



# FLAG STATES & HUMAN RIGHTS REPORT 2019

PROTECTING HUMAN RIGHTS AT SEA:  
An evaluation of Flag State Practice in Monitoring, Reporting  
and Enforcing Human Rights Obligations on Board Vessels



# Table of Contents

<b>TABLE OF ACRONYMS</b> .....	<b>01</b>
<b>AUTHORS</b> .....	<b>02</b>
<b>ACKNOWLEDGMENTS</b> .....	<b>03</b>
<b>1. INTRODUCTION</b> .....	<b>04</b>
<b>2. THE TEAM</b> .....	<b>04</b>
<b>3. RESEARCH METHOD</b> .....	<b>05</b>
<b>4. REGISTRIES</b> .....	<b>06</b>
Introduction .....	<b>06</b>
Panama .....	<b>06</b>
Denmark .....	<b>07</b>
Taiwan .....	<b>07</b>
Conclusion .....	<b>08</b>
<b>5. HUMAN RIGHTS OBLIGATIONS</b> .....	<b>09</b>
Introduction .....	<b>09</b>
Panama .....	<b>10</b>
1.1 Human Rights Treaties	
1.2 Maritime Treaties	
1.3 Labour Treaties	
1.4 Domestic Human Rights Law	
Denmark .....	<b>11</b>
1.1 Human Rights Treaties	
1.2 Maritime Treaties	
1.3 Labour Treaties	
1.4 Domestic and European Human Rights Law	
Taiwan .....	<b>12</b>
1.1 Human Rights, Maritime, and Labour Treaties	
1.2 Domestic Human Rights Law	
Conclusion .....	<b>12</b>
<b>6. MONITORING AND REPORTING</b> .....	<b>13</b>
Introduction .....	<b>13</b>
Panama .....	<b>13</b>
1. Memorandum of Understandings	
2. Panama Maritime Authority	
3. Ship Captains	
Denmark .....	<b>15</b>
1. Memorandum of Understanding	
2. The Danish Maritime Authority	
Taiwan .....	<b>16</b>
1. Memorandum of Understanding	
2. National Legislation and Protection	
3. Fishing Industry Problems	
Conclusion .....	<b>17</b>
<b>7. OUTREACH</b> .....	<b>18</b>
Introduction .....	<b>18</b>
Panama .....	<b>18</b>
Denmark .....	<b>19</b>
Taiwan .....	<b>19</b>
Conclusion .....	<b>20</b>
<b>8. CONCLUSIONS AND RECOMMENDATIONS</b> .....	<b>21</b>
<b>MAP OF FLAG STATES IN REPORT</b> .....	<b>23</b>
<b>CONTACT US</b> .....	<b>24</b>

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## TABLE OF ACRONYMS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIC	Concentrated Inspection Campaign
COLREG	Convention on the International Regulations for Preventing Collisions at Sea
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DIS	Danish International Ship Register
DMA	Danish Maritime Authority
DMAIB	Danish Maritime Accident Investigation Board
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organisation
IMO	International Maritime Organisation
INTERVENTION	International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties
LLMC	Convention on Limitation of Liability for Maritime Claims
MLC	Maritime Labour Convention
MOTC	Ministry of Transportation and Communications of Taiwan
MoU	Memorandum of Understanding
MPB	Taiwan Maritime and Port Bureau
NCSU	National Seamen's Union of Republic of China
PAL	Athens Convention Relating to the Carriage of Passengers by Sea
PMA	Panama Maritime Authority
PSCS	Port State Control System
SAR	International Convention on Maritime Search and Rescue
SMC	Safety Management Certificate
SOLAS	International Convention for the Safety of Life at Sea
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
US	United States

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

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# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS



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# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## 1. INTRODUCTION

The human rights obligations of States apply equally at sea, as they do on land.<sup>1</sup> That said, human rights are frequently violated at sea, but the violations remain unpunished. This is hardly surprising given that it is difficult to monitor violations at sea away from law enforcement agents and judiciary supervision. Accordingly, it is imperative that the monitoring, reporting and enforcement of states' human rights obligations at sea is continuously examined and, in many cases, challenged, in order to encourage better protection.

To this end, the present report has been prepared by University of Bristol Law School graduate and postgraduate researchers in partnership with the independent UK human rights charity, Human Rights at Sea as part of the University's Human Rights Implementation Centre and Human Rights Law Clinic. The Flag State Research Project was established to comment on the under-explored issue of flag State practice and their international and national human rights obligations. In doing so, this project aims to reveal deficiencies in human rights protection to offer informed recommendations. Such insight, it is hoped, will better flag State assessments, and eventually flag State practice, in the future.

**In this report, the flag States identified for evaluation are Panama, Denmark, and Taiwan, which offer a combination of open and closed registries in different regions.**

## 2. THE TEAM

The research team consists of a diverse group of eleven University of Bristol Law School students with a common desire to complement the efforts of Human Rights at Sea to advance our understanding of promoting and protecting human rights in the maritime domain. The conclusions are the result of an evidence-based and consensus approach. The recommendations contained herein are in no way influenced by the University of Bristol, The Human Rights Implementation Centre, Human Rights at Sea or any other stakeholders beyond the student research team.



<sup>1</sup> David Hammond, Founder 'Human Rights at Sea' at London International Shipping Week 2013.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## 3. RESEARCH METHOD

### THE CENTRAL QUESTION OF THE PROJECT

How do flag States comply with their international human rights obligations 'vis-à-vis' persons on board vessels registered under their flag?

### THE THREE SUB-QUESTIONS CONSIDERED

1. What registries do the flag States hold?
2. What are the human rights obligations of the flag states?
3. How do flag States monitor human rights compliance on board vessels?

### THE PROJECT WAS STRUCTURED IN THREE STAGES

In the **first stage**, extensive desk-based background research on the ship registries, the human rights obligations, and monitoring and reporting mechanisms of each flag state was conducted. This involved reviewing primary sources such as international human rights treaties, labour conventions, Memoranda of Understanding ('MoU') and national legislation online. We also analysed secondary resources, such as official government publications and United Nations ('UN') reports. All of the data collected was collated into respective flag state databases, scrutinised and then presented in **Sections 4, 5 and 6** of this report.

1

The **second stage** of the project consisted of a direct outreach to the three flag States with the aim of establishing a dialogue. Government websites of each flag state were used to find information on the contact information for this stage. Seven standardised questions were subsequently presented, offering the Flag States' representative an opportunity to fill any relevant information gaps. The questions, efforts and results of these communications are discussed in **Section 7** of this report.

2

The **third stage** consisted of compiling all relevant information, analysing and then summarising our findings. As a team we came to some overall conclusions which enabled three recommendations to be drawn out, which are outlined in **Section 8** of this report.

3

<sup>2</sup> 'Open Registry' (Ship Inspection) <<http://shipinspection.eu/open-registry/>> accessed 7 January 2019; 'Ship Registration Law' (HG.org) <<https://www.hg.org/ship-registration.html>> accessed 11 April 2019.

<sup>3</sup> 'Requirements and Documents' (PMA Certification Inc) <<http://www.pmacertification.com/view.asp?idp=25&c=15>> accessed 20 December 2018.

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS



## 4. REGISTRIES

### INTRODUCTION

In order to register a vessel under a particular flag, several certificates and other requirements must be presented and approved by the flag State registry. Flag states operate as a system known as either an open or closed registry.<sup>2</sup> Closed registries are those that only permit vessels owned by persons residing or companies registered in the country to be registered under the flag of that country. By contrast, open registries do not impose any nationality or residency restrictions in the registration process. The requirements of ship registries serve in-part to ensure compliance with international regulations related to safety and pollution prevention, as well as living and working conditions of seafarers.

