×	○ (Deposited on July 1, 2020. Entered into force on October 1, 2020)	○

a) 2001 Bunker Convention (Entered into force in 2008)

Under the Bunker Convention, the ship owner is held strictly liable (“liability without fault”) for pollution damages from fuel. The registered ship owner is obligated to take out liability insurance to cover compensation for pollution damages. The victim who suffers the pollution damages may make a direct claim to the ship owner’s insurer for the payment of compensation. As the maximum amount of compensation (total maximum liability) is not stipulated in the Bunker Convention, LLMC 1976 (including the revised convention) is applicable (explained later). The Bunker Convention differs from systems for oil tankers in many respects. For example, it does not set out a separate total maximum liability, and there are no international funds that complement the system.

In this incident, Mauritius, which is the country where damages were incurred, may make a direct claim for the payment of compensation for damages to the insurer (the insurer of

Nagashiki Shipping Co., Ltd. is Japan P&I Club<sup>23</sup>), based on this Convention. The Mauritian government has established a website for claim registration. Going forward, it will consolidate the damages suffered by the country, and as the claimant, may put in a request to the insurer, etc., for compensation for damages, or file a petition with the court.

b) Convention on Limitation of Liability for Maritime Claims (LLMC 1976) (Entered into force in 1986) and the 1996 Protocol (LLMC 1996)

As explained above, as the Bunker Convention does not set out a total maximum liability, in cases where a general vessel causes oil pollution damages and the total maximum liability becomes a problem, the Convention on Limitation of Liability for Maritime Claims (LLMC 1976) and its revised protocol are applicable. It is a convention that defines a certain maximum amount for the damages liability that the ship owner or other responsible entity has to bear when a maritime accident occurs. Such systems that define total maximum liability are considered to have been established against the background of the policy consideration that making the ship owner or other responsible entity shoulder all the liability for damages could overly suppress maritime commercial activities.<sup>24</sup> The International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships was enacted in 1957 (entered into force in 1968). Thereafter, the Convention on Limitation of Liability for Maritime Claims (LLMC 1976) was enacted in 1976 (entered into force in 1986) to make partial changes to the total maximum liability. Furthermore, based on the 1996 Protocol for this Convention (entered into force in 2004) and the revision to the same protocol thereafter, the total maximum liability was raised again and again.

However, in this incident, as Mauritius and Japan, where the ship owner is based, are parties to different treaties (LLMC 1976 for Mauritius and LLMC 1996 for Japan), decisions on the amount of compensation is likely to become a point of contention in the future (details are covered later).

c) Costs for the removal of the wreck –Nairobi International Convention on the Removal of Wrecks is not applicable

The Nairobi International Convention on the Removal of Wrecks (Nairobi Convention), adopted in 2007, is a convention on the removal of sea wrecks (vessels that are about to sink

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<sup>23</sup> Official website, <https://www.piclub.or.jp/> (Accessed on September 14, 2020)

A non-profit mutual insurance organization established in 1950 based on the Ship Owner's Mutual Insurance Union Act, with the aim of covering ship owners' liability and expenses. It is a member of the International Group of P&I Clubs comprising the main P&I Clubs of each country. Under the system, in the case of accidents with a large amount of compensation, such as oil spills by oil tankers, compensation is paid out by the Group's reinsurance pool organization.

<sup>24</sup> Kobayashi, Hiroshi. *Senpaku Yudaku Songai Baisho/Hosho Sekinin no Kozo* [Structure of Responsibility for Compensation for Oil Spill Damages], Seibundoh Publishing, 2017, p. 130.

or run aground, or which are reasonably expected to do so) in EEZs and (under certain conditions) territorial seas. Under the Convention, ship owners are obligated to remove sea wrecks and shoulder the costs of removing such wrecks (Article 9, Paragraph 2; Article 10, Paragraph 1). At the same time, a certain degree of authority is delegated to coastal states. In other words, coastal states may take measures corresponding to the dangers posed by the wrecks; in such cases, the ship owner is also responsible for the removal costs.

