The subject matter of this book manifests three themes. First, not surprisingly, it indicates, loosely, the honorand's range of interests. But it is not merely serendipitous for, secondly, it acknowledges that the breadth of what constitutes maritime and commercial law is difficult to define, if not unlimited. Thirdly, and most importantly, it illustrates the value of publication of rigorous analyses of specific issues and the lessons that can be learned from the individual essays for the continuing development of the law on the subjects addressed.

Francis Rose

SHIPPING AND THE ENVIRONMENT LAW AND PRACTICE, 3rd Edition. *Colin de la Rue, Charles B Anderson and Jonathan Hare. Informa Law from Routledge, Abingdon (2022) 1504 pp. Hardback £625.*

The first and second editions of this book have become important handbooks for anyone who deals with environmental issues in the maritime field. The second edition was published in 2009. Since then major developments have taken place in relation to environmental aspects of shipping, and a new edition of the book has been eagerly awaited. It has been worth the wait for this third edition!

The co-authors of the first two editions of the book, Colin de la Rue and Charles B Anderson, have been joined for the third edition by Jonathan Hare, former General Counsel, Assuranceforeningen Skuld, Oslo, who has brought additional valuable experience to the team of authors.

The third edition of this book follows largely the same structure as the two previous editions, but some parts have been expanded. The book is divided into six main parts.

Part I (Ch.1, which has been substantially expanded) offers a comprehensive introduction to the environmental aspects of shipping. An outline is given of the development since the early days of oil tanker transport in the nineteenth century and the emergence in the 1960s of supertankers. It contains an introduction to relevant law and practice as well as a valuable overview of the international treaties dealing with the subject. A short presentation is given of the developments in the United States. The contributions of private interests to this development are summarised. The present concern within the shipping and insurance industries relating to greenhouse gas emissions is discussed briefly. Shipping in the polar regions and the emergence of unmanned ships are also discussed, as are the difficulties resulting from political sanctions and the grave concerns relating to violent attacks on ships and crews. Useful references are given to other chapters where the issues are discussed in detail.

Part II (Chs 2–6) deals with liability and compensation for oil pollution damage, both within the framework of the international regimes established by the treaties adopted under the auspices of the International Maritime Organization (IMO) and under the United States legislation.

Chapter 2 discusses the Civil Liability Conventions 1969 and 1992 (CLC), focusing on the 1992 version. The CLC, together with the Fund Conventions of 1971 (which ceased to be in force in 2004) and 1992, establish a regime of compensation for pollution damage

caused by oil spills from tankers on two levels; the first level imposes a strict liability on the registered shipowner coupled with a compulsory liability insurance, whereas the second layer provides additional compensation from the International Oil Pollution Compensation Funds 1971 and 1992 and the 2003 Supplementary Fund (IOPC Funds) financed by oil cargo interests when adequate compensation is not available from the shipowner and his insurer.

The authors examine various provisions of the CLC which have given rise to difficulties of interpretation. A useful analysis is made of the key definitions which are important for determining the scope of application of the CLC, in particular the definition of "ship". A number of cases are discussed in which the interpretation of that definition has been addressed by the IOPC Funds.

The interpretation of Art.I.1 of the 1992 CLC as regards the application of the Convention to unladen tankers is considered. In this context reference is made to the judgments of the Dutch District Court and Court of Appeal in the *Bow Jubail* case. As the authors state, it is difficult to see how, in view of the position taken by the Dutch courts, a shipowner would be able to prove that the ship's tanks do not contain any residues of a previous cargo of persistent oil.

There is also a useful discussion of whether the CLC and Fund Conventions apply to offshore craft and to craft used for the storage of persistent oil. Reference is made to the *Slops* case in Greece, where the 1992 Fund had considered that the vessel did not fall within the definition of ship, but the Greek Supreme Court took the opposite view.

The concept of oil is also addressed. The CLC and Fund Conventions apply only to spills of persistent oil. There is no definition of persistent oil in the CLC; but, as the authors note, the IOPC Funds have developed a definition of non-persistent oil which is based on the temperature at which a certain fraction of the oil distillates.

