

CENTER FOR OCEANS LAW AND POLICY

CURRENT MARITIME ISSUES
AND THE INTERNATIONAL
MARITIME ORGANIZATION

Edited by
Myron H. Nordquist
and
John Norton Moore



Martinus Nijhoff Publishers

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**CURRENT MARITIME ISSUES
AND THE INTERNATIONAL
MARITIME ORGANIZATION**

LONDON PAPERS

Current Maritime Issues and the International Maritime Organization is part of a series of publications on oceans law and policy associated with the Center for Oceans Law and Policy, University of Virginia School of Law.

This volume is based on presentations made at the Center's Twenty-Third Annual Seminar held at the International Maritime Organization Headquarters in London from January 6-9, 1999. The 1999 program was co-sponsored by the International Maritime Organization and the Center for Oceans Law and Policy.

Prefatory Note

The Center for Oceans Law and Policy (COLP), University of Virginia School of Law holds a seminar each year on a subject of importance to marine affairs. At its Twenty-Second Annual Seminar in Montego Bay, Jamaica, participants familiar with the work of the International Maritime Organization (IMO) piqued the interest of the audience by making repeated references to recently concluded or ongoing negotiations under IMO leadership. A consensus soon emerged that a conference updating the oceans community on IMO activities was desirable, particularly as 1999 marked the fiftieth anniversary of the IMO. The Secretary-General of the IMO, William A. O'Neil subsequently agreed to co-host the Twenty-Third Annual Seminar at IMO Headquarters in London. While highly experienced in hosting international meetings of all kinds, this was the first academic conference of this nature IMO has co-hosted. We believe that the published results of the presentations made there which are included in this book justifies the conclusion that the Secretary-General's decision was a good one.

The first keynote speaker on the program was Sir Robert Jennings, long a distinguished Professor of International Law at Cambridge University and now recently retired as the President of the International Court of Justice. As Sir Robert phrased it, he spoke out on several "bees in his bonnet". The first was the relative neglect of the study of the actual history of international law which he illustrated by briefly referring to key turning points in the history of the law of the sea. His second "bee" was the tendency of academic international lawyers to overemphasize settlement of disputes to the neglect of policy and management analysis. Ms. Glenda Jackson, the United Kingdom Under Secretary of State and Minister of Shipping, was the second keynote speaker. She chose to concentrate her remarks on the need for industry and governments alike to comply with their maritime duties as fully as they asserted their rights. She cited examples in navigation,

Prefatory Note

maritime liability and operational pollution to demonstrate her points. The last keynote address was not delivered in person at the conference but we are pleased to include the text in the written proceedings. The co-editors felt that readers would benefit from the presentation that Satya N. Nandan would have given had he been able to attend. Ambassador Nandan is second to none in expertise on international straits and his paper highlights the increasingly troublesome problem of international cooperation between the users and the bordering States in the Malacca and Singapore straits.

Panel I, devoted to maritime safety issues, was appropriately chaired by Giuliano Pattofatto, the Chairman of the IMO Maritime Safety Committee. Chairman Pattofatto provided an outline of issues addressed by conferences in the 1990s, issues on the Committee's current agenda and issues in the future. His outline was followed by a presentation from Commander (USN) Raul "Pete" Pedrozo who is the Special Assistant for Ocean Policy, Under Secretary of Defense for Policy. He chairs an informal IMO group considering the topic he discussed on international initiatives to combat trafficking of migrants by sea. Norman W. Lemley then spoke on the importance of an industry consensus on timely and effective implementation of the international convention for standards for training certification and watchkeeping for seafarers. The last speaker on Panel I, Professor Valentin Hadjiev of Sofia University Law School, discussed the maritime safety issues in the international straits between the Black Sea and the Aegean Sea.