In view of the situation when this incident first occurred, it is likely that this case corresponds to the assumptions of Nairobi Convention. However, as Mauritius, where the damages occurred, is not a party to the Nairobi Convention, the Convention is not applicable to this incident. At the end of August after the accident occurred, Mauritius took steps to submerge the front part of the grounded ship into the sea<sup>25</sup> (the rear part of the hull was left on the site). It is considered that there are grounds for claiming the costs for the removal of the hull from the ship owner (or the insurer of the ship owner) as oil control cost, in accordance with the Bunker Convention.

### 3. Implications from past cases

#### (1) Overview of this shipping accident

According to a report by the Japan P&I Club, the number of accidents involving ocean-going vessels was 3,070 cases in 2013; of these, 118 cases had insurance claims amounting to \$100,000 or more.<sup>26</sup> The causes of oil pollution include collisions, grounding, defective equipment, and fires.<sup>27</sup> While there are very few cases of grounding and collisions, the insurance claims for each case are extremely high.<sup>28</sup>

As explained earlier, in dealing with marine pollution by oil from vessels, the applicable laws and regulations are different between tankers and other general vessels.

With regard to the relationship between accidents involving tankers and accidents involving other general vessels, it was observed in the 1990s that the annual number of accidents caused by general vessels tended to be higher than that of oil spills caused by tankers.<sup>29</sup> Moreover, according to a report by the United Nations Conference on Trade and Development (UNCTAD), fuel used by vessels tended to be of lower quality than fuel that is

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<sup>25</sup> Ibid. (Mizunari, Note 2)

<sup>26</sup> The Japan Ship Owners' Mutual Protection & Indemnity Association, *P&I Rosu Puribensyon Gaido* [P&I Loss Prevention Guide] Vol. 33, 2015, p.2.

<sup>27</sup> UNCTAD, *Liability and Compensation for Ship-Source Oil Pollution: Studies in Transport Law and Policy - 2012 No. 1*, 2012, p. 4.

<sup>28</sup> Ibid. (The Japan Ship Owners' Mutual Protection & Indemnity Association, Note 26), p.14.

<sup>29</sup> Japan Maritime Center. *Senpaku Yudaku Songai Baisho Hoshu Kankei Horei/Jyoyaku Shu* [Collection of Laws and Treaties Related to Liability for Oil Pollution Damage], Seizando-Shoten Publishing Co., Ltd., 2011, p. 346.

transported as cargo. For this reason, it is said that the cleaning cost for the same volume of oil leakage tends to be higher.<sup>30</sup>

From the perspectives of case numbers and cleaning costs, there is a good chance that the amount of damages and therefore, the amount of compensation, will be higher for general vessels apart from tankers.

However, the number of accidents in which the amount of damages exceeds the total maximum liability established under the convention is not necessarily high. According to a report<sup>31</sup> submitted by the Japan P&I Club to IMO's Legal Committee, of the 595 shipping accidents reported for vessels other than tankers from 2000 to August 2009, only seven cases exceeded the total maximum liability (increased by three cases to 10 cases until 2012).

## (2) Past cases

With regard to the total maximum liability for compensation for damages, the total maximum liability established under LLMC 1996 was raised as a result of revisions made in April 2012.<sup>32</sup> This was triggered by the accident involving the geared bulk carrier and multipurpose vessel, Pacific Adventurer, which was registered to Hong Kong, on March 11, 2009. The accident caused the leakage of about 250 metric tons of fuel in the eastern part of Australia, and caused damage to Moreton Island, a national park, and other places.<sup>33</sup> The amount of damages is estimated to be more than double the total maximum liability of the time. (At the time, total maximum liability was about US\$18.9 million, meaning that the estimated amount of damages exceeded US\$37.8 million (about 4 billion yen))

According to the aforementioned report to IMO's Legal Committee, of the seven cases that exceeded total maximum liability, the accident involving the general cargo vessel Gold Leader (registered to Belize) which occurred off the Akashi Strait of Hyogo Prefecture on March 5, 2008, is said to have caused damage to fisheries exceeding 4 billion yen in Japan. However, the total maximum liability at the time was 170 million yen, and in this case, compensation of only 500 million yen was secured by fishery cooperatives.<sup>34</sup>

<sup>30</sup> *Supra* note 27, p.33.

