The Law of the Sea Convention: No Place for Persons?

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Abstract
The article, adopting an innovative approach to the law of the sea, discusses the place and role reserved to persons in the United Nations Convention on the Law of the Sea (LOSC) and the legal regime of which it is a part. The LOSC and other law of the sea agreements are examined, focussing on provisions that mention persons, their rights and their duties. Shortcomings identified include: the difficulty to configure persons as the beneficiaries of rights and the recipient of duties and the ensuing uncertain subjectivity of persons under the law of the sea; the presence of numerous gaps and inconsistencies in the existing legal regulation; the unavailability of mechanisms to address violations of duties by states. The conclusions draw attention to the potential of the LOSC and other treaties to further develop the international legal regime applicable to persons at sea and to provide an adequate place for persons in the law of the sea.

Keywords
law of the sea; persons; human rights; jurisdiction; right to life; enforcement; United Nations Convention on the Law of the Sea (LOSC)

Introduction

The United Nations Convention on the Law of the Sea (LOSC or the Convention) is undoubtedly a monument to international law-making. The ‘constitution for the oceans’, as it has been aptly termed, sets the legal and institutional framework of the legal regime applicable to the seas and contains many detailed substantive rules. However, the LOSC does not say the final word on the law of the sea, as the text and the spirit of the Convention itself,¹ not to mention actual state practice, have shown. The adoption of two

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“implementation” agreements so far\(^2\) and the process launched by the UN General Assembly in 2011 concerning areas beyond national jurisdiction, bear witness to the will of states to continue working on law of the sea issues.\(^3\)

Poor regulation, one of the main reasons for revising existing rules, is particularly evident with respect to persons at sea. This contribution addresses this problematic issue by sketching the existing framework, pointing at some major problems and advancing a few suggestions. A focus on shortcomings and inconsistencies may hardly seem suitable for a contribution to a celebratory issue. This choice reposes on the belief that the greatness of a treaty has to be evaluated not only with respect to what it has achieved, but also with respect to what it can still achieve in the future. At 30, it is time to evaluate the LOSC not only as a monument to the past, to international negotiations and the codification and further development of the law in the 1970s and 1980s, but also as a living instrument which, despite its many problems, can provide rules for today’s situations and concerns. In this light, paying homage to what has been achieved seems more like a commemorative speech for something that has passed away, while commenting on shortcomings and addressing possible ways forward seems a better tribute to a treaty that, because it is still living, is capable of evolution. And the LOSC, as will emerge, is indeed a living instrument that can be used as a basis for addressing present concerns.

**Persons in the LOSC**

On examination of the Convention, it immediately strikes the eye that there seems to be no place for persons. People seem to occupy a space so small that it can be compared to that of a rock or a small island—with the exception that, unlike Part VIII, no Part is dedicated to the former. In order to verify whether this impression is correct, the following discussion identifies LOSC rules mentioning persons and assesses their significance against two criteria: whether they take into account concerns proper to persons and whether they allow persons an active role as subjects of the law of the sea.

The institutional (or framework) provisions of the Convention distribute jurisdiction between states as far as the spaces and objects present at sea are
