

the duties and responsibilities of flag states, the phenomenon of port state control and the contemporary issue of formal safety assessment (FSA) examined in light of three landmark marine casualties. Chapter 3 is dedicated to FSA and touches on a variety of associated issues including risk, cost benefit and the human element.

The security of ships and ship operations in Chapter 5 is quite intuitive in terms of a new approach proposed by the author for efficient investment. The chapters on piracy (6 and 7) are both informative and interdisciplinary in approach. As mentioned earlier, the chapters in Part II are relatively more elaborate and comprehensive, embracing such important factors as risk management in terms of port security and contemporary developments in the application of the ISPS Code in ports from an Asian perspective.

Overall, the book is undoubtedly an excellent addition to any maritime library. It must be viewed as utilitarian as well as academic in content, suitable for students, teachers, practitioners, managers and administrators in the field of shipping and maritime affairs. The principal author along with his collaborators deserve to be congratulated for producing a book that is at once a sound reader-friendly reference book as well as one that is useful for academics and analysts in the fields covered by the three subjects.

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**The System of Liability of Articles III and IV of the Hague [Visby] Rules**

NJ Margetson

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This monograph appears in the publishers' *International Commercial Law Series* and focuses on the core nature of the liability regime established under the Hague and Hague-Visby Rules. With regard to the province of the book the two versions of the Rules are the same and therefore they will be referred to in this review as the Hague regime. The essential purpose of the author is to undertake a comparative legal analysis of the duties the regime imposes on carriers and of certain of the counterbalancing exclusions which are recognised, together with associated questions relating to causation and the allocation of burden of proof. The duties and exclusions are set out in Articles III(1) and (2), and IV(1) and (2) of the

Hague regime. In pursuing a comparative methodology, the text draws on the English common law, US law and Dutch law, but is prepared to travel even more widely when that contributes to understanding.

The general framework of the Hague regime is largely familiar. The carrier is under two primary duties in relation to the cargo transported, namely a duty to exercise due diligence to make available a seaworthy vessel and a duty to act properly and carefully in relation to the contractual performance functions assumed by the carrier. The former applies before and at the beginning of the voyage; the latter continues throughout the contractual performance. Each, in theory, is breached only upon evidence of fault but in practice they will often appear to carriers to be synonymous with absolute liability, so difficult is it to counter an allegation of fault in the face of loss or damage to cargo in the custody of the carrier. The counterweight to the duties is a long list of exclusions, only a few of which offer a genuine protection against carrier fault, and the length of the list has led many to misunderstand the true extent of the benefit thereby conferred on carriers. Most identify circumstances when the carrier would not be at fault in the first place. The author has chosen to analyse only those which are set out in Article IV(2)(a)–(c) and (q), of which only those identified in paras (a) and (b) are truly exculpatory. The exclusions do not apply to the duty to provide a seaworthy vessel, although the continuing duty of care is expressly declared to be subject to them.

This framework is presented with admirable clarity in Chapters 3 and 4, drawing on relevant primary and secondary sources in the three chosen jurisdictions. This is an area of the law where over a long period of time there has been a substantial amount of judicial activity, producing a not insignificant quantum of case law, which in turn can add to the challenges of comprehension and presentation. The author does not falter when encountering these challenges, with the nature of the law and the debates and issues embedded within it comprehensibly and cogently organised and expounded.

The relationship between the duties and exclusions, and the four categories of exclusion chosen for exposition are analysed in Chapters 4 and 5. This takes us further into the concept of overriding duties, meaning that an exclusion is only applicable if the primary duty has in the first place been properly discharged. There is no doubt that seaworthiness is such a duty, with it significant that the duty is not made subject to the exclusions, but the author proceeds to assert that, in contrast, the duty of care is not overriding in

character. It is true that in the formulation of the duty it is expressly made subject to the exclusions; nonetheless, in English law, the assertion, it is suggested, is not strictly true, although in relation to the exclusions defined in Article IV(2)(a) and (b), it is no doubt true. But more widely the authorities suggest that the exclusions are capable of being displaced by evidence of underlying causal negligence. Thereafter the text proceeds to develop a detailed analysis of the nautical fault, fire and perils of the seas exclusions, and also the catch-all exclusion specified in para (q).

Although not always expressly visible on the face of the Hague regime, issues of causation and burden of proof play a vital role in the functioning of the regime. The right to redress is dependent not only on establishing loss; the loss must have been caused by breach of duty and the same applies when an exclusion is pleaded. The carrier is only excused from the consequences of loss caused by an excluded peril. The text is sensitive to these points and also to the importance of burden of proof, which in the practice of litigation and arbitration may be of vital importance, often representing the difference between success and failure. There continues to survive some uncertainty about the burden of proof in the English common law, whether the traditional rule of litigation applies, with the burden of proof on the cargo claimants, or whether the bailment rule applies, with the burden of proof on the carrier. The author fully engages with this and associated questions, and reveals a full understanding of their importance. The only point on which the Hague regime is crystal clear is that in the face of an allegation of unseaworthiness, the burden of proof is on the carrier to establish due diligence.

There is no shortage of published texts on the Hague regime and its successors, most of which are either of a general character or detailed works of reference. This book falls into another category that may be described as a research monograph and it is all the more interesting and meritorious for that reason. The focus of the book is precise and clear, although the author very sensibly provides some helpful background and context to the Hague regime. The research credentials of the book are reinforced by the content and direction of Chapter 1, where the research objectives and methodology are outlined. Thereafter the text remains true to the adopted course, trawling impressively through the sources, adopting a structured comparative technique, identifying the influences on the development of regime and expounding all with clarity. Without gainsay this is a worthy addition to the literature and the author is to be commended both for what he has sought to do and the dexterity with which he has

executed the task. Whatever the reader's perspective on the carriage of goods by sea, there is profit to be derived from this book. This area of the law is moving fast and it is therefore the kind of book which ought to appear from time to time in new editions and it is to be hoped that both the author and publisher will consider this possibility. The fact that it is published in the English language (apart from a brief Dutch translation of a concluding summary) also adds greatly to its international appeal.

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**Piracy and Armed Robbery at Sea –  
the Legal Framework for Counter-Piracy  
Operations In Somalia and the Gulf of Aden**  
Robln Geiss, Anna Petrig

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I have researched and written on the subject of sea piracy since 1977, having published the first 'book' on the subject in 1980. I have also been a law professor for 32 years and taught seminars on the subjects of international law of the sea and on sea piracy, maritime crimes/jurisdiction. I have approached the topic of sea piracy from environmental and human refugee situations and suggested a 'radical' idea of attacking pirates in territorial waters in the firm belief that attacks on the environment and human refugees rise to the level of 'jus cogens' violations. Lately, I have suggested setting up an international court to try pirates and financiers on a ship, sanctioned by the UN, which will go around on circuit trying pirates – at least on a short term basis. There have been numerous articles and UN materials that have been written on the subject since Somali pirates started upping the ante from simple hijackings to organized criminals financed by sources from both within and without Somalia. Just this past month (May, 2011) an economic study was done on the costs of sea piracy which shows that it has become quite an industry.

This book is an excellent primer for anybody who wishes to learn the subject. It is full of excellent analysis for the most part and delves into many different aspects of sea piracy. It is broken into four main parts and covers material that is essential for an understanding and background of Somali piracy. It is well organized and the authors obviously did their homework. I have a couple of criticisms regarding some of their 'conclusions' which appear to rely on a certain author rather than