

International Max Planck Research School (IMPRS)
for Maritime Affairs
at the University of Hamburg

For further volumes:
<http://www.springer.com/series/6888>

Hamburg Studies on Maritime Affairs

Volume 16

Edited by

Jürgen Basedow
Peter Ehlers
Hartmut Graßl
Lars Kaleschke
Hans-Joachim Koch
Doris König
Rainer Lagoni
Gerhard Lammel
Ulrich Magnus
Peter Mankowski
Marian Paschke
Thomas Pohlmann
Uwe Schneider
Jürgen Sündermann
Rüdiger Wolfrum
Wilfried Zahel

Jürgen Basedow • Ulrich Magnus
Rüdiger Wolfrum
(Editors)

The Hamburg Lectures on Maritime Affairs 2007 & 2008

 Springer

Editors

Professor Dr. Jürgen Basedow
Max Planck Institute for Comparative
and International Private Law
Mittelweg 187
20148 Hamburg
basedow@mpipriv.de

Professor Dr. Ulrich Magnus
University of Hamburg
Law Faculty
Schlüterstraße 28
20146 Hamburg
u-magnus@jura.uni-hamburg.de

Professor Dr. Rüdiger Wolfrum
Max Planck Institute for Comparative
Public Law and International Law
Im Neuenheimer Feld 535
69120 Heidelberg
wolfrum@mpil.de

ISSN 1614-2462 e-ISSN 1867-9587
ISBN 978-3-642-04063-4 e-ISBN 978-3-642-04064-1
DOI 10.1007/978-3-642-04064-1
Springer Heidelberg Dordrecht London New York

Library of Congress Control Number: 2009935693

© Springer-Verlag Berlin Heidelberg 2010

This work is subject to copyright. All rights are reserved, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilm or in any other way, and storage in data banks. Duplication of this publication or parts thereof is permitted only under the provisions of the German Copyright Law of September 9, 1965, in its current version, and permission for use must always be obtained from Springer-Verlag. Violations are liable to prosecution under the German Copyright Law.

The use of general descriptive names, registered names, trademarks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

Cover design: WMXDesign GmbH, Heidelberg

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

Preface

In April 2002 the International Max Planck Research School for Maritime Affairs at the University of Hamburg was established as a joint venture of the University of Hamburg and three Max Planck Institutes, in particular the Max Planck Institute for Comparative and International Private Law (Hamburg), the Max Planck Institute for Comparative Public Law and International Law (Heidelberg) and the Max Planck Institute for Meteorology (Hamburg). The Research School has set up a unique interdisciplinary PhD programme. The researchers and their respective topics cover the legal, economic, ecological and geophysical aspects of the use, protection and organisation of the oceans. From the very beginning, the school has been in close contact with the International Tribunal for the Law of the Sea (ITLOS).

A close cooperation of the two institutions has been established in several fields. One of them is the organisation of the Hamburg Lectures on Maritime Affairs which started in 2007. These lectures are meant to contribute to the top level education of the scholars of the Research School and of the trainees that take part in an internship program offered by the International Tribunal for the Law of the Sea and funded by the Nippon Foundation. While the latter group is mainly composed of junior government officials, the scholars of the Research School are young academics. Both groups are recruited from all over the world and represent the global spirit of maritime policy.

This volume publishes seven papers which were presented as Hamburg Lectures in the years 2007 and 2008. All of them deal with legal aspects of maritime affairs, focusing on issues of transport law, on the pollution of the marine environment, and on dispute settlement. While some of the topics relate to private law, others form part of public international law. These collected papers are published in the book series Hamburg Studies on Maritime Affairs edited by the Directors of the above mentioned Research School.

The editors of this volume gratefully acknowledge the editorial assistance of Dr. Anatol Dutta and of Ingeborg Stahl in preparing this volume and the language editing of the papers by Michael Friedman.