### PANAMA

Panama has an open registry and therefore, it is possible for any individual to register a vessel without the need to travel to Panama. The Panama Maritime Authority ('PMA') carries out the registry functions in two steps.

First, a provisional registration is carried out. According to the PMA Certification Inc., the documents needed for this stage are: a copy of a power of attorney duly authenticated by a Notary Public and legalized where a draft may be provided by the PMA Certification Inc., a completed application for registration along with data in respect of technical description of the vessel, payment of governmental fees, and enrolment and first year annual taxes, document of title (Builder's certificate, Bill of Sale, Certificate issued by the court in case of legal auctions) and a valid copy of the current Safety Management Certificate (SMC).<sup>3</sup> If successful, it grants a provisional radio license and a provisional patent that allows for the application of further mandatory documents as identified by the PMA Certification Inc.<sup>4</sup>

The second step is permanent registration, which needs to take place within six months of gaining a provisional registration. The documents required for this step are: a proof of ownership, an original power of attorney, a deletion certificate or cancellation of previous registry, radio application forms that are properly filled out, and an International Tonnage Certificate. The Shipping Bureau will inspect the documents and grant a Statutory Navigation Patent and the Statutory Radio License.<sup>5</sup> The registration will be valid for five years unless the vessel is considered a pleasure boat in which case the documents will be valid for two years. However, this license is renewable as long as the vessel's bills and taxes are paid, and it is in line with the applicable laws and regulations.

For new vessels, although no technical requirements arise, certain documents do need to be presented. These include, a request form for registration under the Panamanian flag, a request and filled out application for a Radio License, a certification of New Construction which needs to be authenticated by a Notary Public, confirming the authenticity of the signatures and legal capacity of the signatories, and legalised by a Panamanian Consul or by way of Apostille and a power of attorney, in favour of legal representatives that are authenticated.<sup>6</sup> Furthermore, it is mandatory to have a legal representative resident in Panama for every vessel registered under the Panamanian flag.<sup>7</sup>

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## DENMARK

Denmark has a closed registry. The Danish Maritime Authority ('DMA'), which was established in 1988 as part of the Ministry of Industry, Business and Financial Affairs, is tasked with managing the Danish registry.<sup>8</sup> The DMA carries out the registry functions by categorising ships as either part of the Register of Shipping or the Danish International Ship Register ('DIS').<sup>9</sup> The Register of Shipping is reserved for those ships which have a tonnage of over 20 and are not merchant ships. The Danish International Ship Register is the registry exclusively for merchant ships.

All Danish ships of a minimum gross tonnage of 20 are eligible for the DIS as long as they are merchant ships and do not engage in commercial fishing or ferrying of passengers between Danish ports.

In accordance with DIS, international ships can be registered if two conditions are met: (1) the activity requirement and, (2) the establishment requirement. First, the Danish shipping company must own, or have a considerable share, in the respective foreign shipping company. This also includes a foreign ship owned by a foreign company which is nevertheless operated from within Denmark, provided it meets certain requirements.<sup>10</sup> These requirements include the ship being 'effectively administered, controlled and operated from Denmark' and that the owner of the ship is domiciled or established within either Denmark, the European Union ('EU'), or the European Economic Area.<sup>11</sup> In addition, if one of the board members of the ships company is Danish, the ship may fly the Danish flag if the Dane has a 'significant direct or indirect holding in the foreign company and... a significant influence in the form of voting rights'<sup>12</sup> which has been construed to mean at least twenty per cent.<sup>13</sup> Nevertheless, such companies must also have 'a representative in Denmark who can accept service writs on behalf of the owner'.<sup>14</sup> Notwithstanding these requirements, the DIS reserves the right to issue registration to ships which do not comply to nationality requirement and where there is no documentation from the foreign registration authority, but only if the country from which the ship has been acquired has 'neither acceded to the International Convention of 1967 for the Unification of Certain Rules Relating to Maritime Liens and Mortgages nor the International Convention of 1967 relating to Registration of Rights in respect of Vessels under Construction'.<sup>15</sup>

Second, the international ships must comply with at least one of the following provisions: 'technical or commercial operation of the ship is performed from Denmark', the ship's operator is covered by the Danish tonnage taxation act or, the agent responsible for compliance with the Danish Code on the Safe Operation of Ships is established in Denmark.<sup>16</sup> Additionally, the DIS requires documents such as a builder's certificate or bill of sale for the registering of ships which have been acquired abroad. In addition to this a 'deletion certificate' or a 'non-registration certificate' are also required so as to ensure that the ship is not part of a foreign registry.

## TAIWAN

Taiwan (the Republic of China) holds a closed registry, which means only ships that have links to Taiwan by ownership can be registered.<sup>17</sup> The Taiwan Maritime and Port Bureau ('MPB'), which is the bureau under the Ministry of Transportation and Communications of Taiwan ('MOTC'), manages the registry.<sup>18</sup> Owners are free to choose a port of registry within the country for registration purposes. The MPB carries out the registry functions in two ways.

First, the owner can choose the provisional registration. According to the Regulations launched by MOTC, the documents needed for this stage are sealed and valid documents of the applicant (if the applicant is a juridical person, the applicant shall submit a hard copy of establishment registration card or change of registration certificate issued by the competent authority). Moreover, before registering an ownership reservation, the applicant shall submit the following: the official documents for import approved by the competent authority, the sale or shipbuilding contract, the original tonnage certificate (unless it is a new ship), and the practical measurement certificate with the application form. If the application is submitted by the captain or other agents, identity and authorisation documents are also required.<sup>19</sup> However, the validity of the Provisional Certificate shall not exceed six months for a ship navigating abroad, or three months for a ship navigating within domestic waters.<sup>20</sup>

The second method is the permanent registration. The documents required for this stage include: sealed and valid documents for the applicant (as aforementioned in the first method) and the issued Provisional Certificate of Vessel's Nationality which should be returned before registering an ownership registration. If the applicant is an agent, identity and authorisation documents are also required.<sup>21</sup> The local authority under the MPB shall undertake to prescribe and give effect to the regulations on the issuance, renewal, annulment, cancellation or withdrawal, imposition of certification fees, validity of certificate, management and regulation on other matters for compliance concerning the Certificate of Vessel's Nationality and Provisional Certificate of Vessel's Nationality.<sup>22</sup>

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS



Notably, once a vessel is registered under Taiwanese nationality, it is obliged to undergo periodical inspections under the MPB. Only if the ship has passed the inspection and arranged the equipment properly according to relevant regulations, will it be allowed to sail.<sup>23</sup>

## CONCLUSION

A clear distinction between the three states is that Panama operates on the basis of an open registry, whilst both Denmark and Taiwan have closed registries. This distinction certainly has an impact on the flag states respective registration requirements, and the amount of ships under a flag state. Indeed, Panama currently has the biggest share of registered ships in terms of number of flags and tonnage, no doubt because it operates an open registry and has the perfunctory requirements of a form and subsequent payment.<sup>24</sup> Denmark and Taiwan, however, as closed registries are more selective and have more requirements. Nevertheless, the two flag states illustrate that not all closed registries have the same requirements. Whereas Denmark puts forth the conditions of nationality and activity, Taiwan only requires nationality. It is evident that open and closed registries therefore differ in relation to the proximity to registered ships; open registries are less involved than those that are closed.

<sup>8</sup> 'About Us' (Danish Maritime Authority) <<https://www.dma.dk/OmOs/Sider/default.aspx>> accessed 31 December 2018.

<sup>9</sup> 'Danish International Register of Shipping' (Danish Maritime Authority) <<https://www.dma.dk/SynRegistrering/SkibsregistreringAfgifter/DIS/Sider/default.aspx>> accessed 2 January 2019.

