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A COMPREHENSIVE TREATISE ON MARITIME LAW FOR STUDENTS AND PRACTITIONERS

*Martin A. Rogoff**

DROITS MARITIMES. By *Jean-Pierre Beurier* (ed.). Paris, Éditions Dalloz, 2006. Pp. 1,008

The oceans and coasts of the world are vast and form a natural unity. The human activities that take place in that space are many and varied. Although there have at times been relatively long periods of stability in this immense domain, during the past half century changes in the technological, economic, political, and military environments in which these activities take place have dramatically accelerated. As in all arenas of human endeavor, in the maritime domain, too, there is need for order, the resolution of conflicts, and the protection of common interests. It is the function of law and legal institutions to perform these essential tasks. Just like the interconnectedness of the activities, interests, and concerns of those who are involved in or affected by those activities, the law and legal institutions that pertain to maritime and coastal areas must necessarily be similarly comprehensive and interconnected. As Professor Jean-Pierre Beurier puts it in the Foreword to *Droits Maritimes*, there is “an indispensable complementarity of the legal disciplines connected to the sea and [a] necessary pluridisciplinarity.”¹ The greatest virtue of the volume under review here is that it presents the complex, seemingly diverse bodies of law which relate to maritime areas in a comprehensive fashion and stresses the necessary interconnections between them. In this way it breaks down the barriers created by traditional legal categorization to allow particular legal problems, transactions, and disputes to be seen and analyzed holistically, taking into consideration all relevant legal principles and policies.

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1. DROITS MARITIMES ix (Jean-Pierre Beurier ed., 2006) [hereinafter DROITS MARITIMES]. See also *id.* at 4 (“[The bodies of law which pertain to the maritime realm] are thematic, complementary, and possess large areas of interdisciplinary overlap.”).

The volume here under review represents a complete reworking of its three-volume predecessor published under the direction of Professor Yves Tassel, but is inspired by a similar philosophy, which is to stress “the strong interpenetration of different branches of law in the resolution of legal questions—especially those involved in litigation—related to the complex world of the oceans.”² Legal problems in this domain “have made obsolete the traditional division between public law and private law, labor law and international law, commercial law and environmental law.”³ Whereas the earlier work was directed principally toward providing a text for advanced students in the maritime law program in the Centre de Droit Maritime et Océanique at the Université de Nantes (CDMO), with which both professors Beurier and Tassel, as well as the other contributors to *Droits Maritime* are affiliated, the present volume has a “strongly professional orientation.”⁴

Consistent with its stated mission, *Droits Maritimes* deals comprehensively with ocean and coastal law. It is divided into nine parts: the history and sources of maritime law, the international law of the sea, the maritime law of the European Union, private maritime law, labor law pertaining to seafarers, coastal law, port law, the law pertaining to the exploitation of ocean resources, and the protection of the marine environment. *Droits Maritimes* represents the work of eight authors, but its different parts are well-integrated, common themes are developed and pursued, and interconnections are stressed. In his introductory contribution entitled “The Sources of Maritime Laws,” Professor Beurier points out that each of the bodies of law to be considered is similarly marked by “the complexity of the physical environment of the hydrosphere, the importance of historical tradition, the pragmatism of solutions to problems, and the spirit of compromise.”⁵ He continues by identifying two principal unifying themes for maritime law at the beginning of the twenty-first century: the tension between economic and ecological interests, with economic interests usually prevailing;⁶ and legal evolution in response to technological evolution, which risks upsetting the prior equilibrium.⁷

2. *Id.* at ix.

3. *Id.*

4. *Id.*

5. *Id.* at 4.

6. *Id.* at 11 (“The legal regimes in force take the form more of an economic compromise to sustain commercial activity than an ecological agreement to safeguard the ecosystem.”).

7. *Id.* (“The extraordinary advance in oceanic technology since 1960 engendered a stampede toward the sea and a resulting legal frenzy, both the defensive assertion of vested rights by some and the aggressive assertion of new rights by others.”).

The interdisciplinary orientation of *Droits Maritimes* is in marked contrast to the prevailing way of conceptualizing and organizing the various bodies of law that relate to ocean and coastal space in the United States. Although the French legal system, as well as French jurists and legal academics, are famous for their strict division of law into public law and private law, whereas their American counterparts make no such clear distinction, focusing more on the transaction or legal problem to be resolved and seeking guidance in all potentially applicable law, *Droits Maritimes* represents a departure from the French model and is conceptually more in tune with American ways of thinking about law. Ironically, however, American jurists and legal academics have by and large not applied a similar interdisciplinary approach in their considerations of law in this area. For instance, American treatises⁸ and law school casebooks⁹ deal almost exclusively with either the public law of the sea or private maritime law, rarely with both.

