INTERNATIONAL LAW ASSOCIATION

VIENNA CONFERENCE (2026)

PROTECTION OF PEOPLE AT SEA

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* The Committee marks with sadness the passing of Professor Steven Haines

INTERIM REPORT

March 2026

Content

I. Preface: constitution and meetings

1. The Committee on Protection of People at Sea, established in 2023, formally commenced its work at the ILA's 81st Biennial International Law Conference in Athens (Greece) taking place from 25 to 28 June 2024. The Committee's aim is to develop a set of recommendations or rules on a key issue relating to the protection of people at sea, namely the jurisdiction of States for the purpose of protecting people in the maritime domain.

2. To address jurisdiction in a comprehensive way, the Committee focuses on (a) how the notion of "jurisdiction" in human rights law, mostly developed with regards to situations on land, operates at sea; (b) how the concept of jurisdiction under general international law, the law of the sea, and other substantive branches of international law governing the allocation of power among States, informs the obligations of these States to protect people at sea; and (c) how these notions of jurisdiction interact with a view to maximise the protection for people at sea.

3. This Interim Report is the product of two years of work by the Committee (2024-2026), carried out through hybrid meetings in March 2024 in Milan (Italy), in June 2024 in Athens (Greece) and in April 2025 in Cape Town (South Africa). Deliberations and discussions also took place in several intersessional online meetings. At its first meeting in Milan, the Committee refined its work programme and mandate, which notably entailed discussions on the meaning of "jurisdiction" in relation to the protection of people at sea and possible methodological approaches. At its meeting in Athens, the Committee adopted a two-stage work plan. Stage I, ending in August 2026, serves to map, collect and classify existing law and practice concerning the exercise of jurisdiction by States in relation to the protection of people at sea. In Stage II, the Committee will reconstruct and elaborate the normative framework governing jurisdiction in relation to the protection of persons at sea.

4. In Cape Town, the Committee operationalised Stage I by deciding on the organisation of work and membership of eleven Working Groups (WGs). WGs 1-10 focused on international law and practice, with WGs 1-5 examining substantive branches of international law (human rights law; law of the sea; criminal law; maritime law; and other fields of international law) and WGs 6-10 addressing specific categories of persons who may be in need of protection (seafarers; migrants; criminal suspects; fishers; other persons). In forming these 10 WGs, each Committee member was asked to join two groups (ideally, one relating to a substantive branch of international law and one relating to a category of persons at sea); one or more Members were appointed as Coordinator(s) for each WG. WG 11 addressed domestic law and practice, with a sub-WG focusing on EU law and practice. All members of the Committee are members of WG 11, which also has a Coordinator.

5. WGs 1-10, following specific instructions and a common template, undertook a systematic collection and organisation of materials, including the preparation of two-page summaries to serve as the basis for the Interim Report. Two online meetings took place in September 2025 to discuss potential overlaps and gaps in the design of WGs and to allow for an exchange on early experiences between WGs. WGs 1-10 completed their work by February 2026, when the coordinators of WGs 1-10 shared their summaries and tables listing practice collected with the Chair and Co-Rapporteurs. The work of WG 11 is ongoing and should be completed by August 2026.

6. This Interim Report reflects the work of the Committee carried out up to February 2026 and concentrates on international law and practice on the exercise of jurisdiction by States in relation to the protection of people at sea.

II. Introduction

7. The protection of people at sea has historically received limited attention in international law, despite the inherently transnational character of many activities at sea and the diverse nationalities of people involved. Although unnatural deaths, abuse, exploitation, and excessive use of force have long been common at sea, it is only in the last two decades that violations of basic human rights in maritime settings have begun to be more regularly documented by intergovernmental organisations (IGOs), civil society, and the media. These abuses range from forced labour in fisheries to prolonged detention in law enforcement operations.

8. International law could significantly contribute to the eradication of such practices in two main ways. On the one hand, by upholding the human rights of all persons at sea and by providing effective remedies in case of their breach and mechanisms for non-repetition of illegal conduct. On the other hand, by regulating the maritime space, maritime activities, and all means used by humans at sea, including vessels and platforms, so as to ensure that persons are protected. Yet, the potential of international law has not been fully harnessed to prevent or remedy these harms. A central reason for this problem is that people at sea sit at the intersection of two bodies of international law - human rights law and the law of the sea - which have traditionally been developed and applied without reference to each other. Neither human rights treaties nor the UN Convention on the Law of the Sea (UNCLOS)[1] expressly address the protection of people at sea. In addition, while some maritime treaties, such as the International Convention for the Safety of Life at Sea (SOLAS Convention)[2] or the Maritime Labour Convention (MLC),[3] aim to safeguard basic rights of certain people at sea, their implementation raises longstanding difficulties.

9. These structural gaps are compounded by the fragmented nature of existing regulation. Protection is scattered across instruments that address particular groups, such as seafarers or fishers, or people finding themselves in specific situations, leaving various categories of people, such as offshore workers, without dedicated safeguards. Even within UNCLOS, differences in the procedural guarantees afforded under provisions concerning pollution and fisheries respectively exemplify the inconsistent treatment of those subjected to enforcement measures.[4] Although general human rights treaties and customary international law, particularly as reflected in the Universal Declaration on Human Rights,[5] apply to all people at sea, no treaty provides them comprehensive protection in the maritime domain. As a result, different standards apply to different groups of people at sea, States assume uneven commitments, entire categories of situations remain unregulated, and violations of certain rights are left unaddressed. In response, IGOs, courts and

[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 Convention for the Safety of Life at Sea (adopted 1 November 1974, entered into force 25 May 1980) 1184 UNTS 1 ("SOLAS Convention").
[3] Maritime Labour Convention (adopted 23 February 2006, entered into force 20 August 2013) 2952 UNTS 3 ("MLC").
[4] See UNCLOS, Arts 73, 220 and 226.
[5] UNGA Resolution 217A Universal Declaration of Human Rights (10 December 1948), GA Res 217A (III), UN GAOR, UN Doc A/810.

treaty bodies have begun to clarify the obligations of States vis-à-vis people at sea, and scholars have called for a holistic approach that integrates human rights law, the law of the sea, and other relevant legal regimes. The 2022 Geneva Declaration on Human Rights at Sea represents one initial attempt to articulate such an approach.[6] However, many questions remain unresolved, including what specific rights individuals have at sea, which States bear duties toward which individuals at sea, how those duties vary across maritime zones and activities, what these duties exactly entail, and how such duties can be enforced.

10. Among these numerous unresolved legal questions, the Committee has, for the purposes of its mandate for the years 2024-2028, chosen to focus on the issue of jurisdiction in relation to protection of people at sea. This choice is due to the fact that the Committee is focusing on the analysis of existing international law and its progressive development. Although actors other than States are increasingly considered as addressees of rules of international law, States remain the primary subjects of international law. In this context, the concept of "jurisdiction" is central to determining which State or States are under an obligation to respect, protect and fulfil human rights and, at the same time, is key in identifying the State with power to regulate a certain maritime zone, vessel or activity, and which could therefore take measures to protect people at sea and their rights. At the same time, the topic of "jurisdiction" exemplifies the main challenges that affect all protection of people at sea: the uncoordinated multiplicity of legal instruments; the highly fragmented regimes deriving from them; the conceptual silos that have often prejudiced effective protection; and the inconsistent use, interpretation, and application of key terms. The Committee has furthermore decided at this stage to exclude from its focus the powers that can be attributed to IGOs,[7] as well as rules concerning the competence of international judicial and quasi-judicial bodies to hear specific cases submitted to them.

11. Mindful of these challenges, the Committee agreed to divide its work into two Stages. Stage I entails the mapping, collection and classification of existing law and practice concerning the exercise of jurisdiction in relation to protection of people at sea (see para 3). The Committee decided to map both international practice and domestic practice, since the latter constitutes a relevant element in assessing the existence of rules of customary international law or may be otherwise relevant as "general principles of law".[8] The Committee's approach in Stage I is deliberately descriptive and taxonomic in order to comprehensively map existing law, moving beyond the sectoral approach generally followed thus far, and allowing members from different epistemic communities to engage in a mutual learning exercise that will constitute the basis for the future analytical work of the Committee. This approach has prompted different understandings to emerge and advanced our discussions, sectoral rules and instruments to become widely known, and overlaps, gaps, and inconsistencies to better emerge and be mapped. The work conducted by the Committee in Stage I has therefore laid the ground for its future work during Stage II, which aims at reconstructing and developing the normative framework and to elaborate a set of recommendations or rules for consideration by the ILA.

[6] Human Rights at Sea, "Geneva Declaration on Human Rights at Sea" (launched 1 March 2022) https://www.humanrightsatsea.org/GDHRAS.
[7] The practice of IGOs is therefore examined to the extent that it provides evidence of rules on the exercise of jurisdiction by States, rather than directly by the IGOs themselves.
[8] ICJ Statute, Art 38(1).

12. Methodologically, this Interim Report consists of a descriptive mapping of existing international law and practice concerning the exercise of jurisdiction for the protection of people at sea. It draws on the material collected and two-page summaries written by the Committee's WGs 1-10, which used a common template designed to ensure coherence and comparability across the subject-matter of the respective WGs (see paras 4-5). Within its mandate, each WG tried to ensure to the extent possible that the summary included material and practices from all geographical regions, as well as rules existing at the international and regional levels. In line with the mandate of Stage I, the Interim Report does not advance normative conclusions but instead provides the evidentiary base that will support the analytical and normative work to be undertaken in Stage II.

13. For Stage I of the Committee's work, members were invited to consider the following questions: (1) Who has authority to do what?; (2) Where can they do it?; (3) With respect to whom?; and (4) Who must act? In addressing these questions, WGs 1-10 collected international law and practice, including but not limited to treaties and other international instruments (including informal/soft law instruments), customary international law, decisions and other normative or policy documents of IGOs, and judicial and quasi-judicial decisions.

14. Accordingly, the content of this Interim Report reflects the work undertaken by Committee members engaged in WGs 1-10.[9] Part III provides an overview of the main findings from the WG summaries. Part IV outlines the Committee's work to be undertaken in Stage II of the Committee's mandate in light of these findings. Annexed to this Interim Report are the WG summaries, edited to fit within the page limits of the Interim Report.

III. Mapping jurisdiction to protect people at sea

15. As a preliminary point, it is worth noting that jurisdiction constitutes a foundational structural element of international law. Although numerous international instruments address specific manifestations of State jurisdiction, no single treaty articulates its basic architecture, categories, or underlying principles. These matters fall instead within the realm of customary international law and general principles. Jurisdiction is distinct from sovereignty: while sovereignty includes all forms of jurisdiction, jurisdiction can also be exercised in spaces and contexts where a State does not enjoy sovereignty. This is what happens in the vast majority of the sea, which is not subject to the sovereignty of any one State. While a broad consensus exists concerning the main bases of State jurisdiction—particularly territoriality and nationality—other bases remain less settled and continue to depend heavily on variable State practice and contested doctrinal interpretations.