<sup>10</sup> 'Admission: foreign ships' (Danish Maritime Authority) <<https://www.dma.dk/SynRegistrering/SkibsregistreringAfgifter/DIS/OptagelseUdenlandskeSkibe/Sider/default.aspx>> accessed 2 January 2019.

<sup>11</sup> *ibid.*

<sup>12</sup> Consolidated Act No. 68 of 17 January 2014 (Act on the Danish International Register of Shipping), s1(2)(1) <<https://www.dma.dk/Vaekst/Rammevilkaar/Legislation/Acts/Consolidated%20act%20on%20the%20Danish%20International%20Register%20of%20Shipping.pdf>> accessed 2 January 2019.

<sup>13</sup> Order No. 1157 of 1 October 2013 (Order on the Danish International Register of Shipping), s5(5) <<https://www.dma.dk/Vaekst/Rammevilkaar/Legislation/Orders/Order%20on%20the%20Danish%20International%20Register%20of%20Shipping.pdf>> accessed 2 January 2019.

<sup>14</sup> Act on the Danish International Register of Shipping (n 13) s1(2)(2).

<sup>15</sup> Order on the Danish International Register of Shipping (n 14) s9 (2)

<sup>16</sup> Order No. 1654 of 20 December 2017 (Order on the Registration of Merchant Ships Whose Owner is Not Considered to be Danish) s3 <<https://www.dma.dk/Vaekst/Rammevilkaar/Legislation/Orders/Order%20on%20registration%20of%20merchant%20ships%20whose%20owner%20is%20not%20considered%20Danish.pdf>> accessed 2 January 2019.

<sup>17</sup> Article 5 of the Taiwan Law of Ships Act <<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=K0070004>> accessed 2 April 2019.

<sup>18</sup> *ibid.*

<sup>19</sup> 'Appendix 2, Regulations for Issuing Certificate of Vessel's Nationality' (MOTC) <<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=K0070005>> accessed 2 April 2019.

<sup>20</sup> Article 19 of the Taiwan Law of Ships Act (n 18).

<sup>21</sup> Appendix 2, Regulations for Issuing Certificate of Vessel's Nationality (n 20).

<sup>22</sup> Article 22 of the Taiwan Law of Ships Act (n 18).

<sup>23</sup> *ibid.*

<sup>24</sup> "Summary Tables" (UNCTAD e-Handbook of Statistics 2018) <<https://stats.unctad.org/handbook/MaritimeTransport/MerchantFleet.html>> accessed 11 April 2019.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## 5. HUMAN RIGHTS OBLIGATIONS

### INTRODUCTION

The treaties considered relevant for the purpose of assessing flag State compliance at sea were the nine core UN human rights treaties and their additional protocols, as well as those conventions related to maritime and labour obligations. They are:

### HUMAN RIGHTS TREATIES

1. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 21 December 1965
2. International Covenant on Civil and Political Rights (ICCPR), 16 December 1966
3. International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966
4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 18 December 1979
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 10 December 1984
6. Convention on the Rights of the Child (CRC), 20 November 1989
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), 18 December 1990
8. International Convention for the Protection of All Persons from Enforced Disappearance (CPED), 20 December 2006
9. Convention on the Rights of Persons with Disabilities (CRPD), 13 December 2006

### LAW OF THE SEA AND IMO TREATIES

1. UN Convention on the Law of the Sea (UNCLOS), 10 December 1982
2. International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 29 November 1969
3. Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 20 October 1972
4. International Convention for the Safety of Life at Sea (SOLAS), 1 November 1974
5. Athens Convention Relating to the Carriage of Passengers by Sea (PAL), 13 December 1974
6. Convention on Limitation of Liability for Maritime Claims (LLMC), 19 November 1976
7. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 7 July 1978
8. International Convention on Maritime Search and Rescue (SAR), 27 April 1979
9. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), 10 March 1988

### LABOUR TREATIES

1. Forced Labour Convention (No. 29), 28 June 1930
2. Freedom of Association and Protection of the Right to Organise Convention (No. 87), 9 July 1948
3. Right to Organise and Collective Bargaining Convention (No. 98) 1 July 1949
4. Equal Remuneration Convention 1951 (No. 100), 29 June 1951
5. Discrimination (Employment and Occupation) Convention (No. 111), 25 June 1958
6. Minimum Age Convention (No. 138) 26 June 1973
7. Worst Forms of Child Labour Convention (No. 182), 17 June 1999
8. Maritime Labour Convention (MLC), 7 February 2006
9. Work in Fishing Convention No.188, 16 November 2007

<sup>25</sup> 'Top 10 flag states 2018' (Lloyd's List Maritime intelligence) <<https://lloydlist.maritimeintelligence.informa.com/LL1125024/Top-10-flag-states-2018>> accessed 19 December 2018; "Summary Tables" (UNCTAD e-Handbook of Statistics 2018) <<https://stats.unctad.org/handbook/MaritimeTransport/MerchantFleet.html>> accessed 11 April 2019.

<sup>26</sup> 'Ratification of 18 International Human Rights Treaties' (UN Human Rights Officer of the High Commissioner) <<http://indicators.ohchr.org/>> accessed 19 December 2018.

<sup>27</sup> 'Panama 2017 Human Rights Report' (United States Department of State 2017), 22 <<https://www.state.gov/documents/organization/277593.pdf>> accessed 19 December 2018.

<sup>28</sup> *ibid* 25.

<sup>29</sup> 'Ratification of 18 International Human Rights Treaties' (UN Human Rights Officer of the High Commissioner) <<http://indicators.ohchr.org/>> accessed 2 April 2019.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## PANAMA

As the largest flag state in the world, more than seventeen per cent of the world's merchant fleet in terms of tonnage flies the Panamanian flag.<sup>25</sup> Accordingly, Panama's human rights obligations are fundamental. Overall, Panama has ratified an extensive range of Conventions. Nonetheless, there are gaps in Panama's coverage of human rights, meaning that standards on Panamanian flag ships are lower than they should be.

### 1.1 HUMAN RIGHTS TREATIES

Of the nine major UN Treaties, Panama has ratified all except the ICMW.<sup>26</sup> In light of this, a 2017 report has revealed frequent abuses by maritime employers relating to illegal short-term contracts, inevitably affecting migrant workers falling outside the scope of human rights protection.<sup>27</sup> The same report refers to violations concerning working hours.<sup>28</sup> Also of note is Panama's failure to ratify the Optional Protocol to the ICESCR,<sup>29</sup> this has great significance for those who wish to seek redress for abuse of their economic, social and cultural rights aboard vessels. The Optional Protocol gives competence to the Committee on Economic, Social and Cultural Rights to consider communications from victims of rights violations,<sup>30</sup> to enforce interim measures to prevent irreparable damage to victims,<sup>31</sup> and establishes an inquiry procedure by which the Committee may investigate alleged grave or systemic violations of rights.<sup>32</sup> Sadly, the non-ratification of this Protocol greatly diminishes any real impact the ICESCR may have for upholding the relevant human rights aboard Panamanian vessels.

### 1.2 MARITIME TREATIES

Panama became a member of the International Maritime Organisation ('IMO') in December 1958.<sup>33</sup> Out of the nine major Maritime Treaties, Panama has signed up to all but two: the LLMC and PAL (but Panama has interestingly ratified the 2002 Protocol). The ratification rate in this section is adequate, however, being the largest shipping registry in the world the implications of even two non-ratifications is likely to be vast. The treaties above relate to increasing the limit of liability for claims of personal injury or loss of life,<sup>34</sup> and establishing a regime of liability for damage suffered by passengers,<sup>35</sup> respectively. Both of which are highly important to ensuring protection of human rights aboard vessels.