<sup>31</sup> LEG 97/8/5 (October 8, 2010): LEG 99/4/6 (March 2, 2012). Available at <https://docs.imo.org/Default.aspx> (Accessed on September 16, 2020)

<sup>32</sup> *Ibid.* (Kobayashi, Note 24), p.136.

<sup>33</sup> Nakamura, Hideyuki. "Banka-yu ni yoru Osen Songai no Baisho nit suite" ["Compensation for Pollution Damage by Bunker Oil," *The Japan Maritime Daily* 1305, 2013, pp. 1-2.

<sup>34</sup> Kamitanida, Suguru. "Kaiyo Osen Songai ni taisuru Sekinin oyobi Hosho nado ni Kakawaru Kokusai Ruru" [International Rules Related to Liability and Compensation for Sea Pollution Damage], *Rippo to Chosa* [Legislation and Investigation], No. 411, p. 51 [Note 29]

In the Don Pedro incident,<sup>35</sup> in which 150 tons of fuel leaked from a sunken vessel at the Port of Ibiza in Spain, a protective barrier was erected to protect Ses Salines Natural Park, which is a bird sanctuary. While the protective barrier did not cause any damage to the natural park<sup>36</sup>, the damages in this incident were estimated to be US\$16.5 million (about 1.76 billion yen). Total maximum liability based on the convention was US\$6.9 million (about 730 million yen), reduced to less than half the estimated amount of damages.

Table 6 (end of this section) shows the other cases in which the amount of damages was reported as exceeding the total maximum liability. There are also cases with a high amount of oil pollution damages for nature reserves, even though these amounts did not exceed the total maximum liability.

On March 3, 2010, the Chinese-registered bulk carrier, Shen Neng, ran aground on Douglas Shoal, located on the southern tip of the Great Barrier Reef Marine Park. As a consequence of this accident, a maximum of 4 tons of oil was spilled.<sup>37</sup> Although the amount of oil spillage was not very large, the Australian government made a claim after the incident to the ship owner for the payment of about AU\$120 million (about 9.3 billion yen), to cover the cost of oil removal. It failed to reach an agreement on the amount of this claim with the London P&I Club, which was the insurer of the ship owner in question,<sup>38</sup> and the case was taken to court in Australia. On September 16, 2016, the Federal Court of Australia ruled that the amount of damages to be paid by the ship owner would be AU\$39.3 million (about 3 billion yen).

### (3) Implications from past cases

Table 6 compares the scale of past reported accidents (volume of oil spillage) based on the Bunker Convention. The volume of oil spillage in Mauritius in this case is high for a general vessel, at 1,000 metric tons. Although there is a very small number of shipping accident cases in which the total maximum liability is exceeded, if we were to contrast this with past cases of oil pollution, we would not be able to rule out the possibility that the amount of damages in this case may exceed the total maximum liability.

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<sup>35</sup> LEG 99/4/6 (March 2, 2012) Annex, page 1.

<sup>36</sup> July 16, 2007, Reuters. <https://www.reuters.com/article/environment-spain-ibiza-oilspill-dc/oil-leaks-from-sunk-ibiza-ship-to-be-sealed-monday-idUSL1537052020070715> (Accessed on August 28, 2020)

<sup>37</sup> <https://gis.imo.org/Public/MCI/Browse.aspx?Form=Incident&Action=View&IncidentID=7710> (Accessed on September 2, 2020)

<sup>38</sup> <https://www.theguardian.com/environment/2016/sep/06/australia-seeks-120m-for-great-barrier-reef-damage-from-chinese-coal-ship> (Accessed on September 2, 2020)

Table 6: Oil spillage accidents from vessels other than oil tankers, and the amount of compensation for damages claimed

(Cases in which the total maximum liability was applied, and the amount of compensation reduced<sup>39</sup>)

