Book Review

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The right of a ship in distress to enter ports was long accepted in customary international law. This rule reflected humanitarian concern with the lives of those on board. The rule also facilitated saving vessels and their cargoes.

This traditional rule may well have changed. Humanitarian reasons for assuring vessels access to places of refuge may be less significant today, as other ships or helicopters frequently may effect rescues at sea. Some coastal authorities have refused to allow access to tankers in distress carrying hazardous cargoes or fuel oil, fearing that access could pose risks to port security or the local environment. But such denials of access may risk greater damage to the marine environment, loss of the vessels in distress and their cargoes, and harm to an array of other interests. In short, whether to grant access to a place of refuge, and if so on what conditions, has become a matter for debate. Decisions concerning access affect shipowners, cargo interests, salvors, the insurance industry, the fishing industry, the marine environment, port security, human health and safety, and a range of coastal commercial interests. How best to address the complex problem of places of refuge requires fashioning appropriate regulatory standards, management procedures, and liability regimes.

In Places of Refuge for Ships in Distress, Anthony Morrison, a Research Fellow at the Australian National Centre for Ocean Resources and Security at the University of Wollongong, explores the significant current problems associated with places of refuge, assesses in depth international, national, and regional responses, and offers thoughtful suggestions for improving those responses. Following the book overview in Chapter 1, Chapter 2 sets the context for places of refuge problems. It examines changes to the shipping and salvage industries, the development of international environmental law, developments in salvage law, and the Erika, Castor, and Prestige incidents. Chapter 2
also provides an overview of the various interests concerned with the completion of voyages and with conservation of the marine and coastal environment.

Chapters 3 and 4 analyse international law respecting a general right of access for vessels to ports and a right of access for vessels in distress. Chapter 3 hews to the modern line that there is no general right of access to ports (in contrast to an earlier view that a right of port access existed as a corollary of a right to trade); access is subject to the discretion and control of port states. Chapter 4 concludes that the traditional customary law right of access to places of refuge for vessels in distress has changed over time. Today, Morrison argues, “the extent of the obligation under customary international law has been greatly circumscribed to be one of humanitarian assistance only and . . . outside the requirement to protect human life, a request by a ship in distress for access to a port or a place of refuge is now to be treated in the same way as any general request for access” (p. 126).

The next four chapters analyse existing international, national, and regional responses to the problems of places of refuge. The primary international developments have been the International Maritime Organization’s (IMO) 2003 Guidelines on Places of Refuge for Ships in Need of Assistance and the Comité Maritime International’s (CMI) 2008 Draft Instrument on Places of Refuge. Chapter 5 explores in detail the development and phrasing of the IMO’s Guidelines, a soft law instrument that calls for evaluation of various factors in deciding whether to allow access for a “ship in need of assistance,” defined in Article 1.18 as “a ship in a situation, apart from one requiring rescue of persons on board, that could give rise to loss of the vessel or an environmental or navigational hazard.” Existing IMO treaties, such as the 1979 Search and Rescue Convention, deal with rescuing individuals on board vessels in distress. Morrison critically evaluates the IMO Guidelines: “they are a good first step . . . and at the very least are better than nothing,” but they reflect “the lowest common denominator sufficient to attract support from [IMO] member States” and are “arguably biased towards the interests of coastal States.” But because the Guidelines do not deal with liability and compensation, coastal states may be reluctant to accept them, and the possibility increases “that incidents like the Erika, Castor and Prestige will reoccur due to risk-based decisions being overruled on political or other extraneous grounds” (p. 355). Chapter 5 also notes other international initiatives, including the CMI’s Draft Instrument (written in the form of a convention), which is considered in depth in Chapter 8. This Instrument creates a presumption in favour of granting access to a place of refuge, explicitly reflects concerns with protecting ships and cargoes, as well as minimizing navigational hazards and protecting the environment and human life, and establishes a limited legal protection for coastal states if they make