### 1.3 LABOUR TREATIES

Panama has been a member of the International Labour Organisation ('ILO') since 1919.<sup>36</sup> Of the nine major Labour Treaties, Panama has ratified all but one, No. 118.<sup>37</sup> Despite the high ratification rate, the lack of this one is particularly significant. The ILO describes the Work in Fishing Convention as setting 'the basic standards of decent work in the fishing industry'.<sup>38</sup> Without ratification it seems highly unlikely that basic standards on Panamanian vessels will be met.

### 1.4 DOMESTIC HUMAN RIGHTS LAW

In 1998, Panama passed its own Maritime Labour Law which covers all labour issues not dealt with under the Maritime Labour Convention.<sup>39</sup> However, under Article 92 of this Act,<sup>40</sup> the 'ship owner and the seaman may agree on any law and jurisdiction other than Panama in their contracts'.<sup>41</sup> As a result, and rather disconcertingly, ship owners may choose to agree upon a law from a country with less protection for human rights, something which the seaman may not be aware of or may have been coerced into agreeing to.

<sup>30</sup> Optional Protocol to the International Convention on Economic, Social and Cultural Rights 2013, Article 1.

<sup>31</sup> *ibid* Article 5.

<sup>32</sup> *ibid* Article 11.

<sup>33</sup> 'IMO Membership' (International Maritime Organisation) <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/IMO%20MEMBERSHIP.pdf>> accessed 19 December 2018.

<sup>34</sup> 'Convention on Limitation of Liability for Maritime Claims' (International Maritime Organisation) <[http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-\(LLMC\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-(LLMC).aspx)> accessed 19 December 2018.

<sup>35</sup> 'Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea' (International Maritime Organisation) <<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-%28PAL%29.aspx>> accessed 2 April 2019.

<sup>36</sup> 'Ratifications for Panama' (International Labour Organisation) <[https://www.ilo.org/dyn/normlex/en/?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102792](https://www.ilo.org/dyn/normlex/en/?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102792)> accessed 19 December 2018.

<sup>37</sup> *ibid*.

<sup>38</sup> 'ILO Work in Fishing Convention No.188 (International Labour Organisation 2007) enters into force' (International Labour Organisation) <[https://www.ilo.org/washington/WCMS\\_596898/lang-en/index.htm](https://www.ilo.org/washington/WCMS_596898/lang-en/index.htm)> accessed 19 December 2018.

<sup>39</sup> 'The Shipping Law Review - Edition 4: Panama' (The Law Reviews) <<https://thelawreviews.co.uk/edition/the-shipping-law-review-edition-4/1144094/panama>> accessed 19 December 2018.

<sup>40</sup> Panama Maritime Labour Code Law Decree No. 8 1998.

<sup>41</sup> The Shipping Law Review (n 39).

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## DENMARK

As the world's twelfth largest flag state, the maritime industry is of huge importance to Denmark domestically and internationally.<sup>42</sup> The Danish flagged merchant fleet is growing rapidly - expanding by twenty-five per cent between April 2017 and April 2018 - demonstrating the utmost need for effective protection of human rights at sea.<sup>43</sup> Overall, Denmark can be considered an exemplar flag state for its high rate of treaty ratification and also due to its further obligations arising from its European Union membership.

### 1.1 HUMAN RIGHTS TREATIES

Denmark has signed and ratified the majority of the UN human rights treaties, although, for completeness, it should be noted that the CPED has only been signed and is currently awaiting ratification. Only the ICMW remains unsigned, but the impact of this is admittedly limited. Through the ICMW, signatory states expressly affirm the human rights of migrant workers. Denmark, however, has affirmed its commitment to the universality and non-discriminatory application of human rights in several other international instruments, with further obligations arising under European Union law. Nevertheless, non-ratification may be held to carry symbolic force. As of 2018, Denmark employed 2,642 European seafarers and 6,516 seafarers of other nationalities.<sup>44</sup> Whilst the rights of these seafarers, particularly European citizens, are largely guaranteed by overlapping legal provisions elsewhere, the possibility exists that employers could perceive non-ratification as signalling a lower standard of rights-protection for migrant seafarers. Ratification of the ICMW would therefore be welcomed to ensure that the rights of migrant seafarers are clearly identifiable and enforceable.

### 1.2 MARITIME TREATIES

Every maritime treaty identified as essential has been signed and ratified by Denmark, with the exception of INTERVENTION being signed, but awaiting ratification. The rights of passengers and crew-members alike on Danish flag ships are sufficiently guaranteed by law and Denmark consistently strives to improve the standards of protection. For example, as well as signing the Oil Pollution Casualties convention, Denmark is party to the 1973 Convention on Prevention of Pollution of Ships and the 1992 International Convention on Civil Liability for Oil Pollution Damage, ensuring appropriate civil and criminal redress for any harm its fleet may cause. Denmark has an excellent record in the field of maritime treaties, reflecting the importance of the shipping and maritime industries to the Danish flag state.

### 1.3 LABOUR TREATIES

Denmark has ratified all but one of the listed labour treaties, with just the Work in Fishing Convention remaining unratified. Interestingly, only fourteen countries across the world have ratified the Work in Fishing Convention.<sup>45</sup> Denmark's omission to sign this might therefore be explained by the fact that the Convention only entered into force on November 2017, and with fishing being of negligible economic importance compared to shipping, there might be a lack of political will to sign what is perceived as a minor convention. Speculation aside, non-ratification may be subject to a limited degree of criticism for the same reasons discussed regarding the ICMW above. Like the ICMW, the Work in Fishing Convention broadly seeks to promote the implementation and enforceability of seafarers' rights under flag state jurisdictions. Whilst overlapping legal provisions elsewhere secure those rights already, there would be symbolic value in expressly declaring them through the ratification of the Convention.

### 1.4 DOMESTIC AND EUROPEAN HUMAN RIGHTS LAW

Under Danish national law, the human rights of seafarers are comprehensively guaranteed. Through domestic legislation, Denmark ensures all employees under its jurisdiction have access to safe working conditions and equal pay, for both documented and undocumented workers, and evidence suggests the State is proactive in upholding adequate labour standards.<sup>46</sup> In particular, the DMA has been eager to ensure that safety levels at sea correspond to those ashore and has accordingly established distinct health services for fishing and shipping employees, known as the 'Danish Fisherman's Occupational Health Service' and 'Sea Health and Welfare - Denmark' respectively.<sup>47</sup> Furthermore, the Danish Maritime Accident Investigation Board exists to conduct investigations of maritime accidents with a view to learn lessons and reduce the risk of future incidents.<sup>48</sup> Moreover, as a member of the EU, Denmark has a number of additional obligations arising from the Charter of Fundamental Rights<sup>49</sup> and EU law<sup>50</sup> to ensure seafarers' safety, equality, and access to justice. Similarly, any passenger or worker aboard a Danish flagged ship will be within the national jurisdiction of Denmark for purposes of rights compliance and protection under the European Convention for Human Rights,<sup>51</sup> as confirmed in the cases of *Medvedyev v France*<sup>52</sup> and *Hirsi Jamaa v Italy*.<sup>53</sup> Accordingly, Denmark has a level of human rights compliance far above the norm seen in many flag states.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## TAIWAN

### 1.1 HUMAN RIGHTS, MARITIME AND LABOUR TREATIES

The uncertain international legal status of Taiwan poses problems for its participation in international human rights law. Taiwan has not been a member state of the UN since 1971, when the People's Republic of China took its place, though it maintains some formal diplomatic or informal relations with most states.<sup>54</sup> As a result, Taiwan has not ratified any of the core international human rights instruments, relevant maritime or labour conventions.