Vessel Name	Incident Date	GT	Flag of registry	Shipowner	Location	Costs incurred and estimated to date	LLMC 96 limit
<b>Maersk Holyhead</b>	06.11.2005	17,980	Venezuela	A.P. Møller - Mærsk A/S(Denmark)	Lake Maracaibo, Venezuela	US\$32,500,000	(not in force in the country, but if it had been): US \$ 11,235,840
<b>Vicuna</b>	15.11.2004	11,636	Chili	SOCIEDAD NAVIERA ULTRAGAS LTD(Chili)	Paranagua, Brazil	US\$31,500,000	(not in force in the country, but if it had been): US \$ 7,378,688
<b>Don Pedro</b>	11.07.2007	10,957	Spain	Iscomar shipping company (Malta)	Ibiza, Spain	US\$16,500,000	US\$6,903,107.65
<b>Sea Diamond</b>	05.04.2007	22,412	Greece	ELONA MARITIME CO. (Greece)	Santorini, Greece	US\$37,313,239.71	US\$13,921,331
<b>Gold Leader</b>	05.03.2008	1,466	Belize	SUN LEADER SHIPPING SA(Panama)	Kobe, Japan	US\$50-60 million above the relevant LLMC 96 limit.	US\$1,642,516.27
<b>Server</b>	12.01.2007	19,864	Cyprus	AVENA SHIPPING(Cyprus)	Fedje Island, Norway	US\$35,309,997	LLMC 96 limit: US\$12,333,351 Limit under Norwegian law: US\$37,710,235
<b>Ku San</b>	15.07.2006	1,972	South Korea	SHINSUNG SHIPPING CO LTD (South Korea)	Osaka, Japan	US\$2,790,680	US\$1,553,610
<b>Bohai Challenge</b>	31.01.2011	8,708	Panama	AI SHIPPING SA (China)	Kanazawa, Japan	US\$8,574,612.18	Approximately US\$5,660,000
<b>Full City</b>	31.07.2009	15,873	Panama	ROC MARITIME INC(Panama)	Telemark, Norway	US\$46,410,451.59	Limitation under LLMC 96: US\$ 10,014,067 Limitation under Norwegian Law: approximately US\$35,071,101
<b>Pacific Adventurer</b>	11.03.2009	18,391	Hong Kong	Swire Navigation / Bluewind Shipping (China)	Australia	US\$30,750,000(※)	Limitation under LLMC 96: approximately US\$18,900,000

※White.M, "Pacific Adventurer oil spill 2009: Lessons past and future" (2013) 87 ALJ 320, p. 325

<sup>39</sup> Prepared by the author based on LEG 97/8/5 (October 8, 2010), LEG 99/4/6 (March 2, 2012).

#### 4. Future Points for Discussion

The following four points are matters that can be discussed in the future from a legal perspective, with a focus on the points of discussion related to civil liability.

In the future, when the victim and the ship owner (insurer) fail to come to an agreement on the amount of compensation for damages that should be paid, it is expected that legal proceedings will be instituted at a domestic court and the case deliberated in court (agreement may also be reached through out-of-court settlement or private settlement after the commencement of court proceedings). As the Bunker Convention stipulates that claims for compensation for damages may be made to the ship owner or other responsible entity only in a court of the country where the oil pollution damage has occurred (Article 9, Paragraph 1), based on that, only a court of Mauritius has jurisdiction over this case. However, strictly speaking, for points of contention other than the oil pollution damages (such as the cost of damage to reefs damaged by the grounding), a court of a different country could also possibly have jurisdiction. Moreover, as the Bunker Convention had not yet entered into force in Japan at the time of the accident (although it had completed the deposition), it is not bound by the convention, and the possibility remains that a Japanese court may grant jurisdiction. How and where the suit is filed depends on the claimant in Mauritius.

(1) Total maximum liability (Whether or not there was neglect; what obligations the conventions/protocols of (ii) impose on Japan/Japanese ship owner)

In this case, Japan is party to LLMC 1996 (total maximum liability of 6.9 billion yen), and Mauritius is party to LLMC 1976 (total maximum liability of 1.9 billion yen). With regard to which total maximum liability is applicable, there were reports in Japan that the maximum liability is about 1.9 billion yen (Article from the Japan Maritime Daily, dated August 13), while there were also views by overseas parties that this could be about US\$65.17 million (about 6.9 billion yen, which is the total maximum liability under LLMC 1996).<sup>40</sup> Ultimately, the decision lies with the domestic court.<sup>41</sup>

There is also a possibility that a total maximum liability based on LLMC will not be applied. These are the cases in which (i) the ship owner does not petition for the application for LLMC in court, and (ii) the court judges that the ship owner had committed an extremely malicious

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<sup>40</sup> UNCTAD, News, 19 August 2020, at <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2453> (Accessed on September 14, 2020)

However, the basis for adopting the maximum value in LLMC 1996 is not provided.

