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FORUM

Addressing the Challenges of Applying Human Rights Law at Sea

Reece Lewis[1] and Sofia Galani[2]

[1]Senior Lecturer, Cardiff University, Cardiff, UK; [2]Assistant Professor, Panteion University, Athens, Greece
Corresponding author: Reece Lewis; Email: LewisR74@cardiff.ac.uk

Abstract

It is now generally accepted that human rights law applies at sea, yet uncertainty remains as to how it operates within the maritime domain. The United Nations Convention on the Law of the Sea contains few references to the treatment of individuals and many of the central concepts of the law of the sea that are reflected in it—such as functional zones of maritime jurisdiction, flag State jurisdiction and the freedoms of the seas—present challenges to the effective application of human rights law. Moreover, human rights law was developed with a terrestrial focus, making its application at sea equally problematic. This article argues that before practical solutions can be proposed to address this conflict of regimes, it needs to be recognised that human rights law does not apply at sea in the same way that it applies on land: the practical realities of the maritime environment shape the scope and content of rights. It argues that there is a need to clarify what constitutes a genuine human rights issue in the maritime domain, distinguishing these from other forms of poor treatment or regulatory non-compliance. It examines how the law of the sea and human rights law might interact more effectively, considering both conceptual and contextual adjustments necessary for realistic and enforceable protection of human rights in the maritime domain.

Keywords: law of the sea; human rights; jurisdiction; flag States; high seas; shipping; migration; refugees; seafarers; ports

1. Introduction

In March 2022, a comprehensive report was published by the House of Lords International Relations and Defence Select Committee (IRDC), which examined whether the United Nations Convention on the Law of the Sea (UNCLOS)[1] remains fit for purpose 40 years after its adoption.[2] A key question raised was whether UNCLOS

[1] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS).

[2] International Relations and Defence Committee (IRDC), *UNCLOS: The Law of the Sea in the 21st Century* (HL 2021–22, 159–I).

does enough to protect human rights at sea.[3] In oral evidence to the IRDC, Professor Sir Malcolm Evans memorably observed that:

> The convention has an awful lot more to say about protecting fish than about protecting people. That is one of its huge flaws. It is worse than that. Not only does it not say much that is helpful about it, but the way it approaches its zones of jurisdiction and the way it allocates flag State jurisdiction and says that the high seas are beyond jurisdiction makes it extremely difficult to apply other areas of law such as human rights law at sea.[4]

This assessment captures the crux of the problem. UNCLOS was never designed as a human rights instrument; it was intended to resolve disputes over resources, navigation and coastal State jurisdiction.[5] Its core jurisdictional architecture—functional maritime zones, the primacy of flag State jurisdiction and the freedom of the seas—was developed without reference to human rights law, and often complicates its application.[6] Human rights law, by contrast, was crafted with land-based application in mind, presuming that individuals are located within a State's territory or otherwise clearly subject to its jurisdiction. The maritime environment does not fit neatly into that model. At any given time, an estimated 30 million people—seafarers, fishers, passengers, migrants and others—are at sea, often far from their home States, subject to the jurisdiction of States with limited enforcement capacity or willingness or located in areas where jurisdiction is contested or unclear.[7] The result is that while it is now generally accepted that human rights law applies at sea, it does not apply in the same ways as it does on land. Context matters: the maritime environment shapes both the content and enforcement of individual rights.

This subject has become the focus of increased attention[8] and various initiatives, including the soft law instrument known as the Geneva Declaration on Human Rights at Sea,[9] have emerged.[10] This article argues, however, that before practical solutions can

[3] ibid ch 5; C Whomersley, 'UNCLOS at 40: What about Human Rights?' (2023) 148 Marine Policy 105424.

[4] IRDC, 'Corrected Oral Evidence: UNCLOS: Fit for Purpose for the 21st Century?' (20 October 2021) 5 <https://committees.parliament.uk/oralevidence/2853/pdf/>.

[5] Discussed in BH Oxman, 'Human Rights and the United Nations Convention on the Law of the Sea' (1997) 36 ColumJTransnatlL 39; T Treves, 'Human Rights and Law of the Sea' (2010) 28 BerkeleyJIntlL 1.

[6] IRDC, 'Corrected Oral Evidence: UNCLOS: Fit for Purpose for the 21st Century? (24 November 2021) 14 <https://committees.parliament.uk/oralevidence/3126/pdf/>.

[7] E Cavalcanti de Mello Filho, 'From "Flags of Convenience" to "Flags of Deceit": The Future of the Law Governing the Nationality of Ships' (2025) 74(Supp) ICLQ 121; S Haines, 'Developing Human Rights at Sea' (2021) 35 OceanYB 18, 21.

[8] See, e.g. I Papanicolopulu, *International Law and the Protection of People at Sea* (OUP 2018); R Strating et al, 'Human Rights at Sea: The Limits of Inter-State Cooperation in Addressing Forced Labour on Fishing Vessels' (2024) 159 Marine Policy 10593; S Galani, 'Assessing Maritime Security and Human Rights: The Role of the EU and Its Member States in the Protection of Human Rights in the Maritime Domain' (2020) 35 IJMCL 325; S Galani, 'Somali Piracy and the Human Rights of Seafarers' (2016) 34 NQHR 71; A Petrig, *Human Rights and Law Enforcement at Sea: Arrest, Detention and Transfer of Piracy Suspects* (Brill Nijhoff 2014); D Guilfoyle, 'Counter-Piracy Law Enforcement and Human Rights' (2010) 59 ICLQ 140.

[9] Human Rights at Sea, 'Geneva Declaration on Human Rights at Sea' (January 2022) <https://www.humanrightsatsea.org/GDHRAS>. See N Klein, 'Geneva Declaration on Human Rights at Sea: An Endeavor to Connect Law of the Sea and International Human Rights Law' (2022) 53 ODIL 232. See also the Nice Declaration on Human Rights at Sea (January 2025) <https://sites.usp.br/cedmar/wp-content/uploads/sites/973/2025/01/LIVRETO-DIREITOS-HUMANOS-NO-MAR-INGLES.pdf>.