### 1.2 DOMESTIC HUMAN RIGHTS LAW

Notwithstanding the lack of ratification of UN, IMO and ILO international human rights treaties, Taiwan has its own set of domestic human rights laws founded in the Taiwan Maritime Code and the Taiwan Civil Code. Therefore, although not being a UN member, Taiwan has adopted and incorporated both the ICCPR, the ICESCR and CEDAW into the domestic legal system.<sup>55</sup> Furthermore, under the Seafarers' Act, 'the qualifications of seafarers must comply with the standards set in the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers'.<sup>56</sup> The Act also sets out standards regarding working conditions, such as living quarters, safety equipment, as well as certain standard contractual terms for seafarers' employment as determined by the MoTC, regarding wages, rest periods and annual leave. These standards seek to ensure minimum standards of fairness in the employment of seafarers.<sup>57</sup>

## CONCLUSION

In comparison to Denmark and Panama, Taiwan's lack of ratification of the core UN, Maritime and Labour Conventions represents a remarkable gap in the protection of human rights at sea. However, neither Denmark or Panama are beyond reproach, as both have certain shortcomings or distinctive issues arising from their human rights coverage. For example, although Denmark should be commended for its excellent treaty ratification and rights compliance, it appears to devalue the interests of migrant seafarers by failing to ratify the ICMW and Work in Fishing Conventions. By Denmark ratifying these outstanding treaty commitments, it would be a welcome denouncement of far-right and anti-immigration populism spreading across Europe. Panama also has areas of concern, such as the loophole of Article 92 which seriously lessens the impact of any safeguards included within its Maritime Law. It is clear, therefore, that whilst Taiwan has a more noticeable human rights gap, Denmark and Panama do still have areas on which to improve.

<sup>42</sup> Danske Rederier, 'Danish Shipping: Facts and Figures' (Danske Rederier 2018), 15 <<https://www.danishshipping.dk/analyse/>> accessed 3 April 2019.

<sup>43</sup> *ibid* 4.

<sup>44</sup> *ibid* 8.

<sup>45</sup> International Labour Organisation, 'Ratifications of C188 - Work in Fishing Convention, 2007 (No. 188)' <[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312333](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312333)> accessed 3 April 2019.

<sup>46</sup> US Department of State, 'Country Reports on Human Rights Practices for 2018: Denmark' (US Department of State 2018), 14 - 15 <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2018&dliid=289123>> accessed 3 April 2019.

<sup>47</sup> Danish Maritime Authority, 'Sea Health' <<https://www.dma.dk/SikkerhedTilSoes/Skibssikkerhed/Arbejds miljoer/Sider/default.aspx>> accessed 3 April 2019.

<sup>48</sup> Act on Safety Investigations of Marine Accidents 2011, s1 - 3.

<sup>49</sup> Charter of Fundamental Rights of the European Union, OJ 2010 C 83/389.

<sup>50</sup> See, for example, European Parliament, 'Maritime Transport: Traffic and Safety Rules' <http://www.europarl.europa.eu/factsheets/en/sheet/125/maritime-transport-traffic-and-safety-rules> accessed 14 April 2019

<sup>51</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended)

<sup>52</sup> *Medvedyev and others v France* (App No 3394/03) (2010) ECHR 384

<sup>53</sup> *Hirsi Jamaa and others v Italy* (App No 27765/09) (2012) <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-109231&filename=001-109231.pdf>

<sup>54</sup> United Nations General Assembly Resolution 2758.

<sup>55</sup> Library of Congress, 'Taiwan: Law Implementing CEDAW Adopted' (2011) <<http://www.loc.gov/law/foreign-news/article/taiwan-law-implementing-cedaw-adopted/>> accessed 20 March 2019.

<sup>56</sup> 'Taiwan' (The Shipping Law Review) <<https://thelawreviews.co.uk/edition/the-shipping-law-review-edition-5/1171148/taiwan>> accessed 20 March 2019.

<sup>57</sup> *ibid*.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## 6. MONITORING AND REPORTING

### INTRODUCTION

This section will explore the procedures that are in place to monitor compliance with and enforce human rights on the vessels that fly the flags of Panama, Denmark and Taiwan. The **Paris** and **Tokyo** MoU are of significant relevance in this respect, as they provide evidence of flag performance in relation to the inspections and detentions. A Flag State's performance is determined by the total number of inspections and detentions over a 3-year period. There is a three-level grade of compliance; White, Grey and Black, which indicate high to low compliance. Usually, States on the 'black' list have demonstrated poor performance with many of their vessels having been detained, while those classified as 'white' are considered as high-compliance flags.



### PANAMA

As the largest flag state in the world, more than seventeen per cent of the world's merchant fleet in terms of tonnage flies the Panamanian flag.<sup>25</sup> Accordingly, Panama's human rights obligations are fundamental. Overall, Panama has ratified an extensive range of Conventions. Nonetheless, there are gaps in Panama's coverage of human rights, meaning that standards on Panamanian flag ships are lower than they should be.

#### 1. MEMORANDUM OF UNDERSTANDINGS

According to the Paris MoU, Panama classifies as a low risk vessel with 6,110 inspections between 2015 and 2017.<sup>58</sup> As such, it is on the white list, being ranked as number 35 out of 40 countries in June 2018. Therefore, there is clearly room for Panama to improve their position. It should be noted that Panama is an open registry, meaning there is no requirement of residency or nationality, this may have an impact on its classification due to the large range of ships hosted by the state. Additionally, Panama joined the Tokyo MoU in 2015 as a cooperating member. It was both the member with the highest number of inspections (27.92%) and detentions with 9 out of 1,876 inspections between 1st September 2017 and 30 November 2017.<sup>59</sup>

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## 2. PANAMA MARITIME AUTHORITY

The PMA is responsible for the implementation and enforcement of its international and domestic human rights at sea obligations. The PMA is also the port-control entity, and its Directorate of Merchant Marine, Directorate of Ports, and Auxiliary Industries conduct inspections on vessels entering waters of Panama. The Compliance and Enforcement Department Directorate of Merchant Marine has a number of responsibilities such as – although, not limited to – conducting random inspections on vessels, evaluating the work of Recognised Organisations, and continuously supervising compliance.<sup>60</sup>

In compliance with the MLC, vessels engaged in international voyages with a gross tonnage of 500GT are obliged to have an on-board Maritime Labour Certificate. Although, such a requirement remains optional to the vessels with gross tonnage from 200 GT to 499 GT.<sup>61</sup> Nevertheless, ship owners must complete the declaration to ensure permanent compliance. Furthermore, Panamanian vessels have an on-board complaints procedure for the seafarers to use when they have complaints.<sup>62</sup> The PMA is required to carry out an inspection within forty-eight hours of the vessel's departure if a complaint is received from the majority of the staff or seafarer's organisation. When there is sufficient evidence to show that a vessel is not compliant, the PMA reserves the right to order restrictions or detain the vessel until has been made compliant.

That said, the PMA is not without its issues. There are reports of exploitation in the maritime sector with reported shifts of fourteen up to twenty-four hours, as pointed out by the United States ('US') Report on Human Rights.<sup>63</sup> The US Report further highlights that these shifts have led to fatigue-based health and safety risks. It appears that these negative consequences are due to a lack of inspections on working hours by both the PMA, and the Labour Ministry. The report carries on claiming that the Labour Relations Board has been inefficient in dealing with workers' complaints on this matter.<sup>64</sup>

Moreover, with regards to the effective protection offered via the PMA, the recent de-flagging of the Aquarius humanitarian rescue vessel, highlighted by Human Rights At Sea as an act under political influence of the Italian government,<sup>65</sup> raises serious doubts as to any actual intention of the PMA to uphold human rights at sea as well as its legitimacy as an independent maritime authority. These issues raise further questions as to the significance and legitimacy of ship classifications given that in spite of these concerns, Panama remains a 'white' flag state.

