

Table of contents

Acknowledgements	1
Abstract	5
Introduction	7
 Preliminary part: Universalism in maritime law as a point of reference for lawmakers: Myth and reality	
1. From the point of view of the flag State	17
2. From the point of view of the coastal State.....	22
3. From the point of view of the port State	25
 Part I: Overall position of the EU and the U.S. towards universal maritime safety standards: Common standards, but... ..	
1. The EU “Common Maritime Transport Policy” on maritime safety and marine environment protection: Uniform, enhanced and anticipated rules.....	30
1.1. The context.....	30
1.2. The regulatory framework: Brief overview.....	33
1.3. In quest of unilateralism: The EU maritime legislature’s approach and method.....	39
2. The maritime safety and anti-pollution legal framework in the U.S.: The quest for optimum safety, the quest for limits to the traditional standard-setting process	43
2.1. The quest for optimum safety in U.S. waters	43
2.2. The regulatory framework: Brief overview.....	46
2.3. The quest for unilateralism: The U.S. legislature’s approach and method.....	49
 Part II: The search for common trends: A substantive law approach in the light of prevention, preparedness/response and liability	
1. Prevention	56
1.1. Design and construction of oil tankers	56
1.1.1. The backdrop of the adoption of provisions on the phasing-in of double hulls	59
1.1.2. Substantive provisions or the withdrawal’s schedule waltz.....	61
1.1.3. Derogations.....	65

1.1.4. Assessment	66
1.2. Requirements on the human element	70
1.2.1. Protecting the seafarer as the most vulnerable part of the chain: Search for antagonism or synergy through the ILO's vision	72
1.2.1.1. ILO Convention 147	72
1.2.1.2. The new consolidated convention on maritime work	75
1.2.2. Training, certification and watchkeeping of seafarers	77
1.2.2.1. The general framework of international regulations on seafarers' standards of training, certification and watchkeeping	78
1.2.2.2. The STCW requirements in domestic legal orders	79
1.2.3. The International Safety Management (ISM) Code: The managerial/operational approach to maritime safety via the human element	82
1.2.3.1. The ISM Code in the EU and the U.S.	83
1.2.4. Assessment	84
1.3. Port State Control (PSC)	86
1.3.1. Is there a right of access of foreign vessels to ports?	87
1.3.2. General aspects of PSC in the EU and the U.S.: Purpose and scope	89
1.3.3. The material aspects of PSC	94
1.3.4. Sanctions and appeals	99
1.3.5. Assessment	101
2. Preparedness and the ability to respond: The need for promptness and effectiveness put to the test	103
2.1. Viewing past incidents	103
2.1.1. Noticeable incidents in European waters	104
2.1.2. Noticeable incidents in U.S. waters	105
2.2. The legal framework: Building on the the International Convention on Oil Pollution, Preparedness, Response, and Cooperation (OPRC) and on regional cooperation	107
2.2.1. The international instruments	108
2.2.2. The EU: Softening discrepancies between Member States, reinforcing capacities and cordination	110
2.2.2.1. The tool of harmonization	110
2.2.2.2. The institutional framework in support of preparedness and response: The European Commission and the European Maritime Safety Agency acting jointly and separately	111
2.2.2.3. Regional cooperation in Europe	113
2.2.2.4. National implementation: Discrepancies and challenges	115
2.2.3. Being proactive in the U.S.	116
2.2.3.1. Key concepts and legal instruments	116
2.2.3.2. Brief overview of laws and policies on preparedness and response: From CWA to SARA	118

2.3. Assessment.....	120
3. Liability issues for marine pollution: The paradigm of oil	122
3.1. The international regime on limitation of liability for maritime claims: A consolidated, yet greatly challenged point of reference for the regime in Europe.....	123
3.1.1. The IMO regulatory framework or the silent agreement on strict, yet limited, liability	124
3.1.2. Putting the international regime on limitation of liability to the test-possible influences from the American system.....	126
3.1.3. The EU's attempts to "go further" and the ensuing pressure on the international regime	130
3.1.4. Criminal liability for marine pollution: Not novel, yet, far from being consolidated at the EC level.....	132
3.2. Limitation of liability for oil pollution in the U.S.: Brief overview	134
3.2.1. Preexisting law: FWPCA, CWA and CERCLA	134
3.2.2. Deterrence, compensation and punishment or the Oil Pollution Act 1990.....	136
3.2.3. Strict criminal liability	138
3.2.4. OPA 1990 and the 1992 IMO amendments: Myth and reality	139
3.2.5. Should the U.S. accede to the international regime on limitation of liability?	139
Concluding remarks – Recommendations	141
1. The old debate is not dead: Freedom of the seas vs. coastal States' rights	141
2. The "problem of synergy and antagonism" as part of the "solution"	143
3. Viewing the potential of underestimated directions by legislators: Market- oriented incentives in support of qualitative shipping.....	143
Bibliography.....	147
Index	159

Maritime Safety Law and Policies of the European Union
and the United States of America: Antagonism or
Synergy?

Christodoulou-Varotsi, I.

2009, XVI, 162 p., Hardcover

ISBN: 978-3-540-69871-5