16. Since its mandate concerns people "at sea", the Committee has focused on rules that relate to the exercise of jurisdiction "at sea", that is, beyond land. Rules providing for jurisdiction by States can be divided in two categories for this purpose. First, rules that directly attribute to one or more States jurisdiction over persons at sea. These rules have been mapped by WGs 6-10, which have focused on specific categories of persons at sea. Second, rules may attribute jurisdiction to a State, not directly over a person, but rather over the object (e.g. a vessel) or the maritime zone (e.g. the territorial sea or high seas) in which the person is located, or over the activity that the person is conducting (e.g. fishing) or over the activity of the State that interferes with the person (e.g.

[9] The work of WG11 is ongoing and will be discussed in the next report. WGs 3 and 8 were merged to avoid overlap of work.

suppression of drug trafficking). International law allocates legislative jurisdiction to States to regulate specific maritime objects, activities, persons and spaces. It further provides enforcement jurisdiction over specific maritime objects, activities, persons and spaces. In addition, international law provides States with adjudicative jurisdiction.[10] These separate bases of authority to act are not always explicitly articulated in the relevant treaties and may be implied.[11] The Committee has mapped all three types of jurisdiction just mentioned.

a. Substantive Areas of Law: Working Groups 1-5

17. At sea, the law of the sea allocates jurisdiction to States primarily on a spatial, (vessel) nationality, and functional basis, whereby the protection of people at sea is most commonly incidental to rather than the focus of the allocation of State competence.[12]

18. The spatial allocation of State jurisdiction necessitates distinctions being drawn between internal waters, archipelagic waters, the territorial sea, the contiguous zone, the exclusive economic zone (EEZ), the continental shelf, the Area and the high seas. The scope of coastal State jurisdiction depends on what activity is occurring and where it is occurring and is drawn from the coastal State's sovereignty over internal waters, archipelagic waters and the territorial sea as well as its sovereign rights and jurisdiction in the EEZ and on the continental shelf.[13]

19. The flag State has jurisdiction over vessels that are registered (or flagged) to that State. The flag State has a duty to "effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag".[14] This duty applies to both State-owned and privately owned vessels that are flagged to that State. The scope of the duties of flag States, especially as articulated in Article 94 of UNCLOS, to protect people at sea is augmented through international instruments adopted under the auspices of the International Maritime Organization (IMO), particularly those concerned with maritime safety.[15]

20. The jurisdiction of the flag State may be concurrent with the jurisdiction of the coastal State, for example, if a vessel flagged to one State is navigating in the territorial sea or the EEZ of another State. This intersection of flag State and coastal State jurisdiction will sometimes produce scenarios where both States have jurisdiction to prescribe and enforce rules that are relevant to the protection of people at sea.

[10] Article 105 of UNCLOS is notable in this regard for setting out the competence of national courts to prosecute persons arrested for piracy.
[11] For example, UNCLOS sets out a specific provision granting coastal States the power to enforce laws relating to fisheries in Article 73. Article 73 stipulates several protections for arrested fishers. However, UNCLOS does not include comparable provisions for law enforcement actions taken against offshore mining or marine scientific research activities. The *Arctic Sunrise* Tribunal implied the existence of law enforcement powers when assessing Russia's actions against Greenpeace protestors who were challenging Russia's mining operations in the Arctic. *Arctic Sunrise* (Netherlands v Russia) (Award on the Merits of 14 August 2015) PCA Case No 2014-02, paras 281-282.
[12] See WG 2 Report.
[13] The coastal State has authority to prevent and punish particular offences in its contiguous zone, which can extend up to 24 nautical miles from its coast. See UNCLOS, Art 33.
[14] UNCLOS, Art 94(1).
[15] See, e.g., SOLAS Convention; Convention on Facilitation of International Maritime Traffic (adopted 9 April 1965, entered into force 5 March 1967) 591 UNTS 265 ("FAL Convention").

21. Instruments adopted at the IMO are also relevant for determining when a State has jurisdiction in relation to the protection of people at sea.[16] These instruments either pursue a preventive approach to protection (e.g. by setting safety standards)[17] or are remedial, as they allow for the establishment of adjudicative jurisdiction in domestic (rather than international) courts.[18] These maritime law instruments primarily allocate responsibility to the flag State,[19] although port and coastal States have a role when there is an interface between the vessel and land territory.[20]

22. The duties of the flag State may be predicated on responsibilities that are ultimately performed by a business entity (the business that owns, manages or charters a vessel) or the master of a vessel.[21] The flag State will have the duty to ensure that these private actors meet their international obligations associated with protecting people at sea.[22] It may also be the case that the States of nationality of the business entity are required to ensure that the business, and any further actor over whom the business has leverage (such as the master), protect human rights.[23]

23. States have the obligation to protect people at sea under international human rights treaties if they exercise *de jure* or *de facto* jurisdiction.[24] The Committee's overview shows that such conditions for jurisdiction may include relationships of authority, (physical) control, or other forms of power or impact, depending on the treaty and interpreting court or body. Human rights jurisdiction arises, for example, when State officials, such as coast guard, police or naval officers, exercise physical control over persons at sea.[25] What exact circumstances will establish extraterritorial "control" at sea is evolving. For example, to establish that Italy had an obligation to protect migrants at sea, the UN Human Rights Committee noted a special relationship of dependency, the foreseeability of harm to the right to life and the international obligation to render assistance.[26]

24. Human rights bodies routinely refer to the human rights obligations of flag States in relation to activities on ships that are flagged or registered by a State party.[27] The European Court of Human

[16] See Report of WG 4.
[17] Eg, International Convention on Salvage, London, 28 April 1989, entered into force 14 July 1996, 1953 UNTS 165, SOLAS Convention, FAL Convention and the International Convention on Maritime Search and Rescue (adopted 27 April 1979, entered into force 22 June 1985, as amended) 1184 UNTS 278 ("SAR Convention").
[18] See, eg, Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 (13 December 1974, entered into force 28 April 1987) 1463 UNTS I-24817 and its 2002 Protocol (adopted 1 November 2002, entered into force 23 April 2014).
[19] See Report of WG 3. For example, Chapter 1 of the SOLAS Convention reflects strong reliance on the flag State as the relevant "Administration" responsible for conducting inspections, surveys and investigations following accidents or defects, as well as issuing or endorsing certificates.
[20] See Report of WG 4. For example, the FAL Convention relies on the prescriptive and enforcement jurisdiction of port and coastal States to address the disembarkation of persons for emergency medical treatment, or in public health emergencies. FAL Convention, Section 2.6 and Section 6, 6.8bis.
[21] Notably the master of the ship has a qualified duty to assist people in danger of being lost at sea. SOLAS Convention, Chapter V, Regulation 33.1.
[22] Consistent with their duty to exercise effective jurisdiction and control over their vessels. UNCLOS, Art 94(1).
[23] UN Guiding Principles on Business and Human Rights (2011) UN Doc HR/PUB/11/04, Reg 13.
[24] See Report of WG 1.
[25] *Medvedyev and Others v France*, App No 3394/03, Judgment 29 March 2010, para 67; *Hirsi Jamaa and Others v Italy*, App no 27765/09, Judgment 23 February 2012, para 81; *J.H.A (P.K) v Spain,* Communication No 323/2007, Decision, 10 November 2008, CAT/C/41/D/323, 2007, para 8.2.
[26] UN Human Rights Committee, Communication No. 3043/2017, *AS and Others v Italy*, UN Doc CCPR/C/130/D3042/2017, 4 November 2020, para. 7.8.
[27] Eg, UN Committee against Torture, General Comment No 2, Implementation of article 2 by States parties, CAT/C/GC/2, 24 January 2008, para 16; UN Human Rights Committee, General Comment no 36, Article 6 Right to Life, para 63.

Rights, for example, determined in *Banakova v Lithuania* that a flag State need not exercise physical control over a vessel to incur human rights obligations; rather, the applicability of flag State law on board suffices to establish human rights jurisdiction.[28] In a few instances, human rights bodies have not relied on the spatial allocations of State jurisdiction available in the law of the sea to assert human rights jurisdiction, even when such jurisdiction is otherwise available, but rather made reference to different criteria.[29]

25. Jurisdiction of States linked to search and rescue operations emerges from Article 98 of UNCLOS and the SOLAS and SAR Conventions.[30] Flag States "shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers" to proceed to rescue persons in distress at sea.[31]

26. While the physical act of rescue can be carried out by vessels of various flags, State jurisdiction is also exercised through operational control within the search and rescue system. Coastal States are responsible for the establishment, operation and maintenance of search and rescue services.[32] Under the search and rescue framework, the State responsible for the relevant Search and Rescue Region assumes jurisdictional competence to coordinate and conduct rescue operations through its rescue coordination centres.[33]

27. Search and Rescue Regions established under the SAR Convention are neither coextensive with maritime zones established under UNCLOS, nor do they alter the nature or content of coastal States' sovereign rights or jurisdiction and corresponding duties under UNCLOS. Nonetheless, these regions have been influential in assessments of whether States have extraterritorial human rights jurisdiction to protect migrants' right to life. For example, the Committee on the Elimination of Discrimination against Women (CEDAW) has called on Malta to protect maritime migrants not only after they disembark but also during search and rescue operations in Malta's Search and Rescue Region.[34] As noted above, the UN Human Rights Committee also took into account search and rescue responsibilities in establishing Italy's jurisdiction to protect the right to life of migrants in distress at sea.[35]

28. State responses to criminal activities also allow for the exercise of jurisdiction over people at sea. The relevance of the exercise of criminal jurisdiction to the protection of people at sea is twofold: it concerns the protection of victims of criminal acts as well as the protection of due process and other human rights of alleged perpetrators.

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[28] *Banakova v Lithuania*, App no 11167/12, Judgment 31 May 2016, para 63.
[29] For example, in *Kebe and Others v Ukraine*, the European Court of Human Rights did not rely on the fact a vessel was in port in Ukraine to establish Ukraine's jurisdiction but instead considered that the border control carried out by Ukrainian authorities was sufficient to establish de facto jurisdiction. *Kebe and Others v Ukraine*, App no 12552/12, Judgment 12 January 2017, para. 76.
[30] See Report of WG 7.
[31] UNCLOS, Art 98(1).
[32] SAR Convention, Annex para 2.1.1. See also UNCLOS, Art 98(2); SOLAS Convention, Regulation 7.1.
[33] UNCLOS, Art 98(2), SOLAS Convention, Regulation V-7; IMO Guidelines on the Treatment of Persons Rescued at Sea (20 May 2004) IMO Res MSC.167(78).
[34] List of issues and questions prior to the submission of the combined fifth to seventh period reports of Malta, CEDAW/C/MLT/QPR/5-7, 5 November 2024, para. 22.
[35] UN Human Rights Committee, Communication No. 3043/2017, *AS and Others v Italy*, UN Doc CCPR/C/130/D3042/2017, 4 November 2020, para. 7.8. See also paras 2.7 and 4.1.

