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An Overview of the Interaction Between Human Rights and the Law of the Sea: Toward the Humanization of Maritime Law

Prof. Dr. Mohammad Ekram YAWAR^{1*}, Muaiyid Rasooli², Dr. Nasratullah Morad³, Mohammad Kazim Amini⁴, Mohammad Masoud Moradi⁵

¹ Dean of the Faculty of Law, International Science and Technology University, Warsaw, Poland. Email: ekram.yawar@istu.edu.pl. ORCID: <https://orcid.org/0000-0003-3198-5212>

² PhD Candidate, School of Law, Xi'an Jiaotong University, China. muaiyid.rasooli1992@gmail.com
<https://orcid.org/0009-0000-8968-8910>

³ Department of Language and Literature, Turkish Language and Literature, Kabul University. Email: nasratullah.morad@gmail.com, orcid: <https://orcid.org/0000-0001-6007-2995>

⁴ PhD Candidate. History of Islam. Faculty of Literature and Literary Sciences. University of Tehran.
Tehran..kazim.amini@gmail.com<https://orcid.org/0009-0004-4923-1325>

⁵ PhD Candidate in Agriculture Faculty, Department of Agricultural Economics, Ankara University.
Email: masoud.moradi@hu.edu.af orcid: 0009000895521912

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***Corresponding author:** Prof. Dr. Mohammad Ekram YAWAR

Dean of the Faculty of Law, International Science and Technology University, Warsaw, Poland.

Abstract

Human rights violations at sea often remain less visible than those occurring on land, and therefore, receive limited attention from the international community. However, the protection of human rights must extend to the seas with equal force. The growing interaction between human rights law and the law of the sea has provided the foundation for the humanization of maritime law. One contributing factor to the fragmentation of international law is the emergence of self-contained and highly specialized regimes. Among these are the law of the sea and human rights law, each with distinct sources and enforcement mechanisms.

Nevertheless, their intersection is both inevitable and necessary. This interaction can be viewed as an opportunity to strengthen international law and further consolidate the rule of law at sea. While the traditional purpose of the law of the sea has been to regulate relations among states, recent developments highlight the importance of recognizing the individual–state relationship in maritime contexts. This shift underscores the growing significance of human rights in shaping and humanizing the law of the sea.

Keywords: Human rights and the law of the sea, international law, fragmentation, humanization of maritime law

Introduction:

The vastness and freedom of the seas have long prompted the international community to regulate and limit the powers of states in maritime spaces. These efforts culminated in the adoption of the *United Nations Convention on the Law of the Sea (UNCLOS, 1982)*, often referred to as the “constitution of the oceans.” While this treaty sets out comprehensive rules for the use and governance of the seas, it cannot be regarded as the final or exhaustive legal framework in this field. The adoption of subsequent instruments—such as the 1994 Agreement on Part XI and the 1995 Fish Stocks Agreement—demonstrates the evolving and dynamic nature of the law of the sea.

This dynamism reflects a broader reality of international law: the emergence of new regimes and the increasing overlap of obligations between them. One of the most significant intersections arises between the law of the sea and international human rights law. Both are self-contained regimes with distinct principles, objectives, and enforcement mechanisms, yet their norms may at times come into conflict.

Given that more than three decades have passed since the adoption of UNCLOS, new issues—particularly the recognition of human rights at sea—have emerged. Situations at sea involving migration, detention, forced labor, and environmental harm illustrate that conflicts between maritime law and human rights obligations are not merely theoretical but practical. In legal terms, a conflict arises when the implementation of one norm leads to the violation of another.

At the same time, international law is not solely characterized by conflict but also by interaction and synergy. Despite differences, the law of the sea and human rights law share common principles and objectives, which provide a foundation for coordination and mutual reinforcement. These shared perspectives give rise to interaction, understood as the arrangement of distinct legal regimes through their overlapping concerns and goals.

Accordingly, this study explores both the conflicts and interactions between the obligations arising from the law of the sea and human rights law. It argues that such interplay, while sometimes contentious, can ultimately contribute to the development of international law by fostering greater coherence and strengthening the rule of law at sea. The discussion first considers the areas of synergy between the two regimes, then examines tools for coordinating their coexistence, and finally addresses the humanization of the law of the sea as an outcome of this process.

