Vessel-Source Marine Pollution

Analysing the regulation of vessel-source pollution from the perspective of the political interests of key players in the ship transportation industry, Alan Khee-Jin Tan offers a comprehensive and convincing account of how pollution of the marine environment by ships may be better regulated and reduced. In this timely study, he traces the history of regulation at the International Maritime Organization (IMO) and investigates the political, economic and social forces influencing the IMO treaties. Also examined are the efforts of maritime states, shipowners, cargo owners, oil companies and environmental groups to influence IMO laws and treaties. This is an important book which uncovers the politics behind the law and offers solutions for overcoming the deficiencies in the regulatory system. It will be of great interest to professionals in the shipping industry as well as practitioners and students.

Alan Khee-Jin Tan is an Associate Professor in the Faculty of Law at the National University of Singapore.
Established in 1946, this series produces high-quality scholarship in the fields of public and private international law and comparative law. Although these are distinct legal subdisciplines, developments since 1946 confirm their interrelation.

Comparative law is increasingly used as a tool in the making of law at national, regional and international levels. Private international law is now often affected by international conventions, and the issues faced by classical conflicts rules are frequently dealt with by substantive harmonisation of law under international auspices. Mixed international arbitrations, especially those involving state economic activity, raise mixed questions of public and private international law, while in many fields (such as the protection of human rights and democratic standards, investment guarantees and international criminal law) international and national systems interact. National constitutional arrangements relating to ‘foreign affairs’, and to the implementation of international norms, are a focus of attention.

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A list of books in the series can be found at the end of this volume.
To my parents, Keat Seng and Kim Heoh, my friend and wife, Sun, and my daughter, Kai Ryn
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I am very pleased to write the foreword to this book, because of its important content and because the author is a colleague at the National University of Singapore’s Faculty of Law, where I had the privilege of serving as Dean in the early 1970s.

Coastal states are justifiably concerned about pollution, caused by ships, to their coastal and marine environment. The international regulatory system has had to craft policy responses that seek to balance such concerns with the freedom of navigation for ships. It has been over 50 years since efforts began to regulate vessel-source pollution on a comprehensive scale. Much has changed during that period – from the size of polluting ships and the nature and hazards of pollutants involved, to the growing interest of states and citizens in the environment.

One of the dramatic changes is the rise of the environmental movement, which has led to unprecedented scrutiny being placed on the activities of economic enterprises, including the shipping industry. As a result, the traditional right of freedom of navigation has become increasingly qualified. The international organisations tasked with the role of regulating shipping – principally the International Maritime Organization (IMO) – have had to grapple with a host of increasingly complex issues. Regulating these issues involves a delicate balancing of the interests of states, industry and civil society groups, with the aim of creating a just and equitable system for the use of the oceans.

The author has done an excellent job in analysing these complex issues. He has ably charted the history of regulation, identified the forces energising the regulation of pollution from ships and prescribed remedies for the regulatory system’s shortcomings. In the process, this book brings out the key political, social and economic forces which
underpin the international regulation of modern shipping. The interplay between shipowners and cargo owners is analysed, as is the problem of ‘sub-standard’ or irresponsible shipping. The author makes the point that international legal rules are often shaped by the political interests of states. The interests of states are, in turn, determined by the contest of competing interest groups and policy preferences. This phenomenon was especially evident during the Third UN Conference on the Law of the Sea, and continues to feature in the contemporary politics of ocean use. In this regard, I remain optimistic about the capacity of international law to reconcile the competing aspirations of states and their citizens, and to bring about not only equity but sustainability in the use of the oceans.

The sea is close to my heart and that of my country. I am confident that this book will make a significant contribution to international law and legal scholarship. I have great pleasure in commending the book to all those who are interested in the law of the sea.

Professor Tommy Koh
Ambassador-at-Large, Republic of Singapore
President, Third UN Conference on the Law of the Sea
Chairman, Preparatory Committee for and the Main Committee of the 1992 UN Conference on Environment and Development
Preface

This book analyses the regulation of vessel-source pollution from the perspective of the interest politics underlying the major actors’ positions. In essence, it investigates the political, economic and social forces that energise and influence rule-making at international fora, principally the International Maritime Organization (IMO). In the process, the book identifies deficiencies within the shipping industry as well as the international regulatory system that affect the effectiveness of pollution control rules and standards. The book then suggests prescriptions to overcome or reduce the impact of these deficiencies.