The introductory part of the volume continues with an historical overview of maritime law beginning with the ancient world, written by Professor Emeritus Philippe-Jean Hesse.¹⁰ After describing the principal uses of ocean space throughout history (for food; as a means of exchange for people, ideas, and goods; and as a vector of imperialism),¹¹ he discusses the principal periods of maritime history (the period of “the sail and the oar”¹² and the last two centuries of “disruptions”¹³). Each period is subdivided into coherent and useful parts, and each of these subdivisions is described from three perspectives: the economic, technological, and political environment (i.e., the maritime activities of the period and the

8. See, e.g., THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW (4th ed. 2001) (private law); FRANK L. MARAIST & THOMAS C. GALLIGAN, JR., ADMIRALTY IN A NUTSHELL (5th ed. 2005) (private law); LOUIS B. SOHN & KRISTEN GUSTAFSON, THE LAW OF THE SEA IN A NUTSHELL (2nd ed. 2006) (public law); DONNA R. CHRISTIE & RICHARD G. HILDRETH, COASTAL AND OCEAN MANAGEMENT LAW IN A NUTSHELL (2nd ed. 1999) (public law).

9. See, e.g., FRANK L. MARAIST, THOMAS C. GALLIGAN, JR. & CATHERINE M. MARAIST, CASES AND MATERIALS ON MARITIME LAW (2003) (private law); DAVID W. ROBINSON, STEVEN F. FRIEDEL & MICHAEL F. STURLEY, ADMIRALTY AND MARITIME LAW IN THE UNITED STATES (2001) (private law); TED L. MCDORMAN, ALEXANDER J. BOLLA, DOUGLAS M. JOHNSTON & JOHN DUFF, INTERNATIONAL OCEAN LAW: MATERIALS AND COMMENTARIES (2005) (public law); JOSEPH J. KALO, RICHARD G. HILDRETH, ALISON RIESER, DONNA R. CHRISTIE & JON L. JACOBSON, COASTAL AND OCEAN LAW: CASES AND MATERIALS (2nd ed. 2002) (public law).

10. Notable here is an extensive bibliography. DROITS MARITIMES at 14-15, 19-26, 50-52. While most of the sources cited are in French, many are in English.

11. *Id.* at 17.

12. *Id.* at 19-49.

13. *Id.* at 50-62.

technological changes that occurred during the period); the sources of maritime law during the period; and the principal contributions of the period to the development of maritime law. As for the last third of the twentieth century, Professor Hesse calls attention to three significant changes in the maritime environment: the decolonization movement that followed the Second World War, the impact of air navigation on the movement of people and goods, and the great increase in the size of ocean-going vessels.¹⁴ And of course the “veritable technological revolution,” which has affected all aspects of marine-related activities.¹⁵

Each of the next eight parts of *Droits Maritimes* deals with a specific area of the law that pertains to the ocean and coastal domain. Each part is subdivided into short chapters that schematically describe the law in each of these areas. While intended as a guide for practitioners as well as students, for practitioners the material provided, given its brevity, is more of a starting point for research and analysis than a comprehensive presentation that is sufficient in itself. Each chapter is usefully prefaced with an enumeration of the principal applicable legal texts, the principal applicable judicial decisions, a bibliography of secondary sources (including references to internet sites where appropriate), and a presentation of the principal questions that relate to the law in the particular area. Those chapters that deal with matters that may be the subject of litigation (like ship construction contracts, maritime collisions, or maritime insurance) also include indications of statutes of limitations pertaining to such litigation. If an understanding of an area of the law requires certain geographic, geologic, economic, or technical background, that information is briefly provided. For instance, in his chapter entitled “The vessel as an object of exchange: sale and purchase of the vessel,” Professor Martin Ndende calls attention to the complex set of economic, social, and political factors involved in the sale of vessels.¹⁶ And if an understanding of the broader legal context in which a particular legal question is situated is necessary, that context is provided. Thus, in his chapter dealing with maritime insurance, Professor Yves Tassel describes the diverse kinds of insurance available and the general legal regime for the regulation of insurance in France;¹⁷ and in his chapter on the freedom of movement of seamen in the European community, Professor Patrick Chaumette describes the general

14. *Id.* at 59.

15. *Id.*

16. *Id.* at 211.

