

## BOOK REVIEW

**Malcolm Clark (ed). *Maritime Law Evolving: Thirty Years at Southampton*. Hart Publishing, Oxford, 2013. 338 pp.  
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For anyone wanting to see maritime law in a broader way – from a broader perspective – as an evolving phenomenon, then *Maritime Law Evolving* by Malcolm Clark (ed) is a very good read.

The sub-title to the book is *Thirty Years at Southampton*. The book consists of a collection of peer-reviewed papers written by present and past members of the Institute of Maritime Law at the Southampton Law School on the occasion of the thirtieth anniversary of the Institute. Each paper in the collection, which forms a chapter in the book, has a dual Janus-like purpose: to look back to the development of the law in the area during the last three decades and to look forward to the direction which that development may take in the future.

The contributors to the work include some very well known writers, teachers and authorities in the area: Prof Yvonne Baatz, Prof Malcolm Forster and Prof Nick Gaskell (now of the TC Beirne School of Law, University of Queensland) among them.

Part 1 of the book deals with ‘Developments in the Management of the Oceans’. I found the paper by Prof Forster – ‘Somali Piracy – An Affront to International Law?’ (Chapter 1) – quite fascinating reading. One conclusion he reaches (at p 21) is that ‘the solution to piracy off the Somali coast lies in the resolutions of the problems within Somalia itself’ but that ‘[sadly], despite the obvious international goodwill towards that end, the melancholy truth is that [that] seems as remote as ever’. Another paper in Part 1 is ‘Changing Perspectives on the High Seas Freedom of Navigation?’ (Chapter 2) by Dr Andrew Serdy. As the title suggests, this paper looks at the notion of the freedom of the seas particularly in light of the New Zealand decision in *Sellers v Maritime Safety Inspector*<sup>1</sup> and the subsequent case in the International Tribunal of the Sea (ITLOS) of *M/V Louisa (Saint Vincent and the Grenadines v Kingdom of Spain)*.<sup>2</sup> Another paper in Part 1 is by Richard Shaw and is titled: ‘Pollution of the Sea by Hazardous and Noxious Substances – Is a Workable International Convention on Competition an Impossible Dream?’ (Chapter 3). Marine pollution is a serious international issue and this paper focuses on 1996 amendments<sup>3</sup> made to the 1976 *International Convention on Limitation of Liability for Maritime Claims* (‘LLMC’)<sup>4</sup> following an HNS Conference of that year (1996).<sup>5</sup> It then goes on to examine yet further changes adopted by Protocol at the Diplomatic Conference of 2010.<sup>6</sup>

The paper by Prof Gaskell is titled ‘Compensation for Offshore Pollution: Ships and Platforms’ (Chapter 4). In this paper he looks at developments in the law and practice relating to marine pollution liabilities particularly over the last 30 years. He points out (p 65) that since 1967 ‘the international community has had to grapple with a series of legal and practical problems in providing compensation to victims of oil pollution at sea’. That year (1967) was of course the year of the *Torrey Canyon* disaster. Subsequent disasters (including the *Deepwater Horizon* blow out in the Gulf of Mexico in 2010), Prof Gaskell points out (ibid), have focused attention away from oil spills from ships and in the direction of offshore platforms and structures and in doing so have raised ‘questions about the traditional boundaries of maritime law, eg. how far it can or should apply to activities at sea not directly involving ships’. Maritime law – certainly of old – will not supply answers to these sorts of questions (except analogously perhaps) because they are beyond its traditional understanding.

The final paper in Part 1 is titled ‘Shipping and the Marine Environment in the 21st Century’ and is by Prof Mikis Tsimplis (Chapter 5). In this paper Prof Tsimplis concludes (at p 126) that ‘the shipping of the future must (a) be part of a path for the sustainable development of each state; and (b) consider the (unknown) limits of

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<sup>1</sup> [1999] 2 NZLR 44.

<sup>2</sup> ITLOS Reports 2008-2010, 58.

<sup>3</sup> [2004] ATS 16.

<sup>4</sup> 1050 UNTS 16.

<sup>5</sup> *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea*, 1996, 35 ILM 1415.

<sup>6</sup> [2010] ATNIF 55.

tolerance of the various aspects of the marine environment'. Clearly, if so, we can expect continuing tension between striving for financial gain, by developing maritime states, and the need to protect the marine environment for the good of all humanity.

