

# Human rights in a shifting maritime landscape

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When the United Nations Convention on the Law of the Sea (UNCLOS) entered into force in 1994, then-Secretary-General Boutros Boutros-Ghali hailed it as “possibly the most significant legal instrument” of the twentieth century.<sup>1</sup> Four decades later, UNCLOS remains a foundational pillar of the international legal order governing maritime spaces. Yet, its current relevance is increasingly tested by complex and evolving challenges – chief among them, its capacity to engage meaningfully with the protection and promotion of human rights.

Part I of Volume 4 of the ASCOMARE Yearbook on the Law of the Sea explores this tension through an evolutionary lens, critically examining the interplay between the law of the sea and international human rights law. Although UNCLOS does not explicitly reference human rights – a limitation acknowledged across multiple contributions – its interpretation and application have been shaped by normative developments, including international jurisprudence that introduces ‘con-

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1. UN Division for Ocean Affairs and the Law of the Sea, ‘The United Nations Convention on the Law of the Sea (A historical perspective)’ (originally prepared for the International Year of the Ocean, 1998), available at <<[https://www.un.org/depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm](https://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm)>>.

siderations of humanity’ as guiding principles within the maritime domain.<sup>2</sup>

The contributions in this Part address key doctrinal and practical developments at this intersection. Qafisheh and Patel examine the maritime past and prospective future of the State of Palestine, exploring how UNCLOS may generate legal and human rights implications at both domestic and regional levels. Loefflad and Kapogianni investigate China’s maritime militias in the South China Sea, highlighting the tension between security imperatives and human rights concerns, particularly where Chinese practice departs from Western legal norms. Canella discusses the Chagossian Committee’s *amicus curiae* submission, underscoring the marginalisation of Indigenous rights and the potential for international adjudicative bodies to accommodate such claims. Cerboni analyses the dual implications of artificial intelligence in the maritime sphere: its potential to enhance safety and its capacity to generate new human rights risks. Porchia examines the emerging trend among States to restrict non-governmental search and rescue operations in the Mediterranean, particularly in light of recent Italian aviation legislation, while Papachristodoulou highlights legal voids that hinder accountability for States complicit in migrant disappearances. Leucci focuses on maritime trade in conflict minerals, notably coltan from the Democratic Republic of the Congo, and its impact on the rights of those involved in its extraction.

Together, these contributions converge on a central critique: the existing legal architecture is ill-equipped to address the human rights dimensions of maritime governance. Scovazzi’s discussion of underwater intangible cultural heritage, contextualised within ongoing negotiations at the International Seabed Authority, further illustrates the tension between

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2. See Liesbeth Lijnzaad, ‘Considerations of humanity and human rights at sea’, in *this volume*.

sovereign rights and the protection of cultural and social dimensions of the law of the sea.

Yet, the section does more than diagnose shortcomings. Contributions by Scovazzi and Canella highlight the potential of an evolving legal framework to support rights-based claims, particularly those of Indigenous Peoples and local communities. The adoption of the UNCLOS implementing agreement on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ Agreement)<sup>3</sup> marks a significant development in this regard, signalling a shift toward inclusive governance in areas beyond national jurisdiction and reinforcing a broader ‘humanisation’ of the law of the sea – an approach increasingly recognised in judicial practice. Such efforts should be welcomed, especially as they seek to correct historical injustices, many rooted in colonial legacies. In this context, the analysis by Qafisheh and Patel on the maritime past and present of the Palestinian people offers a future-oriented reminder that such colonial mindsets must be categorically rejected.

Several implicit reflections also emerge. First, the importance of multilateralism in promoting human rights at sea. As seen in the chapters by Porchia and Papachristodoulou, unilateral State practices exercised under broad discretion pose substantial risks to fundamental rights. Similar concerns arise in Loefflad and Kapogianni’s analysis of Chinese maritime militias, whose operations threaten regional stability and carry serious human rights implications.

Second, UNCLOS itself requires critical reassessment. Its limited engagement with human rights norms makes it essential to consider the role of complementary legal instruments that extend its functional reach.

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3. Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (New York, 19 June 2023, not yet in force).

These include the BBNJ Agreement and the International Convention on Maritime Search and Rescue,<sup>4</sup> both integral to the protection of human dignity at sea.

Leucci's chapter underscores the imperative of strengthening the nexus between States' due diligence obligations – particularly those of flag States – and the protection of human rights. Framed within the context of maritime trade in conflict minerals such as coltan, this observation accords with the conclusions articulated in the ASCOMARE Legal Opinion annexed to this Yearbook. It further prompts a broader examination of the extent to which the effective implementation of human rights obligations at sea may produce concrete legal and practical effects on land (and *vice versa*).

Boutros Boutros-Ghali's optimism in 1994 reflected the achievements of a different era. The question now is whether UNCLOS can retain its status as a *Constitution for the oceans* in a world where human rights and maritime governance are ever more entwined. The contributions in Part I suggest a cautiously optimistic answer: with political will, normative innovation, and a commitment to justice at sea, a more human-centred law of the sea is within reach.

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4. International Convention on Maritime Search and Rescue (Hamburg, 27 April 1979, in force 22 June 1985) 1405 UNTS 119.