<sup>41</sup> According to the views of a maritime lawyer in an article from the Japan Maritime Daily (front page of the daily edition dated September 1), basically, there are many courts that adopt the LLMC that has been ratified by their own country. <https://www.jmd.co.jp/article.php?no=260339> (Accessed on September 14, 2020)

act.<sup>42</sup> Usually, insurance clauses, etc., prescribe that insurance benefits will not be paid to the ship owners in such cases.<sup>43</sup> In reality, however, it is very rare for ship owners to be deemed as having committed an extremely malicious act.<sup>44</sup> Generally, the acts of the captain and crew, etc., are considered separately from the actions of the ship owner. As such, even if the captain of the ship were deemed to have committed an extremely malicious act, this does not automatically mean that the ship owner has also committed an extremely malicious act.

Based on the information that has been made public on this case so far, it is considered unlikely that Nagashiki Shipping Co., Ltd. will be judged as having committed an extremely malicious act (although this is dependent upon the domestic court with jurisdiction), and the total maximum liability of either LLMC 1976 or LLMC 1996 will be applied. However, comparison with past cases in the previous section has also shown that there is a possibility that the amount of damages in this accident could exceed the total maximum liability set out in LLMC.

International funds that complement civil liability do not exist in the framework of the Bunker Convention, unlike frameworks for oil tankers. For pollution damages that cannot be fully covered by insurance, it is possible that victim compensation may not be adequately secured. It has been pointed out<sup>45</sup> that this point has stimulated discussions toward securing the effectiveness of measures and compensations in the international community, while taking into consideration the limitations of the Convention.

## (2) Contents of compensation for damages

Along with the total maximum liability, other questions are likely to become important points of discussion going forward. This includes the types of damages that will be eligible for compensation; in other words, in addition to oil removal, recovery, and cleaning, to what extent will damages to the fishery and tourism industries be compensated? According to the Bunker Convention, the damages that are eligible for compensation are losses or damages that arise outside of the vessel as a result of the pollution. Excluding the loss of profits as a

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<sup>42</sup> "A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result." (Article 4, LLMC 1976 and LLMC 1996)

<sup>43</sup> The insurance contract provisions set out by the Japan Ship Owners' Mutual Protection & Indemnity Association also stipulates that costs will not be covered in the event of damage caused intentionally. <https://www.piclub.or.jp/service/information#ocean> (Accessed on September 14, 2020)

<sup>44</sup> The British Court had previously ruled to affirm the bar on liability limitations (2013 Atlantik Confidence incident). This was confirmed as a scuttling case that resulted in the bar on liability limitations, and it was the first case in which a bar on the liability limitations of LLMC 1976 were granted. Refer to Tanaka, Yosuke. "Senshu Sekinin Seigen Teduzuki ga Sokyaku-sareta Jirei (Atlantik Confidence go Jiken Hanketsu ni Tsuite)" [Case of Barring of Proceedings to Limit Ship Owners' Liability (Judgement on the Atlantik Confidence Incident)], *Ho to Seiji* [Law and Politics], Vol. 69 No. 2, II, pp.381-395. 2018.

<sup>45</sup> *Ibid.* (Kamitanida, Note 34), p.51.

result of deterioration of the environment, this includes the costs of reasonable recovery measures that are actually implemented, costs of preventive measures, and the losses or damages that arise as a result of the preventive measures (Article 1, Paragraph 9).

Specifically, what are the costs that are compensated for? A source of reference would be the Claims Manual<sup>46</sup> produced by the International Oil Pollution Compensation Fund (IOPC Funds) under the system for oil tankers. This manual was produced as a guide when claimants put in requests to IOPC for compensation for damages. While it cannot be directly applied to cases under the Bunker Convention, the definition of damages is similar in both systems. For this reason, this manual should be a useful reference in this case.

