

CODIFICATION OF MARITIME LAW

CHALLENGES, POSSIBILITIES
AND EXPERIENCE

EDITED BY
JUSTYNA NAWROT
AND
ZUZANNA PEPEŁOWSKA-DĄBROWSKA

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CODIFICATION OF MARITIME LAW

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Challenges, Possibilities and Experience
Edited by Justyna Nawrot and Zuzanna
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FOREWORD

This book is a collection of presentations from the European Colloquium of Maritime Law Research in Toruń, Poland, 20–21 September 2018. This seminar was the tenth of these biannual colloquia, and the hosts did a wonderful job of organizing the seminar practically and scientifically as well as taking extremely good care of us individually and collectively. They even had a good cultural program to entertain us and broaden our horizons beyond the law. This was certainly a colloquium to remember with great fondness.

I learned a lot at this colloquium by listening and by participating in discussions in the plenary and on the fringes. Some of the presentations were excellent. I cannot imagine anyone actively participating in the colloquium without profiting from it.

The theme in 2018 was Codification of Maritime Law (Challenges, Possibilities and Experience). This echoes the 2000 Oslo theme, Legislative Approaches in Maritime Law. Much has changed over this period. Nevertheless, it is still important that academics reflect on the methods and design of the systems of maritime law, looking beyond individual conflicts.

This was the goal of the seminars from the start in Oslo. The seminars soon became a joint project of the Scandinavian Institute of Maritime Law at the University of Oslo and the Institute of Maritime Law at the University of Southampton. In the early years, Professor Charles Debattista was the director in Southampton, and I was the director in Oslo. The seminar series was an immediate success, and it has never been difficult to find local organizers of the individual seminars. Indeed, a problem over the years has been that so many attend and present at the seminars that they can lose their character as real colloquia with ample time for discussion.

The local hosts over the years have been our sister institutes in Bologna, Nantes, Athens, Swansea, Messina/Palermo, Rotterdam, Bilbao and now Toruń. All have organized excellent seminars. The participants are very grateful, as are we.

The European colloquia are different from the many seminars for practitioners that academics and others organize in maritime law. There is room to discuss principles and tendencies and even academic questions. Discussions can be of a comparative nature, not bound to one legal system. We all love studying the law in action and the cooperation and dialogue with practitioners, and having a good grasp of practical issues is certainly necessary to being a good academic lawyer. However, sometimes it is fruitful to change one's perspective.

An academic perspective is important to lifting the discussion from black-letter law. These days, the pendulum has perhaps swung to the other extreme, so clarifying the law and organizing the case materials in black-letter style are not considered appropriate research

for academic lawyers. Today, blue-sky visions and grand perspectives are in fashion. Personally, I believe that there should and must be room for both approaches, and that should certainly apply in the European colloquia as well.

Just as the European colloquia have helped shape an identity for maritime law researchers and academics as different from practitioners, they have also focused on the European legal culture. It is important to see what unites across language barriers and, for example, across common law and civil law.

A major influence in European law in this century has obviously been the European Union. However, it is fair to say that its influence on contract law in general and maritime law in particular has not been substantial. It is easier to form a political union than a unified system of law or even commercial law. Still, European maritime law academics are confronted with aspects of European Union law every day, particularly in relation to jurisdiction; enforcement and recognition of judgments; and consumers, including passengers. This is a new, common (play)ground for European maritime law academics.

However, Europe is a lot more than the European Union. We have tried to locate the European colloquia in the north and south of Europe as well as the east and west. This has made it possible for us to learn about the differences in legal and general cultures and for every participant to expand his or her network. To me, this has been a particularly fascinating aspect of the European colloquia. I think we know each other better today than we did when the colloquia started.

This book is a reflection of this long process. I believe it is well worth reading – as the culmination of this process and for a number of other reasons.

Oslo, 3 May 2019

PROFESSOR ERIK RØSÆG

PREFACE

As noted by Professor Erik Røsæg in the Foreword, this book is a collection of papers presented at the Xth European Colloquium on Maritime Law Research, organized by the Maritime Law Unit of the Nicolaus Copernicus University in Toruń, Poland, between 20 and 21 September 2018. The conference was held in cooperation with the Scandinavian Institute of Maritime Law at the University of Oslo and the University of Southampton's Institute of Maritime Law. The underlying theme of the conference was 'Codification of Maritime Law. Challenges, possibilities and experience'. Moreover, the book includes several papers which were not included in the conference proceedings, but complement the book, making it more comprehensive.

