



Fangzhi
Haiyang Wuran
Fagui Huibian

英汉对照

第一批 潘洋上 编

防止海洋污染 法规汇编

法律出版社

**THE CORPUS OF ANTI-MAR-POL
LEGISLATIONS**

防止海洋污染法规汇编

(英汉对照)

第 一 辑

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EDITORIAL PREFACE

Marine pollution is a problem of serious concern to the world and particularly to coastal states and those interests connected with shipping. Ecology and the protection of environment has thus become an urgent task of the times. Our governmental administrators, judges, harbour officers, shipbuilders, navigators, insurers and jurists are working at this problem. For facilitating their work, of course they hope to have a corpus of anti-pollution legislations available as tools helpful to them. As to legislations, the conventions adopted by IMCO rise to universal eminence among documents and exert an utmost authoritative influence over our daily efforts to prevent pollution of the world. Therefore I would be as helpful as I can to compile IMCO conventions presented here to the public. As for the rest including legislations enacted by various nations and regions (Asian, American, European.....), they will be codified and issued in companion volumes continually hereafter.

The English texts in this volume, being official documents from IMCO, may be quoted as sound bases in legal proceedings; the Chinese translations, attached for reference only, are not authentic ones specified in the conventions.

To conclusion, it is a pleasure to me to acknowledge my indebtedness

to The Office of Environmental Protection

(under The Ministry of Communications)
for encouragement and documentations from
the Office,
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Compiler:

Tse-Shang Pan

The Maritime Law Research
Center and

The Anti-Mar-Pol Research
Center of

The Maritime Transportation
Institute of Shanghai

Midsummer, 1982

编者前言

海洋污染这一严重问题，受到全世界尤其受到沿海国家和航运业有关界的关注。生态和环保是当务之急。政府行政管理人员、审判员、港监工作人员、造船师、海员、保险工作人员和法学工作者都致力解决这一问题。为便于工作，他们当然希望手边有一部防污法规汇编作为有益的工具。提起法规，以联合国海事协商组织所通过的公约最孚众望并影响人们日常防污作业。因此，编者将海协公约编成此册，献与读者。至于各国各地区制订的法规（亚洲的，欧洲的，美洲的，……）将陆续编辑出版。

本卷英文原文系联合国官方文件，可供引证；汉语译文部分由编者译出，部分由交通部环办提供，均非正式文件，仅供参考。

最后，编者对交通部环办提供文件和部分译文，魏文达教授（上海海运学院海商法研究室）鼓励和帮助，以及希利教授（美国纽约大学）建议和提供文件，表示诚挚的谢意。

潘译上

于上海海运学院 海商法研究室

防污染研究室

1982年秋

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FOREWORD

Marine oil pollution is not a new phenomenon; like other environmental problems, it has simply grown in magnitude out of all proportion to the population growth. This is so because modern industrial civilization requires constantly increasing quantities of heating oil, gasoline, jet fuel and the many other products derived from petroleum.

The very discovery of oil was related to pollution. The first petroleum utilized by man was the product of natural seepage into the Black and Caspian Seas, which was noticed thousands of years ago. Herodotus describes the oil pits at Ardericca, near Babylon, while Strabo and Pliny mention the use of the oil of Agrigentum, in Sicily, and Plutarch refers to petroleum found near Ecbatana. From the earliest times it was used for lighting, heating, cooking, lubrication and road building, and the Persians and Arabs adapted it for the manufacture of silks and other textiles. Marco Polo refers to the oil springs of Baku and Sir Walter Raleigh gives an account of the pitch lake in Trinidad. Perhaps the earliest military use of petroleum was to frighten war elephants, burning it for that purpose is said to have contributed to the successes of Alexander the Great, and later, Tamerlane.

It was the Chinese who first engaged in drilling for petroleum. This they did more than 2,000 years ago, using percussion drilling bits, bamboo piping, and strenuous manual labor.

The modern history of the petroleum industry dates from 1859, when the first American oil well was drilled in Titusville, Pennsylvania. Tremendous impetus was of course given to the development of the industry by the invention of the internal combustion engine, and its growth has been stimulated by the development of the diesel engine and the jet engine, and the gradual replacement of coal by oil as fuel for steam and motor ships, and for home and industrial furnaces. The day may come when a practicable substitute for oil as the primary source of energy may be discovered, but that day is not yet in sight.

The ever-increasing demand for oil has brought with it a corresponding increase in the means of bringing it from the sources of supply to the places where it is to be consumed. While a sizable amount of transportation, particularly of the products of petroleum, is performed by rail and by road, and while oil pipelines are being built in increasing numbers, the greater part of petroleum transportation is still effected by tankers. It is therefore obvious that the potential for marine oil spills today is infinitely greater than it was in 1906, when petroleum and its products were first carried by sea in bulk.