29. State competence to exercise jurisdiction over criminal acts is governed by general international law, which has led to the articulation of specific offences and related jurisdictional clauses in various law of the sea and transnational criminal law treaties. For terrorist crimes committed at sea, multilateral treaties allow for or require the exercise of State jurisdiction when: (i) the crime was committed in its territory, including its territorial sea; (ii) the alleged offender is found within its territory; (iii) the crime was committed against or on board a ship of that State; (iv) the alleged offender is a national of that State; (v) the alleged offender is a stateless person whose habitual residence is in that State; (vi) a national of that State is seized, threatened, injured or killed during the commission of a crime; and (vii) the crime is committed in an attempt to compel that State to do or abstain from doing any act. Similar criteria are found in the Transnational Organized Crime Convention, which obliges States to establish jurisdiction over crimes set out in that treaty and its accompanying Protocols,[36] which notably address human trafficking and migrant smuggling.[37] States parties must additionally establish jurisdiction over vessels that are flagged to them in relation to drug-trafficking offences, and may also establish jurisdiction based on nationality, the authorisation of the flag State, or to protect its territory.[38] As regards enforcement jurisdiction, customary international law as reflected in Article 105 UNCLOS provides for universal jurisdiction over the offense of piracy.

30. According to the above treaties, there may be instances where States assert jurisdiction over persons who are on vessels flagged to another State or on stateless vessels. The exercise of enforcement jurisdiction, by States other than the flag State, over vessels to prevent and suppress a criminal activity must be agreed by treaty or authorized on an ad hoc basis,[39] and the flag State may be able to condition the boarding of its vessel and the treatment of those on board under the terms of that treaty.[40] For stateless vessels, the scope of jurisdiction granted to boarding States has not been fully articulated under international law and has led to State practice expanding the scope of enforcement jurisdiction against these vessels.[41]

2. *Categories of Protected Persons: Working Groups 6-10*

31. State competence to protect people at sea is also drawn from the regulation of specific actors who may be located on ships in different maritime zones for diverse purposes. Using a lens centred on specific people, the Committee considered (a) fishers, (b) seafarers, (c) migrants and (d) other persons at sea.

[36] United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209, Art 15 ("TOC Convention").
[37] 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 ("Migrant Smuggling Protocol"); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 ("Human Trafficking Protocol").
[38] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted 20 December 1988, entered into force 11 November 1990) 1582 UNTS 95, Art 4(1) ("1988 Vienna Convention").
[39] Where there is no treaty granting the right of visit over foreign-flagged vessels on the high seas. The limited scope of this right is manifest in Article 110 of UNCLOS.
[40] See, e.g., 1988 Vienna Convention, Art 17; Migrant Smuggling Protocol, Art 8. There is no ship-boarding authority granted in relation to the Human Trafficking Protocol.
[41] Report of WG 3/8.

32. Fishers: State competence over the conservation and management of fisheries has focused predominantly on regulating fishing activities rather than protecting the persons harvesting the fish. The starting point is again flag State jurisdiction to exercise effective jurisdiction and control over labour conditions and safety standards on board fishing vessels.[42] This role is apparent in the Work in Fishing Convention, although this treaty is not yet widely ratified,[43] as well as the Fishing Personnel Standards Convention (STCW-F).[44]

33. Port States may also have competence to protect fishers by either applying their own regulations over labour conditions for fishing vessels entering into port or by enforcing licensing conditions or other coastal State requirements.[45] Regional organizations and instruments are increasingly looking to enhance the role of port States to improve compliance with labour law requirements.[46] As a minimum, under the Agreement on Port State Measures, port use may not be denied where port services are essential to the safety or health of the crew, provided these needs are duly proven.[47]

34. With encouragement from the International Labour Organization (ILO), an increasing number of Regional Fisheries Management Organizations (RFMOs) are adopting recommendations concerned with minimum labour conditions. The Western and Central Pacific Fisheries Commission adopted a binding Conservation and Management Measure setting out State obligations to protect fishers from forced labour.[48]

35. It has been much less common for States that supply fishers (States of nationality) or the States that receive fish harvested by workers whose rights have been violated (market States) to be the subject of international regulation in fisheries instruments. One example is the Southern African Development Community (SADC) Fisheries Policy on Safe and Decent Working Conditions, which describes the types of regulatory and enforcement measures that flag, coastal, port, crew, and market States should undertake regarding safety standards and working conditions on board vessels.[49] Another is the Association of South East Asian Nations (ASEAN) Guidelines on the Placement and Protection of Migrant Fishers, which impose obligations on sending and receiving States, as well as authorities exercising flag, port, and coastal State jurisdiction, with regard to transboundary issues related to the placement and protection of migrant fishers. Both instruments are legally non-binding, however.

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[42] UNCLOS, Art 94(3)(a) and (b). See Report of WG 9.

[43] Convention (No 188) Concerning Work in the Fishing Sector, (adopted 14 June 2007, entered into force 17 November 2017) 3208 UNTS No. 54755. At time of writing, there are 25 ratifications.

[44] International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, adopted 7 July 1995, entered into force 29 September 2012, 3348 UNTS I-56216 ("STCW-F"). The 2012 Cape Town Agreement imposes safety standards on the flag State in relation to fishing vessels and will enter into force on 11 February 2027. Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1997.

[45] Report of WG 9. However, the STCW-F provides for port State control but not enforcement. See STCW-F, Art 8.

[46] Including International Commission for the Conservation of Atlantic Tunas and North Pacific Fisheries Commission. Report of WG 9.

[47] Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (adopted 22 November 2009, entered into force 5 June 2016) 3161 UNTS 377, Art 11(2)(a).

[48] WCPFC CMM 2024-04. This measure will enter into force in January 2028.

[49] Southern African Development Community, SADC Fisheries Policy Brief on Safe and Decent Working Conditions(May 2021).

36. Seafarers: Under the MLC, a "seafarer" is "any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies".[50] This treaty excludes fishers from the definition of "seafarers".[51] The MLC obligations are imposed on "each Member" to "implement and enforce laws or regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to ships and seafarers under its jurisdiction".[52]

37. Under the MLC, flag States and port States exercise jurisdiction on ships and seafarers.[53] In addition, the MLC requires the effective exercise of "jurisdiction and control over seafarer recruitment and placement services, if these are established in its territory".[54] This provision reflects the exercise of territorial State jurisdiction, yet has direct effects on the protection of people at sea. While recruitment and placement services are land-based businesses, the actions of these agencies have significant implications for the protection of seafarers (and fishers) at sea given that they are responsible for formalizing contracts of employment that govern work conditions at sea and may manage the wages of seafarers during the course of employment.

38. The State of nationality of the seafarer may also exercise jurisdiction to protect their rights at sea. For example, the IMO and ILO Guidelines on Fair Treatment of Seafarers refer to "the State of nationality".[55] In cases of abandonment of seafarers, it is not only the State of nationality who may act, but there is reference to "States of which the seafarers are nationals, residents, or otherwise domiciled within their territory".[56]

39. Migrants: The question of which State has jurisdiction to protect people at sea, and whether this jurisdiction creates an obligation to do so, has been especially controversial in the context of migration by sea. The intersecting jurisdictional requirements under the law of the sea, the search and rescue regime, migrant smuggling law, and international human rights law (including international refugee law) may all have bearing on State actions responding to maritime migration incidents.[57]

40. Under the Migrant Workers Convention, States must protect the rights of migrant workers "during the entire migration process (...), which comprises preparation for migration, departure, transit (...)" and could therefore cover transit by sea.[58] The Committee on Migrant Workers has noted that obligations of State parties extend to "international waters" where a State is "exercising effective control outside its borders".[59]

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[50] MLC, Article II(1)(g).
[51] Report of WG 6.
[52] MLC, Art 5(1).
[53] A port State may inspect a ship "in one of its ports, to determine whether the ship is in compliance with the requirements of this Convention". MLC, Art 5(4).
[54] MLC, Art 5(5).
[55] Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident (2024), IMO Resolution LEG.3(91); IMO/ILO Guidelines on Fair Treatment of Seafarers Detained in Connection with Alleged Crimes, TWGSHE.3/2024/5.
[56] ILO Guidelines on Seafarer Abandonment Cases (2023), TWGSHE/2022/7.
[57] Report of WG 7.
[58] International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3, Art 1(2).
[59] Joint Comment No 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding human rights of children in the context of international migration, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22, para 12.

41. Other Persons at Sea: There are many other categories of people who operate or voyage at sea, including military and other State personnel (such as observers), ocean defenders (promoting environmental and/or other causes), women and children, Indigenous peoples, tourists, and scientists.[60]

42. Observers are deployed at sea for monitoring of agreed standards, especially in relation to fisheries conservation and management, and both treaties and non-binding instruments have sought to establish the competence of States to protect observers. This responsibility will be accorded to flag States,[61] but may extend to other actors. For example, the Forum Fisheries Agency's Harmonised Minimum Terms and Conditions provides explicitly for the responsibility of the operator for the health and safety of the observer.[62]

43. Where persons are not specifically protected under international law by dint of their employment status, the activity in which the person is engaged may hold the most relevance for determining what States have competence to regulate that activity. Both human rights law and the law of the sea may respectively allocate jurisdiction in protecting the social and cultural rights and practices of Indigenous people or the protest rights of environmental defenders.[63] The UN Guiding Principles on Business and Human Rights are also critical in regulating the actions of transnational corporations.[64] For example, the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes relied on flag, coastal and port State obligations as well as the role of shipping companies and business enterprises to prevent harm to human rights and promote a healthy environment.[65]

44. The Committee further acknowledged the potentially vast reach of international law in allocating jurisdiction to States that protects—or has the effect of protecting—people at sea. For example, the 1969 Intervention Convention authorises exceptional coastal State jurisdiction in marine pollution emergencies and expressly requires States to notify affected persons and minimise risks to life—thereby engaging human rights considerations.[66] In addition, the International Health Regulations are applicable territorially and to ships in port or leaving port.[67] They are critical for managing international public health emergencies and implicated the rights of seafarers, cruise ship passengers and other persons at sea during the COVID pandemic. Other treaties may further

[60] Report of WG 10.

[61] See, e.g., Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (adopted 4 August 1995, entered into force 11 December 2001) 2167 UNTS 3, Arts 18(3)(f) and (3)(g)(ii) (flag States must allow observer access and require masters to accommodate observers and enable them to carry out their duties); Northwest Atlantic Fisheries Organization, Conservation and Enforcement Measures, 2019, Chapter V Observer Scheme, Section 9 (flag States must ensure that masters ensure that observer safety is not compromised).

[62] Forum Fisheries Agency Harmonised Minimum Terms and Conditions for Access by Fishing Vessels of May 2024, Section 9.4.

[63] See, e.g., *Arctic Sunrise*; *Bryan and Others v Russia*, App no 25515/14, Judgment 27 June 2023, para 37; UN Human Rights Council, Resolution 58/16, The human right to a clean, healthy and sustainable environment: ocean and human rights, adopted 3 April 2025, UN Doc A/HRC/RES/58/16.

[64] UN Guiding Principles on Business and Human Rights, UN Doc A/HRC/17/31, Annex, 21 March 2011.

[65] "Shipping toxics and human rights", Report of the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, UN Doc A/78/169, HRC, 13 July 2023, paras 15 and 80.

