

*El Derecho del Mar y las personas y grupos vulnerables.* By Gabriela A. Oanta (ed.), (Bosch Editor, Barcelona, 2018), 426 pp.

Edited by Gabriela A. Oanta, the volume collects the proceedings of a conference held in Vigo on 24 May 2018, in the framework of a Jean Monnet module that the editor coordinates at the University of Coruña. Particularly appreciable for its timeliness, the publication provides up-to-date insights on the human dimension of the law of the sea, a topic to a great extent still unsettled and scarcely researched until recently. Most notably, the volume focuses on “vulnerable” individuals and groups, whose rights are susceptible to being violated in the maritime context.

In the last decade, the notion of vulnerability has seen increasing use in international and EU law, as well as in the doctrine. At the UN level, the International Law Commission (ILC) has emphasized on various occasions the obligation of States not to discriminate against vulnerable groups and individuals, including the positive obligation to give specific attention to their needs. For instance the 2014 Draft Articles on the Expulsion of Aliens provides that “[c]hildren, older persons, persons with disabilities, pregnant women and other vulnerable persons who are subject to expulsion” shall be treated and protected with due regard to their vulnerabilities, enhancing the level of protection as compared to that reserved for non-vulnerable persons. A similar reference to the “needs of the particularly vulnerable” can be found in the ILC Draft Article on the Protection of Persons in the Event of Disasters (2016) (see extensively T. O’Donnell, ‘Vulnerability and the International Law Commission’s Draft Articles on the Protection of Persons in the Event of Disasters’, 68 *International and Comparative Law Quarterly* (2019) 573-610). As Abrisketa emphasizes, the concept of vulnerable groups is also gaining momentum in the jurisprudence of the European Court on Human Rights. Introduced in the *Chapman v the United Kingdom* judgment of 18 January 2001 (ECtHR, Application No. 27238/95, para. 93, referring to the Roma minority), it has been extended to include detained persons, women, persons with disabilities, and migrants. The Court has attached legal consequences to the status of applicants as members of marginalized and underprivileged groups, for example to establish whether their conditions of detention reached the “minimum level of severity” to fall within the scope of Article 3 of the Convention, or while undertaking proportionality assessments relating to other Articles. As far as EU law is concerned, provisions on vulnerable persons can be found mainly in migration legislation (see e.g. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, laying down standards for the reception of applicants for international protection).

Against this backdrop, the choice underlying the selection of the issues tackled in the book’s chapters is based on a looser notion of vulnerability —not unknown in the literature (T. O’Donnell, *supra*)— that encompasses vulnerable individuals, groups and even States. In the Introduction, Oanta explains the editorial strategy behind the choice

of topics. Two main themes that run through the book may be identified. The first group of chapters deals with the individual rights of vulnerable persons, a class that includes migrants, seafarers, and children. The second group deals with the rights of peoples and of communities particularly worthy of protection, which are disadvantaged due to geographical conditions, denial of self-determination, poverty and underdevelopment. These include indigenous peoples, peoples living in non-autonomous territories, and the inhabitants of poor States, most notably small islands and archipelagic States.

The book's first chapter, by Abrisketa, presents a thoughtful discussion on the protection of the human rights of people at sea. The author evidences the gaps in the UN Law of the Sea Convention (LOSC), which mainly regulates the exploitation of natural resources and the allocation of jurisdiction among States in different maritime areas. In this connection, it has been insightfully noted that the very wording of many provisions of the LOSC, referring to vessels rather than to persons onboard, reveals "a latent desire to keep people – and all the problems arising out of their presence – out of the law of the sea picture" (I. Papanicopolulu, *International Law and the Protection of Persons at Sea* (Oxford University Press, Oxford, 2018), at 130). As revealed *inter alia* by the *Intertanko* judgment, the idea of the LOSC as an instrument having exclusively a horizontal, inter-state character, has found ample support (Court of Justice (Grand Chamber), case C-308/06, Judgment of 3 June 2008, *Intertanko*, paras. 55-65). However, Abrisketa succeeds in demonstrating that, as also amply supported by international jurisprudence, human rights rules and principles need to be taken into consideration in order to interpret the LOSC, thus allowing the consistency between the two bodies of law to be enhanced.

The second chapter, by Miguel A. Acosta Sánchez, is devoted to the human rights of migrants: after providing an account of irregular immigration across the Mediterranean Sea from the standpoint of international law, the author considers human rights issues relating to the activities of Frontex, and the struggle against irregular immigration from Morocco to Spain. Fleeing from war, persecution and extreme poverty, driven by sorrow to face the sea aboard unsafe and overloaded boats at the mercy of people smugglers, irregular migrants are without doubt the most vulnerable persons at sea. As a consequence, the reader might have expected to find in the volume more essays on the rights of migrants, refugees and asylum seekers. However, the editorial choice to focus on human rights abuses in contexts other than migration allows a wider range of topics to be covered, to which much less attention has been paid in the legal literature.

