

МІНІСТЕРСТВО ОСВІТИ І НАУКИ УКРАЇНИ
НАЦІОНАЛЬНИЙ УНІВЕРСИТЕТ «ОДЕСЬКА МОРСЬКА АКАДЕМІЯ»
АСОЦІАЦІЯ МОРСЬКОГО ПРАВА УКРАЇНИ
КОЛЕГІЯ ЮРИСТІВ З МОРСЬКОГО ПРАВА УКРАЇНИ

**«Морське право та менеджмент:
еволюція та сучасні виклики»**

Матеріали
XVIII Міжнародної науково-практичної конференції

Одеса – 2025

УДК 341.225(082)

М432

Рекомендовано до друку рішенням Вченої ради Навчально-наукового інституту морського права та менеджменту Національного університету «Одеська морська академія» від 27 травня 2025 р. (протокол № 10).

Редакційна колегія: Савінова Н.А., д.ю.н., с.н.с. (голова редколегії); Шемякін О.М., д.ю.н., проф.; Сотниченко Л.Л., д.е.н., проф.; Голубкова І.А., д.е.н., проф.; Доннікова І.А., д.ф.н., проф.; Вишневський В.Л., к.ю.н., доцент; Задоя І.І., к.ю.н., доцент; Степанов С.В., к.ю.н., доцент.

Морське право та менеджмент: еволюція та сучасні виклики: матеріали **М432** XVIII Міжнародної науково-практичної конференції НУОМА (25 квітня 2025 р.) – Одеса: НУОМА, 2025 – 215 с.

У збірник увійшли матеріали XVIII щорічної Міжнародної науково-практичної конференції «Морське право та менеджмент: еволюція та сучасні виклики», що відбулась в Національному університеті «Одеська морська академія» 25 квітня 2025 р.

Видання містить аналіз актуальних безпекових та організаційно-правових проблем в сфері використання Світового океану, морегосподарського комплексу та інфраструктури в сучасних умовах.

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ЗМІСТ

ВІТАЛЬНЕ СЛОВО	7
РОЗДІЛ І. МОРСЬКА БЕЗПЕКА	9
<i>Савінова Н.А.</i> ПОВОЄННІ КРОКИ НА СТАНОВЛЕННІ МОРСЬКОЇ БЕЗПЕКИ УКРАЇНИ: ПОЛІТИКО-ПРАВОВІ АСПЕКТИ	9
<i>Палько В.В.</i> СТРАТЕГІЯ МОРСЬКОЇ БЕЗПЕКИ ЄВРОПЕЙСЬКОГО СОЮЗУ	14
<i>Барінов Д.А.</i> ОСНОВНІ ЦІЛІ ТА ЗАХОДИ ЕКОНОМІЧНОЇ БЕЗПЕКИ ДЛЯ ЗАБЕЗПЕЧЕННЯ СТІЙКОСТІ ФУНКЦІОНУВАННЯ ПОРТІВ	18
<i>Рабомізо Д.В.</i> КЛАСИФІКАЦІЯ ДІЙ РФ ЩОДО НАПАДІВ НА ТОРГОВЕЛЬНІ СУДА І ПОРТОВУ ІНФРАСТРУКТУРУ УКРАЇНИ ВІДПОВІДНО ДО МІЖНАРОДНОГО ГУМАНІТАРНОГО ПРАВА	21
<i>Tuliakov V.O.</i> NAVIGATING CONTESTED WATERS: A LEGAL EXPLORATION OF UNCLOS, FRAGMENTATION, AND THE EXPANDING HORIZON OF HUMAN RIGHTS AT SEA	27
<i>Єфтені Н.М.</i> РОЛЬ ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА УКРАЇНИ В ЄВРОПЕЙСЬКІЙ ІНТЕГРАЦІЇ	33
<i>Степанов С.В.</i> ВИЗНАЧЕННЯ ЗАГРОЗ ТА ВИКЛИКІВ В КОНТЕКСТІ ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ УКРАЇНИ	36
<i>Мезіна Л.В.</i> РОЗВИТОК МОРСЬКОГО БІЗНЕСУ В КРИЗОВИХ УМОВАХ	40
<i>Примачова Н.М.</i> АДАПТАЦІЯ СИСТЕМИ МОРСЬКОГО ТА РІЧКОВОГО ТРАНСПОРТУ ДО УМОВ ВІЙНИ	43
<i>Valuieva L.V.</i> TRANSIT SAFETY AND DATA EXCHANGE UNDER THE NCTS SYSTEM	47
<i>Ковбан А.В.</i> КОНСТИТУЦІЙНА БЕЗПЕКА ЯК СКЛАДНИК КОНСТИТУЦІЙНОГО ЛАДУ	50
<i>Задоя І.І.</i> ВІДПОВІДАЛЬНІСТЬ ПОСАДОВИХ ОСІБ ОРГАНІВ ДЕРЖАВНОЇ ВЛАДИ ЗА КОРУПЦІЙНІ ПРАВОПОРУШЕННЯ, ЯК СКЛАДОВА МОРСЬКОЇ БЕЗПЕКИ	53
<i>Балобанов О.О.</i> ОСНОВНІ ЗАВДАННЯ МОРСЬКОГО СЮРВЕЮ	56
<i>Бондаренко К.В., Некрасов Д.С.</i> ПРОБЛЕМНІ АСПЕКТИ ЗАСТОСУВАННЯ ЗАКОНОДАВСТВА ЩОДО ЗАТРИМКИ СУДЕН	60