In 1936, when the writer of this foreword first started practicing maritime law, oil pollution liability was virtually unheard of, as it still was in 1947, when he began teaching that subject. Not until the 1954 Convention on the Prevention of Pollution of the Sea by Oil was formulated was any serious international effort made to minimize water pollution by oil discharged from vessels. And it was

not until the TORREY CANYON stranded in 1967, causing disastrous pollution damage to the English and French coasts and coastal waters, that the first attempts were undertaken to regulate civil liability for oil pollution damage on an international basis.

The TORREY CANYON stranding presented two problems of major concern. The first was whether international law permitted a State to do what the British Government did, after some initial hesitation, that is, to destroy a foreign flag vessel on the high seas in order to avoid, or at least minimize a threat of oil pollution damage to its own coasts or territorial sea.

The second problem related to the doctrine of Anglo-American law whereby one who voluntarily performs an unsolicited service for another is, as a general rule, not entitled to be paid for the service. It was feared that under this doctrine the courts would deny the British Government a recovery for the cost of removing oil spilled from the TORREY CANYON from privately owned beachfront property.

For help in solving both of these problems the British Government turned to the Intergovernmental Maritime Consultative Organization ("IMCO"), recently renamed the International Maritime Organization ("I.M.O."). The International Convention on Intervention on the High Seas in cases of Oil Pollution Casualties, commonly called the "Intervention Convention", was IMCO's solution to the first problem.

For assistance in finding a satisfactory answer to the

second problem - liability for oil pollution damage, including "clean-up" (removal) costs - IMCO turned to the Comité Maritime International ("C.M.I."), the international organization of national maritime law associations of which the China Council for the Promotion of International Trade ("CCPIT") is now a constituent member. The C.M.I. prepared a draft civil liability convention which was approved at its Tokyo Conference in March, 1969, and presented to IMCO. IMCO submitted the draft, with some changes, to a diplomatic conference held at Brussels in November of the same year. Further changes were made by the delegates to that conference, who then adopted the draft as the International Convention on Civil Liability for Oil Pollution Damage (the "Civil Liability Convention" or "C.L.C."). In 1971 the C.L.C. was supplemented by the Convention on The Establishment of an International Fund for Compensation for Oil Pollution Damage (the "Fund Convention"). These, and the other international conventions relating to marine pollution by oil and by hazardous and noxious substances are reviewed in this book by my friend and colleague, Professor Pan Tse-Shang.

As this is written, a movement is under way to amend both the C.L.C. and the Fund Convention, particularly with a view to increasing the limits of liability under the C.L.C. and the size of the compensation fund under the Fund Convention, so as to reflect the recognition of those concerned that the present limits of liability and the present size of the compensation fund are much too low, particularly in light of the worst water pollution

disaster of all the AMOCO CADIZ stranding of 1978.

Professor Pan's book is therefore a very timely one. He is to be commended for undertaking the formidable task of researching the subject of marine pollution liability on an international level, and collating the materials on the subject. While wide differences in political philosophy may exist among Governments, all of them are equally concerned with the preservation of the marine environment. As has been amply demonstrated by a number of serious oil spills, a discharge of oil from a vessel off the coast of one State may cause pollution, not only of the territorial waters and coasts of that State, but those of its neighbors as well.

As Professor Pan's book will demonstrate, the preservation of the marine environment is therefore a truly international problem and it can be achieved only by concerted international efforts, not only in minimizing discharges of oil and hazardous and noxious substances from vessels, but in establishing a uniform system of compensation for the victims of such discharges as do occur. It is hoped that the forthcoming efforts to update the C.L.C. and the Fund Convention will result in the removal of any obstacles perceived as standing in the way of adherence to them by the United States and other maritime nations that have thus far declined to join the many States that have adopted them.

Another reason, of course, for the timeliness of Professor Pan's work is the emergence of the People's Republic of China as the owner and operator of one of the

world's largest merchant fleets. Until very recent years, the world thought of Chinese shipping as limited mainly to river craft and a relatively modest number of small coastal vessels, many of them overage. Today, the Chinese fleet is not only very sizable, both in numbers and tonnage, but consists of modern, well-built ships engaged in trading on all of the world's oceans. China thus has a vital interest both in protecting its own shores and coastal waters from oil and hazardous and noxious substances discharged from vessels, whether Chinese or foreign, and in helping to insure that its own ships calling at foreign ports will not be subjected to unreasonable water pollution laws and regulations. The better knowledge and understanding of the existing international conventions which Professor Pan's work will provide will be of great assistance in accomplishing both of these aims.

January 25, 1983.