[66] International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties (adopted 29 November 1969, entered into force 6 May 1975) 970 UNTS 211, Art III (e).

[67] International Health Regulations, adopted 24 May 2014 and amended in 2024

address the allocation of jurisdiction between States that then have indirect impact on the protection of people at sea.[68]

45. The work conducted so far by the Committee has contributed to the clarification of the international legal framework concerning protection of people at sea in two separate ways. First, it has constituted the most comprehensive mapping of existing international law rules on jurisdiction relating to protection of people at sea conducted so far. The significant number of ILA members that have joined the Committee and their diversity in terms of geographic provenance but also, and especially, in their legal specialisation, has ensured that the mapping has addressed also little-known rules and international practice. These include cases submitted to the International Criminal Court (ICC), rules on fisheries observers, and rules on people working on offshore platforms.

46. Second, it has allowed members of the Committee coming from different legal fields, including human rights law, law of the sea, and (international private) maritime law, to engage in a fruitful dialogue, which has allowed the Committee as whole to clearly identify outstanding issues that stand in the way of promoting international law rules for the protection of people at sea. These issues include: a different understanding of the concept of jurisdiction across different fields, but also by different international lawyers; the fact that rules on jurisdiction included in international legal instruments are rarely coordinated, creating significant conflicts, overlaps, and gaps; a diverse treatment of different categories of persons, without a clearly identifiable legal justification, which leads to the frustration of the universality of human rights; and an uneven case-law resulting from a lack of familiarity with international law regimes outside the parties' and the court's area of primary competence, which creates fragmentation and stands in the way of ensuring better and more effective protection of people at sea.

47. The extensive mapping conducted so far, in allowing for a comprehensive assessment of existing rules, also with a view towards identifying gaps, conflicts, and inconsistencies in the existing legal framework, will guide the Committee in Stage II of its work. In fact, this mapping and the discussions that have accompanied its collection, clearly show that "jurisdiction" remains a central concept in international law, and that it has a great relevance in identifying both States' obligations to protect people at sea, as well as those people's right to be protected. At the same time, Stage I of the Committee's work has clearly shown that there is quite some confusion as to the exact content and scope of jurisdiction within and across different fields of international law. As a consequence, it has confirmed the necessity of a clear identification of instances in which a State has jurisdiction for the purpose of protecting people at sea and their rights, since this constitutes the necessary premise for ensuring that States comply with their obligations and for checking whether, by committing an unlawful act, a State has breached these obligations. This will be the work of the Committee in Stage II, as illustrated in the following section.

IV. Plans for stage ii of the committee's work

48. The mapping exercise conducted by the Committee of the jurisdictional "seascape" in relation to the protection of people at sea has reflected diverse problems with the current operation of international law. First, while the word "jurisdiction" is used in all fields of international law examined, and with respect to all persons, it appears that the meaning of the word may not always

[68] See Report of WG 5.

be exactly the same. Second, the instances in which international legal instruments identify the State that has jurisdiction over a specific person at sea are few. Rather, international legal instruments generally attribute jurisdiction to a State over a certain maritime space or vessel where the person happens to be, or over a certain activity that involves that person. It is therefore necessary to analyse the provision to identify if and in what ways this jurisdiction can ensure protection of people at sea. Third, the two main international law fields which are relevant for the Committee's work, the law of the sea and international human rights law, interact in various ways that have still to be fully explored. Fourth, the mapping exercise demonstrated that norms comprising jurisdictional principles relevant for the protection of people at sea are dispersed across different branches of international law, such as general international law, the law of the sea and transnational criminal law, to mention but a few.[69] At times, fragmentation even occurs at the level of one single instrument providing for protection.[70] It is not an overstatement to speak of a highly fragmented system. Fifth, the mapping exercise demonstrated that some concepts of jurisdiction used in different instruments remain, despite the growing case law and practice, underdeveloped for the maritime context. Finally, recent instances, involving the search for and rescue of migrants and State activities relating to security have strained the limits of what human rights bodies will recognize as a State exercising "authority" or "effective control" in the absence of physical control.[71] For example, the use of earth observation tools, drones or other remote technology in relation to the situation of persons at sea may not suffice to establish human rights jurisdiction.

49. The mapping exercise also revealed certain jurisdictional gaps. Such gaps, for example, potentially emerge where jurisdiction is allocated on the basis of a treaty but relevant States are not party to that treaty; the application of customary international law principles or general principles of international law on jurisdiction then become critical.

50. The mapping exercise also highlighted overlaps where the existence of different legal norms potentially applying simultaneously to a given situation may attribute jurisdiction to more than one State.[72] A risk arises that where several norms govern a situation in practice, protection may not always be enhanced, since it allows States to disavow responsibility.[73]

51. There have been calls for systemic integration,[74] as "the interaction between different jurisdictional regimes remains underdeveloped, leading to uncertainty and potential conflicts in practice".[75] Understanding how different legal norms of different legal regimes interact has the potential to enhance the protection of people at sea.

52. Following the mapping exercise conducted across all the WGs in Stage I, the Committee now has a clearer, although still not fully comprehensive, view of the existing rules addressing jurisdiction to protect people at sea. The WG reports have reflected key areas of emphasis, as well as gaps and tensions, across the relevant bodies of law and different groups of people. Building on this basis,

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[69] Report of WG 7.
[70] Report of WG 4.
[71] Report of WG 7.
[72] Report of WG 5.
[73] Report of WG 10.
[74] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art 31(3)(c).
[75] Report of WG 7.

the Committee will, in a next step, proceed to Stage II of its work and explore specific topics that can ground proposals for a set of recommendations or rules and related commentaries on the jurisdictional principles concerned with the protection of people at sea.

V. Annex: working group reports

This Annex contains the summaries prepared by the coordinators of WGs 1-10 and to which various WG members have contributed, as indicated for each summary. These WG summaries draw from extensive underlying research that was also compiled and summarised as part of the Committee's work.

A. Working Group 1: Human Rights

Contributors: Francesca De Vittor and Mohan Katarki (coordinators), Carole Petersen, Constance Maclntosh, Kristof Gombeer, Ntemesha Maseka, Emete Gözügüzelli.

1. Methodology and Scope

WG 1 was tasked with looking at human rights law. Following discussion among its members, WG 1 decided to deliberately confine its research to the concept of "human rights jurisdiction", understood as the scope of application of human rights treaties, as interpreted through the case law and other relevant practice of the monitoring bodies established under those treaties—primarily human rights treaty bodies and regional human rights courts.

WG 1 exclusively examined global and regional human rights treaties and the practice of international human rights monitoring bodies in relation to the concept of jurisdiction as defined above. The investigation did not extend to private law instruments lacking internationally recognised institutional authority. For the purposes of this study, the practice of the bodies thus identified was understood in a broad sense, covering both binding and non-binding acts, including judgments, decisions, views, reports, statements, recommendations, and general comments.

Some of the decisions surveyed are accompanied by dissenting or concurring opinions of individual members. As those opinions do not reflect the position of the majority and therefore of the body as a whole, they have not been examined in detail. For reasons of time and resource constraints, it was not possible to review the entirety of States' periodic reporting procedures. The inquiry was therefore limited to reports relating to those States with respect to which issues concerning the protection of human rights at sea were known by members of WG 1.

A significant body of case law concerning extraterritorial human rights jurisdiction on land offers elements that could be extended to the maritime context and applied to the exercise of human rights jurisdiction at sea. However, for the purposes of this first phase of research, the cases surveyed are exclusively those in which the facts concerned, at least in part, the maritime context.

2. Preliminary Assessment

In almost all human rights treaties, jurisdiction is conceived primarily in territorial terms: all persons present within a State's territory—understood as within its borders—fall within its jurisdiction. Human rights jurisdiction may, however, in exceptional circumstances, also be exercised extraterritorially. In this respect, the concepts most commonly relied upon by human rights monitoring bodies is that of "authority", "control" or "power", although these notions are articulated differently depending on the body concerned.

No human rights treaty contains a provision specifically addressing jurisdiction at sea. Accordingly, the analytical categories developed in relation to the territorial or extraterritorial exercise of human rights jurisdiction may also be applicable to situations arising at sea, subject to any adaptations required by the specific features of the maritime context.

Particularly relevant is the practice of the UN Human Rights Committee (developing the concept of "special relationship of dependency" with reference to search and rescue at sea) and the Inter-American Court of Human Rights (developing the causal link of transboundary environmental harm also to the maritime environment).

Even though the practice remains limited, it seems reasonable to consider that:

(1) the flag State has jurisdiction—and corresponding human rights obligations—on board vessels flying its flag, irrespective of the maritime area in which they are located; a flag State need not exercise physical control over a vessel to incur human rights obligations, applying national law on board suffices to establish a relation of authority;

(2) a State has jurisdiction when its authorities (police or military) take full control of a vessel and people on board, irrespective of the flag of the vessel.

(3) by applying the general principle of territorial State jurisdiction, it would appear logical to conclude that the coastal State has jurisdiction over events occurring in its territorial sea or contiguous zone. However, this conclusion is not fully borne out by the practice of monitoring bodies, which, in relation to events taking place in the territorial sea, often affirm human rights jurisdiction not solely on the basis of the geographical area, but also by relying on additional connecting factors.

Cases of shared human rights jurisdiction may be envisaged. The practice of monitoring bodies is not sufficient to draw any firm general conclusions on criteria of distribution for shared human rights jurisdiction.

With the exception of the internal waters, archipelagic waters and territorial sea, with respect to which some clarifications will be required, jurisdiction at sea is, by definition, extraterritorial. Accordingly, the principle established by the European Court of Human Rights that where jurisdiction is exercised extraterritorially, it is not necessarily exercised in respect of the entirety of the rights set out in the Convention, but may be "divided and tailored" to the particular circumstances of the extraterritorial act in question, may be relevant.[76] While the terminology of "divided and tailored" is specific to the European Court of Human Rights, its underlying logic has been consistently adopted by other international human rights courts and treaty bodies.

B. Working Group 2: International Law of the Sea

Contributors: Alexander Proelss (coordinator), Frances Anggadi, Richard Barnes, Mary-Elisabeth Chong, Valérie Boré Eveno, Chie Kojima.

1. Methodology and Scope

WG 2 focused exclusively on rules and practices, based on the international law of the sea, relating to State jurisdiction over persons at sea. WG 2 examined instruments and materials forming part of the international law of the sea that directly or indirectly establish, allocate, or condition jurisdiction over persons at sea, including jurisdiction exercised by flag States, coastal States, and port States. The analysis did not address issues of substantive protection as such, except where reference to protection was necessary to clarify the existence, scope, or exercise of jurisdiction.

