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## Book Review

**Michael Faure, Han Lixin & Shan Hongjun (eds.) - *Maritime Pollution Liability and Policy: China, Europe and the US***

(Alphen aan den Rijn: Kluwer Law International, 2010)  
(ISBN: 978-90-411-2869-0)

Review by Dr Richard Caddell\*

Since the *Torrey Canyon* disaster in 1967 heralded the phenomenon of catastrophic oil spills from tankers, few maritime regions and trading routes have remained unaffected by such pollution. As the impact of tanker accidents has varied considerably from region to region, so too has the legislative response from major jurisdictions. The *Torrey Canyon* ushered in a new era of international regulation in the form of the International Convention on Civil Liability for Oil Pollution 1969/92 (CLC) and International Convention on the Establishment of an International Fund for Oil Pollution Damage 1971/92 (Fund Convention), latterly bolstered by the 2003 Supplementary Protocol, International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunker Convention) and, if it enters into force, the Hazardous and Noxious Substances Convention 1996 (HNS). However, the responses of key regions to the threat posed by marine pollution have raised interesting questions concerning the overall cohesion and effectiveness of the international liability regimes. In the USA, the infamous *Exxon Valdez* spill prompted the authorities to eschew international cooperation in favour of draconian Federal legislation in the form of the Oil Pollution Act 1990. In Europe, the damage wreaked by the *Erika* and *Prestige* spills and the subsequent political fall-out almost generated a break-away EU regime. Latterly, in China – a major maritime jurisdiction within

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\* Institute of International Shipping and Trade Law, Swansea University.

which the spectre of marine pollution looms large – considerable questions remain concerning the implementation of key liability conventions. These controversial questions are the primary focus of this interesting and informative collection of papers, published to mark the centenary of Dalian Maritime University.

*Maritime Pollution Liability and Policy* comprises twenty-six substantive chapters, addressing a series of broad themes including general principles, the Bunker Convention, the role of criminal law, US and Chinese approaches and individual case studies. The book opens with the customary outline of the project by the editors, who observe that they will address elements of compensation, implementation, prevention and enforcement of pollution liability regimes. Chapter 2, by Wang Hui, provides a helpful outline of the major liability conventions and MARPOL, noting the truism that the high political visibility of oil spills has developed an expansive tapestry of legislation in a way that has not been replicated with less obvious pollutants. Chapter 3, by Eddy Sommers, moves to examine a key aspect of pollution prevention, namely the vexed issue of port access to vessels in distress – a key element in the *Prestige* spill. In a concise but insightful chapter, Sommers highlights the customary international law rules and argues that while a right of access is often assumed to exist, such a privilege is not legally enforceable and will require specific international and regional legislation to implement.

Chapters 4 and 5 then examine the question of compensation for damage to natural resources, demonstrating that such claims provide few easy answers. James Boyd examines damages for lost ecosystem benefits, noting that this remains an emerging head of compensation fraught with considerable practical difficulties even where the jurisdiction in question is sympathetic to such claims. Likewise, Proshanto Mukherjee evaluates the role of the public trust doctrine, calling for clearer international rules on claims of this nature. On an allied note, Bariş Soyer examines the reception of pure economic loss claims in the English courts and under the Fund Convention. In a concise evaluation of the case law, Soyer demonstrates that the Fund adopts a more generous approach to such claims, which is of considerable practical interest to many claimants reliant upon – but exercising no proprietary claim over – marine resources. Chapter 7, by Jason Scott Johnson, provides an outline of the polluter pays principle as applied to oil spills. In a very brief, but highly interesting, chapter Johnson provocatively argues that the *ex post facto* application of the principle might ultimately prove counter-productive to environmental protection objectives.

Chapters 8 and 9 address the Bunker Convention, opening with an account by Shan Hongjun of Chinese implementation of this regime. Shan observes that the Bunker Convention has filled some practical lacunae within the national system and argues that this provides a clear indication that China should also implement the Fund Convention and Supplementary Protocol. Subsequently Han Lixin and Wang Dapeng examine issues of insurance and limitation of liability within the Convention. Like Shan, they observe that national implementation in China has left a series of complexities in the operation of the law, the two chapters suggesting that a degree of practical modification will be required by the Chinese authorities to ensure the effective operation of the convention.