1. The Interaction of Human Rights and the Law of the Sea

The emergence of “self-sufficient” or *special regimes* in international law, beginning with the *Wimbledon Case* and later reflected in the *Hostages Case*, *Congo v. Uganda*, the *nuclear weapons Advisory Opinions*, and the *Barrier Case*, illustrates the increasing specialization of international law. At first glance, this specialization appears to allow for the parallel implementation of obligations arising under different regimes—such as human rights law alongside the law of the sea. For example, in the *nuclear weapons Advisory Opinion*, the International Court of Justice (ICJ) emphasized the simultaneous applicability of obligations under both human rights law and the law of armed conflict.

In practice, however, when conflicts arise between human rights obligations and other regimes of international law, particularly the law of the sea, states often prioritize obligations that safeguard their sovereignty. This raises the pressing question of how to resolve such conflicts. Unlike domestic legal systems, international law lacks a centralized hierarchy, making it impossible to rely on the same methods used in national jurisdictions.

As the International Law Commission (ILC) observed in its report on the plurality of international law, “the primacy of one treaty over another cannot be based on chronological order alone but requires greater care in conflict resolution.” Indeed, in many instances, no hierarchy exists among legal sources, and conflicts must be addressed case by case.

Martti Koskeniemi, Special Rapporteur of the ILC on the fragmentation of international law, emphasized that no legal regime is entirely self-sufficient; rather, regimes draw their legitimacy and enforcement capacity from general international law. Accordingly, while conflicts are inevitable across different areas of international law, such as between the law of the sea and human rights law, they also present opportunities for the development and refinement of international law itself.

The law of the sea is a particularly dynamic and evolving regime. Its interaction with other areas of law, especially human rights, should therefore be seen not only as a challenge but also as an opportunity to foster coherence and strengthen legal protections at sea. Rosalyn Higgins, former President of the ICJ, reflected on this issue in a speech marking the Court’s tenth anniversary, noting that while the

¹ Joost Pauwelyn, *C conflict of Norms in Public International Law* (United Kingdom: Cambridge University Press, 2003) at 237.

² . Margaret A. Young, *Regime Interaction in International Law: Facing Fragmentation* (Netherlands: University of Leiden, 2011) at 67

³ PCIJ, *S.S. Wimbledon*, U.K./Japan, (1923), Ser. A, No. 1, at 23-24.

⁴ ICJ Report, *United States Diplomatic and Consular Staff in Tehran*, U.S. v. Iran, (1980), at 38-41.

⁵ ICJ Rep. Case concerning Armed Activities on the Territory of the Congo, DRC v Uganda, (2005), at 216-217.

⁶ ICJ Report, Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), (1996), at 25.

⁷ ICJ Report, Legal Consequences of the Construction of a Wall in the Occupied Territory, (Advisory Opinion), (2004), p.106

⁸ ICJ Report, Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), (1996), at 9.

⁹ International Law Commission, “Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission Finalized by Martti Koskenniemi”, UN Doc. A/CN.4/L.682, 2006, para.119.

¹⁰ International Law Commission, op. cit., paras 224.

proliferation of new courts raises concerns about coherence, such concerns need not be exaggerated. International tribunals frequently reference one another’s decisions, thereby promoting consistency. For example, the International Tribunal for the Law of the Sea (ITLOS) has regularly relied on ICJ jurisprudence to clarify questions of general international law. Cases such as *M/V Saiga* (No. 2) before ITLOS and disputes involving the interplay between UNCLOS and European Union law illustrate the practical challenges of overlapping regimes. Courts thus play a vital role in balancing commitments and mitigating fragmentation. The application of general international law, moreover, serves as a stabilizing tool to reduce the intensity of conflicts between specialized regimes.

This raises a fundamental question: in cases where obligations under human rights law and the law of the sea conflict, should human rights obligations prevail, particularly in areas beyond national jurisdiction? Article 1 of the *European Convention on Human Rights* (ECHR) requires States to secure rights and freedoms to all individuals “within their jurisdiction.” Importantly, the European Court of Human Rights (ECtHR) has interpreted “jurisdiction” broadly, extending it beyond territorial boundaries.