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NAVIGATING CONTESTED WATERS: A LEGAL EXPLORATION OF UNCLOS, FRAGMENTATION, AND THE EXPANDING HORIZON OF HUMAN RIGHTS AT SEA

This paper investigates the complex relationship between UNCLOS and national criminal jurisdictions, especially when states assert their enforcement powers at sea. A comparative analysis of ECHR, ICJ, and ECJ jurisprudence makes it clear that international maritime law is anything but calm waters. The legal seas are marked by competing principles-state sovereignty, navigational freedom, and increasingly, the unwavering current of human rights. While jurisdictional fragmentation persists, emerging patterns suggest growing momentum toward legal harmonization.

1. Sovereignty Anchored in Stormy Waters. The law of the sea, and in particular the 1982 Law of the Sea Convention (UNCLOS), does not specifically deal with maritime security [1]. UNCLOS defines maritime zones with surgical precision, only for national criminal codes to enthusiastically override them. The result? Legal friction between Article 2's proclamation of sovereignty and Article 27's carefully phrased exceptions for foreign vessels. It nevertheless provides for some instruments in order to manage and counter those threats on the high seas and to limit the otherwise guaranteed freedom of navigation. In particular, the right of visit (Article 110 UNCLOS) is the core legal basis for any enforcement activity performed, unilaterally or multilaterally, on the high seas. The right to visit is the legal basis for any interception of vessels on the high seas or interdiction program. It consists of an exception to the exclusive jurisdiction of the flag state on the high seas (Article 92 UNCLOS) and the related principle of non-interference [2]. In practice, states often pursue enforcement with national zeal, while international courts act as referees of competing interpretations.

2. Judicial Styles: Four Courts, Four Voyages. Approaches to maritime enforcement across international tribunals are as diverse as the waters they aim to regulate. The ECHR steers by the compass of human rights. The ICJ guards the

sanctity of state sovereignty. The ECJ keeps the EU legal fleet in formation, ensuring compliance with asylum law and fundamental rights.

And UN treaty bodies such as the Committee against Torture remind states that jurisdiction does not begin and end with shorelines. The *J.H.A. v. Spain* case before the Committee against Torture, while technically outside the ECJ's docket, reinforces a broader European tendency to interpret jurisdiction expansively. Despite declaring the individual complaint inadmissible, the Committee rejected Spain's claim of lacking jurisdiction over migrants held off the coast of Mauritania. It held that effective control—not territoriality—determines jurisdiction, setting an important precedent for the extraterritorial application of human rights protections in maritime settings [3].

2.1. ECHR: Rights Before Rudders. The European Court of Human Rights (ECHR) has emerged as a beacon for ensuring that maritime enforcement respects core human values. In *Medvedyev v. France*, the Court insisted that a diplomatic nod is not a license to skip legal procedure. The right to liberty, under Article 5 of the Convention, remains afloat even on foreign-flagged vessels [4]. Conversely, in *Hirsi Jamaa v. Italy* (2024), the Court upheld the prohibition on collective expulsion and reaffirmed the extraterritorial reach of non-refoulement obligations. The decision made it clear: rights travel farther than borders [5]. The ECHR's 2023 decision in *JA v Italy* reflects growing confidence that human rights obligations are operational at sea [6]. These decisions not only identify violations but offer constructive legal architecture for compliant enforcement—suggesting that rights and security are not mutually exclusive.