The Claims Manual classifies the contents of damages that compensation claims may be made for in the categories shown in Table 7. A close causal relationship needs to exist between pollution and damage, and it is required to be quantifiable.

Table 7: Categories of claims (based on the Claims Manual by the IOPC Funds)

Categories of claims	Contents
(i) Oil removal, recovery, and cleaning costs	
(ii) Property Damage	Loss of profits to the owners of assets contaminated by oil Eg. Cost of cleaning, repairs, replacement of contaminated fishermen's nets
(iii) Consequential loss	Loss of monetary income that should have been gained, as a result of the inability to use contaminated assets Eg. Value of catches lost as a result of contaminated nets
(iv) Pure economic damage	While fishermen's belongings did not incur oil pollution damages, for example, the fishery losses incurred as a result of contamination to the area of the sea where they normally fish, and the lack of an alternative fishing area.
(v) Environmental damage	The costs of reasonable reinstatement measures aimed at accelerating natural recovery of environmental damage (compensation based on abstract quantification calculations in accordance with theoretical models are not accepted)

<sup>46</sup> IOPC Funds, Claims Manual(2019 ed.) at [https://iopcfunds.org/wp-content/uploads/2018/12/2019-Claims-Manual\\_e-1.pdf](https://iopcfunds.org/wp-content/uploads/2018/12/2019-Claims-Manual_e-1.pdf) (Accessed on September 14, 2020)

The location where this incident occurred is near to two wetlands that are registered under the Ramsar Convention. Pollution to the ecosystem, such as the coral reefs that are important to the tourism and fishery industries, is spreading. In such cases, the following questions can become important points of discussion: To what extent should the respective damages shown in categories (ii) to (v) above be recognized, especially the cost of recovery for (v) environmental damage, which is difficult to estimate? If not recognized as cost of damages, what kind of international assistance and support is possible?

### (3) Position of Mitsui O.S.K. Lines

Unlike CLC and FC, under which the liability is concentrated on the registered ship owner of the oil tanker, the Bunker Convention sets out a broad definition for “ship owner,”<sup>47</sup> and as such, is a system that leaves room for entities other than the registered ship owner to shoulder a part of the responsibility. However, this convention stipulates that “If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.” (Article 3, Paragraph 4), thereby treating it as negligence liability. Hence, only the registered ship owner shoulders strict liability.

In this case, Mitsui O.S.K. Lines is the charterer of the vessel, and the operation control of the vessel had been undertaken by Nagashiki Shipping Co., Ltd.<sup>48</sup> Although the details on the cause of the accident are not yet available pending the accident investigation report, based only on the information that has been confirmed until this point it is highly improbable that Mitsui O.S.K. Lines will have to take responsibility for the compensation based on the Bunker Convention. The Bunker Convention imposes compulsory insurance only on the registered ship owner. Since Nagashiki Shipping Co., Ltd. has taken out insurance coverage in accordance with that stipulation, claims for the costs related to the pollution damage in this case will be made to Nagashiki Shipping Co., Ltd. and the insurer.

However, it is certain that Mitsui O.S.K. Lines is expected, as the charterer, to fulfill its social responsibility as the beneficiary of the commercial activities achieved through the chartering of the vessel. With the attention of the international community on this case, the company is expected to be accountable for the accident, and by providing support for the removal of contamination and reparation of damages, offer close support to the society, people, and environment of Mauritius that have been impacted by the accident.

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<sup>47</sup> Bunker Convention, Article 1, Paragraph 3: ““Shipowner” means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.”

<sup>48</sup> Article from the Japan Maritime Daily (Page 0 of the daily edition dated August 11, 2020), <https://www.jmd.co.jp/article.php?no=259744> (Accessed on September 14, 2020)

For example, the environmental NGO Greenpeace has published an open letter of inquiry to Mitsui O.S.K. Lines on its website, and demanded for the company to take responsibility for costs not covered by insurance, accident investigation by independent experts, non-use of navigation routes in the future, and to move away from the use of petroleum fuel, among other demands.<sup>49</sup> As explained earlier, Mitsui O.S.K. Lines itself has actually released press releases and other information frequently since immediately after the accident occurred. In September, it set up a dedicated website to disseminate information in Japanese and English. Amidst the attention of the media and civil society in Japan and abroad, it needs to fulfill its responsibility in a careful and long-term manner.