Of particular interest is the discussion of the channelling provisions in Art.III.4 of the 1992 CLC, which in principle exclude actions for compensation against parties other than the registered owner. Reference is made to the court judgments in France in the *Erika* case and in the United States in the *Prestige* case.

Chapter 3 contains a very informative overview of the structure and operations of the IOPC Funds. Reference is made to the close cooperation between the Funds, on the one hand, and the International Group of P&I Clubs and the Group's members, on the other.

Under the relevant provisions of the CLC and Fund Conventions, the 1992 Fund should not start paying compensation until the shipowner's limitation amount has been determined by a competent court and the limitation fund of the ship in question has been constituted. If these provisions were observed, it would often take several years before claimants would receive any compensation. The authors emphasise that the Funds and the P&I Clubs have not applied these provisions but have taken a flexible approach, which in most cases has enabled them to make compensation payments promptly.

The voluntary agreements STOPIA and TOPIA are described and the legal relationship between these agreements and the IOPC Funds is clarified.

Chapter 4 focuses on the legal situation in the United States. Following the *Exxon Valdez* incident in 1989, the Oil Pollution Act of 1990 (OPA-90) was adopted. OPA-90, which applies also to spills of bunker oil, represented an attempt to create a comprehensive federal system of liability, prevention and response to oil spills. As the authors point out, OPA-90

does not completely repeal existing laws but rather supplements and amends the previous statutory framework. It is also emphasised that OPA-90 does not pre-empt state law, so state statutory and common law may still apply to recovery for clean-up costs and damages, to the extent that they do not conflict with OPA-90. The authors have managed to summarise the complex legal situation in the United States in a manner which clarifies the main issues for those who do not have their background in the United States legal environment.

Chapter 5 (which is substantially new) deals with pollution from offshore operations and craft, including an outline of industry practice. The applicability to offshore operations and craft of various international regulatory and compensation regimes in the maritime sector and their relationship with national laws are discussed. The chapter contains a detailed discussion of the *Deepwater Horizon* incident in the Gulf of Mexico in 2010 and its implications. The contractual allocation of pollution liability risks between operators and contractors and of usual insurance arrangements (eg, the so-called "knock-for-knock principle") is described. This chapter provides a very informative presentation of these difficult topics.

Liability for oil pollution caused by a spill of bunker oil from a ship is dealt with in Ch.6. Spills of bunker oil are nowadays much more numerous than tanker oil spills, and even small bunker spills may cause considerable damage. The chapter focuses on the regime under the 2001 Convention on civil liability for bunker oil pollution damage (the Bunkers Convention) and on the differences between the Bunkers Convention and the regime under the 1992 CLC, in particular as regards the definition of "shipowner". The chapter contains a very valuable discussion of the complications that may arise as a result of the Bunkers Convention not having any dedicated system of limitation of liability; the limitation depends on the so-called linkage to any applicable national and international regime, such as the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC) as amended. Attention is drawn to the fact that there is no mention of "pollution damage" in the LLMC, and that therefore it is not clear whether the right of limitation under the LLMC covers all kinds of pollution damage as defined in the Bunkers Convention.

Part III (Chs 7 and 8) deals with compensation for damage caused in connection with the carriage of hazardous and noxious substances by sea.

The regime under the 2010 Hazardous and Noxious Substances Convention (HNS Convention) is dealt with in Ch.7. This Convention has not yet entered into force, so there are no decisions on the interpretation and application of its provisions. A number of provisions are open to interpretation, and the authors discuss possible interpretations on various issues (eg, whether the HNS Convention applies to mobile offshore units, the problems that arise if an incident involves both HNS cargoes and non-HNS cargoes, and the provision that the Convention does not apply to claims arising out of any contract for the carriage of goods and passengers). Reference is made to the Environmental Liability Directive adopted within the European Union.

Chapter 8 deals with the situation in the United States as regards HNS damage. The chapter contains a detailed presentation of the statutory law, the principal ones being the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), but compensation claims may also be based on general maritime law. The situation in the United States as regards liability for HNS damage is quite complex, but the authors give a good overview of the legal situation.