These issues notwithstanding, in November 2018, an agreement has been signed between the PMA and The Mission to Seafarers for the running of seafarer welfare services at Panamanian ports. This makes TMS the first seafarer charity operating in Panama and it is expected to increase conditions and compliance.<sup>66</sup>

## 3. SHIP CAPTAINS

In addition to the PMA, the captain of each ship also has responsibilities. The captain is obliged to inspect or appoint an officer to carry out inspections of the conditions of accommodation areas, and facilities used for food service.<sup>67</sup> Furthermore, the person appointed to provide medical services is obliged to inspect and maintain medical equipment. These inspections are required to be repeated at regular intervals and must be documented.

<sup>58</sup> Port State Control: Annual Report 2017' (Paris MoU) <<https://www.parismou.org/2017-paris-mou-annual-report-%E2%80%99safeguarding-responsible-and-sustainable-shipping%E2%80%9D>> accessed 20 December 2018.

<sup>59</sup> 'Press Release: Concentrated Inspection Campaign (CIC) on Safety of Navigation (SOLAS CH.V)' (Tokyo MoU Secretariat) 1.

<sup>60</sup> 'Compliance and Enforcement' (The Panama Registry) <<https://www.segumar.com/compliance-and-enforcement2/>> accessed on 21 December 2018.

<sup>61</sup> Department of Control and Compliance, Merchant Marine Circular MMC' (Panama Maritime Authority) 269.

<sup>62</sup> *ibid* 264.

<sup>63</sup> 'Country Report on Human Rights Practices for 2018' (United States Department of State, Bureau of Democracy, Human Rights and Labour) 27 <<https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2018&dclid=289314#wrapper>> accessed 9th April 2019.

<sup>64</sup> *ibid*.

<sup>65</sup> Human Rights at Sea, 'Human Rights and International Rule of Law Ramifications of the De-Flagging of M/V Aquarius Dignitus' (2019).

<sup>66</sup> 'The Mission to Seafarers Signs MoU with Panama for seafarer welfare services' (The Mission to Seafarers) <<https://www.missiontoseafarers.org/News/the-mission-to-seafarers-signs-mou-with-panama-for-seafarer-welfare-services>> accessed 3 January 2019.

<sup>67</sup> 'Rights Pamphlet: Panama' (Seamen's Church Institute) <<https://seamenschurch.org/article/rights-pamphlet-panama>> accessed 21 December 2018.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## DENMARK

### 1. MEMORANDUM OF UNDERSTANDING

According to the 2018-19 Annual Report, Denmark ranks fourth on the White List of the Paris MoU Annual Report with 1,189 inspections and only 12 detentions.<sup>68</sup> Similarly, for the same period, Denmark is on the White List of Tokyo MoU with 536 inspections and only 9 detentions.<sup>69</sup> Importantly in 2017, the Paris MoU and Tokyo MoU organised the 'Concentrated Inspection Campaign' ('CIC') based on navigational safety which took place from 1 September until 30 November 2017 in Denmark.<sup>70</sup> It was stated that '(t)he aim of the CIC is to check compliance with the applicable requirements of the SOLAS Convention, the overall status of the vessel's navigation safety, and the competency of the crew involved in navigation operations'.<sup>71</sup> During this period 87 inspections took place with only 1 detention.<sup>72</sup> Furthermore, according to the latest report published by DMA for the purpose of Maritime Labour Convention, the annual inspection activities from the beginning of January 2015 to 31 December 2015 was 313.<sup>73</sup> Nonetheless, no further information is given as to whether all of these inspected ships had passed all the criteria.

### 2. THE DANISH MARITIME AUTHORITY

The DMA provides for active investigations into maritime casualties. Under the Act on Safety Investigations of Marine Accidents, the Minister of Economic and Business Affairs established the Danish Maritime Accident Investigation Board ('DMAIB'). The DMAIB is an independent unit which carries out investigations of maritime casualties and incidents with a view to reducing the risk of future marine casualties.<sup>74</sup> The purpose of DMAIB is significant as it clarifies the circumstances of the accidents and promotes a better understanding of safety at sea.<sup>75</sup> However, some weaknesses remain as DMAIB may decide not to carry out investigations of very serious casualties on fishing vessels of a length less than 15 metres.<sup>76</sup> Moreover, DMAIB does not have the capacity to establish any legal or economic liability, and while it investigates about 140 accidents each year, only about 15 of these investigations are published as marine accident reports.<sup>77</sup> Consequently, although the DMAIB initially appears to be important in the Danish protection of human rights, its role is somewhat limited.

Parallel to investigating accidents at sea, the DMA prioritises the safety of vessels and the protection of health aboard vessels. For instance, in relation to safety of the ships, the Act on Safety at Sea harmonises EU protection with Danish law, and regulates the construction, equipment and operations of ships to minimise any accidents at sea.<sup>78</sup> The Act thus seeks to ensure the safety of those on board Danish flag ships, such as navigation measures and placing obligations on shipowners to ensure that the ship is in a fit condition.<sup>79</sup> In relation to health onboard ships, Denmark has provisions within the 'Technical regulation on occupational health in ships'. These provisions contain important regulations of the safety of, for example, pregnant employees or those who breastfeed. There are also provisions concerning the control of occupational health and preventive principles as well as provisions discussing young persons' work on board ships.<sup>80</sup>

These legal frameworks are undoubtedly important in maintaining Denmark's white list status in both the Paris and Tokyo MoUs. Nonetheless, in order to better contribute to the protection of human rights, the DMAIB needs to extend its duties and not just investigate accidents, but establish liability, and publish the results.

<sup>68</sup> 'White, Grey and Black List' <<https://www.parismou.org/detentions-banning/white-grey-and-black-list>> accessed 20 March 2019.

<sup>69</sup> 'White, Grey and Black List' <<http://www.tokyo-mou.org/doc/Flag%20performance%20list%202017.pdf>> accessed 20 March 2019.

<sup>70</sup> 'Launch of Joint Concentrated Inspection Campaign on Safety of Navigation (Solas CH.V);1 < Press release Paris MoU, Tokyo MoU 31 July 2017 <<https://www.parismou.org/announcement-cic-safety-navigation>> accessed 20 March 2019.

<sup>71</sup> *ibid.*

<sup>72</sup> Report of the 2017 Concentrated Inspection Campaign (CIC) on Safety of Navigation, including ECDIS (Paris MoU) 2017, 21 <<https://www.parismou.org/system/files/CIC%20on%20Safety%20of%20Navigation%20in%202017%20web%20report%20%28final%29.pdf>> accessed 20 March 2019.

<sup>73</sup> 'Maritime Labour Convention' (Denmark Maritime Authority) <<https://www.dma.dk/Documents/Publikationer/Annual%20MLC%20report%202015.pdf>> accessed 20 March 2019.

<sup>74</sup> 'About the DMAIB' (Danish Maritime Accident Investigation Board) <<http://www.dmaib.com/Sider/Aboutus.aspx>> accessed 20 March 2019.

<sup>75</sup> DMAIB, 'Danish Maritime Accident Investigation Board' <<http://www.dmaib.com/SiteCollectionDocuments/Folder%20om%20havari Kommissionen/DMAIB%20folder%20UK.pdf>> accessed 20 March 2019.

<sup>76</sup> Act on safety investigations of marine accidents 2011 ss1-3.

<sup>77</sup> *ibid.*

<sup>78</sup> Consolidated act no. 72 of 17 January 2014, ss 2, 3, 4 and 5.

<sup>79</sup> *ibid* s.6. and part 4.

<sup>80</sup> Danish Maritime Authority, Technical regulation A of 11 December 2009.

<sup>81</sup> Ministry of Transportation and Communications Maritime Transport Network Portal, 'The Current Port State Control Situation in Taiwan' <[http://eng.mtnet.gov.tw/psc\\_eng/index.html](http://eng.mtnet.gov.tw/psc_eng/index.html)> accessed 5 January 2019.