In *Medvedev v. France*, the Court held that France’s continuous and exclusive control over the vessel *Winner* and its crew brought them under French jurisdiction within the meaning of Article 1 ECHR. This reasoning was reaffirmed in *Hirsi Jamaa v. Italy*, where the Court stressed that the exercise of control over individuals at sea triggers human rights obligations. Similarly, in *Andreou v. Turkey*, jurisdiction was extended to actions occurring in the course of an exchange of fire between two ships, prior even to boarding. In *Al-Skeini v. United Kingdom*, the Court explicitly recognized that the exercise of authority and control over individuals abroad entails jurisdiction under the Convention.

These cases demonstrate that human rights obligations are no longer confined to territorial borders. States must respect human rights wherever they exercise effective control, including at sea. The challenge, therefore, lies in reconciling these obligations with the traditional framework of the law of the sea.

2. Tools for Identifying the Interaction between Human Rights and the Law of the Sea

The need to respect human rights at sea has been increasingly emphasized by international institutions. For instance, several resolutions of the United Nations Security Council (UNSC) have expressly highlighted the obligation to respect human rights during maritime operations. Such references signal a growing recognition that the protection of individuals at sea must be integrated into broader international legal frameworks.

Although international courts and tribunals have not yet explicitly acknowledged the existence of a distinct human rights regime for the sea, some legal scholars argue that references to the “need to take into account humanitarian considerations” in judicial decisions implicitly attest to the gradual emergence of such a regime. This reflects a broader trend in international law: the expansion of human rights obligations beyond traditional territorial boundaries and into new domains, including the maritime sphere.

The **United Nations Convention on the Law of the Sea (UNCLOS)** primarily regulates relations among states and is deeply rooted in sovereignty. Accordingly, it is unsurprising that the International Court of Justice (ICJ), in its jurisprudence, has often characterized individuals at sea primarily as “*persons of a ship*”—that is, as part of a vessel under the authority of a flag state—rather than as independent rights-holders. This vessel-centered approach reflects the inter-state focus of UNCLOS but does not adequately capture the growing recognition of the individual as a subject of international law.

Against this background, a key question arises: **by what legal tools and mechanisms can human rights be linked to the law of the sea, thereby ensuring that States respect fundamental rights in maritime contexts?**

The principal tools include:

1. Treaty Interpretation and Integration

- The use of general rules of treaty interpretation under the Vienna Convention on the Law of Treaties allows for the integration of human rights obligations into the interpretation of UNCLOS provisions. For example, provisions on interdiction, rescue at sea, and detention on vessels may be read consistently with obligations under international human rights instruments such as the ICCPR and the ECHR.

2. Jurisdictional Principles of Human Rights Law

- The expansion of the concept of “jurisdiction,” particularly by the European Court of Human Rights, enables human rights treaties to apply extraterritorially whenever a state exercises effective control at sea. This provides a direct legal link between state conduct under the law of the sea and the obligation to uphold individual rights.

3. Judicial Dialogue among International Tribunals

- International courts and tribunals, including ITLOS, the ICJ, and regional human rights courts, increasingly cite one another’s jurisprudence. This cross-referencing promotes

¹¹ International Law Commission, "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission Finalized by Martti Koskenniemi", UN Doc. A/CN.4/L.682, 2006.

¹² International Law Commission, op. cit., paras 192-194.

¹³ Marti Koskenniemi and Päivi Leino, "Fragmentation of International Law? Postmodern Anxieties", Leiden Journal of International Law, No.15, (2002), at 554.

¹⁴ Speech by H.E. Judge Rosalyn Higgins, President of the International Court of Justice, at the Tenth Anniversary of the International Tribunal for the Law of the Sea, 29 September (2006), in <http://www.itlos.org>.

4. Soft Law and Institutional Practice

- Resolutions and guidelines by the UNSC, the International Maritime Organization (IMO), and other bodies often include human rights considerations. While not binding, these instruments provide normative guidance that influences the interpretation and application of binding treaties.

5. State Practice and *Opinio Juris*

- The conduct of states in maritime operations, including search and rescue, anti-piracy operations, and migrant interceptions, contributes to the gradual development of customary international law recognizing the human rights obligations of states at sea.

Through these tools, the interaction between human rights and the law of the sea becomes more tangible, allowing for a gradual "humanization" of maritime law. This humanization transforms UNCLOS from a framework focused predominantly on state sovereignty into one that also addresses the rights and dignity of individuals at sea.