2.2 ICJ: The Cartographer of Consent. The International Court of Justice (ICJ) holds firm to state consent and the primacy of treaty language. Its decisions in *Congo v. Belgium* and *Qatar v. Bahrain* reflect a methodical, sovereignty-centered view of jurisdiction. Even where legal complexity deepens, the ICJ prefers to navigate by inter-state consensus and interpretive formalism [7]. In *M/V "Louisa,"* the International Tribunal for the Law of the Sea (ITLOS) similarly avoided entanglement with human rights discourse, favoring a narrow interpretation of jurisdiction under UNCLOS [8].

2.3 ECJ: Constitutionalism with Sea Legs. The European Court of Justice (ECJ) occupies a distinctive position as the guardian of EU legal integrity. In *Commission v. Hungary* and *Commission v. Greece*, the ECJ, as well as European Ombudsman, held that pushback operations violated the EU Charter of Fundamental Rights and asylum law, even when justified by security concerns [9].

Moreover, the Court's rulings underscore that EU member states cannot use international legal frameworks to circumvent fundamental rights anchored in Union law. Maritime enforcement, in this view, must remain tethered to the constitutional

obligations of the EU legal order. In accordance with the new EU approach, reception conditions continue to vary considerably between Member States in particular with regard to the reception standards provided to applicants. More harmonised reception standards [10] set out at an adequate level across all Member States will contribute to more equal treatment and the fairer distribution of applicants across the Union [11]. Thus in the case of maritime incidents with migrants **ECHR** prioritizes human rights, extending obligations beyond territorial waters; **ICJ** anchors in sovereignty and state consent; **ECJ** enforces compliance with EU rights law, resisting maritime exceptionalism; **CAT** stresses de facto control as a basis for jurisdiction, reinforcing accountability even in diplomatic limbo.

3. National Adjustments: From Resistance to Resilience. Spain's human rights-inclusive maritime strategy shows that the rule of law and enforcement need not be adversaries. With consular protocols, video oversight, and pre-operation legal assessments, the strategy reflects a maturing legal conscience [12]. Italian courts, in addressing the Diciotti incident [13], translated abstract rights into tangible accountability. Judicial review, when taken seriously, becomes an engine for reform—not merely a post-factum evaluation [14]. The European Maritime Safety Agency provides operational guidance for interpreting UNCLOS enforcement provisions consistently with ECHR jurisprudence recommending how enforcement officers can act decisively *and* lawfully. Interpretive guidance has evolved from optional reading into an operational necessity [15].

4. Layered Legalities: When UNTOC Collides with UNCLOS. The United Nations Convention against Transnational Organized Crime (UNTOC) and its protocols add another layer of complexity. The Protocol against the Smuggling of Migrants by Land, Sea, and Air authorizes boarding vessels suspected of migrant smuggling, creating potential tensions with UNCLOS navigational freedoms and human rights protections [16, 17]. The Protocol against Smuggling of Migrants under UNTOC allows maritime interdictions, but its application must align with human rights norms. The ECJ's verdicts against Italy and Greece underscore this: action without proportionality and respect for rights is incompatible with EU legal standards.

Conclusion: Toward Coherence on the High Seas. The relationship between UNCLOS and national criminal jurisdictions is not one of irreconcilable contradiction but of evolving dialogue. Sovereignty, far from being eclipsed, is being redefined in light of shared obligations. The ECHR's jurisprudence provides not only critique but direction—it reveals a viable path where maritime enforcement is legally sound and ethically grounded. The growing incorporation of human rights in national protocols, the rise of judicial review, and the maturation of international legal guidance point toward convergence rather than conflict. The international legal

system may still face fragmentation, but within that fragmentation lie seeds of innovation. With strategic investment in interpretive harmonization, coastal states can assert their jurisdictional authority without drifting into legal isolation. For them, navigating these tensions requires sophisticated legal frameworks accommodating both UNCLOS jurisdictional boundaries and human rights obligations. As international jurisprudence continues to develop, greater clarity may emerge regarding how states can exercise legitimate criminal jurisdiction in maritime contexts while respecting both navigational freedoms and fundamental human rights. Concrete examples of human rights safeguards in maritime protocols, specialized judicial review mechanisms, and comprehensive interpretive guidance demonstrate that reconciliation is possible but requires substantial institutional investment and legal innovation. The sea, long governed by the logic of power and commerce, may now be charted by the values of accountability and human dignity. It is no longer a question of choosing between sovereignty and rights - but of recognizing that in a modern rule-based order, one strengthens the other.

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