Preface

The purpose of this book is to identify the role of environmental norms in the making and enforcement of contemporary maritime law. This is attempted through the examination of a variety of sources of private and public law. While this book is a technical legal analysis, my commitment to it originates in my cultural background and professional occupation, both of which are linked with the sea.

From a very young age I have been fascinated by the underwater world. By observing it for five decades I have witnessed pollution and adverse changes in biodiversity, effects which are documented globally. During the same period the environmental principles first introduced in the 1972 Stockholm Declaration became points of reference for states, political movements and inter-governmental negotiations. The nebulous concept of sustainable development has become the holy grail of the global community.

Maritime law did not remain unaffected by these developments. Both the Law of the Sea and the international regulation of shipping have been profoundly impacted by the need for environmental protection. Indeed, every time a new regulation is agreed at the International Maritime Organization, the maritime sector, which in my terminology includes governmental departments represented at the IMO, shipping companies and various non-governmental organisations, hail the newly adopted rules as steps taken by society towards sustainability.

Science, however, insists that most environmental indicators are worsening with time and that society should be concerned not only about the localised problems caused by catastrophic incidents but also by the accumulation of pollutants and the reduction of the resilience of the marine environment caused by the combined effects of human activities, including shipping.

This state of affairs poses an important problem. Assuming that our guiding environmental principles are valid why is it that the extensive maritime regulatory framework that they underpin is proving ineffective in protecting the marine environment? This is how the theme of this book developed.

This book examines the law-making process and the extent to which it relies upon environmental norms and also analyses the adopted legal instruments against the guiding environmental principles. It further looks at implementation laws, maritime contracts, the limitation of liability and ship arrest arrangements, questioning whether the complex legal system they form has

fully accommodated these principles. The emerging picture suggests that despite the extensive regulatory framework that has been developed due to the efforts for environmental protection, environmental norms and principles are not guiding the negotiations at the IMO and as a result the adopted instruments are not compliant with them.

There are two main reasons for this effect: first, the superiority of norms on international law such as the freedom of navigation, which prohibits capable states from controlling foreign ships while these are underway outside their territorial waters; and, second, sectoral norms which have been developed within the IMO because of the way it was originally constituted but also because of the dominating influence that the shipping and trade interests have in terms of participation in the IMO governments and NGOs. These norms operate as barriers to sustainable development because they always prioritise the financial interests of the shipping industry without much consideration to the level of protection of the marine environment required for sustainability to become a realistic possibility. To make shipping a contributor to sustainable development it is not enough to adapt the narrative provided by the sector so as to include the environmental principles. The sectoral norms must be balanced by the need to diminish the environmental impact of shipping. This must be achieved as quickly as possible and requires the development of financial incentives for the industry to invest in “green” ships, the adoption of operational, in addition to engineering, solutions, a renewal (or retrofitting) of the fleet and an optimisation of the combined capability of states to effect change, increase standards, police the seas and ensure that the remediation and restoration efforts, paid for by the polluter, will be subject to a precautionary approach. Thus grandfathering clauses should be removed by short periods for adjustments, exceptions from environmental performance should not be granted for operational purposes, and more should be done by the richer and larger states, the basis of a proposed interpretation of the CBDR principle.

There will be financial consequences because all the suggested changes internalise the costs of environmental degradation. The exact way this will happen needs to be worked out and is not part of this book. A possible future would be one where the part of the shipping sector which invests in ships as assets will be guided towards investing in “green” shipping with the promise of being allowed to trade for longer. There is no reason why a ship designed to operate without any oceanic discharges, except in an emergency, should not be allowed to operate for as long as ships do today. It will, of course, have a smaller earning capacity, due to the need to store what otherwise would have been discharged, but this can be counteracted by making ships that discharge in the ocean pay for these discharges even where these are compliant with MARPOL – pretty much what happens with annual car licences and their emissions. The financial benefits of investing in environmentally benign ships

would then guide the investment towards “green” solutions. It would be up to the industry to decide how to achieve such an outcome. Continuous monitoring of ships for discharges and emissions could be of assistance for such a solution to work. Stopping discharges from ships altogether is, in essence, the equivalent of removing the exclusion of ships from the London Convention – thus the legal principle is already in place. Such a change will diminish the shipping industry’s contribution to many environmental problems but not all.

In the part of the shipping industry which makes money by running the ships, the additional operational costs for a “green” ship will be met by the consumer. These additional costs reflect the cost of environmental protection which is now borne by the taxpayers of coastal states and future generations. Thus the major impact of moving towards ships with no discharges and, hopefully with no harmful atmospheric emissions, would be, in this scenario, to increase the cost of entering the sector, which at the moment is defined by the price of older and dirtier ships.

It is my belief that the shipping industry will be profitable irrespective of the environmental standards imposed. It is the bloodline of international trade and this will not be defeated by the requirement to protect the marine environment fully while making money. The environmental norms provide a useful and flexible framework to achieve the transformation of the shipping industry to its environmentally neutral equivalent. For these to operate efficiently, the governance of international shipping and of shipping companies, as well as the classification societies and financiers must be exposed to their operation.

I hope that this book will contribute to the broader discussion on the way the regulation of ships and shipping should develop so that environmental degradation is stopped and society profits without unnecessarily destroying its heritage.

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