2.1 The Doctrine of Margin of Authority as a Tool for Harmonizing Commitments:

The doctrine of the "margin of authority" (or *margin of appreciation*) is a judicial creation of the European Court of Human Rights (ECtHR). Although the Court has never provided a single, uniform definition, it applies the doctrine flexibly on a case-by-case basis, taking into account the specific circumstances of each case. In essence, the doctrine allows states a degree of discretion in how they fulfill their international obligations, thereby reconciling the protection of state sovereignty and national interests with the promotion of human rights. As one scholar has

defined it, the doctrine is grounded in the principle of state sovereignty and grants states a freedom of action, while at the same time requiring them to demonstrate that they have sought to promote human rights as far as possible within their national context. The central purpose of the doctrine is to strike a balance between the *general interests of society* on one hand and the *rights and freedoms of individuals* on the other.

The ECtHR has even extended this doctrine to the sphere of international obligations. In the *Nada v. Switzerland* case, the Court implicitly applied the doctrine of the margin of appreciation in finding that Switzerland could not justify restrictions imposed on Mr. Nada by merely invoking its duty to implement binding Security Council resolutions. Instead, the Court held that Switzerland was required to take all reasonable steps to reconcile its obligations under international security law with its human rights obligations. The Court concluded that Switzerland had failed to strike the necessary balance and had therefore violated several provisions of the European Convention on Human Rights (Articles 8, 5, 4, and 13).

Similarly, in the *Women on Waves v. Portugal* case, the Portuguese government prohibited the entry of a Dutch vessel advocating for reproductive rights into its territorial waters, citing public order concerns. The ECtHR recalled that freedom of expression does not automatically guarantee a right of access to public or private property (*Appleby v. United Kingdom*), but nonetheless emphasized that the territorial sea is an open and public space where foreign vessels enjoy rites of passage under Articles 19 and 25 of UNCLOS. The Court held that Portugal could not impose a blanket prohibition and should have instead adopted proportionate measures consistent with its human rights obligations. This case illustrates how the margin of appreciation requires states to balance the protection of public order with the respect for freedom of expression, even in maritime spaces.

¹⁵ ECtHR, *Medvedyev v. France*, (Application No. 3394/03), (2010), para.68.

¹⁶ ECtHR, *Hirsi Jamaa v. Italy*, (Application No. 27765/09), (2012), paras. 81-82.

¹⁷ ECtHR, *Andreou v. Turkey*, (Application No. 45653/99), (2010), para.14.

¹⁸ Hourieh Hosseini Akbarnejad, *Transterritorial Implementation of Human Rights Obligations*, Master's Thesis, University of Tehran, Department of Law and Political Science, (2007), p. 155.

¹⁹ ECtHR, *Al-Skeini v. UK*, (Application No. 55721/07), (2011), para.136.

²⁰ UNSC RES/1816(2 June 2008), para.11.

²¹ Irini Papanicolopulu, *International Law and the Protection of People at Sea* (United Kingdom: Oxford University Press, 2018) at 242.

²⁴ Yaser Amin Roaya, *The role of the doctrine of discretion in the interpretation of international treaties*, doctoral dissertation, Alameh Tabatabaee University, (2017), p. 54

²⁵ *ibid.* p. 5.

²⁶ ECtHR, *Nada v. Switzerland*, (Application No. 10593/08), (12 September 2012), para.197.

²⁷ Ibid., para.197.

²⁸ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), 1950, Arts.4,5,8,13.

²⁹ ECtHR, *Women on Waves et autres c. Portugal*, (Application No. 31276/05), (Judgment of 3 February 2009), para.47.

³⁰ Ibid.

³¹ Ibid., para.40.

³² Ibid., paras.15-16.

³³ Ibid., para.43.

Although the UNCLOS itself does not explicitly refer to human rights, the principle has been acknowledged in international judicial practice. As early as 1949, in the *Corfu Channel* case, the ICJ declared that Albania was bound to observe “elementary considerations of humanity” both in peace and war. Likewise, in later decisions (1999; 2015), the ICJ reiterated that humanitarian considerations in the law of the sea must be applied in the same way as in other fields of international law. These statements suggest that states cannot exercise their rights or implement their obligations under UNCLOS without also taking into account their human rights commitments, even when pursuing legitimate objectives.

Accordingly, the doctrine of the margin of appreciation functions as a bridging tool: it enables states to harmonize potentially conflicting obligations by ensuring that the implementation of one obligation does not disregard others. In this way, the doctrine contributes to the progressive humanization of the law of the sea.

