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REGULATION OF VESSEL-SOURCE MARINE POLLUTION

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VESSEL-SOURCE MARINE POLLUTION, THE LAW AND POLITICS OF INTERNATIONAL REGULATION. By *Alan K. Tan*, Cambridge University Press, 2006. Pp. 416.

This excellent monograph by Alan Tan examines the historical development and current content of international regulation of vessel-source marine pollution as well as the range of State and non-State interests that have shaped and continue to shape this regulatory activity. As the text's focus is on the latter element, it conveniently complements previous research that has primarily focused on international law relating to vessel-source marine pollution. As such, Dr. Tan has intended his research to build on, and to provide a welcome update of, the well-known works of Abecassis, Gold, M'Gonigle and Zacher, Mitchell, and others. There is no doubt that he has succeeded in this respect.

Aside from the comprehensive Tables of Conventions, Instruments, Legislation, and Cases, the monograph consists of three parts. Part A, 'The Regulation of Vessel-Source Pollution in its Eco-Political Context,' is subdivided into two chapters: chapter one, 'Vessel-Source Pollution, the Ecological Imperative and the Compliance Problem,' and chapter two, 'The Dynamics of the Law-Making Process: Actors, Arenas and Interests.' Part B of the text, 'Vessel-Source Pollution and the International Legislative Process,' consists of four chapters, namely chapter three, 'Vessel-Source Pollution and Regime Formation,' chapter four, 'Jurisdiction over Vessel-Source Marine Pollution,' chapter five, 'Implementation and Compliance,' and chapter six, 'Liability and Compensation.' Finally, part C, 'The Future of Regulation' consists of chapter seven, 'Challenges and Prescriptions.'

In chapter one, Tan lays out the objectives, scope, and outline of the monograph and briefly summarizes the main issues that will be dealt with,

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as well as hinting at possible regulatory reform that could resolve some of the most pressing problems. In line with the monograph's character, Tan devotes little attention to juridical definitions. Therefore, the definitions of flag, coastal, and port State are very straightforward, taking little account of standard and potential scenarios for exercising prescriptive and enforcement jurisdiction in this sphere of international regulation.

Tan next provides an introductory overview of the environmental, safety, security, military, and socio-economic interests of maritime and coastal States and other actors (shipowners, operators, cargo owners, charterers, insurers, classification societies, and non-governmental organizations). Tan also explores the arenas in which these interests are to be balanced, focusing primarily on the International Maritime Organization (IMO). Subsequently, chapters three and six outline the various interests that sparked the historical development and current content of specific aspects of the international regulation of vessel-source marine pollution. For example, Tan examines the load-on-top (LOT) system, the double hull requirement, vessel-source air pollution, harmful aquatic organisms and ballast water management, as well as the 1969 and 1971 Civil Liability and Fund Conventions.

Of particular interest are Tan's many recommendations in chapter seven on potential reform of the international regulatory process and the body of international regulation *per se*. Tan recommends methods to ensure market discrimination against sub-standard shipping by introducing liability for non-shipowners (e.g. cargo owners, charterers, and classification societies) and making registration in developed States attractive (thereby ensuring higher flag State performance), *inter alia*, by the use of taxes or other disincentives for relevant nationals and a global approach to port State control that addresses the shortcomings of regional port State control. The latter is currently also considered in the sphere of the international regulation of marine capture fisheries.

None of Tan's recommendations relate to the modification of the international legal framework—in particular the balance in jurisdiction and interests struck by the 1982 United Nations Convention on the Law of the Sea—between coastal States, port States, flag States, and the international community as a whole. Nevertheless, Tan does advocate that procedures should be adopted within IMO to approve measures to protect natural resources within the maritime zones of coastal States upon the latter's request. It seems that this would address his concern that “the whole history of marine pollution regulation over the past 80 years or so has essentially been a chronicle of the gradual retreat of exclusive flag state

control and the concomitant expansion of coastal and port state jurisdiction.”¹

Many of Tan’s recommendations concern IMO. He not only advocates that IMO should pursue more pro-active rule-making, preferably by establishing a new IMO body or by mandating the IMO Secretariat with such a role, but also that the IMO Secretariat should be given powers to assess the performance of flag States and other actors. The latter recommendation is inspired by IMO’s Voluntary Member State Audit Scheme. It is interesting in this context to point to currently increasing support within the sphere of marine capture fisheries for performance assessments, especially for regional fisheries management organizations. The IMO scheme is building on a similar system developed by the International Civil Aviation Organization, thus pointing to broader support for accountability in and by global institutions.

In his final thoughts, Tan acknowledges that some recommendations appear at first sight mutually exclusive, but he convincingly argues that at second glance they are in fact compatible. Still, the list of recommendations is so extensive and ambitious that the majority of them are not likely to be implemented in the coming years. This, of course, should not stop academics from making such arguments; hopefully policy makers will seriously consider these types of recommendations.

1. Alan Tan, *Vessel-Source Marine Pollution, The Law and Politics of International Regulation* 19 (2006).