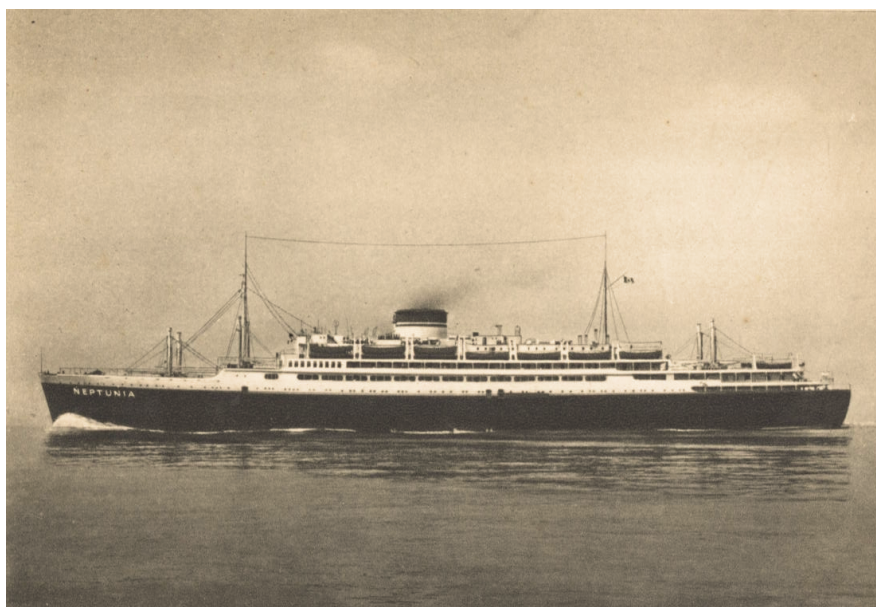


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OANTA, G.A. (coord.), *El Derecho del Mar y las personas y grupos vulnerables*, JM Bosch Editor, Vallirana, 2018, 426 pages.

The United Nations Convention on the Law of the Sea (UNCLOS) is undoubtedly the cornerstone of the Law of the Sea; however the international set of rules related to the oceans and seas has increased significantly addressing specific issues that are not regulated by UNCLOS. The evolution of the international legal marine and maritime framework also includes that more attention has been paid to new actors such as human beings by regulating both rights and obligations of people at sea *sensu lato*. While UNCLOS's focus lies on States and establishes their competencies and responsibilities in the different maritime zones, a set of rules from different fields of law has emerged dealing with situations of individuals in a maritime context that are not specifically covered by UNCLOS. While there are regulations related to human activities at sea in a broader sense, attention also has been drawn to people and communities who are in a vulnerable situation within a maritime context, i.e. people facing obstacles that result in human rights violations. This collective work addresses exactly these kinds of situations analyzing the legal framework and/or the lack of existing rules protecting people and communities in specific maritime contexts.

This book is coordinated by Prof. Dr. Gabriela A. Oanta (Profesora Titular at the University of Coruña) and contains works from eleven academics from Public international law and Labour Law departments from Spanish and French universities as well as professionals, and is the result of the papers presented at the conference “El Derecho del mar y las personas y grupos vulnerables” on 24 May 2018, which was organized in the framework of the Jean Monnet Module “Política Marítima Integrada de la Unión Europea” (574770-EPP-1-2016-1-ES-EPPJMO-MODULE) and co-financed by the Erasmus+ Programme of the European Union. The main purpose of this collective work is twofold and thus to reflect, first, on the variety of situations

where people and communities may find themselves in vulnerable circumstances in a maritime context. Second, every contribution analyzes specific aspects of vulnerability of people in a maritime context and thus provides the reader with highly valuable reflections on regulations and possible lack of rules for particular individuals or communities.

The first two chapters of the book deal with questions regarding the connection between the law of the sea and human rights law, and the applicability of the latter on maritime spaces. Chapter one, elaborated by *Joana Abrisketa Uriarte*, examines the interaction of two different, but complementing, legal frameworks, i.e. the law of the sea and international human rights law from a theoretical point of view focused on the protection of the individual both by the law of the sea in a broader sense and the international human rights law. She highlights that even though the protection of people is not a central issue of the UNCLOS, there are international regulations whose objective is to protect people at sea such as SOLAS or SAR convention, or more recently the Convention n^o. 188 of the ILO. Analyzing the set of rules of international human rights law, the article focuses specifically on several aspects of the applicability of the European Convention on Human Rights on maritime spaces due to the fact that the European Court of Human Rights has addressed this question in several cases.

Miguel Ángel Acosta Sánchez focuses in chapter two on the European Border and Coast Guard Agency (FRONTEX) analyzing several questions related to its mandate, which is to control the maritime external borders of the EU, in a special context that is the migratory crisis. On the one hand, he examines the operative capacity of the Agency and the respect of the law of the sea by the States. On the other hand, he addresses the respect and protection of fundamental rights during operations of the own Agency and thus drawing the attention to a particular vulnerable community, i.e. migrants using maritime routes. In his analysis, he both takes into consideration the protection of fundamental rights, but also analyzes the mechanisms for claiming rights if people feel that their rights were violated. Besides the in-depth analysis of these questions in an EU context, in the final paragraph he makes reference to a particular bilateral relation in order to address the migratory crisis in the Mediterranean, namely the relationship and cooperation between Spain and Morocco.