[10] See, e.g. UNGA Res 56/18 *Promoting and Protecting the Enjoyment of Human Rights by Seafarers* (16 July 2024) UN Doc A/HRC/RES/56/18; UNGA, 'Oceans and the Law of the Sea: Report of the Secretary-

be advanced, greater conceptual clarity is needed as to what constitutes a genuine human rights issue at sea. Not every adverse experience or substandard treatment amounts to a violation of international human rights law. Without this distinction, the debate risks conflating genuine rights violations with broader matters of safety, welfare or regulatory compliance. This article argues that identifying and defining human rights issues in the maritime context is a necessary first step before workable solutions—whether legal, institutional or policy-based—can be crafted.

The argument proceeds as follows. Section 2 explains the structural differences between the law of the sea and human rights law, focusing on their divergent approaches to jurisdiction and the conceptual and practical challenges this creates. Section 3 reflects on how 'human rights at sea' might be reconceptualised in light of these challenges, suggesting the need for greater conceptual precision and identifying the kinds of questions that must be addressed before meaningful solutions can be developed. In particular, this article dispels the false equivalence generated by the memorable but not entirely accurate idea that 'human rights apply at sea, as they do on land'[11] and argues that the differences between the land and sea require distinct approaches to human rights protection.[12] It is concluded that effective solutions—whether they take the form of adapting existing rules and practices, or developing new ones—must take full account of the unique characteristics of the maritime domain.

2. The legal seascape

2.1. Jurisdiction at sea

This section examines the fundamental differences between jurisdiction on land and at sea.[13] On land, there is an assumption that a single State exercises sovereignty;[14] at sea there is an assumption that no State holds sovereignty.[15] Human rights law was developed against the backdrop of the former, whereas the law of the sea is structured around the latter. Under human rights law, States must protect the rights set out in the treaties to which they are party,[16] but only for individuals 'within' their jurisdiction. This creates a circular problem: a State must first be deemed to have jurisdiction before it can be held responsible for any failure to uphold its human rights

General' (6 September 2024) UN Doc A/79/340, paras 12–24; UN Office of Drugs and Crime, *Maritime Crime: A Manual for Criminal Justice Practitioners* (2nd edn, UN 2020) 71–84 <https://www.unodc.org/documents/Maritime_crime/GMCP_Maritime_3rd_edition_Ebook.pdf>; Wilton Park, 'Report on Human Rights Law at Sea' (2022) <https://www.wiltonpark.org.uk/event/human-rights-law-at-sea/>. In 2023, the International Law Association (ILA) launched a new Committee on the Protection of People at Sea. See ILA, *Protection of People at Sea* <https://www.ila-hq.org/en_GB/committees/protection-of-people-at-sea>.

[11] Geneva Declaration on Human Rights at Sea (n 9).

[12] See also the discussion in D Guelker, 'Finding Stable Ground: Moving From "Sea Slavery" to "Continuum of Exploitation"' (2024) 167 Marine Policy 106265 about how the use of 'emotive language' regarding slavery in the fishing industry may capture attention but not serve the needs of victims.

[13] Space precludes a detailed exposition of these differences; for more detail, see Papanicolopulu (n 8) 80–96.

[14] C Staker, 'Jurisdiction' in MD Evans (ed), *International Law* (6th edn, OUP 2024) 307.

[15] B Oxman, 'The Territorial Temptation: A Siren Song at Sea' (2006) 100 AJIL 830.

[16] See, e.g. J Crawford, *Brownlies Principles of Public International Law* (9th edn, OUP 2019) 441–48; C Ryngaert, *Jurisdiction in International Law* (2nd edn, OUP 2015) 22–26.

obligations.[17] On land, this is likely to be obvious: an individual is either located within the State's territory or not. At sea, by contrast, jurisdiction is organised through a zonal approach that balances the rights of coastal States with navigational freedoms and the primacy of flag State jurisdiction.[18] This framework complicates the application of human rights obligations and raises the question of which State is responsible for ensuring their observance. The extension of jurisdiction into the maritime domain reflects a carefully calibrated balance: on one side, the interests of coastal States in protecting their shores and exploiting the resources of their waters; on the other, the interests of other States in safeguarding navigational rights and the freedoms enjoyed by vessels flying their flag.[19]

While UNCLOS contains provisions relevant to individuals in certain contexts, none explicitly integrate human rights considerations into its zonal framework. Instead, it fragments jurisdiction by allocating different competences to different States depending on the zone or activity.[20] These forms of jurisdiction often overlap or leave gaps, and do not align neatly with the forms of control over individuals that trigger human rights obligations. The result is that UNCLOS' zonal approach to jurisdiction obscures which State bears responsibility for protecting human rights at sea and limits the mechanisms available to ensure their protection in practice.

The fullest expression of State sovereignty is found in internal waters, which lie landward of the baselines[21] and include rivers, lakes and ports.[22] Ports are central to many of the issues at stake as they may exercise legislative and enforcement jurisdiction over foreign flagged vessels and can prevent them from departing.[23] In practice, however, port States—either as a matter of comity[24] or customary law[25]—refrain from exercising such jurisdiction except in limited circumstances, such as when an offence affects or threatens the peace and order of the port, the State's vital interests are implicated, a request is made by the vessel's master or flag State or a serious offence involving a national of the port State is alleged.[26] Human rights violations are unlikely to be perceived by a port State as affecting it in this way. Such matters are more likely to be

[17] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 2; European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 (ECHR) art 1.

[18] MD Evans and R Lewis, 'Law of the Sea' in MD Evans (n 14) 629; U Khaliq, 'Jurisdiction, Ships and Human Rights Treaties' in H Ringbom (ed), *Jurisdiction over Ships: Post-UNCLOS Developments in the Law of the Sea* (Brill Nijhoff 2015) 324.

[19] For a fuller account, see R Churchill, V Lowe and A Sander, *The Law of the Sea* (4th edn, Manchester University Press 2023) 2–8.