Nicholas J. Healy

序 言

海上石油污染不是新的现象，正如其它环境问题一样，它随人口增长比例而增长。这是由于现代工业文明需要不断增加供热用油、汽油、喷气机燃料油以及其它石油产品。

石油被发现是与污染有关。人类最早利用的石油是几千年前受到人们注意的流入黑海和里海的天然油苗。赫氏 (Herodotus) 曾叙述过巴比伦附近亚都利卡 (Ardericca) 地区油矿，同时斯氏 (Strabo) 与普氏 (Pliny) 也谈到西西里地区阿古径突 (Agrigentum) 石油的应用，濮氏 (Plutarch) 也提到意克巴坦娜 (Ecbatana) 附近发现石油。古代将石油用于照明，取暖，烹饪，润滑和筑路，波斯人与阿拉伯人却用之于纺织丝绸及其它纺织品。马可孛罗叙述过巴库地区的石油泉，罗利爵士 (Sir Walter Raleigh) 曾报道过特立尼达地区地层倾斜形成的油池。石油最早的军事用途是吓唬战斗的象群；为了那一目的而燃烧石油据说亚历山大帝以及后来铁目尔都取得成功。

是中国人最早钻取石油。早在2000年以前利用钻头，竹制管道和紧张的手工劳动。

近代石油工业史始于1859年，美国在宾夕法尼亚州蒂吐丝威尔地区钻出美国第一口油井。这当然极大地促进了内燃机发明后的工业发展，并激发柴油机以及喷气机的发展，而且渐渐用石油替代了煤炭作为蒸汽机及机动船的燃料并作为家庭及工业锅炉的燃料。能实际替代石油为能源的物质，将被发现，但目前犹未出现。

石油需要量不断增加使得由产地到消费地的运载工具相应增加。当大量运输，尤其是石油产品，由铁道与公路运输的同时，

当输油管线逐渐增加的同时，大部分石油运输仍由油船负担。显然，今日海上石油溢漏大于1906年，那时石油及其产品刚开始海上散装运输。

1936年本序文作者刚开展海商法业务时，到1947年从事海商法教学时，未闻及石油污染责任问题。1954年制订防止海上油污公约，国际间才共同努力防止由于船舶排放石油造成的海域污染。1967年托雷堪荣号(Torrey Canyon)油船搁浅，使英法两国沿岸及海域遭受污染，国际间才首次制订油污损害民事责任公约。

托雷堪荣号油船搁浅事故出现后引起了两个严重关切的问题。第一，国际法是否准许一个国家可以像英国政府那样经一番犹豫之后，在公海上去破坏一艘悬挂外国旗帜的船舶而免其沿岸或沿海遭受污染损害，或至少减少油污威胁其沿岸或沿海。

第二，涉及英美法律原理，依据这一原理一个自愿为他人主动服务的人通常无权受酬。惟恐法院依据这一原理而否定英国政府收回清除（清除来自托雷堪荣号的油污以免自有滨海财产遭受损失）的费用。

为了解决这两个问题，英国政府爱求助于联合国政府间海事协商组织，简称海协，现名国际海事组织，简称海组。干预公海油污事件公约（一般简称干预公约）就是联合国解决第一个问题的公约。

为了有助于寻求第二问题的令人满意的解答——油污责任，包括清除费用——海组爱求助于国际海商法协会（中国贸促会是其成员国之一）。该会准备了一份民责公约草案，经1969年3月东京会议通过后交付海组，海组又将草案加以修改后提交同年11月在布鲁塞尔召开的国际外交会议。与会代表又将草案作了进一步修改后通过作为国际油污损害民事责任公约（简称民责公约或CLC）。1971年民责公约由于建立国际油污赔偿基金公约的出现而得到补充。这些公约及有关油污、危险品以及有毒品的公约皆出现于我的朋友及同事潘先生编译的本书中。

本序文写作时，民责公约与基金公约有修改的动向，民责公约须增加责任限制，基金公约须增加赔偿尺度，承认这两方面实在过低，在所有恶劣的水域污染损害中尤以1978年阿木可康第茨号搁浅事故赔偿更低。

潘先生编译此书是适合时宜的。按国际水平从事海上油污责任的研究并收集资料的工作是艰巨的，他在这方面受到人们的称赞。同时，各国政府政治主张是不一致的，这与环境保护问题同样受到人们关注。正如许多严重石油泄漏事故所证实，一艘船舶在一个国家沿海排放石油会造成污染，其危害不限于领海或沿岸而且殃及邻国水域。

正如潘先生这本书将表明的，海洋环境保护确是一个国际问题，只有经过国际共同努力才有所成就，不仅要减少船舶排放石油危险品及有毒物质等，而且一旦事故发生时就要有统一的对受害者赔偿制度。希望未来修改民责公约及基金公约能清除美国及其它海运国家的障碍，使与许多采纳的国家合作。

当然，潘先生的作品迎合时宜的另一理由是中国作为世界庞大商业船队所有者和营运者的出现。前些年世界上认为中国航运只限于江船及少量沿海船舶，又大多陈旧。今日中国船队在数量和吨位方面不仅庞大，而且还有现代化的、制造精良的船舶在世界各大洋营运。因此，中国极其注意保护沿岸水域免受来自中外船舶的石油、危险品及有毒物质的污染，并保证自己的船舶远航外国港口免受不合理的污染法规的制约。细心研究潘先生提供的国际公约将有助于达到这两方面的目的。

尼可拉斯·捷·希利

Nicholas J. Healy

(美国纽约大学教授)
(美国海商法学会主席)

1983年1月25日于纽约