
THE IMLI MANUAL ON INTERNATIONAL MARITIME LAW

Volume I
The Law of the Sea

GENERAL EDITOR
DAVID JOSEPH ATTARD

EDITED BY
MALGOSIA FITZMAURICE
NORMAN A MARTÍNEZ GUTIÉRREZ



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THE IMLI MANUAL ON INTERNATIONAL
MARITIME LAW

To those who serve the rule of international maritime law

FOREWORD

Although the oceans cover such a large percentage of the earth's surface, they are becoming increasingly crowded. Conflicts in the use of ocean space and resources among the various stakeholders are increasing. Major security issues need to be addressed and awareness of environmental issues is stronger than ever.

The nations of the world have acknowledged that the use of the sea and the ability to benefit from its resources should not be a free-for-all, and that a shared, agreed, and commonly understood regulatory and legal framework to govern use of the world's maritime spaces is the best way forward.

The result is a complex and multi-faceted structure that embraces a multitude of different disciplines and specializations, many seemingly disparate but all bound by the common thread of seas and oceans.

This three-volume work will provide the most comprehensive and far-reaching approach to the subject of international maritime law ever produced. With sections dedicated respectively to the law of the sea, shipping law, and law relating to the marine environment and maritime security, it will provide the academic world and legal practitioners with a detailed guide to every aspect of maritime law, both from a theoretical and from a practical perspective. It will place contemporary developments in their historical context and tackle the many emerging issues that prompt continual re-evaluation and reassessment of the current situation.

There can be no better institution to undertake such a Herculean task than the IMO International Maritime Law Institute (IMLI). Established in 1988, under the auspices of the International Maritime Organization and in conjunction with the Government of Malta, IMLI has developed into the world's leading international centre for the training of specialists in maritime law. It provides the maritime world with an invaluable human resource, and contributes generally to the development and dissemination of knowledge and expertise in international maritime law.

Written and edited by a cadre of academics and practitioners who are the world's leading experts in their chosen fields, these volumes will make a unique contribution to the current body of legal literature. Collectively, they make a fitting way to mark IMLI's twenty-fifth anniversary, and I commend all those involved for the foresight and dedication to produce such a seminal work. It is my great pleasure to be associated with it, through this foreword.

Koji Sekimizu
Secretary-General, International Maritime Organization

PREFACE

While there is a trend in certain legal literature to treat the law of the sea and shipping law (or admiralty law) separately, it is submitted that these public and private branches of international maritime law have today become intimately interdependent, particularly through the emergence and influence of international maritime treaties, such as those adopted by the International Maritime Organization (IMO). Indeed, some argue that they are now fused together into a single body of law. The IMO International Maritime Law Institute (IMLI) has for over a quarter of a century devoted its work to offering a holistic treatment of international maritime law in its various taught and research programmes of studies. I therefore felt it would be appropriate to commemorate IMLI's twenty-fifth anniversary by the publication of this Manual which provides a unique and comprehensive guide to all the major branches of international maritime law.

The IMLI Manual on International Maritime Law is divided into three volumes: Volume I covers the Law of the Sea, Volume II is dedicated to Shipping Law, and Volume III deals with both Marine Environmental Law and Maritime Security Law. The Manual examines these fields of law from an international and comparative perspective, and provides an in-depth analysis from the point of view of international conventions, customary law, and commercial practices. It also offers comprehensive references and a bibliography on the subjects, so that its users have a single source from which to branch out into even more detailed research. The Manual has been written and edited by academics and practitioners who are leading experts in their respective fields. They have been drawn from a very wide number of legal systems, thereby ensuring that the academic and practical value of the Manual has no geographical boundaries. All these qualities should make it essential reading to students, researchers, academics, and practitioners.

I wish to conclude by thanking the many persons who, in one way or another, have made this project a reality. I would like to express my appreciation to Mr Koji Sekimizu (Secretary-General of the IMO) for honouring the Institute by writing the foreword to this Manual and for his continuous support. I wish to thank the distinguished contributors, who have devoted time and research in preparing their learned contributions. I also wish to express my gratitude to my dear colleagues and fellow editors for their relentless work in putting this Manual together. Special thanks are due to The Nippon Foundation which not only supported this project,

but also contributed to its funding. I would also like to record my appreciation to Oxford University Press and in particular to Ms Merel Alstein and her editorial team for their professional support throughout the production process leading to the publication of this Manual.