#### (4) Position of the Japanese government

As explained so far, in this incident, Japan is not the flag state and therefore has no obligations or responsibilities based on public law regulations. Furthermore, compensation for damages for the oil spill in the sea are dealt with through civil liability, so the government is also not liable for compensation based on private law regulations. (Unlike for nuclear power, there are no systems for the residual liability of a state government for oil spills in the sea.) Yet, Article 10 of the Bunker Convention places the obligation of recognizing judgements made overseas. Article 10 of the Bunker Convention stipulates the mutual recognition, between state parties, of decisions made by courts in state parties.<sup>50</sup>

At the time of the accident, the Bunker Convention had not yet entered into force in Japan (Japan made its deposition on July 1, 2020, the occurrence of the accident to the date of oil spillage lasted from July 25 to the beginning of August, and the convention entered into force in Japan on October 1<sup>51</sup>). However, going forward, when approval is sought on decisions made in domestic trials carried out in Mauritius, Japan should approve the judgement, with exceptions,<sup>52</sup> even though the accident happened before the convention entered into force in Japan. This is based on Article 10 of the Bunker Convention (in the case where Mauritius proceeds with trial proceedings and passes judgement on the case), and because the Vienna Convention on the Law of Treaties<sup>53</sup> sets out a provision on the “Obligation not to defeat the object and purpose of a treaty prior to its entry into force when it has expressed its consent to be bound by the treaty ” (Article 18).

<sup>49</sup> <https://www.greenpeace.org/africa/en/publications/11934/mauritius-oil-disaster-open-letter/> (Accessed on September 14, 2020)

<sup>50</sup> Article 12 of the Act on Liability for Oil Pollution Damage also prescribes that, with regard to claims for compensation for damages based on the convention, decisions made by the court of a state party are also effective in Japan.

<sup>51</sup> The full implementation of the revised domestic law (Act on Liability for Oil Pollution Damage) was on the same date and year, corresponding to the signing of the convention.

<sup>52</sup> According to Article 10 of the Bunker Convention, the judgement was approved with the exception of the following cases: “where the judgement was obtained by fraud” and “where the defendant was not given reasonable notice and a fair opportunity to present his or her case.”

<sup>53</sup> Vienna Convention on the Law of Treaties. Adopted in 1969 and entered into force in 1980.

## 5. Conclusion

This paper provides an overview of the legal framework concerning oil spill accidents from vessels, from the aspects of public law regulations and private law regulations, and discusses if these regulations are applicable to the incident of the grounding of WAKASHIO on July 5, 2020.

As clarified in Section 2 (2), public law regulations are applied to the prevention, reduction, and control measures for pollution from vessels. Under public law regulations, the flag state is regarded as the main responsible entity. As such, the flag state of WAKASHIO, which in this case is Panama, is in a position to be questioned over its compliance with UNCLOS and the relevant IMO conventions. Although no one has raised questions on Panama's violations in these respects at this point in time, it may be subjected to renewed reviews as a result of the accident investigation going forward.

As covered in Section 2 (3), the private law regulations applicable in this case are the Bunker Convention, which regulate oil pollution damage caused by general vessels, as well as LLMC 1976 and LLMC 1996, which prescribe the maximum amount of compensation to be paid by ship owners. As pointed out in Section 4, claims for compensation for damages based on the Bunker Convention are targeted at Nagashiki Shipping Co., Ltd. as the ship owner, and will be contested at a domestic court in Mauritius where the oil spill damage was sustained.

Although the final amount will be dependent on the direction of the domestic trial in Mauritius, if LLMC 1976 or LLMC 1996 are applied to this case, a maximum compensation of about 1.9 billion yen (LLMC 1976) or about 6.9 billion yen (LLMC 1996) will be imposed. In this case, as the conventions ratified by Mauritius and Japan, the country where the ship owner is based, are different, it is likely that the maximum amount of compensation will be determined by a court trial. To begin with, however, it would be desirable—for the purpose of providing relief to the victim—to have a situation in which it is easy for both the victim and the perpetrator (insurance payer) to predict the total maximum liability.