The materials considered comprise binding multilateral treaties on the law of the sea (notably UNCLOS and the 1958 High Seas Convention);[77] binding and non-binding instruments adopted within the IMO framework; selected soft law instruments of general relevance (e.g. the Geneva Declaration

[76] ECtHR, *Al-Skeini and Others v. the United Kingdom*, Application No. 55721/07, Judgment 7 July 2011.
[77] UNCLOS, Convention on the High Seas (adopted 29 April 1958, entered into force 30 September 1962) 450 UNTS 1.

on Human Rights at Sea); selected UN Security Council resolutions addressing piracy; and treaty provisions relating to the suppression of unlawful acts at sea (SUA Convention).[78]

2. Preliminary Assessment

The materials examined reveal that State jurisdiction over persons at sea under the international law of the sea is predominantly structured around functional and spatial allocations of State competence, rather than around the direct protection of individuals as such. Rules on State jurisdiction are often formulated indirectly, through obligations imposed on States with respect to vessels, maritime zones, or specific activities, with jurisdiction over persons arising as a consequence. A central feature across the instruments considered is the primacy of flag State jurisdiction, complemented by limited coastal State powers, functional allocations of responsibility (notably in the context of search and rescue), and, in a small number of cases, forms of universal or quasi-universal jurisdiction (e.g. piracy and the slave trade).

UNCLOS and the 1958 High Seas Convention consistently affirm the duty of the flag State to exercise effective jurisdiction and control over vessels flying its flag**,** including in respect of "social matters" and safety at sea (Art. 94 UNCLOS). While the provisions codified in these agreements are not framed in personal terms, they establish a jurisdictional nexus between the flag State and all persons on board, irrespective of location.

Several UNCLOS provisions illustrate how this jurisdictional framework affects persons at sea:

- obligations relating to safety at sea and assistance to persons in distress generate duties incumbent upon the flag State and vessel masters;
- prompt release provisions and related procedural guarantees limit the enforcement jurisdiction of coastal States and indirectly protect the liberty of crews;
- provisions on stateless vessels highlight the absence of a flag State jurisdictional nexus**,** resulting in increased vulnerability of persons on board such vessels.

Overall, flag State jurisdiction has emerged as the structurally dominant form of jurisdiction over persons at sea, but one where the effectiveness depends heavily on the capacity and willingness of States to exercise control.

Coastal State jurisdiction over persons at sea is primarily exercised incidentally, through the prescription and enforcement of laws and regulations relating to fisheries, environmental protection, or maritime safety within maritime zones under sovereignty (internal waters, territorial sea, archipelagic waters) or jurisdiction (EEZ and continental shelf) respectively. The basis and limits of coastal State jurisdiction over foreign ships and persons on board are not always clearly delineated under the law of the sea. UNCLOS provisions addressing enforcement measures, penalties and notification obligations impose further procedural and substantive constraints on coastal State jurisdiction, thereby shaping the conditions under which persons on board foreign vessels may be subjected to such action. These rules reflect a balance between coastal State interests and the continuing relevance of flag State jurisdiction.

Certain instruments allocate responsibility on a functional basis, without relying exclusively on traditional territorial or nationality links, and without expanding or amending the existing jurisdictional rules under the law of the sea. A particularly relevant example is the rules and principles applicable to search and rescue, where States assume certain responsibilities triggered by a situation of a ship in distress, or by reference to Search and Rescue Regions, rather than maritime zones or nationality.

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[78] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 221; Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 14 October 2005, entered into force 28 July 2010) IMO Doc LEG/CONF.15/21.

A limited number of provisions establish or support universal jurisdiction, notably in relation to piracy. In these contexts, jurisdiction over persons is detached from flag State nationality and may be exercised by any State meeting the conditions set out in the relevant instruments.

3. Gaps and Limitations

The analysis conducted by WG 2 has highlighted several notable gaps and limitations:

- Many instruments do not contain explicit rules on State jurisdiction over persons, even where they clearly affect individuals at sea.
- Consequently, jurisdiction over persons is often, even though not always, implied rather than clearly articulated, making its scope and limits uncertain.
- The fragmentation of jurisdiction across maritime zones and functional regimes complicates the identification of clear lines of responsibility.
- In some areas, the absence of clear jurisdictional rules reflects limitations of the existing law rather than gaps in the analysis conducted by the WG.

C. Working Group 3/8: Criminal Law

Report drafted by Cedric Ryngaert and Jacques Hartmann with the contribution of Eve de Coning, Sofia Galani, and Yurika Ishii.

1. Methodology and Scope

As originally planned, WG 3 was tasked with examining criminal law, while WG 8 was tasked with looking at criminal suspects. In consideration of the significant overlap of scope, the coordinators of these groups decided to merge the two WGs, establishing WG 3/8.

In this report, WG 3/8 discussed relevant jurisdictional provisions in treaties that may be relevant to the protection of persons at sea or provided inspiration for the development of a legal regime aimed at protecting persons at sea. Most of these treaties are suppression conventions that require States to criminalise specific conduct and provide mutual legal assistance. However, other conventions, such as UNCLOS and the Statute of the International Criminal Court, also contain relevant clauses on criminal jurisdiction that are, in part, related to the protection of persons at sea. WG 3/8 analysed treaties and treaty provisions relating to the following offences: (1) terrorism; (2) piracy; (3) cybercrime; (4) transnational organized crime; (5) drug trafficking; and (6) core crimes against international law. The analysis conducted is limited to explicit jurisdictional provisions in treaties with a universal scope. WG 3/8 has neither analyzed regional treaties nor examined non-binding instruments. Also, WG 3/8 has not looked in any detail at national practice giving effect to those provisions.

2. Preliminary Assessment

Terrorism: There are thirteen anti-terrorism conventions listed on the UN website and considered for this report. Each of these conventions includes a jurisdiction clause. According to these jurisdiction clauses, States can exercise jurisdiction when: (a) The crime was committed in its territory, including its territorial sea; (b) The alleged offender is found within its territory; (c) The crime was committed against or on board a ship of that State; (d) The alleged offender is a national of that State; (e) The alleged offender is a stateless person whose habitual residence is in that State; (f) A national of that State is seized, threatened, injured or killed during the commission of a crime; (g) The crime is committed in an attempt to compel that State to do or abstain from doing any act.

Piracy: States are allowed to exercise universal jurisdiction against pirates (Art. 105 UNCLOS). While Article 100 of the UNCLOS provides for the duty to cooperate in the repression of piracy, the term “may”’ in Article 105 demonstrates that it is not an obligation of every State to exercise jurisdiction against the offenders.

Cybercrimes: Cybercrimes generally include illegal access or interception, interference with electronic data, misuse of devices, among others. Both the Convention on Cybercrime (Article 22) and the UN Convention against Cybercrime (Article 22)[79] provide that States Parties shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence committed on board a ship flying the flag of that party. However, these instruments do not provide an independent basis for law enforcement to act against a foreign ship. Law enforcement must be conducted in accordance with general international law.

Transnational Organized Crime: According to Article 15 of the Transnational Organized Crime Convention, States must adopt necessary measures to establish jurisdiction over the treaty offences "participation in an organized crime group" (Article 5); "laundering of the proceeds of crime" (Article 6); "corruption" (Article 8) and "obstruction of justice" (Article 23). The territorial principle is enshrined in Article 15(1)(a). Jurisdiction is moreover extended to offences committed on board a vessel flying the State's flag (Article 15(1)(b)). Regarding crimes committed at sea it should also be noted that a State may also establish extraterritorial jurisdiction over treaty offences committed at sea when they are (Article 15(2)) committed against its nationals (passive personality principle); committed by its nationals (nationality principle); committed by foreign nationals taking part in an organized crime group with the view to commit a serious offence within its territory (objective territorial principle); or consists of money laundering offences committed within its territory by offenders situated in a foreign territory (objective territorial principle). There is some uncertainty regarding the exact jurisdictional scope of Article 8(7) of the Migrant Smuggling Protocol relating to stateless vessels.

Drug-trafficking on the High Seas: The 1988 Vienna Convention allows for the exercise of jurisdiction by States other than the flag State based on shipboarding agreements between the flag State and third States.[80] Also, regional agreements on drug-trafficking provide for such jurisdiction.[81] Shipboarding agreements cannot be concluded for stateless vessels (i.e., vessels without a nationality). Under specific conventions, however, third States may exercise jurisdiction over such vessels.[82] Article 110 UNCLOS, for its part, provides for the right of visit regarding stateless vessels.

Core Crimes against International Law: The ICC can exercise jurisdiction over core international crimes (crimes against humanity, genocide, war crimes, crime of aggression) committed on board a vessel, if the State of registration has accepted the jurisdiction of the Court (Article 12(2)(a) Rome Statute). The ICC can also exercise such jurisdiction if the crime has been committed by a national of a State party to the Statute. Thus, in 2014, in respect of a humanitarian aid flotilla bound for the Gaza strip intercepted by Israel, the Court established its jurisdiction over conduct committed on board vessels registered in three States Parties, even though Israel was not a State party.[83] In 2019, the Office of the Prosecutor concluded that conduct in the EEZ—in the case of alleged crimes against humanity committed by Chinese officials in the Philippines' EEZ in the South China Sea—did not fall within the territorial jurisdiction of the ICC.[84]

3. Trends, Gaps, and Tensions

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[79] UN Convention against Cybercrime (adopted 24 December 2024, not yet in force), Art 5.
[80] 1988 Vienna Convention, Art 4.1(b)(ii) and Art 17.
[81] E.g., Agreement Concerning Co-Operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area (adopted 10 April 2003, entered into force 18 September 2008) 2005 Digest 147, TRB 2010 No 253 (Treaty No 010467), Art 16.
[82] E.g., ibid, Art 23(c).
[83] ICC Prosecutor, Situation on Registered Vessels of Comoros, Greece and Cambodia ("Mavi Marmara"), Article 53(1) Report, 2014, executive summary, para 14.
[84] ICC OTP, Report on Preliminary Examination Activities (2020), para 50.

Suppression conventions often restate basic principles of prescriptive jurisdiction, such as territoriality, nationality, and the flag State principle. However, they also contain innovative principles, such as the *aut dedere aut judicare* principle.

As to enforcement jurisdiction, suppression conventions contain elaborate rules on international cooperation in criminal matters (e.g., extradition and the sharing of evidence). However, they tend to leave the exercise of extraterritorial enforcement jurisdiction to general international law. In the maritime domain, only the flag State normally has enforcement jurisdiction on the high seas. Flag States may allow other States to exercise such jurisdiction under (often bilateral) shipboarding agreements. There are some limited exceptions to the exclusivity of flag State jurisdiction. Most notably, all States are allowed to seize vessels engaged in piracy (Article 105 UNCLOS).

D. Working Group 4: Maritime Law

Contributors: Ainhoa Campàs Velasco, Andrea Longo, Reece Lewis, Dusty Lee-Donnelly, Kristina Siig.

1. Methodology and Scope

There is no universal definition as to what rules constitute "maritime law", apart from the requirement that the rules pertain to sea-going vessels. WG 4 has as a point of departure applied an expansive understanding of the term, embracing instruments on a wide range of substantive areas, including the protection of pecuniary interests, environmental interests, and matters of maritime security and safety at sea. Still, although WG 4 has reviewed a broad set of international instruments, this report narrows its focus to rules with a distinctly *person-centered* protective function. Accordingly, the WG concentrated on rules that confer substantive protection on individuals in connection with *incidents occurring while the protected person is at sea* <u>*and*</u> *in some sort of interaction with a vessel, which is also at sea*. This includes protection extending up to—and concluding with—the completion of disembarkation on land.