Barbara S. Moore introduced the speakers on Panel II who were tasked with discussing the general topic of marine environmental protection. The head of the U.S. delegation to the Marine Environmental Protection Committee, Joseph J. Angelo, spoke about the work underway in the IMO. But he also urged that the developed countries as well as the developing countries and open registries act more responsibly. John Briscoe, a San Francisco attorney who advises the UN Compensation Commission, then analyzed Iraq's defilement of

the Gulf. He highlighted Iraq's liability for damages and the UN organ established to adjudicate claims, particularly noting unprecedented legal aspects. John V. Crayford of the IMO rounded out the panel by talking about forthcoming changes to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

Flag State implementation and port State control was the title of Panel III moderated by Nikos Skourtos of the Aegean Institute. J. Ashley Roach, Office of Legal Adviser, US Department of State, reviewed the work of the IMO Sub-Committee on Flag State Implementation. He discussed various alternatives for achieving flag State implementation and quality shipping. The International Transport Workers Federation perspective was then presented by Jon Whitlow who pointed out weaknesses in the current international regulatory regime and made several suggestions for improvements. A representative of the International Chamber of Shipping as well as the International Shipping Federation, Chris Horrocks, presented the view of those organizations on the respective roles of flag States and port States. Lastly, the Senior Deputy Director of the IMO Maritime Safety Division, Fernando Plaza, spoke on the future for flag State implementation and port State control especially relating to safety at sea and the prevention of pollution.

The Vice President of the International Tribunal for the Law of the Sea, Judge Rüdiger Wolfrum, was the first speaker on Panel IV dealing with the IMO interface with the 1982 Law of the Sea Convention. He emphasized that the IMO had adapted its decision-making "to exercise prescriptive powers and to respond effectively and flexibly to the current challenges of marine safety and the protection of the marine environment." David Sagar, next described the origins, structure, satellite system and services of the International Maritime Satellite Organization. This presentation was followed by Shabtai Rosenne's comments stressing the close intercommunication between IMO navigation and protection of the marine environment activities and the governing provisions

Prefatory Note

in the 1982 Convention. Lastly, Agustín Blanco-Bazán of the IMO legal office discussed the evolution of the correlation between the IMO and the 1982 Convention including views on how the relationship could be analyzed as treaty law.

After an introduction by Panel V Moderator, Sam Menefee, Rosalie P. Balkin, Director of the IMO Legal Affairs and External Relations Division, traced the history of the establishment and work of the IMO Legal Committee over a fifty-year period. Captain Malcolm Williams (USCG) then discussed two trends related to compensation for maritime claims, namely the expanded use of strict liability regimes and the requirement of proof of financial security. The President of Comité Maritime International, Patrick Griggs, highlighted the need for the IMO Legal Committee to produce instruments based on a careful analysis of national laws. The IMO legal issues panel concluded with observations by John Wren from the British Department of Environment, Transport and Regions, on the Hazardous and Noxious Substances Convention.

The final panel was devoted to broader questions of IMO regulations and oceans policy. Gerhard E. Kurz, President of Mobil Shipping and Transportation, offered observations from the perspective of an operator as well as an end user of IMO maritime laws and regulations. Professor Patricia Birnie, former Director of the IMO International Maritime Law Institute, Malta, spoke not only on IMO responsibilities with respect to the 1982 Convention but also with respect to the “principles, programmes and conventions adopted by the United Nations Conference on Environment and Development.” She specifically urged the IMO to work more diligently toward sustainable development. The last substantive speaker, David T. Edwards, Director of the IMO Technical Cooperation Division, covered the technical assistance provided by the IMO to help developing countries comply with international rules and standards relating to maritime safety and pollution prevention.

Prefatory Note

The conference on current maritime issues and the IMO concluded with remarks from the two hosts: Secretary-General O'Neil and Professor Moore. Both expressed the opinion that the meeting had accomplished its objective of providing an update on the first fifty years of the IMO while looking ahead to its future in the 21st Century. The pages that follow offer the opportunity for readers to judge that issue for themselves.

Note by the Co-Editors

The materials in this book are edited versions of presentations made at the Twenty-Third Annual Seminar of the Center for Oceans Law and Policy. The 1999 seminar was co-hosted with the International Maritime Organization (IMO) and was held from January 6-8, 1999 at the IMO headquarters in London. The IMO support was invaluable not only because its stature encouraged participation by leading experts on current maritime issues, but also because the administrative staff of the IMO are highly experienced in hosting international meetings and IMO facilities are tailor-made for this purpose.