The issue of maritime law codification can be analyzed from many perspectives. Accordingly, the book is divided into four parts which represent different views on the main topic. The chapters in Part I are dedicated to the problems specific to different aspects and methods of unification of maritime law on a global scale, as well as several specific issues of maritime law from the regulatory point of view. Professor Francis Reynolds discusses difficulties in unification of maritime law deriving from considerable differences between the legal cultures of civil and common law countries. Professor Dr Eric Van Hooydonk provides a historical view on the unification process, raises the contemporary difficulties of maritime law unifications and considers methods of preserving uniformity. Professor Erik Røsæg submits critical analysis of the current state of commercial maritime law unification via international conventions. Professor Andrew Serdy evaluates the drafting technique adopted in respect of the Rotterdam Rules from the perspective of a public international law specialist. Professor Andrew Tettenborn provides pros and cons of different types of maritime law codifications: via national codes, international conventions, soft law and standard forms. Professor Juan Pablo Rodríguez Delgado refers to advantages and obstacles to the harmonization of maritime law by international conventions and comments upon the success of the 2001 Cape Town Convention on International Interests in Mobile Equipment, deliberating on whether that success may be replicated in the field of maritime law. Milagros Varela Chouciño discusses discrepancies between EEA and EU maritime transport law and challenges it creates, as well as suggesting some legislative simplification techniques. Dr Julia Constantino Chagas Lessa shares an analysis of the Maritime Labour Convention's characteristics, justifying its success as the codification of seafarers' minimum rights at an international level.

Part II of the book consists of those papers that centre on the issue of transport of goods. Professor Rhidian Thomas provides a critical review of the Rotterdam Rules, emphasizing their lack of the quality of commercialism. Dr Jingbo Zhang presents her thoughts

in connection with the Uniform Customs and Practice for Documentary Credits and its shipping provisions, arguing that they are not entirely satisfactory. Dr Elena Orrù explores the issue of a suitable legal regime for electronic bills of lading. Dr Daniel Dąbrowski and Dr Konrad Garnowski provide a critical view on regulation of the multimodal carriage of goods under the Rotterdam Rules, pointing to deficiencies of adopted solutions. Patryk Ciok analyzes national solutions in respect of the multimodal carrier's liability regime.

Part III is dedicated to codifications of carriage of passengers, cruise law and leisure navigation. Professor Juan L. Pulido Begines discusses codification of sailing and leisure navigation, referring to Spanish and Italian legislation. Richard Coles analyzes the legal framework for the commercial yacht charter industry in the United Kingdom. Dr Olena Bokareva examines the international and regional codification of liability and compensation issues in relation to cruise passengers.

Finally, Part IV addresses national codifications of maritime law. Professor Souichirou Kozuka analyzes reform of Japanese maritime law. Professor José Manuel Martín Osante explores legislative techniques adopted in the Spanish Maritime Navigation Law in order to coordinate national maritime law with international conventions, as well as indicating its consequences. Dr Justyna Nawrot and Dr Zuzanna Pełowska-Dąbrowska provide a comparative research into the reasons for adoption of new maritime law codes, as well as their scope and methods to provide uniformity on an international scale.

We should like to take this opportunity to thank all who contributed to the success of the conference: the speakers and chairs, as well its Partners: Kuyavian-Pomeranian Voivodeship, Polish Maritime Law Association and Polish Ship Managers' Association.¹ Moreover, we express our gratitude to the Scandinavian Institute of Maritime Law at the University of Oslo and the University of Southampton's Institute of Maritime Law for entrusting us with organization of the Xth European Colloquium on Maritime Law Research. Finally, we would like to acknowledge the work of our publisher, whose active role allowed the book to come to existence.

Gdańsk, 10 May 2019

DR JUSTYNA NAWROT, UNIVERSITY OF GDAŃSK, POLAND

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¹ The colloquium constituted a part of broader research on Problems of contemporary maritime codes, conducted within a scientific grant financed by National Science Centre, Poland under the contract UMO - 2016/22/E/HS5/00050.

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