Beyond this doctrine, however, another mechanism has also proven important in reconciling human rights with the law of the sea: the principle of evolutionary interpretation, which allows treaties to be interpreted in light of contemporary conditions and values.

2.2 Interpretation as a Tool for Harmonization

When states are faced with two seemingly conflicting international obligations, they often risk violating one in order to comply with the other. In many cases, however, the conflict is only *prima facie*. Through careful interpretation, such contradictions can be reconciled, avoiding unnecessary breaches of international law.

From a judicial perspective, international courts and tribunals consistently seek to minimize conflict between different branches of law by relying on interpretative techniques. The International Law Commission (ILC) has also emphasized that derogations and violations of international rules should be avoided wherever possible, and that conflicts can frequently be resolved through interpretation. In practice, jurists and courts rely primarily on the rules of treaty interpretation contained in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (VCLT), which provide the framework for harmonizing norms and reducing fragmentation in international law.

Interpretation therefore functions as a fundamental method for addressing challenges arising from the increasing specialization and compartmentalization of international law. Courts frequently draw upon *other norms of international law* when interpreting a given treaty, thereby creating coherence between regimes.

Because international law is inherently dynamic, a purely static or literal understanding of treaty provisions cannot adequately address new legal and factual developments. This is where the method of

evolutionary (or dynamic) interpretation becomes critical. Unlike a static interpretation, which assumes that treaty terms remain fixed in meaning, evolutionary interpretation recognizes that certain provisions—particularly those involving concepts with an inherently open or broad character—must be understood in light of contemporary developments in international law and practice.

In the context of the law of the sea, evolutionary interpretation allows courts and tribunals to incorporate human rights considerations into the interpretation of maritime rules, thereby ensuring that the two regimes develop in harmony rather than in conflict. This interpretative approach has been applied, for example, in cases concerning the treatment of individuals at sea, where principles of humanity and fundamental rights have been read into provisions of the law of the sea that might otherwise appear silent on such issues.

Thus, interpretation—especially when carried out through the lens of systemic integration and evolutionary understanding—serves as a powerful tool to reconcile obligations arising under human rights law with those found in the law of the sea. It ensures that states, when implementing their maritime obligations, do not disregard the parallel responsibility to uphold human dignity and fundamental freedoms.

2.2.1 Evolutionary Interpretation from Theory to Practice

Scholars have presented divergent views on the role of evolutionary interpretation in international law. On the one hand, some argue that it functions as a tool for the *creation of new rules*, while others emphasize that its central purpose is to *reduce contradictions and fragmentation* within international law. The International Law Commission (ILC), in its report on the fragmentation of international law, acknowledges both perspectives. Although the Commission has described interpretation as “an art rather than a tool,” the European Court of Human Rights (ECtHR) has consistently treated interpretation both as an *art* and as a *tool* for the protection and progressive realization of human rights.

Through the mechanism of evolutionary interpretation, conflicts between different regimes of international law can be reconciled. Courts have relied on common interpretative techniques such as the principle of effectiveness and interpretation in light of other applicable rules of public international law. The ECtHR, in particular, has developed a rich body of jurisprudence that integrates broader norms of international law into the interpretation of human rights obligations, thereby mitigating fragmentation.

³⁴ ICJ report, Corfu Channel (U.K. v. Albania), (1949), para.22.

³⁵ ITLOS Report, The “Enrica Lexie” Incident (Case No. 24) (Italy v. India), (Order of Aug. 24, 2015), para.133. & M/V Saiga (No. 2) (St. Vincent v. Guinea), (Judgment of July 1, 1999), paras.143 -155

³⁶ Mohammad Habibi Mojenda, Sanaz Kamiyar Rad, “Rulemaking in the International Court of Justice through Dynamic Interpretation”, Journal of International Law, Volume 35, Issue 58 (2018), p. 68

³⁷ Mohsen Mohabi, Vahid Razadoost, “Evolutionary Interpretation of Treaties in International Law in the Light of the Case of Dispute Concerning Shipping and Related Laws (Costa Rica v. Nicaragua)”, Journal of International Law, Volume 32, Issue 53 (2015), p. 13

³⁸ Ilc Reports, UN Doc. A/CN.4/L.682, paras.49-61.

