

2007

## The Complications Legal Issue Of Balancing The Needs Of The Shipping Community And Protecting Coastal Environments A Review Of Places Of Refuge For Ships: Emerging Environmental Concerns Of A Maritime Custom

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### Recommended Citation

Jon M. Van Dyke, *The Complications Legal Issue Of Balancing The Needs Of The Shipping Community And Protecting Coastal Environments A Review Of Places Of Refuge For Ships: Emerging Environmental Concerns Of A Maritime Custom*, 13 *Ocean & Coastal L.J.* (2007). Available at: <http://digitalcommons.maine.gov/oclj/vol13/iss2/8>

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THE COMPLICATED LEGAL ISSUE OF  
BALANCING THE NEEDS OF THE SHIPPING  
COMMUNITY AND PROTECTING  
COASTAL ENVIRONMENTS  
A REVIEW OF PLACES OF REFUGE FOR SHIPS:  
EMERGING ENVIRONMENTAL CONCERNS OF A  
MARITIME CUSTOM

*Jon M. Van Dyke\**

This book is a well-written and well-organized collection of essays about the difficult problem of what a crowded world properly concerned about protecting its coastal resources and populations from pollution and danger should do about ships in distress seeking refuge.

Historically, ships damaged from internal failures or weather disasters have sought refuge in protected coastal areas, and have generally been given the assistance required. But leaking oil tankers, ships with hazardous cargoes, and ships that are unseaworthy are no longer welcome in most coastal communities, particularly in those populated areas that would be best-equipped to provide the services needed in an emergency.

In twenty essays and 557 pages, the editors and authors provide rich historical background regarding the practices of coastal communities in previous centuries, giving numerous examples. The authors explain that shipping disasters in the past several decades have reopened the question of whether coastal communities must provide refuge, and many authors discuss the notable recent examples of “state practice,” such as the refusal of Mediterranean countries to provide refuge to the *Castor* in late 2000 and early 2001, and the November 2002 break up of the single-hull tanker *Prestige* off the coast of Spain, which raise the question whether a duty to provide shelter exists. The relevant treaties are discussed in considerable detail, and the authors struggle with the question of why the right to seek

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refuge, and the responsibility to receive and assist distressed vessels have never been codified with rigor in any treaty.

Many of the authors address the current status of customary international law on this topic, concluding that the matter is still in flux and that the world community needs to give further attention to the rules that apply. The final section of the book looks at the practices of specific countries (Australia, Belgium, the United Kingdom, Denmark, Germany, the United States, and Canada) for examples of national approaches to this problem.

Should specific locations be designated as “places of refuges” that ships in distress can go to? That approach might facilitate the contingency planning necessary to provide the essential services, but ships do not have crises in an orderly fashion and a vessel in distress may be no where near a designated location when disaster strikes. Also, what community wants to put out a welcome mat for ships leaking dangerous cargoes?

Is there a right under customary law or treaty law for a commercial vessel to enter into a port of another country? Does a coastal country have a right to refuse such entry pursuant to its “right of self-defense”? If a distressed ship does come into a port for assistance, does the coastal country then have jurisdiction over the ship in distress? Does the port offering assistance have the right to charge for its services, and, if so, should the charge be determined in the same manner that charges exacted by salvors are determined? Ports may experience considerable disadvantages when accepting a distressed ship, including lost commercial opportunities because of limited space and negative impacts on nearby tourist locations. What are the rules governing liability and what role does the insurance industry play in this matter?

The 2003 International Maritime Organization’s (IMO) Guidelines on Places of Refuge for Ships in Need of Assistance are discussed in detail, and it is explained that these Guidelines, although clarifying the need to balance environmental concerns with the protection of shipping, do not specifically recognize a legal obligation to provide refuge. Professor Chircop explains that the compromise text found in these Guidelines “suggests that the traditional right of refuge has been made subject to the paramount principle of coastal state protection.”<sup>1</sup>

This book contains careful and thoughtful discussions of the emerging principles of international law governing environmental issues in the coastal and offshore waters. Olof Linden discusses the coastal issues with care and skill. William Ritchie addresses the environmental dimensions of the 2003

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1. PLACES OF REFUGE FOR SHIPS: EMERGING ENVIRONMENTAL CONCERNS OF A MARITIME CUSTOM 43 (Aldo Chircop & Olof Linden eds., 2006).

IMO Guidelines. Jens-Uwe Schroder analyzes the risk assessment process necessarily involved in any decision to provide refuge to a distressed vessel, and includes the results obtained from surveying what countries actually do at the present time within their own bureaucracies and in relation to other countries. Rosa Mari Darbra Roman focuses on ports and the burdens imposed upon them when a failing ship containing a dangerous cargo seeks to come into the port.

Aldo Chircop has two fine essays at the heart of the volume, examining “The Customary Law of Refuge for Ships in Distress” and “Law of the Sea and International Environmental Law Considerations for Places of Refuge for Ships in Need of Assistance.” The former explains the nature of customary international law formation and then provides a thorough survey of state practices through the centuries, concluding that although the custom of providing refuge “has demonstrated durability, relevance and flexibility—an ability to evolve,”<sup>2</sup> nonetheless in the present era emerging “competing principles (such as protection and precaution) [ ] may override aspects of the custom” of providing refuge.<sup>3</sup> The latter examines rules governing navigational passage and those designed to protect the marine environment, focusing on the precautionary principle in some detail.

The editors have done a careful and thorough job of editing this volume. Although no one would call it a “page-turner” because it deals with complicated legal materials, the essays are remarkably readable and even engrossing for those concerned about this topic. In his introduction, Edgar Gold explains that the essays emerged from a research project at the World Maritime University at Malmo, Sweden, and that institution should certainly be thanked for facilitating the production of this important book. It should be in the library of everyone concerned about how to balance the needs of the shipping community with the protection of coastal environments, and it will provide useful analysis and ideas for students and scholars for many years to come.

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2. *Id.* at 229.

3. *Id.* at 222.