Part IV of the book (Chs 9–13) turns to admissibility and assessment of compensation claims and contains an excellent presentation (some 120 pages) of this very difficult field of law.

In Ch.9 the authors discuss the general principles on the admissibility and assessment of claims, both under the international regimes and under United States law, giving an outline of the principal categories of claim. There is an interesting summary of technical considerations, which often play a vital part in the assessment of claims for loss or damage.

The importance of a unified interpretation of international treaties is emphasised. The authors refer extensively to decisions by the IOPC Funds' governing bodies on the admissibility of claims, which constitute the main body of precedents in the international system. The chapter contains an informative discussion of the legal status under public international law of the admissibility criteria developed by the IOPC Funds, and reference is made to the relevant provisions of the Vienna Convention on the Law of Treaties. The role played by national courts in the interpretation of the international Conventions is presented. Valuable comments are made on decisions taken by some national courts that are not in line with a reasonable interpretation of the Conventions.

Issues relating to clean-up operations and other preventive measures are dealt with in Ch.10. The term "preventive measures" readily embraces action taken to prevent oil escaping from a tanker involved in a casualty, but the Conventions do not expressly refer to clean-up operations. As the authors state, it appears always to have been accepted that clean-up operations serve to minimise or prevent further pollution damage. The contentious issue has often been whether the measures taken were reasonable, and a summary is given of the technical considerations and other factors which have given rise to dispute.

Even when the measures themselves have been non-contentious, there has sometimes been argument whether the costs were appropriate; this has in particular been the case when claims have been made by public authorities where it has sometimes been argued that the costs would have been incurred in any event, such as the salaries of their regular employees. An overview is given of the position taken by the IOPC Funds in respect of claims for the costs of preventive measures. The relationship between preventive measures and salvage within the framework of the international regime is also discussed.

Damage to property is addressed in Ch.11. Claims for contamination of property as a result of oil pollution have generally given rise to few questions of principle. The chapter contains an informative review of the types of claim relating to property damage which have typically been made, and summarises the issues that have arisen.

Chapter 12 deals with the assessment of claims for economic loss. Of particular interest is the discussion concerning claims for so-called pure economic loss, ie, loss sustained by somebody whose property has not been damaged, for instance in the fisheries and tourism sectors. The authors present the legal situation in this regard in certain common law countries (the United Kingdom, Canada and Australia) and in countries that follow the civil law tradition (notably France), as well as the situation in the United States. The chapter also contains a very detailed presentation of the criteria developed by the IOPC Funds with respect to the admissibility of such claims as well as an analysis of how these claims have been assessed by the Funds and by national courts. Reference is made to the IOPC Funds' change of policy in 2018 with respect to claims by employees having been made redundant as a result of an oil spill.

Politically sensitive issues are discussed in Ch.13, namely whether and, if so, to what extent damage to natural resources of the marine environment and costs of measures of restoration of the damaged resource should qualify for compensation. The authors explain the differences between the approach taken in United States, where such claims are to a large extent admissible in principle, and the international Conventions under which compensation is not payable for damage to natural resources as such but only for economic losses caused by damage to the environment and for costs of reasonable reinstatement measures. The development of the IOPC Funds' policy over the years as regards reinstatement measures is explained.

Part V (Chs 14–21), headed "The law relating to third parties", deals with the liability of various parties that could be involved in a maritime incident.

Of special interest is Ch.14 on salvors, in particular the salvor's right to special compensation under the 1989 Salvage Convention for having prevented damage to the environment. The increasing role played by the Special Compensation P&I Clause (SCOPIC) is discussed in some detail. The issue whether the salvors may obtain compensation under the 1992 CLC and Fund Conventions for "costs of preventive measures" is addressed. The potential liability of salvors to third parties is also discussed.

Important matters relating to damage to the marine environment of interest to charterers and cargo owners are discussed in Ch.15.