[20] e.g. UNCLOS (n 1) art 73(3) requires coastal States not to imprison individuals arrested for fishing violations or subject them to corporal punishment. Yet it remains unclear whether a coastal State can protect fishers abused on board foreign-flagged vessels in its EEZ, given the primary jurisdiction of the flag State. See also Section 2.2.

[21] Baselines legally demarcate the land from the sea, see Evans and Lewis (n 18) section II.

[22] UNCLOS (n 1) art 8.

[23] EJ Molenaar, 'Port and Coastal States' in DR Rothwell et al (eds), *Oxford Handbook of the Law of the Sea* (OUP 2015) 280.

[24] *United States v Wildenhaus* 120 US 1 (1887) (SCOTUS).

[25] Churchill, Lowe and Sander (n 19) 125.

[26] ibid 122–28.

regarded as part of the internal economy of the vessel and therefore more appropriately governed by the flag State, which retains residual jurisdiction over matters of internal order and discipline on board. This challenges the assumption that port State jurisdiction can fill enforcement gaps left by flag States. Moreover, the mere existence of a port State's right to exercise jurisdiction does not translate into a corresponding duty to act, which limits its utility as a safeguard in a human rights context.[27] This is evident in the exercise of port State control under regional Port State Memoranda of Understanding (MoUs), where participating States may inspect labour standards and take action against non-compliant vessels.[28] For seafarers, for whom the ship is both workplace and home, such inspections are vital.[29] Yet, in practice, port State jurisdiction is invoked only in cases of very serious deficiencies.[30] This is a missed opportunity as it is easier to inspect a vessel in port than on the open sea.

In practice, the sovereignty that port States enjoy within their internal waters may give rise to human rights concerns, rather than alleviate them. This has occurred where port States exercise their right to control, or even deny, access to ports, ignoring the impact such restrictions can have on the human rights of those on board.[31] During the COVID-19 pandemic, some States closed ports to passengers, seafarers, migrants and refugees in need of urgent medical assistance, leaving many without access to basic necessities or healthcare and preventing their return home.[32] In the migration context, States such as Italy and Malta have denied entry to vessels carrying migrants and refugees, forcing them to remain on board unseaworthy vessels in appalling conditions. Italy has also designated disembarkation ports far from Mediterranean search and rescue (SAR) operations, thereby lengthening voyages, worsening onboard conditions and reducing the capacity of non-governmental organisations to respond effectively.[33]

In the territorial sea, coastal States exercise sovereignty up to a maximum breadth of 12 nautical miles,[34] constrained by the right of innocent passage for foreign vessels.[35] The coastal State 'shall not hamper' such passage[36] unless it is 'prejudicial' to its 'peace,

[27] Similar attempts have been more productive in the marine pollution and safety standards context within codes of conduct and other instruments generated by the International Maritime Organization (IMO). See IMO, *Port State Control* <https://www.imo.org/en/OurWork/IIIS/Pages/Port%20State%20Control.aspx>.

[28] HS Bang and DJ Jang, 'Recent Developments in Regional Memorandums of Understanding on Port State Control' (2012) 43 ODIL 170.

[29] UNGA Res 56/18 (n 10) 1.

[30] For example, in 2024, under the Paris MoU on Port State Control, fewer than 5 per cent of labour-standard deficiencies resulted in vessel detention. See Paris MoU on Port State Control, *Inspection Results and Deficiencies* <https://parismou.org/Statistics%26Current-Lists/inspection-results-deficiencies>.

[31] UNCLOS (n 1) art 8; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14, paras 212–213.

[32] Discussed in S Galani, 'Port Closures and Persons at Sea in International Law' (2021) 70 ICLQ 605. UNCLOS (n 1) arts 19(2)(g) and 33 also favour the decision of coastal States to prioritise public health over rights, e.g. the right to health of persons on board foreign flagged vessels.

[33] Decree Law No 1/2023 (Italy) <https://www.gazzettaufficiale.it/eli/id/2023/03/02/23G00023/sg>; SOS Humanity, 'Civil Fleet: Over a Year of Operation Time Lost' (1 February 2024) <https://sos-humanity.org/en/our-mission/change/over-a-year-of-operation-time-lost/>.

[34] UNCLOS (n 1) arts 2, 3.

[35] ibid arts 17–19.

[36] ibid art 24.

good order or security'.[37] Article 19 UNCLOS lists activities that render passage non-innocent (e.g. fishing, threats of force), but none address the treatment of persons on board. The catch-all provision in Article 19(2)(l)—activities 'not having a direct bearing on passage'—might be read to capture human rights considerations, yet the list is clearly oriented towards coastal States' security. In practice, coastal States adopt a restrained approach, even though they retain criminal jurisdiction over vessels in their territorial sea.[38] Article 27 reinforces this restraint, providing that the coastal State should *not* exercise criminal jurisdiction on board passing vessels unless: the consequences extend to the coastal State; the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; assistance is requested by the vessel; or it is necessary for the suppression of illicit traffic in drugs.[39] In principle, jurisdiction could extend to 'acts which have social, moral or other disturbing consequences for the coastal State',[40] but there is little practice supportive of its application to human rights violations.[41] The effect is a fragmented jurisdictional seascape: authority exists, but its exercise is confined to categories that do not align with human rights concepts.

Outside the territorial sea, vessels enjoy the freedom of navigation.[42] Within straits used for international navigation[43] and in archipelagic waters,[44] UNCLOS establishes distinct regimes (transit passage and archipelagic sea lanes passage). These are more permissive than innocent passage because they guarantee continuous and expeditious transit and cannot be suspended by the coastal State. For present purposes, however, the human rights analysis remains the same: all these regimes concern transit through areas under coastal State sovereignty, so the same considerations that apply in the territorial sea also apply here, with the added point that the navigation rights of vessels are even more strongly protected.

In the exclusive economic zone (EEZ) and on the continental shelf, the coastal State's enforcement jurisdiction over foreign vessels is tied to the protection of its resource rights: it has no authority to restrict navigation for other reasons.[45] This is underpinned by the principle of the exclusive jurisdiction of the flag State[46] over its vessels, to which few exceptions exist.[47] In theory, the flag State's law—including human rights law and that relating to 'social matters'—applies on board.[48] In practice, however, many flag

[37] ibid art 19.

