

New Zealand, of course, is an island nation located some 4000 kilometers from its nearest inhabited neighbours. Many of New Zealand's most notable historical events are associated with shipping and the sea. New Zealand's (Aotearoa's) maritime traditions began long before European settlement; seafaring was and still is a major part of Maori life and traditions. The sea is presently New Zealand's economic lifeline, as over 99 per cent of its exports and imports are carried by sea. Fourteen New Zealand ports regularly receive international shipping. New Zealand also benefits from one of the largest Exclusive Economic Zones in the world, over 4 million square kilometers. Although the population of New Zealand is about 4.7 million, this nation 'punches above its weight' both in world affairs and maritime law. Thus, the maritime law of New Zealand is of more than passing interest and importance.

Bevan Marten, who is a senior lecturer at the Victoria University School of Law in Wellington and a barrister of the High Court of New Zealand, is ideally qualified to create this work. He is a native Kiwi who received his grounding in maritime law in both New Zealand and in Europe. He is at home not only in New Zealand law, but also international and comparative law.

'Maritime Law in New Zealand' begins with a contextual chapter on the subject of the history of maritime legislation in that nation. Taking its cue from the mother country, English law was the basis of early legislation, the Shipping and Seamen's Acts of 1877, 1903 and 1952. In the 1990s, New Zealand broke from the past, repealing much of earlier legislation and enacting the Ship Registration Act 1992 and the landmark Maritime Transportation Act 1994, laws that focus more on New Zealand's special characteristics and needs. The major agency responsible for safety, security and environmental protection, Maritime New Zealand, was also established at this time. Since the 1990s, New Zealand maritime law has reflected international law norms and a desire for uniformity with other major maritime jurisdictions, as well as distinctive rules that meet the needs of New Zealand society.

International law is essential to understanding and practising maritime law in New Zealand, and Chapter 2 of this work contains a thorough discussion of the role on international maritime law in New Zealand and the relationship between international law and the domestic legal order. Although under constitutional norms, the executive in New Zealand has the authority to enter into treaties, legislation is essential to establish treaty norms as domestic law. Thus, the incorporation of international maritime law into New Zealand law is a cooperative endeavour between the executive and legislative branches of government. International law is incorporated into New Zealand law in three distinct ways: (1) by enacting verbatim the text of a treaty; (2) by enacting treaty obligations

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### Maritime Law in New Zealand

Bevan Marten

Thomson Reuters, 2016, h/b,  
ISBN 978-0-947486-99-0, pp 286, \$170

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Bevan Marten has published an excellent and eminently readable summary and analysis of the maritime law of New Zealand. This book will be of interest not only to academics and lawyers, but also to laypersons interested in the maritime law of this important jurisdiction. The book is an essential read and reference for New Zealand law itself and, for anyone interested in comparative law, it provides an important resource. Dr Marten organises the subject into nine chapters: (1) New Zealand maritime law and context; (2) International maritime law and New Zealand domestic law; (3) Regulation of maritime activities and marine pollution; (4) Property interests in ships; (5) Maritime contracts; (6) Salvage and wreck removal; (7) Civil liability; (8) Criminal liability; and (9) Admiralty jurisdiction in New Zealand.

wholly as domestic legislation; and (3) by enacting treaty language in part into domestic law. Dr Marten gives us an analysis of judicial interpretations of international law in all three instances, making the point that relevant court decisions employ various tools of interpretation in such cases. As to the first category, the New Zealand Supreme Court will take an international approach to interpretation, relying especially on the Vienna Convention<sup>1</sup> and relevant interpretations in other jurisdictions.<sup>2</sup> In the remaining two categories, however, New Zealand courts are likely to depart from international interpretations to effect New Zealand policies and conditions.

To the non-Kiwi lawyer, the most interesting and valuable chapter of the book will likely be Chapter 9 entitled 'Admiralty jurisdiction in New Zealand'. Dr Marten explains and analyses both the function and contours of admiralty jurisdiction in New Zealand. Broadly speaking, admiralty jurisdiction refers to the courts' jurisdiction over disputes related to ships and shipping. In principle, this includes not only ocean but also inland waters. The advantage of asserting admiralty jurisdiction is the availability not only of in personam liability, but also in rem procedures (against a ship) and the consequent possibility of arresting a ship, which is particularly important for New Zealand, given its isolated location. To assert a cause of action in admiralty jurisdiction, the lawyer, in pleading her case, must associate the claim with one or more of the topics listed in section 4 of the Admiralty Act 1973, which is drawn from English practice under the Administration of Justice Act 1956. The most important claims in this list are: (1) a mortgage or charge on a ship; (2) damage done by a ship; (3) damage received by a ship; (4) loss of life or personal injury; (5) a claim arising out of a contract of affreightment; (6) goods or services provided to a ship; (7) repairs; (8) wages; and (9) disbursements.

