

EDITORIAL

Dear Colleagues, Friends and Readers of the *Comparative Maritime Law* journal,

I am writing this editorial at the time of the COVID-19 pandemic, recalling our gatherings at conferences, symposia, seminars and on various other occasions and hoping that you and your dear ones are well and healthy. Members of the editorial board, employees of the Adriatic Institute, and I personally are happy to present you with a new issue of *Comparative Maritime Law*, which contains works by domestic and foreign authors in the field of international law of the sea and maritime law, as well as reviews of decisions of domestic and foreign courts and a book review.

In the paper "General Limitation of Shipowner's Liability: Amounts of Limitation Increased by Tacit Acceptance and their Application in the Republic of Croatia", the author, Professor Dorotea Ćorić, PhD, discusses the model of amending international treaties through the tacit acceptance procedure and provides an answer to the question of the State parties' obligation to apply such amendments. The paper was inspired by the case of the establishment of the limited liability fund before the Commercial Court in Split on the occasion of a shipping accident that occurred in the Port of Ploče in August 2018. The paper raises the issue of the obligation to apply the increased limits of liability from the 1996 Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims. The 1996 Protocol was amended through the tacit acceptance procedure when the increased liability limits were adopted by the IMO Resolution of 2012, effective from 8 June 2015 for all States parties to the 1996 Protocol. However, the Resolution has not been published in the Republic of Croatia.

From the field of international law of the sea, this issue features the paper of two postgraduate doctoral students in international public and private law at the Faculty of Law, University of Zagreb, Boren Petrinec, LL.M, and Leon Žganec-Brajša, LL.M, entitled "Passage Through Straits Using as an Example Russian-Ukrainian Relations Regarding the Sea of Azov". The paper discusses the legal admissibility of the application of the Kerch Strait navigation regime contained in the 2003 Treaty between the Russian Federation and Ukraine, as opposed to the generally applicable regime of transit passage. The paper deals with certain aspects of the rights and obligations of ships in passage according to both regimes, taking into account the claims of the Russian Federation and Ukraine of the mutual disrespect of these rights and obligations in response to the events of 25 November 2018, when the Russian authorities prevented three Ukrainian

ships in their attempt to cross the Kerch Strait. The authors offer conclusions on the legal regime applying to navigation in the Kerch Strait in general and in the circumstances of the above events.

Damilola Osinuga, LL.M, a lawyer in Lagos (Nigeria), and a doctoral researcher at the World Maritime University (Sweden), deals with the current topic of the legal regulation of autonomous vessels. The paper examines areas of maritime law affected by the development of autonomous vessels and suggests possible ways to circumvent obstacles in their legal regulation.

Dr Giorgio Berlingieri, President of the Italian Maritime Law Association, Honorary Member of the Croatian Maritime Law Association and a member of the Working Group of the Comité Maritime International (CMI) on Liability for Wrongful Arrest, analyses the subject of maritime law issues and considers the question of whether there is a need for uniform international rules on liability for the wrongful arrest of a ship. This paper presents the results of the work of the CMI Working Group on Liability for Wrongful Arrest, taking into account the main points of discussion that have taken place at the international level since the beginning of the unification of rules on the arrest of ships, and considers possible future developments in this area.

Another contribution is a paper written by Zoran Tasić, Director of Dedicato Consulting Ltd, devoted to an analysis of a generally accepted principle of English law known as the "prevention principle" in the context of shipbuilding contracts. In accordance with this principle, neither party should enjoy the benefits of non-compliance with their contractual obligations. In the context of a shipbuilding contract, this principle should protect the shipbuilder in the event of a delay in the delivery of the ship caused by the client himself, where a contractual penalty need not be paid due to such a delay. In such circumstances, the agreed period of delivery of the ship ceases to be relevant and instead a reasonable period for the construction and delivery of the ship is applicable.

The paper written by Dr Giovanni Marchiafiava, lecturer at the Faculty of Law, Sapienza University in Rome, deals with the impact of the new Italian security regulation on the search and rescue of migrants at sea. In particular, it deals with Legislative Decree No 53 of 14 June 2019 laying down new rules on order and public security (hereinafter: the Decree). Article 1 of the Decree is dedicated to preventing and combating illegal immigration at sea. It amends the existing Italian Immigration Act. The Decree stipulates that the Italian Minister of the Interior may prohibit the access, transit and mooring of ships in Italian territorial sea. These measures may be imposed for security reasons or if the

applicable immigration law has been violated. The above provisions open the possibility of banning access to ships carrying migrants rescued at sea in Italian territorial waters and ensuring the policy of so-called closed ports.

Amra Pende, LLB, introduces us to a precedent from Croatian shipbuilding practice relating to a shipbuilding contract for the construction of two ships according to which the agreed place of delivery was the Port of Turkmenbashi in Turkmenistan rather than the shipbuilder's port which is common practice. The author explains how the 2019 amendments to Article 99 of the Maritime Code regulating shipbuilding contracts followed as a consequence of that undertaking.

We would not want this issue of *Comparative Maritime Law* to be remembered exclusively as an issue published at the time of the pandemic. On the contrary, we hope that it will be remembered as a "congratulatory" one. For this reason, we have decided to dedicate it to my friend and colleague, Vladimir-Đuro Degan, Professor Emeritus of the University of Rijeka, member of the Institute of International Law (Institut de droit international) and head of the Adriatic Institute, on the occasion of his eighty-fifth birthday and thirty-fifth anniversary of work at the Adriatic Institute of the Croatian Academy of Sciences and Arts.

Dear Professor Degan, all former and current employees of the Adriatic Institute, members of the academic community and I personally congratulate you on this special occasion, especially on your exceptional contribution to the academic discipline of public international law in Croatia and globally. Furthermore, we congratulate you and thank you for the generations of academics (now professors, assistant professors and doctors of science) who have matured in the Adriatic Institute under your mentorship. Without your support and encouragement, many of our doctorates, books and academic papers would not have been written. You take paternal pride and joy in our successes, sometimes more than we do ourselves. Through your example, you have shown us that high goals in science can be achieved only through dedicated work. For this reason, you will always be our role model and example of a man who has dedicated his life to his vocation. For all this, we thank you deeply!

**Professor Davorin Rudolf, F.C.A., Editor-in-Chief
and employees of the Adriatic Institute**