[38] Churchill, Lowe and Sander (n 19) 159–65.

[39] UNCLOS (n 1) art 27.

[40] R Barnes, 'Article 27' in A Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (CH Beck 2017) 229.

[41] A Petrig, 'Coastal State Jurisdiction in the Territorial Sea and the Protection of People on Board Foreign-Flagged Vessels' (*EJIL:Talk!*, 10 December 2024) <www.ejiltalk.org/coastal-state-jurisdiction-in-the-territorial-sea-and-the-protection-of-people-on-board-foreign-flagged-vessels/>.

[42] UNCLOS (n 1) arts 58 (EEZ), 78 (continental shelf), 87 (high seas).

[43] ibid art 38.

[44] ibid arts 52–53.

[45] ibid arts 56, 73, 77, 220.

[46] ibid art 94. R Barnes, 'Flag States' in Rothwell et al (n 23) 304.

[47] UNCLOS (n 1) art 110. For a review of situations where non-flag enforcement jurisdiction exists, see Evans and Lewis (n 18) 642–47.

[48] *Bankovic v Belgium and 16 Other Contracting Parties* App No 52207/99 (ECtHR, 12 December 2001) para 73; *Medvedyev v France* App No 3394/03 (ECtHR, 23 February 2010) para 65; Klein (n 9) 23.

States are unwilling or unable to exercise effective jurisdiction and control over their vessels, which can operate at sea for years without returning to a port of the flag State.[49] The vastness of the oceans compounds these enforcement difficulties. This disconnect results from the fact that UNCLOS allocates authority by formal registration rather than by actual control over people—in contrast to the human rights model of jurisdiction. The permissive interpretation[50] of the 'genuine link' requirement in Article 94 UNCLOS has exacerbated this by encouraging the proliferation[51] of open registries that allow foreign-owned vessels to fly their flag in exchange for fees, typically featuring lower taxes, weaker laws and employment protections and lax enforcement—conditions that may foster or conceal human rights violations.[52]

Jurisdictional problems are acute for persons on board vessels without nationality (flagless vessels) or who are in the water itself—situations common in irregular migration[53] where boats are either unregistered by design or due to size and intended use, and often too small or unsafe for large numbers of people causing them to sink.[54] In such cases, an absurd situation is created where no State seems to be responsible for protecting the human rights of people at sea—often people who require special human rights protection, such as children, women, persons with disabilities or refugees. Efforts to close this jurisdictional gap by stretching doctrines of extraterritorial jurisdiction or proposing new jurisdictional rules have their limits and risk distorting existing law, as discussed in this section.[55]

From a law enforcement perspective, Article 110 UNCLOS authorises warships or other duly authorised ships to board vessels without nationality on the high seas.[56] There is, however, no corresponding duty to do so where human rights abuses are

[49] Fishing vessels, for example, may not access a port for up to two years. Oceana, 'Never-Ending Voyages: Vessels Spending Years at Sea' (June 2024) <https://usa.oceana.org/reports/never-ending-voyages-vessels-spending-years-at-sea/>.

[50] T Scovazzi, 'ITLOS and Jurisdiction over Ships' in Ringbom (n 18) 382.

[51] UN Trade and Development, 'Handbook of Statistics: Merchant Fleet' <https://hbs.unctad.org/merchant-fleet/>; F Scholaert and K Smit Jacobs, 'Addressing Ship Reflagging to Avoid Sanctions' (European Parliamentary Research Service, March 2023) <https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/745686/EPRS_ATA(2023)745686_EN.pdf>.

[52] Cavalcanti (n 7); JH Ford and C Wilcox, 'Shedding Light on the Dark Side of Maritime Trade: A New Approach for Identifying Countries as Flags of Convenience' (2019) 99 Marine Policy 298.

[53] See, e.g. the data collected by the IOM: IOM, *Missing Migrants Project* <https://missingmigrants.iom.int>.

[54] In the UK, for example, the registration of some small ships for non-international sailing is recommended but not required. See UK Ship Register, *Small Ships Register* <https://ukshipregister.co.uk/registration/small-ships-register-part-3>.

[55] See, e.g. *A.S., D.I., O.I. and G.D. v Italy* Communication No 3042/2017 (27 January 2021) UN Doc CCPR/C/130/D/3042/2017. See also V Moreno-Lax, 'The Architecture of Functional Jurisdiction: Unpacking Contactless Control—On Public Powers, *S.S. and Others v. Italy*, and the "Operational Model"' (2020) 21 GermanLJ 385; M Giuffré and V Moreno-Lax, 'The Rise of Consensual Containment: From Contactless Control to Contactless Responsibility for Migratory Flows' in S Singh Juss (ed), *Research Handbook on International Refugee Law* (Edward Elgar 2019) 82.

[56] See also art 8(7) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507.

suspected. Once a boarding occurs, it is recognised that the boarding State exercises effective de facto control over persons on board and thereby becomes responsible for their human rights.[57] In practice, however, this does not necessarily result in human rights protection. Interceptions of boats carrying migrants and refugees are frequently conducted for border control rather than humanitarian relief[58] and have resulted in violations of the prohibition of collective expulsion and the principle of non-refoulement.[59] More problematically, States—now aware that boarding a vessel triggers human rights responsibilities—are increasingly avoiding close contact with such boats and are employing other techniques to deter migrants without having to engage with their human rights obligations (such as funding and training the Libyan Coast Guard (LCG) to interdict vessels before they enter European Union waters).[60]