I am infinitely grateful to many good people whose support made this book possible and the effort that went into it so worthwhile. First, I wish to thank the National University of Singapore for granting me leave and supporting my studies. To Michael Reisman at Yale Law School, thank you for your encouragement and belief in me. I am also grateful to Daniel Esty, Carol Rose, Judy Couture, Barbara Safriet, Toni Davis, Cina Santos and my good friends from the Yale LLM/JSD Class of 2001–02. Special thanks to Deans Chin Tet Yung and Tan Cheng Han at the Faculty of Law of the National University of Singapore, Robert Beckman, Tommy Koh and the Maritime and Port Authority of Singapore. In London, where the bulk of the research was done, I thank and recall with fondness the International Maritime Organization, its delegates and staff (particularly Rouba Ruthnum and the IMO librarians), the Institute of Advanced Legal Studies, and, our home away from home, the London Goodenough Trust. I also thank the many state, industry and NGO representatives who took time to talk to me.

This book first took form almost seven years ago when Sun and I moved to London after our marriage. While Sun was busy with her
own studies and thesis, I made many a visit to the IMO at Albert Embankment, attending numerous meetings, interviewing delegates and spending long, lonely hours at the library scrutinising decades-old documents. Two years later, we moved to New Haven, where I was to finalise the text at Yale Law School. Upon our return home to Singapore in 2001, the effort began to find a publisher and to revise the work substantively. The final product bears little resemblance to the original thesis that inspired it. So many new developments had occurred in the interim that I practically rewrote the bulk of the chapters. Looking back, it is gratifying to know that this book was born not just out of effort, but also in between reflection and rest, from moody rainy days at William Goodenough House in London and impulsive Eurostar trips to meaningful friendships made at Yale and frequent driving distractions around New England.

Finally, my gratitude and love to my dear parents in Penang, who raised my brother and me so well, and to Sun, whose companionship made this surely one of the most fulfilling journeys of our lives. Not to mention an intellectually rewarding honeymoon.

The law is stated as at 1 January 2005.

Alan Khee-Jin Tan, Kent Ridge, Singapore
February 2005
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Abbreviations

AFS  Anti-Fouling Systems
BIMCO  Baltic and International Maritime Council
CDEM  Construction, Design, Equipment and Manning
CEFIC  European Council of Chemical Manufacturers’ Federations
CERCLA  Comprehensive Environmental Response, Compensation and Liability Act of 1980 (US)
CLC  International Convention on Civil Liability for Oil Pollution Damage
CMI  Comité Maritime International
COFRs  Certificates of Financial Responsibility
COW  Crude Oil Washing
CRISTAL  Contract Regarding an Interim Settlement of Tanker Liability for Oil Pollution
dwt  deadweight tons
ECOSOC  United Nations Economic and Social Council
EEZ  Exclusive Economic Zone
EU  European Union
FOEI  Friends of the Earth International
FSI  Flag State Implementation
FUND  International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
GAIRS  Generally Accepted International Rules and Standards
GESAMP  IMO/FAO/UNESCO/WMO/WHO/IAEA/UN/UNEP Joint Group of Experts on the Scientific Aspects of Marine Environmental Pollution
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<td>grt</td>
<td>gross registered ton</td>
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<td>H&amp;M</td>
<td>Hull and Machinery</td>
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<td>HELCOM</td>
<td>Helsinki Commission</td>
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<td>HNS</td>
<td>Hazardous and Noxious Substances</td>
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<td>1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea</td>
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<td>International Association of Classification Societies</td>
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<td>Informal Composite Negotiating Text</td>
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<td>ICS</td>
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<td>IGOs</td>
<td>Inter-Governmental Organisations</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IMCO</td>
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<td>IMDG Code</td>
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<td>ISM</td>
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<td>ISO</td>
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<td>ITOPF</td>
<td>International Tanker Owners Pollution Federation</td>
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<td>IUMI</td>
<td>International Union of Marine Insurers</td>
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<td>Natural Resource Damage Assessment</td>
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<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>Organization of the Petroleum Exporting Countries</td>
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