Two authors focus their work on a group of people that doesn't find themselves in vulnerable situations per se, just as other individuals or communities, but due to their specific working conditions they might be more subjected to vulnerability than other workers. *Xosé Manuel Carril Vázquez* (chapter three) and *Andrés Ramón Trillo García* (chapter eleven) address specific questions related to seafarers and therefore specifically focusing on socio-economic aspects of their work that might put them into a vulnerable situation. *Carril Vázquez* offers, on the one hand, the reader the broader picture of the specific labour situation of seafarers in general and why this community might find themselves in a vulnerable situation; on the other hand, he realizes a critical review of the level of protection of seafarers in an EU context. *Trillo García* makes an in-depth analysis of the Special Social Security Scheme for seafarers in Spain and discusses the requirements for retirement.

François Féral (chapter four) discusses the situation of indigenous communities who are considered by the United Nations as vulnerable group and whose rights are defined by international law. In his contribution, he specifically addresses the question of vulnerability in the sense that these communities often are deprived of their rights regarding natural resources, including marine resources such as fisheries. The illustration of examples underlines his arguments, such as the situations in the Pacific Ocean.

Chapter five, whose author is *Laura Movilla Pateiro*, also focuses on natural resources and the challenges faced by developing states to have access to marine genetic resources and the distribution of its profits. After analyzing the most important international regulations regarding marine genetic resources, the reader learns that there is a consolidated international regulation about marine genetic resources within the jurisdiction of coastal States, namely the Convention on Biological Diversity and the Nagoya Protocol; however, the author concludes that an increase in ratifications of the Protocol and the practical implementation of its three pillars would help to reduce the vulnerability of some concerned developing states.

In Chapter six, *Gabriela A. Oanta* deals with gender questions related to the law of the sea. She shows in a clear way that this crosscutting issue has also found its way into the set of rules related to maritime issues over the last decades. Again, women are not per se a vulnerable community, but throughout the production chain of maritime products such as fisheries products,

gender issues have been given more importance. Her contribution is split into two main parts: on the one hand, she analyzes gender equality within the context of the law of the sea; on the other hand, she focuses on gender issues in the fisheries sector in the context of the European Union and particularly regarding the Common Fisheries Policy.

Antoni Pigrau Solé addresses in his contribution (chapter seven) climate change and the directly related rise of sea level, and its consequence for Small Island and Archipelagic states. These states are considered to be more vulnerable to the adverse effects of climate change and its consequences on the sea due to their geographic and economic special characteristics, and because a majority of its population lives on the coast. Their specific conditions were recognized by the Intergovernmental Panel Climate Change and latest in the Paris Agreement of 2015. In its in-depth analysis he mentions the consequences of the rising of sea levels, but also the participation in international forums and the specific claims of this particular community of states.

Chapter eight, who's author is Ángel J. Rodrigo, deals with the specific subject of so-called failed states and examines the legal consequences of their conditions within the legal framework regulating the seas and oceans. He describes the today's law of the sea as a "delicate mosaic" of rights and obligations of costal States, flag States and port States. According to him, the "balanced functioning of this puzzle" is only possible when the different actors respect the international rules. So-called failed States pose numerous challenges in order to uphold their obligations and to exercise their rights. In his contribution, he specifically addresses the legal consequences in the framework of the law of the sea in order to protect their own state interests; rights and interests of third States; and the protection of the global public interest in the seas and oceans.

Belén Sánchez Ramos discusses in chapter nine the violation of the rights at sea of a community, namely children. In the preliminary chapter she offers the readers information of the exploitation of children in numerous sectors related to maritime activities, and thus highlighting their vulnerability. In her analysis she systematically examines the different legal instruments of the broader fight against human trafficking related to labour exploitation and forced labour. She also mentions the important roles some international organizations and the fisheries sector itself have had in fighting these situations,

and shows how Thailand has responded to this challenge.

The law of the sea and Non-Self-Governing Territories is the subject of chapter ten, elaborate by *José Manuel Sobrino Heredia*. In a preliminary analysis of the legal characteristics of these territories, he highlights that they have their own particularities and are highly diverse regarding their economic situation, population, political-administrative organization or the relation they have with the State of which they depend on. In a lot of these territories there are movements defending a higher grade of autonomy or including independence, and these movements not only defend political, but also economic interests over the natural resources located in their territories as well as in the territorial sea and the maritime spaces under their jurisdiction. In his contribution he examines complex situations that result from their condition being Non-Self-Governing Territories and analyzing, on the one hand, the principle of the self-determination of peoples and the exploitation of the natural resources; and, on the other hand, the challenges related to the conservation and management of the natural resources located in the maritime spaces under their control due to the fact that both, the administration of the Non-Self-Governing Territories as well as the administration of the State with whom they have a constitutional tie, have rights and duties.

This collective work by researchers of the research group REDEXMAR is, in our opinion, a highly interesting contribution in the Spanish language to current debates focusing on a subject that hasn't been addressed before in this way, namely the vulnerability of people and communities related to the *sea* in a broader sense. There is a clear common thread throughout the very well structured book, i.e. the vulnerability of people and communities in a maritime context, but the plurality of topics gives an interesting and valuable insight into the complexity of questions where different fields of law converge. For readers specially interested in questions related to people at sea, this book offers a fascinating overview of the variety of challenges that must be dealt with.

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BIBLIOGRAPHIE CRITIQUE

DIAZ PERALTA, E., El matrimonio infantil y forzado en el Derecho Internacional. Un enfoque de género y derechos humanos, ed. Tirant Lo Blanch, Valencia, 2019. Par Marta REINA GRAU

OANTA, G. (Coord.), El Derecho del mar y las personas y grupos vulnerables, Bosch Editor, Barcelona, 2018. Par Annina BÜRGIN

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