The situation is more complex when vessels carrying migrants are sinking. One might think otherwise since Article 98 UNCLOS imposes a duty to render assistance to all persons in distress—a duty that reflects customary international law and is reinforced by other treaties.[61] However, while the duty to rescue is clear and universal, its application through the International Convention on Maritime Search and Rescue (SAR Convention) and the system of Search and Rescue Regions (SRRs) introduces complications. The SAR Convention requires States to establish and operate SRRs and to coordinate rescue efforts within them. These SRRs, however, are functional zones of responsibility for rescue coordination only. The duty of States to operate SRRs does not automatically generate jurisdiction over vessels or persons within their SRRs.[62] Article II SAR Convention explicitly States that '[n]othing in the Convention shall prejudice the codification and development of the law of the sea by the [UNCLOS] …

[57] For the notion of 'effective de facto control' at sea, see *JHA v Spain* Communication No 323/2007 (21 November 2008) UN Doc CAT/C/41/D/323/2007, para 8.2; *Fatou Sonko v Spain* Communication No 368/2008 (25 November 2011) UN Doc CAT/C/47/D/368/2008, para 10.3; *Rigopoulos v Spain* App No 37388/97 (ECtHR, 12 January 1999); *Xhavara v Italy and Albania* App No 39473/98 (ECtHR, 11 January 2001); *Medvedyev v France* (n 48); *Hirsi Jamaa v Italy* App No 27765/09 (ECtHR, 23 February 2012); *Sharifi v Italy and Greece* App No 16643/09 (ECtHR, 14 October 2014) para 212; *The Haitian Centre for Human Rights v United States* Case No 10.675 (Inter-American Commission for Human Rights, 13 March 1997) 550.

[58] V Moreno-Lax, D Ghezelbash and N Klein, 'Between Life, Security and Rights: Framing the Interdiction of "Boat Migrants" in the Central Mediterranean and Australia' (2019) 32 LJIL 715.

[59] The most obvious example is the forceful return of boats carrying migrants and refugees to Libya. See UNGA, 'Report of the Independent Fact-Finding Mission on Libya' (3 March 2023) UN Doc A/HRC/52/83, paras 40–53.

[60] i.e. legally stopping, searching and seizing a vessel on the high seas, typically for serious violations of international law like piracy, terrorism and drug or migrant smuggling. UNGA, 'Human Rights Violations at International Borders: Trends, Prevention and Accountability: Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales' (26 April 2022) UN Doc A/HRC/50/31; S Fabio Nicolosi, 'Externalisation of Migration Controls: A Taxonomy of Practices and Their Implications in International and European Law' (2024) 71 NILR 1.

[61] International Convention for the Safety of Life at Sea (adopted 1 November 1974, entered into force on 25 May 1980) 1184 UNTS 1, ch V; UNCLOS (n 1) art 98; International Convention on Maritime Search and Rescue (adopted on 27 April 1979, entered into force on 22 June 1985) 1405 UNTS 118 (SAR Convention).

[62] UNCLOS (n 1) art 98; SAR Convention (n 61) annex, para 2.1.9. provides that: 'On receiving information that a person is in distress at sea in an area within which a Party provides for the overall co-ordination of search and rescue operations, the responsible authorities of that Party shall take urgent steps to provide the most appropriate assistance available.'

and the nature and extent of coastal and flag State jurisdiction'.[63] In other words, the establishment of SRRs does not extend a coastal State's jurisdiction beyond its territorial sea. Accordingly, where shipwrecks occur on the high seas, coastal States do not exercise human rights jurisdiction over those in distress.[64] Although the duty to render assistance is not, strictly speaking, a human rights obligation, it is hard to separate the duty to rescue a person from drowning from the protection of their right to life—as is becoming increasingly recognised.[65] Coastal States are unquestionably required to establish effective SAR services, as a matter of treaty obligation under the SAR Convention, thereby ensuring protection of the right to life. The more difficult question concerns the consequences of inaction: can States be held responsible for violating the right to life by failing to render assistance?

The UN Human Rights Committee (HRC) addressed this in *A.S., D.I., O.I. and G.D. v Italy*, concerning a deadly shipwreck near an Italian warship within the Maltese SRR, with the Rome Maritime Rescue Coordination Centre (MRCC) being the first authority to receive the distress call.[66] In a remarkable—though not entirely convincing—decision, the HRC found Italy in violation of its obligation to protect the right to life on the basis of its knowledge of the distress and the proximity of the Italian warship to the shipwreck.[67] According to the HRC, this generated 'a special relationship of dependency … between the individuals on the vessel in distress and Italy', thereby bringing them within Italy's jurisdiction for the purposes of human rights law.[68] The HRC's reasoning drew heavily on the obligation of States to render assistance to persons in distress under the law of the sea, underscoring the need to move beyond a siloed treatment of human rights law and the law of the sea. At the same time, however, this approach produced an expansive interpretation of human rights jurisdiction that at times conflates jurisdiction under human rights law with that under the law of the sea, thereby risking the creation of unrealistic expectations of States without a sufficiently solid legal foundation.[69]

In a more recent decision, the European Court of Human Rights (ECtHR or Court) examined Italy's responsibility for the acts of the LCG, which had responded to a distress call initially received by the Rome MRCC.[70] The applicants argued that the victims of the shipwreck fell within Italy's jurisdiction due to the financial and logistical support provided by Italy to Libya in managing migration, as well as the fact that the LCG operated under the instructions of the Rome MRCC. The Court declared the complaint inadmissible on the basis that Italy's jurisdiction under Article 1 of the

[63] SAR Convention (n 61).

[64] Discussed in S Galani, 'Human Rights Obligations in Maritime Search and Rescue' (2025) 74 ICLQ 33, 38–48.

[65] HRC, 'General Comment No 36' (30 October 2018) UN Doc CCPR/C/GC/36, para 63; S Trevisanut, 'Is There a Right to be Rescued at Sea? A Constructive View' (2014) 4 QIL: Zoom-In 3; A Papachristodoulou, 'The Recognition of a Right to be Rescued at Sea in International Law' (2022) 35 LJIL 337.

[66] *A.S., D.I., O.I. and G.D. v Italy* (n 55). See also *A.S., D.I., O.I. and G.D. v Malta* Communication No 3043/2017 (27 January 2021) UN Doc CCPR/C/128/D/3043/2017.