From the viewpoint of providing relief to the victim, in the future there will probably be stronger calls around the world to ratify LLMC 1996, which offers greater protection, and to enhance the legal stability with regard to total maximum liability. In particular, small island developing states are highly dependent on the seas for their domestic economies, such as tourism and fisheries, and are therefore exposed to extremely high risks of oil spills from vessels.<sup>54</sup> In order to ensure that these countries are provided with maximum compensation in the event of damages, such countries should be encouraged to participate in the Convention going forward.

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<sup>54</sup> *Supra* note 26 (UNCTAD), p. 1.

In this accident, Nagashiki Shipping Co., Ltd. (or its parent company), which is the ship owner, has responded to reports stating that the Mauritian government will be demanding compensation from the company, by issuing a statement that it will respond sincerely based on the applicable laws.<sup>55</sup> Going forward, the Mauritian government is expected to compile its claims and move toward either a negotiation or domestic trial.

While it is extremely unlikely that the charterer, Mitsui O.S.K. Lines, will be made to take legal responsibility, the company has announced that it will implement projects in Mauritius toward the protection and recovery of the natural environment, and make donations to local NGOs as well as contribute to funds.<sup>56</sup>

The Japanese government has expressed its intentions to dispatch the Japan Disaster Relief Team for this accident, and to advance cooperation from a medium- to long-term perspective.<sup>57</sup> In the telephone conference held between the Foreign Minister of Japan and the Prime Minister of Mauritius on September 7, based on the requests from Mauritius, Japan expressed its intention to put in place measures to prevent recurrence of accidents, carry out recovery and regeneration work, as well as monitoring, on the contaminated environment, and provide support to restore the livelihoods of the local residents.<sup>58</sup> In this accident, the Japanese government is not the primary responsible entity. However, as a maritime nation that is highly dependent on maritime transportation,<sup>59</sup> it has recognized anew, through this accident, the importance of promoting efforts to secure the safety of maritime transportation throughout the world through international cooperation. There are great expectations toward the sincere and continued support from Nagashiki Shipping Co., Ltd., Mitsui O.S.K. Lines, and the Japanese government going forward.

\*This study was written with the advice and cooperation of researchers affiliated with the Ocean Policy Research Institute.

<sup>55</sup> Nagashiki Shipping Co., Ltd. "Tosha Fune Zasho oyobi Yubaku Hassei no Ken, Dai 4 Ho" [Fourth Report on the Grounding and Oil Spill Incident Involving Nagashiki's Ship], dated August 13, 2020. <https://www.nagashiki-shipping.jp/2020/08/13/%e5%bd%93%e7%a4%be%e8%88%b9-%e5%ba%a7%e7%a4%81%e3%81%8a%e3%82%88%e3%81%b3%e6%b2%b9%e6%bf%81%e7%99%ba%e7%94%9f%e3%81%ae%e4%bb%b6-%e7%ac%ac%e5%a0%b1/> (Accessed on September 14, 2020) The website and press release of the company are available in Japanese only.

<sup>56</sup> Press release from Mitsui O.S.K. Lines, "MOL Announces Initiatives aiming for recovery of Environmental Damage from the Wakashio Incident, and to Contribute to the Mauritian Community," dated September 11, 2020, <https://www.mol.co.jp/en/pr/2020/20053.html> (Accessed on September 14, 2020)

<sup>57</sup> Press release from Ministry of Foreign Affairs, Japan, "Telephone Talk between Foreign Minister MOTEGI Toshimitsu and Mauritian Prime Minister Pravind Jugnauth," September 7, 2020, [https://www.mofa.go.jp/press/release/press1e\\_000155.html](https://www.mofa.go.jp/press/release/press1e_000155.html) (Accessed on September 14, 2020)

<sup>58</sup> *Ibid.*

<sup>59</sup> Maritime transportation accounts for 99.6% (2019, tonnage basis) of total trade volume (total imports and exports). Japanese trade merchants are responsible for 63.1% of this maritime trade volume. Ministry of Land, Infrastructure, Transport and Tourism, *Report on Maritime Affairs 2020*, July 2020, p. 27