The co-editors accept full responsibility for the preparation of the materials in this book. At the same time, Lauren Greenwood, who did virtually all of the detailed editing, deserves special recognition for her outstanding work in getting the materials in camera ready form. Administrative support essential for the conduct of the seminar was provided by Center staff Kay and Kathy Wood under the able supervision of the Center's Executive Administrator, Donna Ganoe. Finally, a particular note of appreciation goes to Rosalie Balkin at the IMO whose common sense as well as substantive knowledge was indispensable to the success of the seminar and the publication of this volume.

Myron H. Nordquist
John Norton Moore

Co-editors
June 1999

CONTENTS

Prefatory Note	xi
-----------------------------	----

Note by the Editors	xvii
----------------------------------	------

Welcoming Remarks

<i>William O'Neil</i>	3
<i>John Norton Moore</i>	7

Keynote Addresses

<i>Sir Robert Jennings</i>	11
<i>Glenda Jackson</i>	19
<i>Satya N. Nandan</i>	27

Panel I Maritime Safety Issues

Giuliano Pattofatto, Moderator

Pressing Safety Issues and the International Maritime Organization

<i>Efthimios Mitropoulos</i>	45
------------------------------------	----

International Initiatives to Combat Trafficking of Migrants By Sea

<i>Raul A. Pedrozo</i>	53
------------------------------	----

The Importance of Industry Consensus Standard to Timely and Effective Implementation of the International Convention for Standards for Training Certification and Watchkeeping for Seafarers

<i>Norman W. Lemley</i>	85
-------------------------------	----

Table of Contents

**Maritime Safety Issues and the International Legal Regime of
the Strait of Istanbul, the Strait of Canakkale and the Sea of
Marmara**

Valentin Hadjiev95

Panel II Marine Environmental Protection Issues

Barbara S. Moore, Moderator

**The International Maritime Organization and Protection of the
Marine Environment**

Joseph J. Angelo105

**Iraq's Defilement of the Gulf Environment and the Damages
Awards to Issue**

John Briscoe113

**Forthcoming Changes to the International Convention for the
Prevention of Pollution from Ships (MARPOL 73/78)**

John V. Crayford133

**Panel III Flag State Implementation and Port State
Control**

Nikos Skourtos, Moderator

**Alternatives for Achieving Flag State Implementation and
Quality Shipping**

J. Ashley Roach151

Maritime Concerns of the International Transport Workers' Federation

Jon Whitlow 177

Thoughts on the Respective Roles of Flag States and Port States

J. Christopher S. Horrocks 191

The Future for Flag State Implementation and Port State Control

Fernando Plaza 199

Panel IV IMO Interface with the Law of the Sea Convention

John Norton Moore, Moderator

IMO Interface with the Law of the Sea Convention

Rüdiger Wolfrum 223

Inmarsat: Interface with UNCLOS and Other Legal Issues

David Sagar 237

The International Maritime Organization Interface with the Law of the Sea Convention

Shabtai Rosenne 251

IMO Interface with the Law of the Sea Convention

Agustín Blanco-Bazán 269

Table of Contents

Panel V: IMO Legal Issues

Samuel Pyeatt Menefee, Moderator

The Establishment and Work of the IMO Legal Committee

Rosalie Balkin 291

Trends in the IMO Legal Committee

Malcolm Williams. 309

IMO Legal Issues

Patrick Griggs 327

The Hazardous and Noxious Substances Convention 1996

John Wren 335

Panel VI Implementing IMO Regulations and Oceans Policy

Myron Nordquist, Moderator

Implementing IMO Regulations and Oceans Policy

Gerhard E. Kurz 353

Implementation of IMO Regulations and Oceans Policy Post-UNCLOS and Post-UNCED

Patricia Birnie 361

Table of Contents

**Technical Assistance: A Tool for Uniform Implementation of
Global Standards**

David Edwards 391

Commentary

James Cowley 421

Concluding Remarks

William O'Neil 431

Welcoming Remarks
and
Keynote Addresses