³⁹ Ibid., para.67.

This interpretative philosophy is not limited to human rights courts. In the *Right of Passage over Indian Territory* case, the International Court of Justice (ICJ) emphasized that “a text resulting from a state’s obligations must be interpreted in accordance with existing law and not in conflict with it.” Similarly, the ECtHR has repeatedly held that human rights treaties must not be interpreted narrowly. Instead, courts must remain attentive to the *special character* of human rights instruments and interpret them, so far as possible, in harmony with other relevant rules of international law applicable between the parties.

Such an approach promotes a uniform interpretation of international law while still allowing flexibility. A “one-size-fits-all” approach is neither possible nor necessary; rather, each judicial body must take into account the interaction between regimes in the specific context of the dispute before it. In practice, this means that when a court addresses allegations of human rights violations at sea, it cannot separate the law of the sea from human rights law. The two regimes must be considered as interdependent and mutually reinforcing.

The most significant area where this interaction emerges is the high seas. Although the high seas are not subject to the sovereignty of any single state, this does not absolve states of their obligations. On the contrary, states must ensure that their activities at sea are consistent not only with the rules of the law of the sea but also with the broader principles of general international law, including the protection of human rights. In this way, evolutionary interpretation bridges the gap between sovereignty-based maritime rules and the universal obligations owed to individuals.

2.2.2 Evolutionary Interpretation: Bridging Human Rights and the Law of the Sea

The European Court of Human Rights (ECtHR) has emphasized that the freedom of the seas must be interpreted alongside other international law obligations, particularly human rights, in a way that ensures maritime freedom does not become a lawless domain. In the landmark case of *Medoudio v. France*, the Court asserted that: “The special nature of the seas cannot justify a lawless space.” This ruling reflects the Court’s approach of integrating principles of the law of the sea with broader international law norms, in line with the evolving nature of international law. Given the fundamental differences between human rights obligations and those arising from the law of the sea, the incorporation of human rights at sea represents a critical step in legal development. However, human rights are increasingly recognized as an intrinsic component of the law of the sea regime, requiring consideration in all maritime matters. Courts have applied evolutionary interpretation, particularly under Article 31(3)(c) of the 1969 Vienna Convention on the Law of Treaties, to reconcile potential conflicts between these two legal domains.

The M/V Saiga case before the International Tribunal for the Law of the Sea (ITLOS) can be regarded as one of the earliest judgments formally acknowledging the relevance of human rights at sea. The Tribunal’s decision reflected a forward-looking approach, linking human rights principles with the obligations of the law of the sea. Similarly, subsequent ICJ judgments have reinforced this trend, particularly regarding prompt release of vessels and the treatment of detained individuals.

⁴⁰ ECtHR, Cyprus v. Turkey, (Application No. 25781/94), (Judgment of 10 May 2001), para.78.

⁴¹ The principle of effective interpretation is a general rule of interpretation in international law, known as the principle of effective effect, which applies to the interpretation and application of various types of treaties, although the 1969 Vienna Convention on the Law of Treaties does not expressly refer to this principle.

Nafisa Parsania, Principles of Interpretation of the European Convention on Human Rights in the Case Law of the European Court of Human Rights, Senior Master's Thesis, University of Tehran, Faculty of Law and Political Science, (2010), p. 86.

⁴² Ilc Reports, UN Doc. A/CN.4/L.682, para.412.

⁴³ ICJ Report, the Right of Passage over Indian Territory (Preliminary Objections) (Portugal v. India), (1957), para.142.

⁴⁴ ECtHR, McElhinney v. Ireland, (Application No. 31253/96), (Judgment of 21 November 2001), para.36 & Al-Adsani v. the United Kingdom, (Application no. 35763/97), (Judgment of 21 November 2001), ECtHR, p.100, para. 55.

⁴⁵ E. Papastavridis, “The Right of Visit on the High Seas in a Theoretical Perspective: Mare Liberum v. Mare Clausum Revisited”, (2011), Leiden Journal of International Law, Vol. 24, iss.1, at 52

⁴⁶ ECtHR, Medvedyev and others v. France (Application No. 3394/03), (2010), para.81.

⁴⁷ ITLOS report, M/V “Saiga”, (No. 2) (St. Vincent v. Guinea), (Order of 1998), (Dissenting Opinion of Judge Ndiaye), para.90.