[67] *A.S., D.I., O.I. and G.D. v Italy* (n 55), para 7.8.

[68] ibid.

[69] See, e.g. the dissenting opinions in ibid annexes I and II. See also the discussion in Galani (n 64) 44–46.

[70] *SS and Others v Italy* App No 21660/18 (ECtHR, 12 June 2025).

European Convention on Human Rights (ECHR) could not be established and concluded that the situation was governed by other international rules, such as the rules for SAR.[71] Whereas the HRC's reasoning is more attuned to contemporary SAR realities, the ECtHR's more cautious approach underscores that integrating human rights law with the law of the sea requires more than simply expanding or merging existing rules.

2.2. Considerations of humanity

One of the ways that human rights concerns are thought to enter the law of the sea is through the enigmatic phrase that 'considerations of humanity must apply in the law of the sea, as they do in other areas of international law'. The International Tribunal for the Law of the Sea (ITLOS or Tribunal) first used this phrase in *M/V "Saiga" (No 2)*, a case concerning the use of force against vessels.[72] ITLOS held that the principles of necessity and proportionality, found in the law on the use of force, should inform the interpretation of UNCLOS and that 'all efforts should be made to ensure that life is not endangered'.[73] Later tribunals, including in *The Duzgit Integrity Arbitration*, suggested that this approach applied 'to all measures of law enforcement'.[74]

While this appears to signal a willingness to import human rights concerns into the maritime context, the foundations of this reasoning lie elsewhere. The principles of necessity and proportionality originate in the law on the use of force and in international humanitarian law—acting as limits on forcible acts. Such 'considerations of humanity' are not the direct application of the human right to life, but the borrowing of standards developed to constrain State conduct in armed conflict and enforcement operations. The result is a more limited form of protection. The terminology of 'humanity' is deliberately broader and vaguer than that of 'human rights', and the obligations it generates are correspondingly less precise. If these are taken as equivalent, their diluted nature risks undermining the absolute nature of certain human rights. If, however, they are seen as distinct, as argued in Section 3, then their relationship to human rights protections remains uncertain. Regardless, the jurisprudence demonstrates that existing approaches to fold human rights concerns into the law of the sea happen only obliquely, through principles designed for other regimes.

This is further demonstrated in the context of detention under enforcement measures permitted by UNCLOS, where the question of whether such detention could amount to a human rights violation remains unsettled.[75] Coastal States can arrest and detain vessels and crews engaged in prohibited activities in the EEZ.

[71] ibid paras 85–113.

[72] *M/V "Saiga" (No 2) (Saint Vincent and the Grenadines v Guinea)* (1999) 38 ILM 1323, para 155. See A Petrig and M Bo, 'The International Tribunal for the Law of the Sea and Human Rights' in M Scheinin (ed), *Human Rights Norms in 'Other' International Courts* (CUP 2019) 353; K Elmahmoud, 'The ITLOS Advisory Opinion: Human Rights as a Withered Branch of International Law?' (*EJIL:Talk!*, 24 June 2024) <https://www.ejiltalk.org/the-itlos-advisory-opinion-human-rights-as-a-withered-branch-of-international-law/>.

[73] *M/V "Saiga" (No 2)* ibid, para 156.

[74] *The Duzgit Integrity Arbitration (Malta v São Tomé and Príncipe)* PCA Case 2014-07, Award (5 September 2016) para 209.

[75] Petrig and Bo (n 72) 355–57; S Trevisanut, 'Twenty Years of Prompt Release of Vessels: Admissibility, Jurisdiction, and Recent Trends' (2017) 3 ODIL 300.

Article 73, however, requires that detention be followed by prompt release upon the posting of a bond and explicitly provides that 'penalties … may not include imprisonment'. ITLOS has held that the temporary detention of a crew does not even amount to 'imprisonment'[76] and proceedings can only be brought by flag States, not the detained individuals themselves.[77] ITLOS proceedings are confined to the interpretation of Article 73 and do not extend to broader human rights concerns.[78] Judge Treves, both in his separate opinions and his extrajudicial writings, has argued that the prompt release provisions do in fact establish 'human rights and due process dimension[s]'[79]—an approach which is more attuned to international human rights law.[80] Yet, this view has not gained full acceptance in ITLOS jurisprudence. A more open approach was taken in *The Duzgit Integrity Arbitration Award* noting that while the Court's competence was limited to the terms of Article 73, nothing precluded interpreting these in light of broader international rules.[81] This suggests at least some potential for bridging the regime of the law of the sea with human rights norms, though the path remains under construction.

Recent developments reinforce this. In its Advisory Opinion on *Climate Change and International Law*,[82] ITLOS acknowledged that 'climate change … raises human rights concerns'.[83] Judge Pawlak went further, suggesting that the Tribunal could have drawn more directly on the reasoning of human rights bodies in holding States responsible for the 'adequate protection of persons against diverse impacts of climate change *within* the framework of international human rights law'.[84] However, more significant than the rights language itself was the interpretive method that ITLOS employed: it read UNCLOS alongside environmental treaties, allowing each to inform the interpretation of the other. A similar interpretative approach could be taken with human rights treaties too should ITLOS be presented with such an opportunity.

2.3. Summary

The challenges identified in this section show that the obstacles to applying human rights at sea are both fundamental and conceptual. The 'seascape' outlined in Sections 2.1 and 2.2 fragments jurisdiction across zones and activities in ways which do not easily

[76] *M/V "Virginia G" (Panama/Guinea-Bissau)* (2014) 53 ILM 1164, para 308; *The "Hoshinmaru" (Japan v Russian Federation)* (Prompt Release, 6 August 2007) ITLOS Reports 2007.

[77] UNCLOS (n 1) art 292(2).

[78] *The "Monte Confurco" (Seychelles v France)* (Prompt Release, 18 December 2000) ITLOS Reports 2000, paras 74–76.

[79] See, e.g. the Separate Opinion of Judge Treves in *"Juno Trader" (Saint Vincent and the Grenadines v Guinea-Bissau)* (Prompt Release, 18 December 2004) ITLOS Reports 2004; Treves (n 5).