Chapter 20, regarding P&I Clubs and other liability insurers, has been expanded and updated as regards cover for maritime environmental risks. The role of the International Group of P&I Clubs, including the Group members' arrangements for pooling of risks and reinsurance, is explained, as is the direct liability of insurers under international Conventions. Sanction risks, war risks, terrorism, cyber risks and cover for wreck removal are also discussed. The financial responsibility guarantees required by United States legislation are addressed.

Part VI (Ch.22) focuses on limitation of liability for marine environmental claims that are not subject to their own limitation rules, in particular claims relating to bunker pollution and wreck removal. Whether different types of claim fall within the scope of claims limitable under the LLMC is addressed in detail.

Part VII (Chs 23–30) deals with a number of subjects relating to prevention, reduction and control of marine pollution.

Of special interest is Ch.23, on international rules to prevent pollution, including the United Nations Convention on the Law of the Sea, SOLAS, MARPOL, the Anti-fouling Convention and the Ballast Water Convention.

Prevention of pollution from ships and response to incidents in the United States are dealt with in Chs 24 and 26.

Chapter 25 contains important information on response to incidents and international Conventions. Of particular value is the section dealing with places of refuge for ships in need of assistance.

Attention should also be drawn to Ch.27, on wreck removal and dumping at sea; Ch.28, on shipment of waste and recycling of vessels, and Ch.29, on enforcement of rules to prevent pollution.

The final chapter (Ch.30) contains a comprehensive discussion on criminal liability for marine pollution in the light of the experience of the *Erika*, *Prestige*, *Hebei Spirit*

and other major incidents, including an overview of the European Directive on Criminal Sanctions for Ship-source Pollution and the IMO guidelines on fair treatment of seafarers.

A very comprehensive index (some 50 pages) should be of great assistance to the those who navigate through the book, as are the cross references between chapters. The appendix to the book contains useful references to online and documentary sources of information.

In summary, the book contains an immense wealth of material and information. Of special value are the quotations—sometimes quite detailed—from court judgments and from decisions taken by the IOPC Funds. The authors have managed to present very complex issues in a clear manner, which is evidence of their great expertise and practical experience in a variety of legal fields.

As has been the case for the two previous editions of the book, this third edition will be an indispensable source of reference for many years to come, not only for lawyers but for all those who deal with shipping-related environmental issues.

Måns Jacobsson
FormerDirector,
International Oil Pollution Compensation Funds

THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION: A Commentary. *Giles Cuniberti, Professor of Comparative and Private International Law, University of Luxembourg. Edward Elgar, Cheltenham (2022) xcii and 506 pp., plus 7 pp. Bibliography and 20 pp. Index. Hardback £205.*

The 1985 UNCITRAL Model Law on International Commercial Arbitration was not taken up into English law. In 1989, the Committee set up under Lord Mustill to consider the possibility recommended against, for reasons which are only a little unfairly characterised as English exceptionalism. But the gist of its view can be summarised in its own words:

"The sheer volume of international arbitration in England, and particularly in London, is such that the daily experience gained by lawyers, arbitrators, and judges in the practical application of the law to the changing needs of commercial arbitration has kept the law, as enacted and as developed through the cases, both rich in depth and well abreast of contemporary demands. The system is, moreover, familiar to, and accepted and trusted by a very large international community… The argument in favour of enacting the Model Law in the interests of harmonisation, or of thereby keeping in step with other nations, are of little weight. The majority of trading nations, and more notably those to which international arbitrations have tended to gravitate, have not chosen thus to keep in step. There would in our judgment be undoubted disadvantages in introducing a new and untried regime for international commercial arbitration, with all the transitional difficulties that this would entail, and at the same time retaining the present regime for domestic arbitration."

Professor Cuniberti (at *xx*) assesses the Model Law as an "enormous success", at least in part because it has been adopted, holus bolus or with modest degrees of local adjustment, by so many, and many serious, countries. The Law Commission (*Review of the Arbitration Act 1996*: LCCP 257, 2022) also regards it as a success, counting (at [1.27]) the number of adopting states as "around 118". That is revealing. Professor Cuniberti recognises that