In line with this approach, instruments where the primary focus lies e.g., in the protection of coastal State interests or the general safeguarding of marine resources have not been included in this report, as they do not directly protect *people* at sea. Finally, maritime law instruments focused on questions arising from carriage of goods or other delivery of services at sea have specific pecuniary interests, and these instruments have also been considered outside of the scope of work.

The discussion below focuses on the international rules—whether treaty-based or derived from soft law—that inform and structure maritime regulation, as other sources will tend not to be truly international. The rules examined may themselves be protective in nature or may instead provide remedial mechanisms where a protected interest has not been safeguarded.

2. Preliminary Assessment

The maritime law instruments dealing with protection of people at sea may be divided into two distinct categories:

First, safety-related maritime law instruments, where public law considerations are predominant. The jurisdictional framework follows the familiar division between flag State jurisdiction on the one hand and coastal and port State jurisdiction on the other. Flag States generally exercise legislative, enforcement, and adjudicative jurisdiction over vessels flying their flag; consequently, the primary responsibility for the protection of people on board lies with the flag State.

Port and coastal States, by contrast, have jurisdiction over the interface between the vessel and the port or coastal territory, and they play a crucial role in matters relating to disembarkation. Further, they have land-based duties to maintain effective search and rescue capabilities. Beyond this, their jurisdiction is largely centred on the enforcement of international maritime regulation.

Second, instruments providing remedies predominantly address private law interests. Protection of people at sea under these instruments is typically indirect, functioning primarily as a remedial framework when the intended protection has failed. In keeping with the stronger private law focus of these instruments, jurisdictional issues tend to arise indirectly. Provisions on legislative jurisdiction often appear in the form of rules on the instrument's scope of application or are not considered at all in the instrument, being left to follow general rules of conflict of laws. Enforcement jurisdiction in terms of control is rarely central and, when present, typically mirrors the same coastal/port State versus flag State structure identified above. Instead, enforcement of such instruments is generally left to the courts in their application of the law. Adjudicative jurisdiction is frequently allocated to multiple alternative fora and may ultimately depend on the parties' choice of court jurisdiction or indeed other applicable dispute resolution mechanisms. Thus, it may be that no State has adjudicative jurisdiction. Adjudicative jurisdiction may also be enhanced by rules on recognition and enforcement of judicial rulings by foreign courts applying the same rules. Finally, some of these instruments are solely procedural and will, if court jurisdiction can be established, be applied as *lex fori* by the court seized with the case.

Maritime law regulates international shipping as a business and is thus a part of the realm of commercial law. As such, much of maritime law is concerned with the interaction between the relevant business entity and the State, and the ultimate duty bearer will tend to be the business entity, e.g., the entity owning, managing, or chartering, the vessel in question, or the organization tasked with the inspection of the vessel on behalf of a flag State.

If enforced under private law, pecuniary claims in tort or in damages may therefore generally be directed against those entities. States with adjudicative jurisdiction in the respective case will provide an indirect adjudicative enforcement layer of such rules.

When viewing maritime law through the lens of State jurisdiction and States as duty bearers in respect of protecting people at sea, it becomes clear that both those aspects are indirect and only come into play when private entities have failed to fulfil their tasks and obligations in this respect.

E. Working Group 5: Jurisdiction not elsewhere classified

Contributors: Richard Barnes, Armando Rocha, Sara Seck.

1. Methodology and Scope

The scope of WG 5 is jurisdiction in legal instruments and rules not elsewhere classified, that is, not covered by WGs 1-4. Since WGs 1-4 include defined substantive areas of international law (human rights, law of the sea, criminal law and maritime law), the focus of this WG was taken to cover jurisdiction under general international law, as well as fields not specifically identified in other WGs: namely international humanitarian law, international criminal law, environmental law, and natural resources law. Where instruments potentially straddled multiple areas, this was communicated to other WG to confirm it was elsewhere under consideration.

An initial mapping of key instruments in each field was conducted. This was supplemented by a review of select secondary sources on jurisdiction in order to identify any additional instruments. A survey of the jurisprudence of ICJ/ITLOS and select tribunals was conducted, which also informed a summary assessment of customary international law. The aim was to identify instruments or rules that established prescriptive, adjudicative or enforcement jurisdiction, and which had either plenary effect, or specific provisions relating to the maritime sector. The survey also identified instruments placing restrictions on the exercise of jurisdiction (ie immunities). Whilst the survey excludes substantive provisions, some provisions that implicate the extent or form of prescriptive jurisdiction were left in the survey. Fifteen instruments were assessed, as well as a short statement of customary international law rules/principles, largely based upon international jurisprudence. Eight cases are noted.

2. Preliminary Assessment

Jurisdiction constitutes a foundational structural element of international law. Although numerous international instruments address specific manifestations of jurisdiction, no single treaty articulates its basic architecture, categories, or underlying principles. These matters fall instead within the realm of general principles and customary international law. While broad consensus exists concerning the main bases of jurisdiction—particularly territoriality and nationality—other bases remain less settled and continue to depend heavily on variable State practice and contested doctrinal interpretation. General international law therefore provides the conceptual and normative framework within which more specific jurisdictional agreements operate. Where the implications of general jurisdictional principles are considered undesirable or insufficiently precise, States may negotiate tailored agreements to modify or displace them, as illustrated by the relationship between the *Lotus* judgment [85] and subsequent instruments such as the Brussels Convention.[86]

Although certain treaties and judicial decisions acknowledge the existence of overlapping or concurrent jurisdiction, they generally refrain from prescribing mechanisms for resolving conflicting or unexercised jurisdictional claims. This is evident, for example, in contexts involving the relationship between flag State jurisdiction and nationality-based jurisdiction over crew. There is scope to clarify how concurrent jurisdiction over activities should be implemented in practice.

Five general multilateral instruments were examined: the UN Charter, the Convention on the Protection of Diplomats,[87] the Convention on Jurisdictional Immunities,[88] the Convention relating to the Status of Stateless Persons, [89] and the Convention on the Reduction of Cases of Multiple Nationality.[90] These instruments primarily clarify the scope of nationality jurisdiction in complex or exceptional circumstances, or they delineate limits on jurisdiction arising from diplomatic immunities. The UN Charter contains two key provisions that may be overlooked in more detailed jurisdictional analysis: the principle of non-interference in domestic jurisdiction and the primacy of territorial sovereignty. Moreover, the Security Council possesses the authority to adjust or constrain jurisdictional rules when acting to maintain international peace and security, including through authorising action against non-flag vessels. The authorisation of activities provides a potential ad hoc measure to address jurisdictional gaps, although it is restricted to situations where the issue meets the threshold for a threat to international peace and security, and it may be subject to political considerations due to the veto power of the Council's permanent members.

International humanitarian law instruments generally do not address jurisdiction explicitly, but rather set out their material, temporal, personal and geographical scope of application. To the extent that they require States to engage in search, rescue, and or the provision of care to persons *hors de combat*, such obligations may activate human rights jurisdiction. As regards international criminal law, the Genocide Convention,[91] for instance, is primarily territorial in orientation, although it leaves unresolved the question of genocidal conduct occurring at sea when constituting part of a broader genocidal pattern.

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[85] *SS "Lotus"* (France v Turkey) (Judgment of 7 September 1927) [1927] PCIJ Rep Series A No 10.

[86] International Convention on certain rules concerning civil jurisdiction in matters of collision (adopted 10 May 1952, entered into force 14 September 1955) 439 UNTS 219.

[87] Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (adopted 14 December 1973, entered into force 20 February 1977) 1035 UNTS 167.

[88] United Nations Convention on the Jurisdictional Immunities of States and Their Property, (adopted 2 December 2004, not entered force) UN Doc. A/59/508.

[89] Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117.

[90] Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (adopted 6 May 1963, entered into force 28 March 1968) ETS No. 043.

[91] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.

The 1890 Brussels General Act is historically notable for addressing anti-slavery measures in maritime zones and providing for reciprocal search and rescue responsibilities.[92] Beyond human rights treaties, a number of specialised instruments establish State jurisdiction in ways that implicate the human rights of affected individuals. For example, the 1969 Intervention Convention authorises exceptional coastal State jurisdiction in marine pollution emergencies and expressly requires States to notify affected persons and minimise risks to life—thereby engaging human rights considerations.[93] The 2011 Underwater Cultural Heritage Convention concerns heritage protection but may implicate the human right to property.[94] OSPAR and the Helsinki Convention focus on environmental protection, yet their mandates extend to safeguarding human health, aligning with emerging conceptions of environmental human rights and reinforcing obligations relating to life and health.[95] The overlap in protection for human rights or concern for human rights is manifest in the Convention on Biological Diversity (CBD).[96] The CBD establishes State jurisdiction over components of biological diversity in areas within the limits of its national jurisdiction, and for activities or processes related to biodiversity under a party's control, wherever the effects occur. Since several provisions of the CBD relate to human rights (Indigenous rights) and have been further developed through the Kunming-Montreal Global Biodiversity Framework (KMGBF) in relation to Indigenous rights, gender, human rights-based approach,[97] this provides a basis for exercising an indirect form of jurisdiction with respect to human rights at sea. Finally, the International Health Regulations are applicable territorially and to ships in port or leaving port, but may not be applied otherwise to ships in transit through maritime zones or international waterways without calling in at ports.

F. Working Group 6: Seafarers

Contributors: Dawoon Jung, Frances Anggadi.

1. Methodology and Scope

Maritime law instruments often use different terms to define individuals working on board a vessel, such as crew or seafarers. Since the MLC defines seafarers as "any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies",[98] the definition used in the MLC has become widely accepted and is frequently referenced in subsequent guidelines adopted by the IMO and ILO.

WG 6 interpreted "protection" broadly to include matters relating to safety, labour rights, protection from discrimination, slavery, and the right to a safe and healthy working environment.

WG 6 focused on instruments primarily adopted by the ILO and IMO that are relevant to seafarers, while also considering additional documents specifically addressed to seafarers, such as resolutions adopted by human rights committees when relevant. These include both binding and non-binding instruments, such as treaties, guidelines, and resolutions. Additionally, WG 6 identified treaties adopted prior to MLC and bilateral agreements. We excluded UNCLOS and human rights treaties that have general application and therefore could be applicable to seafarers, in order to avoid overlaps with

[92] General Act of the Brussels Conference Relative to the African Slave Trade (adopted 2 July 1890, entered into force 31 August 1891) 27 Stat. 886.
[93] International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties (adopted 29 November 1969, entered into force 6 May 1975) 970 UNTS 211.
[94] Convention on the Protection of the Underwater Cultural Heritage (adopted 2 November 2001, entered into force 2 January 2009) 2562 UNTS 3.
[95] Convention for the Protection of the Marine Environment of the North-East Atlantic (adopted 22 September 1992, entered into force 25 March 1998) 2354 UNTS 67 (OSPAR): Convention on the Protection of the Marine Environment of the Baltic Sea Area (adopted signature 9 April 1992, entered into force 17 January 2000) 2099 UNTS 195 (Helsinki).
[96] Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79.
[97] Kunming-Montreal Global Biodiversity Framework, Decision 15/4 (adopted by the Conference of the Parties on 19 December 2022).
[98] MLC, Article II (1)(g).

the other WGs. We also excluded instruments that are relevant where seafarers are involved in criminal activities since they will be addressed in WG 8.

