

BOOK REVIEW

Shipping and the Environment

Colin De Law Rue and Charles B Anderson (2nd ed., 2009), *Lloyd's Shipping Law Library*, London: Informa. Cx1247 pp. ISBN 978 1 84311 3232.

In an era where environmental considerations are front and centre in societal, regulatory and political perceptions, it is difficult to recall that such concerns are of relatively recent vintage – dating back only to the 1950s. In terms of legal development this is absolute infancy. Yet within this brief period the protection of the environment has gathered and attracted a body of law – both hard and soft – that is truly astounding. In addition, environmental protection has acquired a base of ethical considerations that perhaps may even outweigh other ethics-related regulatory areas, including the protection of human rights.

The protection of the marine environment, as a substratum of general environmental protection, developed even more quickly. Although there were some concerns about marine pollution from sunken vessels during the all-out submarine warfare in World War II, the real beginning of modern marine environmental concerns can be clearly traced back to the grounding of the tanker *Torrey Canyon*, off the United Kingdom coast in 1967, that caused serious oil pollution damage to the British and French coasts. Since that time the regulatory development has been unabated, although the response from the shipping and oil industries has been far less direct. The industry basically felt that ships and cargoes had good liability coverage and, if an accident, involving pollution occurred, it would be cleaned up. If it was too difficult to clean up and beaches were damaged, then – in the words of a well-known shipowner of the times – ‘they can always build swimming pools!’ Nevertheless, lengthy international conferences at the International Maritime Organization (IMO) and intense negotiations resulted in larger and better liability and compensation schemes for ship-source marine pollution. The subject was also a major agenda item of the Third United Nations Conference on the Law of the Sea, the largest global forum so far undertaken, and its subsequent global convention.¹ However, the general attitude of the industry was only changing slowly and there were few, if any, apparent ethical considerations related to the protection of the marine environment. However, to be fair, ship-generated marine pollution, even at that time, never consisted of more than 12-15% of total marine pollutants entering the oceans.

When industry attitudes changed they changed very quickly and were brought about by a combination of factors. These included: the increasingly vigilant regulatory coverage by many coastal states, the societal and political concerns for protecting the marine environment, the increase in the size of vessels carrying pollutants, the potential of serious pollution damage demonstrated in a series of notorious marine disasters, and the rapidly rising cost of risk coverage for maritime accidents. It became apparent to the industry that marine pollution was ‘bad for business’ and that prevention was not only cost-effective but that it would also display good corporate citizenship. Within a few years ship-source marine pollution was reduced to around 5-7% of all pollutants entering the oceans. Due to new technology deliberate pollution from ship operations was almost totally eliminated. In other words, commercial and regulatory considerations had ‘induced’ a polluting industry into becoming one that placed protecting the environment in the forefront of its operations. Ethics through the back door – so be it!

This book provides the very best possible evidence of how far we have come in this area. When the first edition appeared in 1998² it quickly became the leading reference text

¹ United Nations Convention on the Law of the Sea, 1982.

² Colin de la Rue and Charles B. Anderson, *Shipping and the Environment*. (1998).

in the area as it was the first comprehensive treatise that covered virtually all legal and regulatory aspects of ship operations as related to the marine environment. Furthermore, coverage not only included all international legal aspects but also the very complex US regulatory system. The United States had been in the forefront of demanding changes and followed this up with some of the most draconic legislation.³

This new edition has further improved an already excellent product. Compiled by the same authors, both very experienced legal practitioners in London and New York, the book not only covers an enormous area in international and US marine pollution law, but also, brings the subject up-to-date by addressing the many changes that have occurred in the area in the intervening 11 years. Although the book is principally a thorough analysis of the legal aspects of ship-related marine pollution, it will be equally welcomed by non-lawyers due to its highly readable content and user-friendly layout of a very complex area. In particular, the book takes a very good look at many 'soft law' issues related to marine environmental protection that are of concern to society generally and governments specifically. This is a significant development that takes the book much further than the original edition.

The book is divided into six parts covering: Liability and Compensation for Oil Pollution Damage; Compensation for Damage by Hazardous and Noxious Substances; Admissibility and Assessment of Claims; The Law relating to Particular Parties; Limitation of Liability; and, Prevention, Reduction and Control of Marine Pollution. A number of very helpful appendices, including information on online sources, a comprehensive list of legislation and cases, as well as an excellent index are also included. A Foreword is written by IMO Secretary-General Mitropoulos.

There are six totally new chapters that cover: Pollution from Offshore Oil; Owners of Colliding Ships; Pilots and Maritime Authorities; Limitation of Liability for Pollution and Damage from Hazardous and Noxious Substances (HNS); Removal of Wrecks and Dumping at Sea; and Shipment of Waste and Dismantling of Vessels. These are all areas that have received significant attention in recent times. In fact, this book is probably the first systematic information source for these areas.

As already indicated, the book covers many new developments in the area, including a number of cases that have affected the legal development since the first edition was published. This includes notorious shipping cases such as those involving the *Erika*, *Prestige*, *Hebei Spirit*, *New Carissa*, *Cosco Busan*, *Castor*, *Tasman Spirit* and *MSC Napoli*. Many

other changes and new developments are also fully covered. This includes the new Bunkers,

Ballast Water and Anti-Fouling Conventions,⁴ pollution from Floating Production, Storage and Offloading units (FPSO), the International Convention on the Prevention of Marine pollution from Ships (MARPOL), the International Convention on the Safety of Life at Sea (SOLAS), Law of the Sea Implementation, the increasing global interest in air pollution and carbon emissions from ships, flag and port state control developments, measures to promote quality shipping, new developments in criminal liability, the complex area relating to the fair treatment of seafarers in the aftermath of a maritime accident, problems related to oily water separators, and many other areas.

Despite its very hefty price tag⁵ this book will, once again, become a 'must-have' addition to the library of anyone involved in ship operations, shipping law, or the

³ See, *Oil Pollution Act*, Pub L No 101-380, §1 (1990).

⁴ *International Convention on Civil Liability for Bunker Oil Pollution Damage 2001*; *International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004*; *International Convention on the Control of Harmful Anti-Fouling Systems in Ships 2001*.

⁵ £435/€544/US\$870

protection of the marine environment. It has been a long period between editions, but it has been worth the wait.

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