CHAPTER SEVENTEEN

A MISSING PART OF THE LAW OF THE SEA CONVENTION: ADDRESSING ISSUES OF STATE JURISDICTION OVER PERSONS AT SEA

Irini Papanicolopulu*

INTRODUCTION

The United Nations Convention on the Law of the Sea, 1982 (LOSC) is a milestone for international law, in general, and for the law of the sea, in particular. It regulates uses of the sea and addresses most of the issues that arise with respect to the rights and duties of States. In the Convention, the distribution of powers and duties is based on a dual scheme: spatial, which varies according to the zone considered, and functional, which considers the different situations that may request a State to exercise its jurisdiction. The LOSC thus divides the sea into maritime zones, but it also contains parts dealing with, among others, jurisdiction in respect to navigation, exploitation of living and non-living resources, marine scientific research, and prevention of pollution of the marine environment.

It would, however, be excessive to consider that the LOSC has addressed once and for all every legal issue connected with the seas and recent literature has often focused on the problems and gaps in the LOSC regime. This chapter addresses one such issue, indeed one that is little, if at all, studied. That is, the absence, in the Convention of a part addressing the jurisdiction of States over...
persons. No general rule exists, like those relating to sovereignty in the territorial sea, or rights in the contiguous zone, exclusive economic zone or continental shelf, or like that consecrating the jurisdiction of the flag State, or the principle that imposes the obligation to protect and preserve the marine environment. This is not to say that persons are completely unknown to the reader of the LOSC. Persons are mentioned now and then, often in connection with the power of a State to control, arrest or prosecute and punish them.

The presence of persons at sea does, however, pose a number of issues. This chapter focuses on one among them in particular, though perhaps the first such issue logically considered. Its purpose is to enquire into which State has jurisdiction over persons who are at sea. Scholars have generally refrained from addressing the topic, either within the context of law of the sea, or within the broader context of general international law. Nevertheless, there seem to be at least three good reasons for pursuing this line of inquiry.

The first is based on factual considerations: there are many persons at sea and their numbers are increasingly growing. While figures are not available for all categories of seagoing persons, estimates of men and women employed in shipping, fishing and energy production are significant. An estimate 466,000 officers and 721,000 ratings are currently serving on internationally trading merchant ships.4 There are almost 35,000 persons engaged in sea fisheries.5 It is not easy to find estimates of persons employed on offshore platforms, but by way of example, the average platform requires 50–100 persons and in the year 2000, about 19,000 people were employed by the UK offshore industry alone.6 Numbers of persons engaged in illegal activities, spanning from arms and drugs trafficking to illegal fishing to persons smuggling and to piracy and other acts against the safety of navigation, though smaller are also significant. In addition, people at sea are not always there in order to work. Many use the sea to go from one place to another, including passengers of ships but also, and increasingly, migrants and persons fleeing violence in their home or host countries and seeking asylum elsewhere. For example, from January to September 2011, more than 55,000 migrants and asylum seekers fleeing violence in Tunisia and Libya reached the Italian island of Lampedusa.7 All these persons will sooner or later come under the power of

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5 Food and Agriculture Organization (FAO), The State of World Fisheries and Aquaculture, (Rome: FAO, 2010).
6 http://www.oilandgasuk.co.uk/publications/Production/Working_Offshore.cfm
7 Parliamentary Assembly of the Council of Europe, Committee on Migration, Refugees and Population Ad Hoc Sub-Committee on the large-scale arrival of irregular migrants, asylum-seekers and refugees on Europe's southern shores, Report on the visit to Lampedusa (Italy), 30 September 2011, AS/MIG/AHLARG (2011) 03 REV 2, p. 2.