<sup>82</sup> Chen-Ju Chen, 'The Tokyo MoU: Its Implications For Taiwan' (2016) 30 Australian and New Zealand Maritime Journal 99 <<http://ssl.law.uq.edu.au/journals/index.php/maritimejournal/article/view/291/316>> accessed 6 January 2019.

<sup>83</sup> Taiwan Seafarers' Act, Article 16.

<sup>84</sup> Trevor Sutton and Avery Siciliano, 'Making Reform a Priority for Taiwan's Fishing Fleet' (2018) Center for American Progress <[www.americanprogress.org/issues/security/reports/2018/01/08/444622/making-reform-priority-taiwans-fishing-fleet/#fn-444622-31](http://www.americanprogress.org/issues/security/reports/2018/01/08/444622/making-reform-priority-taiwans-fishing-fleet/#fn-444622-31)> accessed 6 January 2019.

<sup>85</sup> 'About Us' (NCSU) <<http://www.ncsu.org.tw/aboutus2.php>> accessed 10 January 2019.

<sup>86</sup> To see specific procedures for different employment claims: <https://www.mol.gov.tw/service/32300/>

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## TAIWAN

### 1. MEMORANDUM OF UNDERSTANDING

Taiwan is not a member of the IMO, but nevertheless adheres to Resolution 787(19) upon which international Port State control is founded. Taiwan established its Port State Control System ('PSCS') whose objective is to meet or exceed the standards of the Tokyo MoU, despite not being a signatory of that instrument.<sup>81</sup> However, research has indicated that the list of applicable conventions covered by Taiwan's PSCS does not reflect all the applicable conventions under the Tokyo MoU, such as the Maritime Labour Convention.<sup>82</sup> The flag is on the 'White List' under the Tokyo MoU, and the CR Classification Society is on the 'High List' performance level. Yet, the flag is unlisted under the Paris MoU, as during the 2015-17 period the minimum number of inspections was not reached.

### 2. NATIONAL LEGISLATION AND PROTECTION

The Taiwan Seafarers Act governs the employment of Taiwanese personnel on board Taiwan-flagged vessels and seafarers must comply with the standards set in the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers. Employers must provide adequate and suitable food, quarters, bedding, medical supplies and protective working gear to seafarers.<sup>83</sup> Notwithstanding the existence of these standards, labour law violations in the Taiwanese fishing sector are widespread. Foreign-hired labourers who perform work on Taiwanese -flagged vessels lack the full protections of the domestic 'Labour Standards Act', instead being subject to weaker alternative arrangements under the 'Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members'.<sup>84</sup>

A subsidiary source of protection may be through trade union protection, as Taiwanese seafarers must join the National Chinese Seamen's Union ('NCSU').<sup>85</sup> The NCSU may be able to assist seafarers through collective bargaining agreements, or act as a mediator between seafarers and shipowners in the event of employment disputes. However, the NCSU website only discusses the aim of the organisation, lacking evidence of specific procedures to submit human rights or labour law claims. It also lacks any annual reporting related to the performance of the organization, posing questions around transparency and its efficacy in protecting its members. Similarly, a potential avenue of recourse for seafarers could feasibly be the MOTC, given their role in the Registration process. However, their website provides little indication of its ability to deal with human or labour rights violations through a specific procedure, instead focussing on training and certification matters. Finally, although the Ministry of Labour provides the access to submit employment claims, it does not offer special procedure for seafarers.<sup>86</sup>



# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS



## 3. FISHING INDUSTRY PROBLEMS

Returning to the issue of differential standards for domestic and foreign-hired fishing industry labourers, the 2018 US State Department Report on 'Trafficking in Persons', whilst rating Taiwan amongst the best nations with respect to trafficking, also draws attention to practices which are particularly prevalent in the offshore fishing industry.<sup>87</sup> It is critical of the split competence of the Fisheries Agency and the Ministry of Labour regarding the enforcement of laws on forced labour and trafficking which it considers impedes proper oversight of Taiwanese-flagged vessels, particularly in the distant water fleet involved in the lucrative offshore fishing sector.<sup>88</sup>

The NGO coalition 'Human Rights for Migrant Fishers', has sought to improve the enforcement of Taiwanese human rights and labour law for persons in the fishing industry. Amongst their recommendations are the ratification of the ILO Convention No. 188 'Work in Fishing', application of the 'Labour Standards Act' to all those employed on Taiwanese vessels in the fishing industry, as well as greater investment in enforcement to ensure adequate inspections.<sup>89</sup> Emphasising the force of these recommendations, the first vessel detained under the 'Work in Fishing' Convention was a Taiwanese-flagged vessel operating off the coast of South Africa, after complaints were made by the crew regarding their working conditions.<sup>90</sup> The Convention seeks to enhance Port-State control inspections, both directly by signatory States over their own vessels, but also indirectly over the vessels of non-signatories calling into ports. Currently only 12 States have ratified the instrument which undermines its current effectiveness.<sup>91</sup> There is also a question of how Taiwan could meaningfully give effect to the instrument given its uncertain international legal status.

## CONCLUSION

There are varying mechanisms in place in each flag State to ensure monitoring and reporting of human rights issues. According to the Paris MoU, both Panama and Denmark are listed as 'white-list' states, the latter ranking much better than the former. By contrast, Taiwan is not a party to the Paris MoU; and yet, is also classified as 'white list'. While the maritime authorities have the main responsibility of ensuring the effectiveness of the flag states' monitoring and reporting systems, the report shows that these mechanisms are not always sufficiently implemented. For instance, the PMA will only carry out an inspection upon a complaint, and only if that complaint is backed by the majority of the staff. Meanwhile, with respect to Taiwan, there is a significant disconnect between its listed standard and the efficacy of its human rights and labour law protection mechanisms. This is especially so in the fishing sector, where differential labour standards for foreign-workers and split institutional competence limits regulatory effectiveness. As it stands, Denmark seems to provide the most effective process for the protection of seafarers' rights, which justifies their ranking on the Paris MoU. That said, the DMAIB may decide not to carry out investigations of a length below 15 meters regarding fishing vessels, and only 15 investigations of the accidents are published. Consequently, more work is needed in all three flag states to better improve their conditions.

<sup>87</sup> US Department of State, 'Trafficking In Persons Report' (2018) <[www.state.gov/documents/organization/282798.pdf](http://www.state.gov/documents/organization/282798.pdf)> accessed 5 January 2019.

<sup>88</sup> *ibid.*

<sup>89</sup> The Maritime Executive, 'Call for Taiwan to End Abuse of Migrant Fishermen' (2018) <<https://www.maritime-executive.com/article/call-for-taiwan-to-end-abuse-of-migrant-fishermen>> accessed 6 January 2019.

<sup>90</sup> ILO, 'First fishing vessel detained under ILO Fishing Convention' (2018) <[http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_634680/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_634680/lang-en/index.htm)> accessed 6 January 2019

<sup>91</sup> ILO, 'Ratifications of C188 - Work in Fishing Convention, 2007 (No. 188)' <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312333:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312333:NO)> accessed 6 January 2019.

<sup>92</sup> 'Contact Us' (Panama Maritime Authority) <<https://www.segumar.com/contact-list/>> accessed 20th December 2018.