[80] HRC, 'General Comment No 35' (16 October 2014) UN Doc CCPR/C/GC/35, para 5; *Guzzardi v Italy* App No 7367/76 (ECtHR, 6 November 1980) para 95; *Medvedyev v France* (n 48) para 73.

[81] *The Duzgit Integrity Arbitration* (n 74) paras 208–210.

[82] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion) (Case No 31, 21 May 2024) ITLOS Reports 2024 (ITLOS Advisory Opinion).

[83] ibid para 66. See also *Obligations of States in respect of Climate Change* (Advisory Opinion) (General List No 187, 23 July 2025).

[84] ITLOS Advisory Opinion (n 82) (Declaration of Judge Pawlak) para 4 (emphasis added).

align with the approach of human rights law of control over individuals. This poses significant legal challenges for upholding human rights law at sea and providing accountability for violations. The jurisprudence has indicated that UNCLOS can be interpreted in light of other international norms, including human rights standards, offering a glimpse of how these regimes could be better integrated in future. These developments reveal both the limits of the existing framework and the opportunities for innovation. The challenge, therefore, is to address the underlying conceptual issues to realise human rights at sea in a way that accounts for the structural realities and differences between human rights law and the law of the sea.

3. Reconceptualising human rights at sea

The challenges outlined in Section 2 show that applying human rights law at sea is not simply a matter of extending existing rules into the maritime domain. The maritime context generates distinct legal and practical difficulties which must first be clarified and recognised before any meaningful integration of regimes can take place. This section therefore raises two preliminary questions: first, what counts as a genuine human rights issue at sea? Second, how does the maritime context shape the way rights are understood? Only by addressing these matters can better standards and approaches begin to be developed.

3.1. What is meant by 'human rights at sea'?

An unintended consequence of the growing interest in human rights at sea is that many issues presented as 'human rights abuses' do not necessarily amount to such violations. Not every adversity experienced at sea constitutes a breach of human rights.[85] This blurring of categories is one reason why the issue has been approached cautiously in both scholarship and jurisprudence. Concepts such as 'considerations of humanity' or the 'protection of people or persons at sea' have been used instead—terms which draw attention to serious problems but do not distinguish between these and human rights issues, raising the question: which acts genuinely amount to human rights violations in the maritime context? Seafarers' employment conditions illustrate this difficulty. Seafarers are often exposed to delayed wages, inadequate supplies or poor work conditions. Yet while such treatment is troubling, it only becomes a matter of international human rights law where it breaches the threshold of rights recognised in treaties—for example, discrimination, forced labour or denial of the right to work or remuneration.[86] Likewise, breaches of International Labour Organization regulations may initially be matters of contractual or regulatory compliance, only becoming a human rights issue once a municipal remedy has been sought and declined.

Difficult questions also arise in the context of the relationship between international human rights law and the application of criminal law at sea. For example, the commission of a sexual offence on board a foreign flagged vessel passing through

[85] See similarly Guelker (n 12) 2, on the tensions between criminal law and human rights law in the context of slavery.

[86] See F Coomans, 'Education and Work' in D Moeckli et al (eds), *International Human Rights Law* (4th edn, OUP 2022) 253.

another State's coastal waters does not automatically fall within the jurisdiction of the coastal State. It is neither a security issue affecting the territorial sea, nor does it impact the exclusive exploration and exploitation of the coastal State's economic resources in the EEZ or continental shelf. Under UNCLOS' zonal approach, criminal jurisdiction rests with the flag State, and the coastal State has neither the right nor the duty to intervene in the management of another State's criminal processes. Only where a State's failure to investigate or prosecute reaches the threshold of denying an individual's rights under international human rights law—such as the prohibition of torture or inhuman or degrading treatment or punishment, or the right to respect for private and family life under the ECHR—might the matter acquire a human rights dimension.[87] Human rights law does not transform every criminal act at sea into a rights violation. Rather, it is a framework designed to secure systemic protection: to prevent the State itself from causing harm, and to require it to protect individuals against the wrongdoing of others, including private actors, where such regulation can be reasonably expected. The difficulty at sea is that UNCLOS' jurisdictional framework, based on zones and flag State exclusivity, does not align with this functional test of control and protection.

If human rights law cannot cover every form of mistreatment at sea, how else might protection be strengthened? Is it necessary to frame everything within the human rights debate? This article argues that it is not and suggests that alternative approaches to improving regulatory compliance may offer more realistic means of safeguarding the rights and dignity of persons at sea. This approach takes account of the many actors operating at sea that may be responsible for violations yet are rarely held accountable for them. These include the operators and agents involved in the shipping, fishing, tourism or resource extraction industries. International law is cemented into the obligations of States. The law of the sea, for example, 'has been designed by States for States'.[88] International human rights law was designed for humans, but 'the centrality of States to the practice of human rights cannot be denied'.[89] Even in the context of positive human rights obligations, it is States who are responsible for failing to protect an individual from the wrongdoing of another individual.[90]

It may, therefore, prove more beneficial to find means of improving regulatory compliance and holding private entities accountable for non-compliance. In other words, the same goal of elevating the treatment of persons at sea might be more feasible through non-traditional, private means in this context. One way could be through enhanced corporate responsibility as is promoted through the UN Guiding Principles on Business and Human Rights, which require businesses to respect human rights.[91] While States remain central in regulating corporate conduct, strengthening corporate accountability provides an important complementary tool for addressing the daily vulnerabilities faced by persons at sea—and may, in practice, prove more effective than relying on State obligations under human rights law.

[87] See, e.g. *X and Y v Netherlands* App No 8978/80 (ECtHR, 26 March 1985); EV Henn, *International Human Rights Law and Structural Discrimination* (Springer 2019) ch 4.

[88] Papanicolopulu (n 8) 84.

[89] CR Beitz, *The Idea of Human Rights* (OUP 2009) 128.

[90] V Stoyanova, *Positive Obligations under the European Convention on Human Rights* (OUP 2023).