Hamburg, May 2009

Jürgen Basedow
Ulrich Magnus
Rüdiger Wolfrum

Contents

Contributors.....	IX
Part I: The Hamburg Lectures 2007.....	1
The Civil Liability and Compensation for Environmental Damage in the 1982 Convention on the Law of the Sea <i>Thomas A. Mensah</i>	3
New Developments in the Field of Transport of Dangerous Goods: Presence and Prospects of the CRTD Convention <i>Krijn Haak</i>	9
Uniform Law and Conflicts in Private Enforcement of Environmental Law: the Maritime Sector and Beyond <i>Sergio M. Carbone/Lorenzo Schiano di Pepe</i>	21
Part II: The Hamburg Lectures 2008	53
The Athens Convention on Passenger Liability and the EU <i>Erik Røsæg</i>	55
International Civil Litigation and the Pollution of the Marine Environment <i>Frank Smeele</i>	77
Some Current Developments in International Maritime Arbitration <i>Carlos Esplugues Mota</i>	119
The Peaceful Settlement of Disputes on Maritime Delimitations <i>Lucius Caflisch</i>	177

Contributors

Jürgen Basedow

Dr. iur., Dr. h.c., LL.M. (Harvard), is Professor at the Law Faculty of the University of Hamburg and since 1997 director of the Max Planck Institute for Comparative and International Private Law in Hamburg. He is a member of various governmental advisory committees in the field of transport, insurance and competition law and speaker of the International Max Planck Research School for Maritime Affairs at the University of Hamburg. His key research areas are international economic law, the law of transport, shipping and insurance, private international law and comparative law.

Carlos Esplugues Mota

Dr. iur. (Univ. Valencia), LL.M. (Harvard), MSc (Edinburgh), is Professor of Private International Law at the School of Law of the University of Valencia (Spain). He has been Visiting Professor at different universities in Europe and Latin America. He is member to the Editorial Board of several national and international Law Journals and an arbitrator in various Arbitration Institutions of the world. He has coordinated several international research projects in the field of Private International Law and International Business Transactions. His key research areas are international trade law, international bankruptcy law, international commercial arbitration, international family law and international private law. He has published and edited, among others: *La quiebra internacional* (Barcelona, 1993), *Contratación internacional* (Valencia, 1999), *Derecho del comercio internacional: Mercosur-UE* (Montevideo/Madrid, 2005); *Derecho del comercio internacional* (Valencia, 2006), *Arbitraje marítimo internacional* (Pamplona, 2007), *Derecho de los contratos internacionales: Latinoamérica, Portugal y España* (Montevideo/Madrid, 2008) and *Derecho internacional privado* (Valencia, 2008).

Lucius Caflisch

Licence en droit, doctorate in law (Geneva); MA (Columbia), Dr. h.c. Professor of International Law (em.), The Graduate Institute of International and Development Studies, Geneva; former judge, European Court of Human Rights, Strasbourg; former legal advisor, Swiss Federal Department of Foreign Affairs, Berne. Lecturer at the University of Fribourg. Member of the International Law Commission of the United Nations.

Sergio M. Carbone

Prof. Avv., is Professor at the Law Faculty and Director of the Institute of International and Maritime Law at the University of Genoa since 1979. He has been lecturer at the Hague Academy of International Law in 1990 and 2009. Since 1977 he is admitted to plead before the Supreme Court of Cassation (Italian Supreme Court). He is a member of the Governing Council of Unidroit. His key research areas are international trade, public and private international law, European Union law, international shipping and ocean carriage law.

Krijn Haak

Krijn Haak has been a professor of Private and Commercial Law at the Erasmus University Rotterdam since 1991. Following his law study at the University of Utrecht (1969–1973), Krijn Haak received his doctorate in 1984. In addition to his academic work he is also a judge in the District Court of Rotterdam and in the Court of Appeal in Arnhem. Krijn Haak is a member of the editorial boards of several legal journals, including “Nederlands Tijdschrift voor Burgerlijk Recht” (NTBR), “Schip en Schade” and “Nederlands Juristenblad” (NJB). He heads the Scientific Working Party on Lex Mercatoria (Commerce and Transport) of the Erasmus University Rotterdam. His list of publications reflects his expertise in the area of carrier liability, freightforwarding and logistics, Transport and Maritime Law and Commercial Law in general.