⁴⁸ ITLOS report, The ‘Juno Trader’ (No.13) (Saint Vincent and the Grenadines v. Guinea-Bissau) (Prompt Release, Judgment of 18 December 2004), para.77

⁴⁹ ITLOS report, The M/V ‘Louisa’ Case (No.18) (Saint Vincent and the Grenadines v. Kingdom of Spain) (Judgment of 28 May 2013), para.155.

⁵⁰ ITLOS Report, The Arctic Sunrise Case(no.22) (Kingdom of the Netherlands v. Russian Federation) (Provisional Measures, Order of 22 November 2013), para.33.

⁵¹ PCA report, The Arctic Sunrise Arbitration (Netherlands v. Russia), (Award of 14 August 2015), para.191.

⁵² Hossein Sharifi Tarazkouhi, Fatima Fatehpour, “The Requirements of Countering Terrorism in the Light of the Humanization of International Law,” Shiraz University Journal of Legal Studies, Volume 9, Issue 2, (2017), p. 216
Research, Fifteenth Year, No. 39, (1392), p. 183

For instance:

- In the *Tomimaru* case, ITLOS held that the arrest of a vessel “shall not be carried out in a manner inconsistent with international standards of fair trial.”
- In the *Louisa* case, the Court underscored those states must fully comply with their obligations under international law, particularly with respect to human rights and fair trial protections.

However, not all decisions explicitly referenced human rights. In the *Arctic Sunrise* case, although the issue concerned the detention of a vessel and its crew, human rights considerations were not explicitly central to the Tribunal’s reasoning. Nevertheless, the Netherlands invoked human rights in its request for the interim release of the ship, demonstrating the continuing judicial attention to human rights in maritime disputes.

Overall, evolutionary interpretation has served as a bridge between the law of the sea and human rights, enabling courts to harmonize obligations, prevent conflicts, and gradually humanize maritime law by ensuring that individual rights are respected even in areas beyond national jurisdiction.

The principle of humanity is reflected in numerous treaties. For example, the 1972 UNESCO Convention on the Protection of the World Cultural and Natural Heritage embodies the concept of collective rights and interests. Protecting collective interests requires coordinated action by states, since these rights concern the survival and well-being of all humanity. In this context, the principle of reciprocity is insufficient, highlighting the necessity of collective responsibility.

The Declaration of the Seabed and Subsoil as the Common Heritage of Humanity exemplifies this principle. In the maritime domain, the three principles of sovereignty, freedom, and common heritage of mankind interact and sometimes conflict. The common heritage principle is fundamentally a human rights concept, developed to guarantee equitable access to resources and recently integrated into the law of the sea.

Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

- Rights and benefits derived from the seabed beyond national jurisdiction belong to humanity as a whole.
- The International Seabed Authority manages these resources on behalf of humanity, not individual states.
- The development and exploitation of these resources must ensure equitable benefits for all, reflecting distributive justice.

Historically, the concept has evolved: although its origins may trace back to ancient times, modern recognition emerged after World War II. For instance, UN Resolution 15 (1967) declared that the high seas and seabed are the common heritage of all mankind, particularly given the stark global disparities in development and access to resources.

By the Third UN Conference on the Law of the Sea, the concept was formally recognized internationally. The common heritage principle underscores that the international community does not act solely for states, but for all humanity, ensuring that resources are used equitably and sustainably.

In conclusion, the humanization of the law of the sea—driven by the interaction with human rights—has led to a legal framework in which human considerations, collective interests, and intergenerational equity are integral to maritime governance. This represents a profound shift from a state-centered model toward a more inclusive, human-centered international legal order.

Conclusion:

The fragmentation of international law arises from the specialization of legal regimes, which creates the potential for conflicts between norms. Kaskenemi, in his report on the fragmentation of international law, does not condemn this phenomenon; rather, he considers specialized rules a response to specific needs. However, when conflicts arise between international law regimes, it is crucial to reduce their intensity by employing established legal tools, such as evolutionary or dynamic interpretation.

⁵⁶ B.Simma, From Bilateralism to Community Interest in International Law(Netherland: Recueil des Cours de l’Académie de Droit International, 1994) at 234.

⁵⁷ A.A.cancando.Trindade, International Law for humankind: Toward New Jus Centum (Netherland: Recueil des Cours de l’Académie de Droit International, 2005) at 35.