Chapters 10 to 14 consider the controversial matter of criminal liability for oil pollution incidents, an issue brought into sharp focus by the *Erika* and *Prestige* spills. In an interesting, well-written and comprehensive chapter, Michael Faure develops an economic analysis of criminal liability. Unlike the US position, the CLC has never operated on a punitive basis. Faure suggests that administrative fines and criminal sentences may have a deterrent role to play, but have had a limited effect to date – not least given that the penalties are often too low to realistically prevent environmental crimes. Liu Nengye and Frank Maes then consider criminal liability under EU and US law, noting that the *Erika* spill and subsequent legislation has made the EU a more proactive operator, while the US has long taken a strident line on emissions. An interesting overview ends with a call for China to adopt more rigorous administrative and criminal sanctions for such events. Chapter 12 sees Marc Huybrechts examine the compatibility of relevant EU rules with the UN Convention on the Law of the Sea 1982, with particular reference to the *Intertanko* litigation. In a nuanced and insightful chapter, Huybrechts notes with caution the implications of the controversial Directive 2005/35/EC and raises concerns over the potential treatment of seafarers. This broad concern is echoed by Jiang Yuechuan in an interesting chapter 13 on the Chinese position. The section closes with an informative overview of the Hong Kong position by Li Lianjun and Qin Mu.

Chapters 15 to 17 examine aspects of the US regime, opening with a helpful summary of the divergence of approaches between the OPA and CLC by Robert Force. In Chapter 16 Li Tiansheng and Han Lixin note a number of deficiencies in the Chinese system and argue that a US-style approach provides a useful source of

reference for future reforms. An interesting comparison of further aspects of pollution law between the US and China is contributed by Guo Ping, arguing strongly for a greater degree of integration between the myriad of Chinese pollution laws. Chapters 18 to 22 then expand these issues further by examining specific aspects of Chinese law. Song Ying provides an informative account of key environmental statutes in China, alongside a sobering analysis of their deficiencies. Chen Qi then outlines the application of the CLC, noting that definitional problems have strongly undermined the implementation of the Convention in Chinese waters and territories. Continuing this theme Zhang Liying examines the application of oil pollution laws, observing that inconsistencies in the approach of the courts have often served to weaken the overall compensation regime in China. In chapter 21 Chu Beiping and Zhang Jinlei outline the requirement for compulsory insurance on HNS cargoes, noting that for all its positive features, implementation has been bedevilled by drafting difficulties and administrative shortcomings. This useful and insightful section on Chinese practices closes with an excellent review by Sun Guang of evidential problems and judicial difficulties in compensation cases.

The book is brought to a close with a selection of useful case studies of compensation issues in major spills within the region. Hu James Zhengliang outlines the *Hebei Spirit* catastrophe in South Korea, a cautionary tale for jurisdictions considering the waiver of the Supplementary Fund, and calls on China to adopt a domestic compensation fund and improve emergency response procedures. This theme is continued by Li Zhinghua and Zhou Zhujun, who examine the *MSC Ilona* spill off the coast of Hing Kong, and also note these practical deficiencies in the system. Meanwhile, Wang Yuh-Ling examines the Taiwanese experience in the *Amorgos* incident, noting that Taiwan's precarious sovereignty status precludes access to international conventions and effective enforcement of judgments against foreign owners. A final chapter, ostensibly concerned with comparative conclusions, ends on a slightly disappointing note and largely reiterates the central arguments of each paper, calling for "further research".

Overall, *Maritime Pollution Liability and Policy* is an interesting and informative book, providing a number of practical insights into the difficulties experienced by China in implementing key international pollution treaties. The overarching picture is one of very cautious optimism, with promising developments often undermined by ineffective legislation and inadequate implementation by the national authorities.

Although the authors had intended to provide an overarching account of difficulties within the international regime, the final work is ultimately rather more focussed on China. Readers who are attracted to the book by its stated focus on US and EU approaches may be somewhat disappointed – EU concerns are relatively peripheral, while the US is used essentially as a basis for comparison to the Chinese initiatives. Nevertheless, given the voluminous literature already available on the Conventions and US/EU approaches, the Chinese focus is a welcome development. There are a number of excellent contributions and the book will serve as a valuable introductory text to key elements of Chinese practice, which is otherwise much neglected in the current scholarship. The nature of the subject matter means that those reading from cover to cover will encounter multiple explanations of the CLC and other Conventions in the chapters; otherwise, this is a helpful account of a series of controversies within the system. This is a lively and enjoyable collection of papers and an illuminating review of the considerable difficulties that China will face in implementing key liability conventions in future years.