Part 2 of the book deals with 'Developments in the Law Concerning Carriage of Goods and International Trade'. There are some very thought-provoking papers in this Part. They include: 'Reflections on the Rotterdam Rules' (Chapter 6) by Regina Asariotis. In this paper Ms Asariotis, who points out that the Rotterdam Rules were adopted in 2008, provides a 'bird's eye view' of those Rules to enable the reader (p 133) 'to better assess some of the implications that entry into force of the ... Rules may have'. The regime in Australia is still of course the Hague-Visby Rules enacted in the *Carriage of Goods by Sea Act 1991* (Cth) although provision is made for the possibility, some day, of the Hamburg Rules taking effect. Her conclusion (p 155) is interesting: 'While the Hague Rules, Hague-Visby Rules and Hamburg Rules are primarily geared towards protecting smaller shippers and consignees against a carrier's unfair standard contract terms, the Rotterdam Rules appear to be designed for use by commercial parties who are potentially equal negotiating partners'. As a result of this she says (ibid): 'there is an important shift in the established commercial risk allocation between carriers and shippers/consignees'. In 'Multimodal Transport Evolving: Freedom and Regulation Three Decades after the 1980 MTO Convention'<sup>7</sup> (Chapter 7), Filippo Lorenzon focuses on the problems presented by multimodal transport and their impact on international trade law. He points out (p 163) that international trade law 'is usually responsive to the needs of its industry and steadily follows technological developments, economic and political change and market practices' but he says (p 179) that with containerisation the 'way in which international trade in manufactured goods has developed over the last decades has been incapable of triggering the development of a uniform legal regime'. With profound developments surely coming over the next 30 years, one wonders how our various legal regimes will fare.

In the next paper in Part 2 of the book 'Incorporation of Charterparty Clauses into Bills of Lading: Peculiar to Maritime Law?' (Chapter 8), Dr Melis Özdel examines the issue of incorporation clauses in bills of lading. The author raises the difficult question whether the rules of incorporation developed in the authorities are (p 194) 'simply a maritime expression of the [well known] contractual doctrine of notice'. Dr Ozdel concludes that the incorporation of charterparty clauses into bills of lading is an issue peculiar to maritime law, as long so held by English courts, and that the rules of incorporation (p 195) 'have much to commend them, for they provide specific solutions to maritime issues'. In the final paper in Part 2 of the book 'Certificate Final Clauses in International Trade: Some Recent Developments' (Chapter 9), Alexander Sandiforth examines in some detail the effect of certificate final clauses which he says (p 198) are 'designed to prevent the buyer from adducing evidence that ... goods were not as described by the certificate at the moment when risk ... passed from seller to buyer ie. loading/shipment'. He concludes (p 205) that a clause must be 'appropriately drafted to provide the finality sought'. This of course would be standard contract law learning.

Part 3 of the book deals with 'Developments in Marine Insurance, Jurisdiction and Enforcement'. The perplexing concept of inherent vice is considered by Johanna Hjalmarsson and Jennifer Lavelle in 'Thirty Years of Inherent Vice – From *Soya v White* to *The Cendor MOPU* and beyond' (Chapter 10). The conclusion of the authors is a challenging one. They say (at p 235) that the concept of inherent vice – always something difficult to distil – 'is something not terribly important any more' following the decision in *The Cendor MOPU*.<sup>8</sup> They argue (ibid) that the limited scope now given by that case to the effects of inherent vice 'is entirely logical: in modern times of post containerisation, and in particular post refrigeration, many cargoes need in practice no longer be treated as perishable'. I would be inclined to disagree with them on this point. I do not regard *The Cendor MOPU*, particularly in the judgement of Lord Saville (at [45]), as diminishing the doctrine of inherent vice and more generally I see a continuing modern day need for that doctrine: there are still many non-perishable cargoes eg. fragile cargoes, where the doctrine still has obvious application. The second paper in Part 3 is by Prof Baatz – 'Thirty Years of Europeanisation of Conflict of Laws and Still at Sea?' (Chapter 11). This is a most informative and well-written paper on the many thorny issues in the area of choice of law, particularly in light of European regulation of this area.

In summary, *Maritime Law Evolving* is well worth acquiring. It gives a well researched, and authoritative, account of maritime law, past and future, in the topics it deals with. It is well set out, easy to read, with an excellent index. It is a very good read as I say for those interested in the subject – particularly in its future aspects.

<sup>7</sup> *United Nations Convention on International Multimodal Transport of Goods*, 1980, UN Doc TD/MT/CONF/16.

<sup>8</sup> [2011] UKSC 5; [2011] 1 Lloyd's Rep 560.