2. Preliminary Assessment

SOLAS Convention sets mandatory standards for ship construction and navigational safety, and it significantly reduces the likelihood of accidents that endanger seafarers' lives by requiring ships to be properly designed, equipped, and maintained. The STCW Convention sets minimum standards for seafarer training, certification, and watchkeeping.[99] Neither treaty contains specific provisions governing jurisdiction. Their standards are widely regarded as "generally accepted international rules and standards" under Article 94(5) of UNCLOS.[100] Accordingly, the UNCLOS framework provides the jurisdictional basis for the enforcement of SOLAS / STCW obligations. Under this framework, flag States exercise primary jurisdiction over vessels flying their flag, while port States and coastal States may exercise jurisdiction in accordance with the relevant provisions of UNCLOS.

Prior to the adoption of the MLC, ILO conventions applicable to seafarers generally imposed obligations on "each Member" to enact national laws or regulations, without expressly distinguishing between flag, port, or coastal States. The scope of these conventions was typically limited to specific subject areas, including seafarers' welfare, occupational accidents, continuity of employment, annual leave, health protection, social security, repatriation, inspection, recruitment and placement, and working hours.

The MLC establishes a broad jurisdictional scope for the comprehensive protection of seafarers' rights, overcoming inconsistencies that existed under earlier instruments. In particular, Article 5(1) states that "*Each Member* shall implement and enforce laws or regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to ships and seafarers under its jurisdiction". The subsequent paragraphs of Article 5 of MLC place implementation and enforcement responsibilities on flag States, port States, and States where seafarer recruitment and placement services are established. It is also notable that certain guidelines provide and differentiate detailed responsibilities for each State, such as the IMO Guidelines on Fair Treatment (2024).

The guidelines adopted by the IMO and ILO do not set out detailed responsibilities for the different States involved in a consistent way. For example, while the IMO Guidelines on Fatigue (2019) provide guidelines only for the flag State and port State, the ILO Guidelines on seafarer abandonment cases (2023) provide guidelines for a broad set of States, including flag States, port States, seafarer supply States, recruitment States and States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory.

G. Working Group 7: Migrants

Drafted by Maria-Louiza Deftou with contributions by Ainhoa Campas Velasco and Aphrodite Papachristodoulou.

1. Methodology and Scope

Strictly limited to the question of jurisdiction, the following analysis covers international treaties but also selected relevant soft law texts insofar as they contain explicit or implicit rules on the exercise of jurisdiction over migrants in maritime contexts, including interception, rescue, and other forms of control at sea. Given that the focus of WG 7 is on migrants at sea, particular emphasis was given to human rights instruments that directly apply to people at sea. Accordingly, international but also

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[99] International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (adopted 7 July 1978, entered into force 28 April 1984) 1361 UNTS 2 ("STCW Convention").

[100] While SOLAS Convention has 168 Contracting Parties and 99% of the gross tonnage of the world's merchant fleet, STCW Convention has 167 Contracting Parties and 98.91% of the gross tonnage of the world's merchant fleet (as of April 2025).

regional human rights conventions were placed at the centre of this mapping exercise. When available, the relevant (quasi) case law was briefly documented so as to shed light on the interpretation and application of the relevant jurisdictional clause in migration-related individual petitions.

WG 7 also took into account non-binding, yet authoritative sources, such as general comments, recommendations, and soft law from IGOs with long-standing expertise in the field, as long as they have informed or guided the application of relevant rules over migrants. However, given the extensive number of human rights instruments on the international plane—particularly the large number of UN human rights treaties—and the limited capacity of WG 7, it was not possible to conduct an exhaustive research exercise on the concluding observations or the quasi-jurisprudence of the UN treaty bodies.

2. Preliminary Assessment

The rules on jurisdiction over migrants at sea are fragmented and dispersed across different branches of international law, most notably the law of the sea, international human rights law, and international refugee/migration law. These bodies of law adopt different jurisdictional approaches, which intersect in complex ways in the context of maritime migration.

Human rights jurisdiction, as understood by human rights bodies, is either territorial or extraterritorial. In the field of maritime migration, the well-established "effective control" criterion (*ratione personae*, *ratione loci*, special features apt to create jurisdictional link) is still the norm at the regional (ECtHR, IACtHR) and to a great extent, at the universal level (some of the UN treaty bodies). However, the reading of "effective control" varies significantly across numerous systems, and this is even more obvious in the field of maritime migration.

By contrast, the Inter-American system appears to have adopted a broader jurisdictional approach. It allows for the establishment of State control sufficient to trigger jurisdiction in interdictions involving migrants who were never boarded onto the vessels of another State.[101]

Contact or physical control over migrants is not required to establish jurisdiction under the ICCPR where a "special relationship of dependency" can be shown.[102] The body monitoring its implementation, the Human Rights Committee, has adopted a functional approach to jurisdiction. The Committee's functional position provides that a "special relationship of dependency" may be created by the distress call received by a State with the capacity to act, physical proximity to the flag ships of the State in question and ongoing involvement by that State in rescue operations, and this is sufficient to bring those migrants under that State's "contactless" power or (effective) control.[103] This impact-based conceptualization of jurisdiction was supported by the Human Rights Committee's General Comment 36 on the right to life, which is accepted to have broader application, and stressed that the rights affected need to be impacted in a direct and reasonably foreseeable manner.

Under international refugee law, there is broad consensus among States, UNHCR, and academic commentators that the obligation to respect the principle of *non-refoulement* is engaged wherever a State exercises jurisdiction, whether within its territory or extraterritorially, including on the high seas. Accordingly, the principle of *non-refoulement* enshrined in Article 33 of the 1951 Refugee Convention has extraterritorial reach, extending beyond a State's territorial waters.

In relation to maritime interdiction practices, which are often "clothed as rescue operations," UNHCR guidance has clarified the scope of State jurisdiction during rescue operations conducted on the high seas. According to UNHCR, where migrants rescued at sea express an intention to seek asylum, the

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[101] See *The Haitian Centre for Human Rights et al. v United States* (Inter-American Commission of Human Rights, Case 10.675, Report No. 51/96, OEA/Ser.L/V/II.95 Doc. 7 rev. at 550, 13 March 1997).

[102] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

[103] Human Rights Committee, "Views: Communication No 3042/2017", 130th sess, UN Doc CCPR/C/130/D/3042/2017 (4 November 2020), paras 7.4, 7.5.

shipmaster of the assisting vessel has no authority to examine asylum claims. Nevertheless, the shipmaster must act in accordance with the principle of *non-refoulement*.

Finally, relevant soft-law instruments should also be considered. Although neither the Global Compact on Refugees—which lacks a jurisdictional clause—nor the Global Compact for Safe, Orderly and Regular Migration contain binding rules on jurisdiction, both reflect emerging expectations regarding the exercise of State authority and responsibility in maritime migration contexts.[104] In particular, they emphasize enhanced State cooperation in border management, coordination of search and rescue operations, and responsibility-sharing arrangements.

While UNCLOS does not specifically address migrants, its provisions on coastal State jurisdiction, flag State jurisdiction, and enforcement powers establish the legal basis for interception and other enforcement measures affecting migrants at sea.

IMO instruments such as the SOLAS Convention and the SAR Convention further refine jurisdictional responsibilities by assigning coordination and operational competence for search and rescue activities to contracting States and their rescue coordination centres. Although these instruments do not allocate jurisdiction over migrants as such, they reinforce functional forms of jurisdiction by linking competence to the coordination of rescue operations and the exercise of authority over persons rescued at sea.

Coastal State jurisdiction, as articulated in Article 98(2) UNCLOS, adds a further layer to the jurisdictional framework. Although Article 98(2) does not confer jurisdiction over migrants, it establishes a standing jurisdictional responsibility grounded in the coastal State's organizational and coordinating role within its maritime zones and assigned search and rescue regions. Coastal States undertake the role to coordinate the search and rescue in respect of persons in specified areas.

3. Trends, Gaps, and Tensions

When it comes to maritime migration, the simultaneous application of different bodies of law, each of which endorses various and sometimes inconsistent jurisdictional models, creates a complex legal architecture that does not always allow these bodies of law to reinforce one another. A major trend identified is the asymmetry between human rights bodies: the European Court of Human Rights, which predominantly insists on control-based models of jurisdiction, and the UN treaty bodies, which adopt a more flexible understanding of jurisdiction. Alongside this complexity sits the traditional zonal approach and flag-based jurisdictional framework of the law of the sea. This coexistence may give rise to tensions, particularly where States seek to rely on the absence of territorial jurisdiction to limit their responsibilities.

The analysis also reveals notable gaps. The law of the sea provides limited guidance on jurisdiction following rescue or interception, particularly regarding disembarkation and subsequent treatment of persons. But most importantly, although systemic integration has strong normative underpinnings in public international law,[105] the interaction between different jurisdictional regimes remains underdeveloped, leading to uncertainty and potential conflicts in practice. All of the above-mentioned gaps appear to reflect the current state of *lex lata* rather than limitations of the present analysis.

H. Working Group 9: Fishers

The report and the instruments overview were prepared by the coordinators Anastasia Telesetsky and Pieter van Welzen. Contributors: Richard Barnes, Eve de Coning, Dita Liliansa, Arron Honniball, Andrea Longo.

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[104] "Global Compact on Refugees", UN doc A/73/12 (Part II); "Global Compact for Safe, Orderly and Regular Migration" UNGA Res 73/195 (19 December 2018) UN Doc A/RES/73/195.
[105] Vienna Convention on the Law of Treaties, Art 31(3)(c).

1. Methodology and Scope

WG 9 focused on the protection of fishers. WG 9 considered that, in the context of fishers, the protection of life involves the safety of fishing vessels and healthy working conditions for the crew of these fishing vessels. Given their close relationship with fishing vessels, WG 9 also included fisheries observers within its scope.

For the purpose of its analysis, the WG considered international treaties such as UNCLOS, the Fish Stocks Agreement, the Cape Town Agreement, the Work in Fishing Convention, the Agreement on Port State Measures, and the Fishing Vessel Personnel Standards Convention. The WG conducted a detailed review of the rules of RFMOs. In addition, the WG evaluated the Sustainable Fisheries Partnership Agreements between the EU and States in Africa, the Pacific Ocean, and the Indian Ocean. The WG also took account of soft law instruments, such as those developed by the Food and Agriculture Organisation (FAO), and various policy documents from international organisations, such as ASEAN and SADC. The researchers focused on those instruments that specifically concerned fishers and did not review human rights and labour-related instruments that may have been generally relevant.