17. *Id.* at 364-66.

principles of freedom of movement for workers within the community and the requirement of equal treatment for community nationals.¹⁸

The coverage of the international law of the sea (by Professor Beurier), after a general historical overview of its legal evolution during the last forty years, is organized in a traditional manner. Its several chapters deal with waters proximate to the coast (internal waters, the territorial sea, the contiguous zone, and maritime boundary delimitation), the continental shelf, the exclusive economic zone, the high seas, and areas beyond national jurisdiction. It also includes a useful introduction to the International Tribunal for the Law of the Sea.¹⁹ The next part (by Professor Patrick Chaumette), dealing with community maritime law (except for the regulation of fisheries, which is covered in a later section), highlights the interrelation of national law and community law, indicating how European law has “overturned the national context of [legal regulation] of maritime activities.”²⁰ It also calls attention to the slow development of European law in this domain, deriving initially from the lack of attention to this area in the founding treaty of the community. Needed community regulation ultimately evolved based on a variety of provisions, like those calling for a common agricultural policy (which were employed to regulate fisheries) and a common transportation policy, those relating to the freedom of establishment or the freedom to provide services, and those intended to protect competition.²¹

The next two parts deal with matters of particular interest to practitioners of private maritime law, including maritime labor law, and occupy nearly one-third of the total volume. Here the focus is heavily on French domestic law, although European community law and international law are referenced when appropriate. Practical matters such as ship construction contracts, contracts for the sale of vessels, the seizure of vessels, maritime mortgages and liens, charter parties, contracts for the transport of goods and passengers, marine insurance, maritime collisions, etc. are covered, as are maritime contracts of employment and social security regimes applicable to seafarers. Two particularly interesting chapters (by Patrick Chaumette) discuss the gradual Europeanization and internationalization of maritime labor law from its originally highly domestic orientation²² and the diversity of sources of maritime labor law.²³

18. *Id.* at 165.

19. *Id.* at 135.

20. *Id.* at 144.

21. *Id.* at 146.

22. *Id.* at 416-19.

23. *Id.* at 420-39.

Maritime space includes not only the oceans, but also ports and adjacent coastal areas. The law pertaining to each of these domains receives full treatment in *Droits Maritimes*. In his chapter on the objectives and scope of application of coastal law, Professor André-Hubert Mesnard highlights the competing interests in coastal areas (inhabitants, fishermen, aquaculturists, recreational users, etc.) and stresses the cultural significance of such areas (“the meeting place of [the four classical elements:] water, earth, air, and fire (the sun)”) ²⁴ which gives so much intensity to conflicts in this zone. Here, of course, attention is devoted almost exclusively to French domestic law, like the Urban Code (which contains a 1986 law for the management, development, and protection of coastal areas in its chapter VII entitled “Provisions specific to the coast”) and the Environmental Code (which contains a title on provisions applicable to coastal areas). In his section on port law, M. Robert Rézenthel, Secretary General of the International Association of Port Lawyers and CDMO lecturer, highlights the “transversality” of port law, where “public law and private law intersect, under the more and more frequent mediation of [European] community law.” ²⁵ Port law is particularly complex in that international law (like the Geneva Convention of 1923 on the International Regime of Maritime Ports), European law (like Directive 2001/96 of 2001, establishing requirements and procedures for the safe loading and unloading of bulk carriers), and French law (the Code of Maritime Ports, administrative law—like decisions of the Council of State, as well as certain aspects of private law) are all potentially applicable in a given situation. ²⁶

The last two parts of *Droits Maritimes* deal with the exploitation of ocean resources (by Professor Beurier and Gwenaëlle Proutière-Maulion, Director of the Centre de Droit Maritime et Océanique) and the protection of the marine environment (by Professor Beurier). The section on ocean fisheries is introduced by three chapters which provide an excellent synopsis of the rather complex developments in this area, dealing respectively with the evolution of the international law of marine fisheries, the emergence of regionalism, and the triumph of the coastal state. The European Union’s Common Fisheries Policy receives full treatment, and French regulation of coastal fisheries is discussed in detail. The laws pertaining to aquaculture, the exploitation of mineral resources (oil, deep-sea mining), and the conservation of marine resources are also covered.

24. *Id.* at 524.

25. *Id.* at 642.

26. *Id.* at 644-45.

Any review of *Droits Maritimes* must say something about the Centre de Droit Maritime et Océanique,²⁷ which is one of the premier maritime law programs in the world. Established in 1970 by Professor Emmanuel Du Pontavice, the CDMO is now one of nine centers for the study of the marine and coastal environment at the University of Nantes. There are presently eleven faculty members, specialists in various aspects of marine law, both public and private, who teach in the program. The CDMO offers masters and doctoral degrees in maritime law, and attracts students from throughout France and the world.²⁸ In 1974, the CDMO commenced the publication of the *Annuaire de droit maritime et océanique*, which soon established itself as a major international publication in the marine law area, bringing together articles by leading French and foreign scholars. The CDMO also publishes *Neptunus*, an electronic journal, which disseminates the work of CDMO students and faculty, and which also invites contributions on marine law subjects, in French or English, by other French and foreign students, academics, practitioners, and public officials. *Droits Maritimes* is representative of the multi-dimensional expertise and high-quality work product of the CDMO faculty.

27. Centre de Droit Maritime et Océanique website, <http://www.droit.univ-nantes.fr/labos/cdmo/centre-droit-maritime-oceanique/cdmo/cdmo/cdmo.php> (last visited Oct. 17, 2007).

28. There are presently 25 doctoral students at the CDMO.

