

## BOOK REVIEW

**Morrison, A P, *Places of Refuge for Ships in Distress. Problems and Methods of Resolution*. Leiden: Martinus Nijhoff, 2012. xix, 416 pp (Legal Aspects of Sustainable Development, Vol 12)**

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It is obvious that there are two fundamentally opposite interests in how ships in distress are handled. On the one hand, ship owners, cargo owners and insurers are interested in a place of refuge being found so that the ship and its cargo can be made safe. On the other hand, coastal states are naturally concerned about the safety of their populations and ports and the protection of their environment from the disastrous effect of oil spills, explosions and fires.

It is difficult to reconcile these two interests, especially when it is clear from the outset that the author favours an international Convention mandating the granting of a place of refuge to a ship in distress. There is nothing wrong with coming to this conclusion after weighing the competing interests more or less evenly. After all, is the value of a ship and its cargo more than that of a commercial port that is effectively closed while the ship in distress is in port, or of a port town that is devastated by explosion or fire (as was feared when the *Tai Ping* grounded in Bluff in October 2002), or of a coastline or fishing industry closed due to oil pollution? However, there is no such even-handedness in this book.

Having said this, the author deals in detail with the international responses to this problem, in particular, the background of the IMO Guidelines on Places of Refuge for Ships in Need of Assistance and the work of the Comité Maritime International. It is very useful that he has obviously devoted a good deal of attention to the work of the IMO Legal Committee in this regard.

Chapter 2 (the first chapter is an introduction and preface) provides an overview of approaches to the problem, noting the changes to the shipping industry that gave rise to the well-known incidents involving the *Erika*, *Castor* and *Prestige*. Although the author does refer to the International Convention on Salvage 1989 and to the salvage industry more generally, he fails in the reviewer's opinion to take this a step further and consider the option of using the global salvage regime to deal with the place of refuge problem. Such a regime, freed from control by inexperienced 'incident supremos' could often, for example, keep the ship in distress more safely at sea. After all, we do not tow oil rigs on fire into port.

Chapter 3 deals with general access to ports. This is basically a discussion of law of the sea issues, but marred by either misunderstandings, for example, of the nature of 'innocent passage', which has nothing to do with ships entering ports, or infelicitous explanations, which may be due to the compressed way of dealing with this topic. An example of the latter is the paragraph at the top of page 56 that states 'a coastal State cannot with impunity deny access to its internal waters for ships if there exists a treaty which obliges the coastal State to grant access'. This is, of course, correct as it stands; but the fundamental legal position is that the coastal state has absolute sovereignty over its internal waters — and, indeed, its territorial sea — and whether a port is considered internal waters or not will depend on how the baseline is drawn; and the coastal state is not obliged to grant any ship access to a port unless it has made a concession in respect of its sovereignty for a specific instance or limited purpose.

Chapter 4 looks at the history of access to ports by ships in distress. From a period when such access was customary or covered by bilateral treaties of Commerce and Navigation — but note that it is not automatic that a number of similar subject bilateral treaties gives rise to customary international law — there has been a major shift in attitude by ports and coastal states due to the much greater volume of shipping, the huge increase in size

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of ships carrying oil and chemicals and the continuing (although dwindling) existence of single-hulled tankers. It therefore comes as a surprise that Denmark has identified 22 places of refuge for ships with pollution potential while the United Kingdom has an estimated 761 places of refuge. It is hard to imagine that coastal residents in either country are equanimous about another *Prestige* being invited into their local harbour.

The next three chapters are the core of the book: international, national (looking at the United Kingdom, Australia, Canada and the United States) and regional responses to the problem of providing places of refuge. While regional approaches may have merit in confined areas like the North Sea or the Baltic, or even within the framework of the European Union, such approaches are largely inconsistent with the author's desired international convention under IMO auspices. IMO members overwhelmingly rejected the European Union's 'go it alone' approach on greenhouse gas emissions by shipping in favour of a united front. The IMO has always believed that shipping requires a global approach, although there were also other factors at play, such as the desire to avoid being dictated to by environmental groupings and the clear economic disparities between countries of ship registration and countries of ship ownership.

As previously noted, the author sees a solution to the problem in a Convention on places of refuge, and this is the topic of chapter 8. The author looks at the CMI Draft Instrument and concludes that a discrete Convention that is binding and enforceable is the most appropriate response. Of course, international Conventions are only binding on parties to them and there is every prospect that many coastal states will not accede to any Convention that does not leave final decisions about abrogating sovereignty to them or which does not allow for unlimited compensation for any loss or damage caused to their citizens, infrastructure, environment or coastal industries as a consequence of granting a place of refuge. It needs also to be recognized that often a ship's cargo will not have come from a coastal state at all and it is simply inequitable to place the whole risk and responsibility for ships in distress on coastal communities and coastal states.

My final thought is that it is drawing quite a long bow to include this book in a series dealing with the 'international legal dimensions of the concept of sustainable development'. However, there is much very interesting and useful detail in this book, and certainly it provides food for thought. Hopefully, the pessimistic note on which the author ends will not prove to be true.

As usual with publications by Martinus Nijhoff, the book is very well produced, only being let down by some sloppy proof-reading; by way of example, four errors on pages 169-170.