2. Preliminary Assessment

Article 73(2) and (3) of UNCLOS sets out limitations on coastal States in respect of enforcement measures against vessels fishing in their EEZs and their crews. Article 94 UNCLOS provides broader obligations on flag States regarding the manning of ships, labour conditions, and crew training, which include fishing vessels.

The 1995 Fish Stocks Agreement imposes obligations relating to the safety of fishing vessel crews in relation to measures by inspecting States. It also provides a general obligation on inspecting States, flag States, and port States to take all necessary steps to ensure the well-being of the crew regardless of nationality.

The Work in Fishing Convention and the STCW-F refer directly to the working conditions of fishers and require a flag State to establish national rules implementing the requirements set out in these conventions. The protection is therefore indirect, as the actual rules that would protect fishers are the national law that would only be applicable to those fishers who work on board vessels flying that State's flag. The STCW-F covers a selection of important but limited training standards including navigation, watchkeeping, boat construction, emergency procedures, and rescues. Significant labour issues such as supply of an adequate diet at sea are not addressed.

The Agreement on Port State Measures provides indirect protection to fishers. One provision that poses an obligation on the port State and is directly benefiting fishers indicates that port use may not be denied where port services are essential to the safety or health of the crew, provided these needs are duly proven.

The 2012 Cape Town Agreement imposes safety standards on fishing vessels. Its rules are addressed to the flag State. However, they do not create direct State jurisdiction over fishers or contain provisions that make direct reference to fishers.

RFMOs and Regional Fisheries Bodies assert jurisdiction over specific geographical fisheries areas and focus either on general fish resources or highly migratory stocks. Of the 13 larger RFMOs, five have proposed directly addressing crew labour conditions. These efforts call for implementing minimum international standards, enforcing legislation, improving enforcement jurisdiction, and engaging recruitment agencies. Only the Western Central Pacific Fisheries Commission has adopted a binding conservation and management measure involving labour conditions, to be implemented in January 2028.

Several RFMOs—including ICCAT, NAFO, and NPFC—have proposed labour measures specifically protecting migrant workers. ICCAT and NPFC have also considered using port state measures to enhance compliance with labour-related provisions. Two Regional Fisheries Bodies currently assert jurisdiction over labour issues: the Fisheries Committee of the West Central Gulf of Guinea and the Pacific Islands Forum Fisheries Agency.

The Sustainable Fisheries Partnership Agreements require the EU to ensure that labour conditions for fishers from partner states working on EU-flagged vessels meet certain minimum standards. They also oblige the masters of EU vessels to ensure observers' physical safety and welfare.

The 1995 FAO Code of Conduct for Responsible Fisheries includes provisions regarding safe, healthy, and fair working and living conditions for fishers.[106] While it does not provide specific jurisdiction rules, it is implicit that measures taken in pursuit of the Code must conform with existing law of the sea jurisdictions, including those of coastal, port, and flag States.

The ASEAN Guidelines on the Placement and Protection of Migrant Fishers impose obligations on sending and receiving States, as well as authorities exercising flag, port, and coastal State jurisdiction, with regard to transboundary issues related to the placement and protection of migrant fishers.

The SADC Fisheries Policy on Safe and Decent Working Conditions describes the types of regulatory and enforcement measures that flag, coastal, port, crew, and market States should undertake regarding safety standards and working conditions on board vessels.

3. Trends, Next Steps

Based on its analysis, WG 9 found that flag States remain primarily responsible for the protection of fishers onboard vessels flying their flag, both in terms of vessel safety and labour conditions. However, particularly regarding labour conditions, it is increasingly recognised that other States—such as coastal, port, and crew States—as well as RFMOs have important roles.

For example, assuming that such action can be based on their prescriptive jurisdiction under UNCLOS, coastal States and RFMOs may regulate labour conditions for vessels fishing in their waters. Port States, in addition to having their own regulations governing labour conditions on fishing vessels entering their ports, may assist in enforcing rules imposed by coastal States and RFMOs. Crew States may regulate the recruitment of their nationals and take action against States that fail to comply with their obligations to protect fishers under international law.

To further analyse the role of non-flag States, additional consideration should be given to State practice, particularly regarding the extent to which coastal States and RFMOs regulate labour conditions on board vessels fishing in their waters, and the potential enforcement role of port States in cases of substandard labour conditions on vessels entering their ports.

I. Working Group 10: Persons Not Elsewhere Classified

Contributors: Sara L Seck (coordinator); Gabriele Goettsche-Wanli; Sophie Ryan; Chie Kojima; Ntemesha Maseka.

1. Methodology and Scope

WG 10 focused its work on jurisdiction in relation to persons covered by international law that are not seafarers, migrants, criminal suspects, or fishers, each of which was the focus of a different WG (WGs 6-9). After some initial discussions among WG 10 members, a list of "persons NEC" was compiled to guide our work. Ultimately, detailed work was conducted on jurisdiction in relation to a subset of persons NEC, specifically: inspectors and observers, military and other State personnel at sea, and

[106] FAO, "Code of Conduct for Responsible Fisheries" (31 October 1995) <http://www.fao.org/tempref/docrep/fao/005/v9878e/v9878e00.pdf>.

ocean defenders. Women were also considered. Brief consideration was given to passengers and tourists, platform workers, persons working on cable or pipeline ships, deep seabed miners, and privately armed security personnel operating at sea and their victims, as well as “humankind” and a subset of vulnerable or otherwise marginalized persons notably, children and youth, Indigenous peoples and local/coastal communities, and “civil society”.

With regard to *inspectors and observers*, an initial mapping of instruments comprised seven global instruments from the law of the sea, international fisheries law and policy, international maritime law and international human rights law and one decision of ITLOS (this list was seen as incomplete), as well as 30 regional instruments representative of diverse regions of the globe. It was noted that many additional sources could have been examined such as those derived from national practice and recommendations of the FAO, ILO, IMO Joint Working Group 5, as well as the International Observer Bill of Rights and Codes of Conduct for Responsible Observer Programmes.

With regard to *military and other State personnel at sea*, multiple provisions of the law of the sea (UNCLOS) were examined, as well as customary international law, a Status of Forces Agreement (NATO), nine international human rights treaties, three regional human rights treaties, multiple provisions from sources of international humanitarian law (Geneva Conventions, as well as the San Remo Manual on International Law Applicable to Armed Conflicts at Sea), five international judicial decisions and select academic commentary.

With regard to *ocean defenders*, the study began with a 2025 Human Rights Council resolution on the right to a clean, healthy and sustainable environment: the ocean and human rights, then examined related resolutions (UNGA and UN HRC) and select reports of Special Procedures mandate holders tasked with clarifying international human rights law in relation to the environment (2), toxic substances (1) and business responsibilities (2). One international and one regional climate advisory opinion were considered, several multilateral environmental agreements (CBD, Paris Agreement[107]) and related instruments including a CBD Conference of Parties decision. Foundational sources of international environmental law, notably the 1992 Rio Declaration on Environment and Development also informed the research. Finally, consideration was given to the rights of *women* (CEDAW General Comments and regional African instruments), *children and youth* (CRC General Comment), and Indigenous peoples (UNDRIP).[108] An effort was made to avoid duplication of work undertaken by other WGs.

2. Preliminary Assessment

With regard to inspectors and observers, a preliminary assessment of the collected materials indicates that many of the instruments examined apply within spatially defined areas, mostly in areas beyond national jurisdiction. Some instruments specify that they apply to “all fishing vessels” and/or “fishing research vessels” operating in the designated areas. Under UNCLOS, flag States have a responsibility to exercise effective jurisdiction and control in administrative matters and must adopt necessary measures to ensure fishing vessels are not involved in activities that would undermine flag State responsibilities in respect of the conservation and management of marine living resources. Under the UN Fish Stocks Agreement, flag States are required to permit access by inspectors and observers from other States on board their fishing vessels on the high seas. Flag States must ensure that vessel masters enable inspectors and observers to carry out their duties as well as providing food and accommodation (among other matters). The flag State of the inspected vessel must also prevent threats to the safety and security of inspectors and observers. Contracting States parties to the diverse instruments examined that are not flag State parties have additional responsibilities that may include placing

[107] CBD; Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) (2016) 55(4) ILM 740.
[108] UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples (adopted 2 October 2007), UN Doc. A/RES/61/295.

observers on Contracting flag State vessels and supporting their work. Under some instruments, it is specified that designated observers and inspectors shall remain subject to the jurisdiction of the Contracting party of which they are nationals.

Some regional instruments provide that in the event that there are reasonable grounds to believe that an observer has been assaulted, intimidated, threatened or harassed, but neither the observer nor the observer provider requests that the observer be removed from the fishing vessel, the member to which the fishing vessel is flagged shall ensure that the fishing vessel: (a) takes action to preserve the safety of the observer and mitigate and resolve the situation on board as soon as possible; (b) notifies the flag State and the observer provider of the situation as soon as possible; and (c) cooperates fully in all official investigations into the incident.

With regard to military and other State personnel at sea, many provisions are generally applicable "at sea", while others specify the territorial sea, including (or not) internal waters and ports, and/or the high seas, or on ships, subject to established exceptions to immunity. In terms of who must or may act, many provisions allocated jurisdiction only for flag States, or coastal States in the territorial sea. Sending State authorities or receiving State authorities were also granted jurisdiction over members of a defence force or civilians, or offences. The exercise of jurisdiction through effective control was also evident under international human rights instruments.

The category of ocean defenders is broad. It is useful to make a distinction between human rights defenders (HRDs) at sea who may act at sea and require protection at sea, but whose focus is on human rights, and (marine) environmental human rights defenders (EHRDs) who may act and require protection while on land or at sea, and whose focus is on the protection of the marine environment. While several of the instruments studied identified specific State obligations to protect HRDs, few considered ocean defenders explicitly. The support and protection of EHRDS may be understood as a subset of procedural environmental human rights. Through this lens, sources of international environmental law highlight the need for enhanced participation by select groups, while sources of international human rights law expand the scope of enhanced inclusion to small-scale fisherfolk and coastal communities, migrants, older persons, person with disabilities, and others who directly depending on biodiversity and ecosystem services as well as civil society. A link also exists between ocean defenders and the protection of workers at sea (beyond the maritime labour conventions) to the extent that workers may be whistle blowers and so act as marine EHRDs needing support and protection.

The jurisdictional understanding of State obligations to protect marine EHRDs (or to promote a safe and enabling environment for EHRDs) appears to be broader than that of HRDs due to systemic integration which necessitates that jurisdictional scope be informed by sources of both international environmental and international human rights law including customary international law, as well as law of the sea and may also require integration of an ecosystem approach. There is also a link between the protection or support of HRDs, including ocean EHRDs, and the field of business and human rights, which clarifies transnational responsibilities across corporate groups and supply and value chain relationships, as well as the obligations of home States of multinational enterprises, including those engaged in shipping (as owners or operators), in addition to or complementary to the exercise of jurisdiction by flag States, coastal States and port States. While reference is made to the duties of States with regard to activities within State jurisdiction or control, access to justice jurisdiction is sometimes invoked from the perspective of the EHRD on the basis of non-discrimination. Challenges identified include overlapping obligations or responsibilities leading to a lack of enforcement.