After the entry into force, in 2017, of the ILO Work in Fishing Convention No. 188 (2007), the volume pays commendable attention to the living and working conditions of seafarers. To work as a crew member in the fishing sector is one of the most dangerous occupations, even when carried out on board vessels flying the flag of industrialized countries (with regard to France, see A. Raybaud, *Marin, le métier le plus dangereux. Les cassés de la mer*, *Le Monde diplomatique*, December 2019, at 7): the majority of fishermen toil in poor working conditions threatening their safety and dignity, with innumerable fatal

incidents and violations of workers' rights reported every year. In their chapters, Xosé Manuel Carril Vázquez provides a useful survey of international conventions and EU law provisions on maritime labour, while Adrés Ramón Trillo García focuses closely on Spanish legislation on retirement pensions. The gender dimension of fisheries law is tackled in the chapter by Gabriela Oanta. In particular, the Editor discusses the rights of women working in the fishing sector, by laying down a clear and well documented overview of international treaties, EU legislation and soft law instruments promoting a gender-equitable governance of fisheries. To these instruments, one should add the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UN Doc. A/RES/73/165, 17 December 2018), adopted by the General Assembly just a few days after the publication of the volume and applicable to small-scale fishers and fish workers as well. The first set of chapters ends with Belén Sánchez Ramos's contribution on the rights of the child at sea. The author focuses primarily on the exploitation of child labour in the fisheries sector (on board fishing vessels on the high seas and in on-land processing facilities) and on trafficking for forced labour.

Going on to the second group of chapters, François Féral explores the fishing rights of indigenous peoples, groups that are particularly vulnerable due to historical injustices, marginalization, and forced assimilation. Coastal States have often failed to safeguard traditional and small-scale fishing by indigenous peoples living in their territory, allocating quotas mostly to the benefit of a few large-scale fleets practising industrial fishing. This has resulted in depriving fishing communities of the resources upon which they traditionally depended, giving rise to what has been effectively described as "ocean grabbing"; to a lesser extent, the exercise of traditional small-scale fishing activities is hampered by environmental laws and regulations enacted by coastal States.

Two other chapters of the book are devoted to claims of control over the natural resources of the sea. José Manuel Sobrino Heredia explores questions relating to the conservation and management of fisheries in waters adjacent to non-self-governing territories, most of which are insular States having very large exclusive economic zones. This is a particularly current topic, as demonstrated by the judgment of the Court of Justice of the European Union concerning the Fisheries Partnership Agreement between the EU and Morocco (Court of Justice (Grand Chamber), case C-266/16, Judgment of 27 February 2018, *The Queen on the Application of Western Sahara Campaign UK v. Commissioner of Her Majesty's Revenue and Customs, Secretary of States for Food and Rural Affairs*) and by the *Chagos Archipelago* arbitration award, which ultimately originated from the exercise of jurisdiction over fisheries by the administering Power (*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom*, arbitration award of 18 March 2015, *Reports of International Arbitral Awards*, volume XXXI, 359-606). In a very informative chapter, Laura Movilla Pateiro considers the steps undertaken by the international community to negotiate an internationally binding regime for marine genetic resources in areas beyond national jurisdiction. The chapter addresses the geopolitical

implications of Access and Benefit-Sharing (ABS) regimes. It emphasizes the loopholes and inconsistencies of the Biodiversity Convention and of the Nagoya Protocol and accounts for the conflicting positions of States in the current multilateral negotiations. Some mention is also made of the debate (still in its infancy) concerning the legal regime of genetic resources *in silico*. Indeed, the advances in computer science and synthetic biology, while facilitating nonphysical access to genetic resources, are undermining traditional ABS regimes and may give rise to new forms of “biopiracy” as long as the transfer and use of digital sequence information remain unregulated.

Equally cutting-edge is the topic dealt with in the chapter by Antoni Pigrau Solé, relating to the effects of climate change upon Small Island Developing States, whose special “vulnerability” due to rising sea level has been expressly recognized in international fora. The author delves into climate justice issues, illustrating the international solutions and financial mechanisms inspired by the principle of common but differentiated responsibilities. Lastly, the volume considers the problems posed by failed States: Ángel J. Rodrigo underscores how these States can represent a threat to the interests of the international community, by failing to abide by their responsibilities as flag, coastal and port States.

From a methodological point of view, all the book’s contributions focus mainly on the analysis of positive law, providing a well-documented and up-to-date treatment of a large body of law and practice, while at the same time proposing some *de jure condendo* solutions. The contextualization and understanding of “vulnerability” might have benefitted from a deeper discussion of the root causes of embedded inequality and marginalization at the various levels taken into account. In any event, addressing most of the new challenges of the international law of the sea, the volume is a valuable contribution to the state of the art and is successful in portraying this branch of international law as a particularly fluid and dynamic area.

Simone VEZZANI  
Università di Perugia