Ulrich Magnus

Dr. iur., is Professor at the Faculty of Law at the University of Hamburg; Chair for civil law, private international law and comparative law; Judge (part-time) at the Court of Appeal of Hamburg; Executive Vice-director of the European Centre for Tort and Insurance Law in Vienna; Germany’s National Correspondent at UNCITRAL; Co-speaker of the International Max Planck Research School for Maritime Affairs at the University of Hamburg; Member of the German Council for Private International Law, of the European Group on Tort Law and of the European Acquis Group.

Thomas A. Mensah

Judge of the International Tribunal for the Law of the Sea, from 1996 to 2005, the first President of the Tribunal from 1996 to 1999. Prior to his election to the Tribunal, Lecturer of Law University of Ghana and Dean of the Faculty of Law, Associate Legal Officer at the International Atomic Energy Agency, Vienna and Assistant Secretary-General and Director of Legal Affairs and External Relations at the International Maritime Organization (IMO); Cleveringa Professor of Law at Leiden University and Professor of Law and Director, Law of the Sea Institute at the University of Hawaii; from 1995 to 1996 High Commissioner (Ambassador) of Ghana to the Republic of South Africa and Chairman of the F4 (Environmental Claims) Panel, United Nations Compensation Commission (UNCC), Geneva from 2000 to 2005. Since 1989 a Member of the “Institut de Droit International”,

Titular Member of the “Comité Maritime International” (CMI) and Member of the Advisory Council of the British Institute of International and Comparative Law.

Erik Røsæg

Dr. jur., Professor of Commercial Law, University of Oslo, Scandinavian Institute of Maritime Law. He has been advising the Norwegian Government in the IMO Legal Committee when the Athens Convention was negotiated, and was the coordinator of the IMO intersessional correspondence groups on the matter. Main areas of interest include maritime law as well as third party relations in private law (bankruptcy, mortgages etc).

Lorenzo Schiano di Pepe

Dottore in giurisprudenza (Genoa 1997), LL.M. in International Business Law (London 1999) and in International Legal Studies (Georgetown 2000), dottore di ricerca in diritto internazionale (Milan 2004), he is a researcher at the Faculty of Law of the University of Genoa, where he teaches European Union Law. His fields of expertise include international and European transport law, international and European environmental law and international law of the sea. Among his recent publications are a monograph on ship-source pollution and coastal States’ powers and an essay on the law applicable to environmental damage according to the so-called “Rome II” regulation.

Frank Smeele

Was born in 1966, has a Master in Law and a Master in Arts (European Studies) both from University of Amsterdam (1991), and a PhD from Erasmus University Rotterdam School of law (1998). Also in 1998 he was admitted as an attorney-at-law to the Rotterdam Bar and joined Van Traa Advocaten at Rotterdam, where he made partner in 2004. In 2005, he was appointed part-time Professor of Maritime Law at Erasmus University and in 2007 he was appointed full-time Professor of Commercial Law. His key research areas are: shipping, transport and maritime law, private international law and comparative law.

Rüdiger Wolfrum

Dr. iur., is Professor for national public and international public law at the Law Faculty of the Ruprecht-Karls-University of Heidelberg and since 1993 director and scientific member of the Max Planck Institute for Comparative Public Law and International Law, former President of the International Tribunal for the Law of the Sea (2005-2008), “Honorarprofessor” of the University of Hamburg, former President of the German Society for International Law (Deutsche Gesellschaft für Völkerrecht, 2005-2009), Director of the Rhodes Academy Ocean Law and Policy. He has published widely in various fields of international public law, thereby focusing on the law of the sea, the law concerning Antarctica, environmental law as well as on human rights and United Nations issues.