In rem claims in New Zealand are available in three categories of cases.<sup>3</sup> First, an in rem claim can be founded upon the existence of a maritime lien.<sup>4</sup> However, New Zealand recognises maritime liens only for seamen's wages, masters' wages and disbursements, damage and salvage.<sup>5</sup> Secondly, in rem procedures are available when contesting a vessel's ownership.<sup>6</sup> Thirdly, an in rem claim may be asserted in connection with an in personam claim where the

defendant owned, chartered, possessed or controlled a ship (or a sister ship) at the time the cause of action arose.<sup>7</sup>

The balance of the chapters in the book analyse in remarkably clear and concise fashion substantive New Zealand maritime law. These include the law relating to ownership and mortgaging vessels (Chapter 4), carriage of goods and charterparties (Chapter 5), and the important topic of salvage and wreck removal (Chapter 6). The latter chapter contains a thoughtful examination of the Wreck Removal Convention (2007) and recommendation for reform of New Zealand's wreck removal laws.

The chapter on civil liability covers liability in maritime tort, collision, liability for damaged and lost cargo, marine pollution liability, liability for carriage of passengers, and limitation of liability. As to the important topic of carriage of goods, New Zealand adheres to the Hague-Visby Rules on international carriage by sea, as amended by the SDR Protocol of 1979. Dr Marten states (at p 17) that, concerning this liability regime (which admittedly favours carriers): 'New Zealand parties can comfortably look to international precedents'. He further states that New Zealand is unlikely to ratify the Rotterdam Rules<sup>8</sup> unless major trading nations do so first. New Zealand has adopted a separate and distinct liability regime for domestic carriage of goods, the Carriage of Goods Act 1979, which channels liability to the contracting carrier. New Zealand's pollution liability regime, which is contained in the Maritime Transport Act, employs strict liability based upon the international Convention on Civil Liability for Oil Pollution Damage (1992) and the International Convention for Bunker Oil Pollution Damage (2001), combined with New Zealand domestic legislation.<sup>9</sup>

New Zealand imposes criminal liability for certain safety and pollution offences. However, New Zealand criminal law carries a presumption against extra-territorial application.

Of particular interest is the longest chapter in the book, which covers regulation of marine activities including marine pollution. New Zealand's maritime regulations are largely contained in the Maritime Transport Act 1994, which the author calls 'a mess of an Act' (at p 66), providing a 'headache inducing mix' of regulations. Many regulations are drawn from International Maritime Organization conventions,

<sup>1</sup> Vienna Convention on the Law of Treaties arts 31 and 32, 1155 UNTS 331 (1969), entered into force 27 January 1980.

<sup>2</sup> As a leading case in this regard see *Tasman Orient Line CV v New Zealand China Clays Ltd* [2010] NZSC 37, [2010] NZLR 1.

<sup>3</sup> Admiralty Act of 1973 s 5.

<sup>4</sup> *ibid* s 5(1).

<sup>5</sup> New Zealand has not adopted any international convention relating to maritime liens or mortgages.

<sup>6</sup> Admiralty Act of 1973 s 5(2)(a).

<sup>7</sup> *ibid* s 5(2)(b).

<sup>8</sup> United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2008) (not yet in force).

<sup>9</sup> Dr Marten has also published an analysis of the well-known case of the 2011 *M/V Rena* grounding and pollution incident. See Bevan Marten 'International recent developments: New Zealand' (2014) 38 *Tul Mar LJ* 623, 625.

such as MARPOL<sup>10</sup> and SOLAS.<sup>11</sup> Regulations cover especially ship registration, safety and protection of the environment. Maritime regulations are administered by a variety of governmental agencies, including the Ministry of Transport, Maritime New Zealand, the Ministry of Environment, and the Ministry of Primary Industries. Enforcement is the responsibility of the New Zealand Customs Service, Police, and the Navy. The New Zealand Coast Guard is a voluntary marine safety agency, not a branch of government.

In summary, Bevan Marten has written a gem of a book that captures in highly readable fashion the essence of maritime law in New Zealand. The book provides a coherent and complete overview of maritime law that will be of interest not only to New Zealand lawyers but to everyone interested in maritime law.

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<sup>10</sup> International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978, 1340 UNTS 184 (entered into force 1983).

<sup>11</sup> International Convention for the Safety of Life at Sea, 1184 UNTS 1 (in force 1980).