[91] UNGA, *Guiding Principles on Business and Human Rights* (2011) UN Doc HR/PUB/11/04.

3.2. The seascape context

The slogan that 'human rights apply at sea, as they do on land' has been used to raise awareness of the issue,[92] but it risks obscuring the important legal distinctions which must be maintained. While it is no longer credible to deny that human rights law should apply as much at sea as it does on land, this does not mean that the manner and extent of its application will be identical. Can, for example, access to: healthcare (the right to health); education (the right to education); places of worship (the right to freedom of religion); or the internet (the right to freedom of expression and to access information) be guaranteed in the same way at sea as on land? The seascape simply poses additional challenges which frustrate achieving these in the same way as on land. Even on land, the enjoyment of rights differs depending on the geographical context, i.e. between metropolitan areas and remote parts of the countryside. The differences between the land and the sea are greater if one considers the weather conditions, the lack of infrastructure and the long distances at sea.

The ECtHR has already noted that the application of the ECHR at sea may be subject to 'wholly exceptional circumstances' that require adjustments to avoid unrealistic expectations of States.[93] This is not to say that the Court introduced exceptions to the application of human rights at sea but, rather, adopted a more practical approach to their protection.[94] For example, the requirement to bring a suspect 'promptly' before a judge is applied more strictly in cases of arrest on land than at sea, where transfers typically involve complex logistics, poor weather conditions and lengthy voyages.[95] The Arbitral Tribunal in the *Arctic Sunrise* case also recognised this variable standard of protection with the seascape in mind.[96] This case concerned Russia's actions against Greenpeace activists that were protesting about a Russian oil rig and had climbed it to erect a banner to prevent its operation. The Arbitral Tribunal concluded that it could 'have regard to the extent necessary to rules of customary international law, including international human rights standards, not incompatible with the Convention, in order to assist in the interpretation and application of the Convention's provisions' concerning Russia's enforcement action against the vessels and individuals involved.[97] Consequently, it thought that 'the right to protest is not without its limitations, and when the protest occurs at sea its limitations are defined, *inter alia*, by the law of the sea'.[98] According to the Arbitral Tribunal, these limitations included the central principle that the seas 'shall be reserved for peaceful purposes' only[99] and also the right of a State to establish installations

[92] See, e.g. Geneva Declaration on Human Rights at Sea (n 9) fundamental principle 1.

[93] *Rigopoulos v Spain* (n 57). See also *Medvedyev v France* (n 48) paras 131–134.

[94] S Galani, 'The Instrumentalisation of Migration as a Hybrid Threat against the EU: Can Human Rights Become "Hybrid" Too?' in A Lott (ed), *Maritime Security Law in Hybrid Warfare* (Brill 2024) 275.

[95] *Rigopoulos v Spain* (n 57); *Medvedyev v France* (n 48) para 131; *Ali Samatar v France* App Nos 17110/10 and 17301/10 (ECtHR, 4 December 2014) paras 53–59.

[96] *Arctic Sunrise Arbitration (Kingdom of the Netherlands v Russian Federation)* PCA Case No 2014-02, Award (14 August 2015).

[97] ibid para 198.

[98] ibid para 228. Relatedly, see R Caddell, 'The Law of the Sea and the Exercise of Free Speech and Protest Rights' in N Matz-Luck, Ø Jensen and E Johansen (eds), *The Law of the Sea: Normative Context and Interactions with other Legal Regimes* (Routledge 2022) 202.

[99] *Arctic Sunrise Arbitration* (n 96) para 228.

for the exclusive exploitation of its economic resources in UNCLOS.[100] Consequently, Russia was able to pursue, arrest and detain those involved, but the noncontinuous manner of its pursuit was contrary to the right of hot pursuit, such that the tribunal did not need to examine the reasonableness of the detention of the individuals and its relationship to human rights standards.[101] While the Arbitral Tribunal did not directly adjudicate human rights claims, it was willing to use human rights principles as interpretive guidance when applying the law of the sea.

This indicates that the seascape shapes how rights are understood and applied, even if only indirectly, and that considerations at sea differ markedly from those on land. Expectations of conduct are distinct, and actions at sea can have more immediate and lethal consequences—whether undertaken by States or by individuals. All this serves as a 'reality check' for every effort to apply human rights at sea from both a theoretical and a practical point of view.

3.3. Summary

The motto 'human rights apply at sea, as they do on land' has been a valuable starting point for raising awareness of the protection of persons at sea. However, it overlooks the legal nuances and operational complexities central to this area. Upholding human rights at sea requires careful differentiation between genuine rights violations, regulatory or welfare issues and the commission of crimes, while also acknowledging the unique characteristics of the maritime context. International human rights law is engaged only in specific circumstances and cannot serve as a panacea for all wrongs at sea. Its application at sea likewise demands adaptation to the distinct challenges of the seascape.

4. Conclusion

This article has shown the difficulties in applying human rights law at sea. The law of the sea and human rights law approach the question of jurisdiction, and the resultant State obligations, from different perspectives. Integration is, therefore, challenging and requires some nuance and deftness. For this reason, forcing all problems into the language of human rights law is unhelpful: it risks obscuring complex legal matters and practical realities. In formulating future solutions, it is essential to be more precise in identifying genuine human rights violations and to distinguish them from other grievances, such as regulatory failures or crimes. Greater sensitivity to the maritime context is required, with closer attention to the specific challenges of the seascape and the need for workable standards from which people at sea can benefit. The goal must be practical solutions—ones that States, shipowners and industry actors can realistically implement. This may involve recognising that existing legal frameworks have limits and that new approaches tailored to the maritime environment will be necessary. Helpful initiatives are already emerging, such as proposals for a UN Special Rapporteur or a UN Working Group on Human Rights at

[100] ibid para 229.
[101] ibid para 333.

Sea, and the reflections in this article are intended to contribute constructively to these efforts.[102] The task ahead is to ensure that human rights are not only invoked at sea but firmly anchored in the seascape.

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[102] Wilton Park (n 10) 5; Geneva Declaration on Human Rights at Sea (n 9); ILA (n 10).

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