⁵⁸ Ernst Fasan, "The Meaning of the Term Mankind in Space Legal Language", (1974), *Journal of Space Law*, Vol. 2, p.125.& Philip Alston, "A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights", *Netherlands International Law Review*, (1982), p.307.

⁵⁹ Humankind

⁶⁰ Mohammad Sharif, *Transition from International Law to Human Rights* (Tehran: Shahr Danesh (2014), p. 179.

⁶¹ Guidance to Philosophy, *The Journey of Reason in the System of International Law* (Tehran: Nashr Nou in Cooperation with Nashr Asim (2017), pp. 432-433

⁶² Yousef Farzana, *Humanizing International Law in the Light of the Theory of Responsibility to Protect with Emphasis on the Islamic Perspective*, Arshad Thesis, Payam Noor University, Department of Public International Law, Theology and Islamic Law Group, (2014) p. 93.

⁶³ Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972, Art.1-2.

The International Court of Justice (ICJ), in the *Namibian Advisory Opinion*, explicitly endorsed evolutionary interpretation, stating: "The concepts contained in Article 22 of the Charter of the League of Nations, including 'the difficult conditions of the modern world,' 'welfare and development,' and 'the sacred mission of human civilization,' are not static but evolve over time." Accordingly, international instruments must be interpreted in light of the entire legal system existing at the time of their application.

The ICJ has applied evolutionary interpretation in several key cases, including the *Aegean Continental Shelf case* (1978), the *Shipping and Related Rights case* (2009), and the *Pulp and Paper Mill case* (2010). The goal of this interpretative approach is not to create new rules but to establish connections between human rights and the law of the sea, adapting legal norms to contemporary situations and needs. As the International Law Commission notes, no legal relationship is unaffected by the passage of time, and dynamic interpretation enables the law to respond to evolving circumstances.

From a practical perspective, the fragmentation of international law has garnered significant scholarly attention. While fragmentation can generate conflicts between norms, institutions, and legal bodies, it also creates opportunities for interaction, synergy, and ultimately the complementarity of legal regimes. In the context of the law of the sea, the expansion of human activity has heightened the interaction between human rights and maritime law, increasing the relevance and accountability of both regimes.

The role of individuals in the law of the sea is gradually expanding. Although the recognition of human rights at sea is still in its early stages, these developments are essential for the humanization of the law of the sea. Fragmentation does not inherently produce negative consequences; when approached critically, it can foster coherence and unity within international law. Kaskenemi's report underscores the potential for human rights to serve as a unifying system, even amidst conflicts with other legal norms.

Today, human rights have permeated all branches of international law, functioning as a guiding principle for the interpretation and development of other legal regimes. In this sense, international law is gradually shifting from a state-centered framework toward an individual-centered approach. Consequently, the law of the sea is evolving in the direction of humanization, while human rights provide the normative foundation necessary for their effective application in maritime contexts.

In summary, the interaction between human rights and the law of the sea demonstrates that fragmentation can be a productive force, fostering both the development of international law and the humanization of the seas. By integrating human rights

considerations, maritime law is becoming more responsive to human needs and more attuned to the collective interests of humanity.

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⁶⁴ Edwin Egede, *Common Heritage of Mankind* (United Kingdom: Oxford University, 2014) at 10.

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⁶⁶ UN Doc. A/C. 1/952, October 31, 1967.

⁶⁷ Ilc reports, UN Doc. A/CN.4/L.682, paras.14-15.

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⁶⁹ The Court considers that the sacred mission of human civilization is contained in Article 22, paragraph 1. Article 22, paragraph 1, of the Charter -1: In the case of colonies and territories which, after the war, have come out of the yoke of the powers which previously held them in subjection and which are inhabited by peoples who, in the difficult circumstances of the present world, are not yet capable of governing themselves, the following principle shall be declared:

Also, since the happiness and progress of these peoples is the sacred mission of human civilization, it is necessary that the current treaty provide the means to implement this mission in a worthy manner.

⁷⁰ For more information on cases in which the International Court of Justice has used the method of evolutionary interpretation, see: Mohammad Habibi Mojanda, Sanaz Kamyarrad, "Rulemaking in the International Court of Justice through Dynamic Interpretation," *International Legal Journal*, No. 85, (2018), pp. 65-88.

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