David Joseph Attard
General Editor
16 July 2014

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The Editors of *The IMLI Manual on International Maritime Law* would like to acknowledge the invaluable contribution of The Nippon Foundation to IMLI and this Manual through the provision of funding within the Project 'The Human Resources Development Project for the Advancement of a More Effective Global Legal Order for the Oceans'.

Dr Yohei Sasakawa, the Chairman of The Nippon Foundation, anticipated that the twenty-first century would become the 'century of oceans' and established numerous fellowships and scholarships to nurture future leaders in maritime affairs globally.

IMO INTERNATIONAL MARITIME LAW INSTITUTE

The genesis of *The IMLI Manual on International Maritime Law* actually dates back to the establishment of IMLI, in 1988, through an agreement concluded between the Government of Malta and the International Maritime Organization (IMO). One of the first challenges of the Institute's founding fathers was the formulation of an academic syllabus for the teaching of international maritime law on a comparative and international basis. To address this issue, the then IMO Secretary-General CP Srivastava set up a committee of eminent lawyers from the different legal systems of the world. The members of this Committee, which I was asked to coordinate, consisted of Professor Francesco Berlingieri (Italy, Former President of the Comité Maritime International), Judge Thomas Mensah (Ghana, Former President of the International Tribunal for the Law of the Sea), and Mr Louis Mbanefo (Nigeria, President of the Nigerian Maritime Law Association).

The Committee produced a unique syllabus of studies, which covered the whole spectrum of international maritime law and took into account the need to train legal officials (mainly from developing States). This syllabus was adopted by the IMLI Governing Board in 1989 and has been updated constantly by IMLI's Academic Committee, to reflect the latest developments in the field, particularly in the work of IMO. An innovative feature of the Committee's proposal was the inclusion (in addition to usual examinations and dissertations) of a requirement that students must prepare draft legislation which incorporates IMO rules into their domestic law. This requirement represents IMLI's *raison d'être*. It is well known that, with one minor exception, IMO has no effective powers to enforce its over fifty conventions and literally hundreds of prescriptions. It is therefore up to its member States to implement and enforce its regimes. Lack of maritime legal expertise has often prevented developing States from participating in this process.

IMLI offers unique taught and research training programmes, designed to provide governments with the necessary expertise through the fostering of excellence in three important areas:

- (1) the development of expertise to advise on international maritime law and develop national maritime legislation;
- (2) the development of legislative drafting skills to ensure that States have the necessary expertise to incorporate international rules into domestic legislation; and

- (3) the preparation of legal advisers to participate in, and contribute to, the deliberations of the international maritime fora.

Through its different taught and research programmes and courses, IMLI has trained over 730 maritime professionals in 134 States and territories worldwide who actively participate and contribute not only in the national maritime infrastructures of their respective States, but also in international fora. IMLI's success is best represented in the achievement of its graduates both at the domestic level—where IMLI graduates occupy positions of Heads of State, Ministers, Professors, Attorneys-General, and senior legal advisers—as well as in international fora, particularly, but not exclusively, in the IMO bodies where currently two of the most important committees, i.e. the Legal Committee and the Technical Cooperation Committee are chaired by IMLI graduates. Beyond IMO, IMLI graduates have demonstrated a similar aptitude for success as is best reflected by the appointment of an IMLI graduate to the post of Prosecutor at the International Criminal Court.

The Institute's work has been recognized for the past six years by the United Nations General Assembly through its Resolutions entitled 'Oceans and the law of the sea'. The latest Resolution, A/Res/68/70 of 9 December 2013, highlights:

...the importance of the work of the International Maritime Law Institute of the International Maritime Organization as a centre of education and training of Government legal advisers, mainly from developing States, confirms its effective capacity-building role in the field of international law, and urges States, intergovernmental organizations and financial institutions to make voluntary financial contributions to the budget of the Institute....

IMLI is a small institution with a global mission to provide governments with the expertise necessary to participate in the practice, codification, and progressive development of international maritime law. Over the past twenty-five years it has grown into a centre of excellence which, through its graduates, is leaving its mark in the international maritime community. This success augurs well for more years of service to the rule of international maritime law.

David Joseph Attard
Director

IMO International Maritime Law Institute
Malta

16 July 2014

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