<sup>93</sup> 'Contact Us' (International Maritime Organisation) <<http://www.imo.org/en/About/Pages/ContactUs.aspx>> accessed 20th December 2018; 'States' (International Maritime Organisation, Member) <<http://www.imo.org/en/About/Membership/Pages/MemberStates.aspx>> accessed 20 December 2018.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## 7. OUTREACH

### INTRODUCTION

The second stage of the project comprised of a series of outreach attempts to the publicly available and most relevant contacts of the three respective flag states. More specifically, the IMO representatives of the three flag States, or their closest identifiable alternative, were the recipients of letters containing a series of questions related to the protection of the human rights of seafarers and the remedies available to them. These questions were:

1. How do you [flag State] ensure the protection of the human rights of seafarers on board vessels registered under your flag?
2. How can seafarers report human rights violations on board vessels that fly your flag?
3. How many complaints are received by the flag administration each year?
4. How do you investigate allegations of human rights abuses under your jurisdiction?
5. What remedies do you have in place for human rights violations on board vessels registered under your flag?
6. Do you have any human rights reporting and assurance requirements for vessels registered under your flag?
7. Do you have an internal point of contact with whom we can maintain an ongoing dialogue about this investigative project, and can you disclose the policies requested and any other information which may assist our work?

### PANAMA

Having researched the available points of contact two main authorities stood out in particular. First, the PMA stood out with a comprehensive list of contacts that were categorised by department and country.<sup>92</sup> Secondly, as Panama is a member of the IMO since 1958, it has representatives based in London, where the IMO has its headquarters.<sup>93</sup> For this project the IMO representatives of Panama were contacted to supplement the information obtained from independent research. The following shows the communications between the IMO Representatives and the authors of this report:

	26 DECEMBER 2018	Initial contact requesting the IMO Representatives of Panama to answer the questions listed above.
	22 JANUARY 2019	First follow-up email to the IMO Representative of Panama to answer the questions listed above.
	27 FEBRUARY 2019	Follow-up call to the Panamanian Embassy in London representing the IMO, which redirected the authors to updated email addresses. All prior emails were sent to the information that was available on the IMO Panama website. Once again requesting the IMO Representative of Panama to answer the above listed questions.
	18 MARCH 2019	Follow-up call to the Panamanian Embassy in London representing the IMO, requesting the status of the request. The authors were told that the representative is on a mission abroad and that they think that the representative 'will not participate in [the] questionnaire' in general. Over the course of contact the 'Contact Us' information was changed, however, the direct contact to the representative of Panama to the IMO remains non-disclosed.

This outreach stage therefore highlights two points. Firstly, as the website is not updated regularly, communication with the representatives is difficult. This holds true for research purposes but also for those affected at sea. Secondly, the authors tried to establish contact and followed up the request of receiving answers to the questions. Although confirmation of receipt was given to the authors, there was no response. Subsequently, the offer of an extension of the deadline was politely denied due to the representative being abroad. Consequently, this report includes the findings of our research without further explanation from Panama. Should Panama wish to respond at a later point in time, this information could be published in a later edition of the report.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## DENMARK

The DMA website lists several potential points of contact to address the above questions, but most are generic government department emails. Documents from the IMO website list 'Mr Ostenfeld' as the permanent representative to the IMO, and the email address listed correlates to one listed on the DMA website as the point of contact for assistance in Maritime Regulation and Legal Affairs. Accordingly, emails have been sent to Mr Ostenfeld, in both English and Danish, requesting further information by 25 March 2019.

-  31 JANUARY 2019 Initial email sent, requesting information from the IMO Representative of Denmark.
-  22 FEBRUARY 2019 First follow-up email, again asking for a response to the above listed questions.
-  22 MARCH 2019 Second follow-up email. The representative was again asked to respond to the above listed questions and reminded that the late submission of evidence would not be included in this year's report but may be published in subsequent publications.

The email address is active, evidenced by automatic out-of-office replies, and remains listed on both DMA and IMO websites. However, there was no formal receipt of correspondence and the Danish representative to the IMO chose not to respond to the requests for information. Consequently, this report includes the findings of our research without further explanation from Denmark. Should Denmark wish to respond at a later point in time, this information could be published in a later edition of the report.

## TAIWAN

Since Taiwan is not a member in IMO or other related international organisations, we mainly focused on the domestic institutions. Having searched for the available contact information, there are two main institutions we could contact; first, the MPB,<sup>94</sup> which regulates the ship registration, and second, the NCSU,<sup>95</sup> which represents the interests of all Taiwan seafarers and help them deal with complaints with employers. The above-listed questions were sent to both MPB and NCSU.

-  04 JANUARY 2019 Initial contact with NCSU to request answers to the seven questions listed above.
-  30 JANUARY 2019 After identifying the Seafarers Administration Division, which is a department of MPB and works on issues concerning seafarers, we sent a request to this department for the of answering the above-listed questions.
-  01 FEBRUARY 2019 A follow-up email was sent to the NCSU.
-  04 APRIL 2019 Follow-up call to NCSU to ask the status of the two former requests; however, the call was not answered.

This correspondence demonstrates two main points. First, it is very difficult to contact the representatives in those organisations, an issue in both the research stage and presumably for those at sea. The lack of response, failure to even acknowledge receipt, and the failure to answer the phone call all serve to highlight the fundamental lack of access to information in Taiwan. Second, the information which was provided on their websites was limited, there is no specific department to deal with human rights claims nor is there any substantive material to help formulate complaints. Consequently, this report includes the findings of our research without further explanation from Taiwan. Should Taiwan wish to respond at a later point in time, this information could be published in a later edition of the report.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## CONCLUSION

Unfortunately, no response to these questions was provided by the selected points of contact. Given the limited scope of outreach to just three flag States, at this time few conclusions can be drawn from Stage 2. However, it is seemingly consistent with limited publicly available information and effort by the flag States to proactively provide clear and informative guidance related to human right obligations and monitoring.



<sup>94</sup> 'Contact Us' (Maritime and Port Bureau of Taiwan) <[https://www.motcmpb.gov.tw/content\\_12.html](https://www.motcmpb.gov.tw/content_12.html)> accessed 30 January 2019.

<sup>95</sup> *ibid.*

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## 8. CONCLUSIONS AND RECOMMENDATIONS

The research conducted reveals a disparity in the number of human rights treaties ratified by Denmark, Panama and Taiwan. Whereas Denmark has ratified most human rights treaties apart from the ICMW, Panama lacks ratification of two major human rights treaties namely the ICMW and the LLMC. Taiwan is the state with the least ratifications having only incorporated 4 treaties into their domestic law namely the ICESCR, CEDAW, ICCPR and the STCW. As ratification is an important step in enforcing human rights in practice, these facts are concerning as the omission of ratifying a treaty results in no obligations arising with regards to human rights protection. In Panama, the consequences are exacerbated by the fact of being the largest flag state. Whereas in Taiwan, the lack of ratifications leads to no obligations of the state with regards to human rights violations. With regards to Denmark, it remains noted that the CED has not been ratified as well as the ICMW affecting over 9,000 seafarers.

Specific monitoring and reporting mechanisms dealing with human rights violations are lacking or absent, especially for those dealing specifically with violations at sea. There is much uncertainty due to the absence of public complaints procedures that would guarantee effective redress for human rights abuses on board vessels. Institutions have discretion over whether to conduct investigations and the lack of published reports prevents transparency. Seafarers are especially vulnerable given that they are isolated on the ocean for long periods of time, and therefore they need a public, accessible and transparent procedure which ensures that they are not being exploited or left unprotected. These mechanisms should be made available and clear to seafarers prior to their maritime activities. All states thus need to establish a complaint procedure and improve its accessibility while lowering thresholds which currently hinder the number of complaints that are being filed.



While the Paris and Tokyo MoUs classifications are relevant in assessing the compliance of flag states with international safety, security and environmental standards, the extent to which the white, grey and black ratings indicate actual adherence to human rights obligations is questionable. For example, all three flag states examined in this report were considered 'white list' flag states. Factually, however, this report concludes that there is a substantial difference between the human rights enforcement in each of the states. Thus, the MoUs should consider providing expanded rationale for ratings and publicise the data used to assign ratings. Human rights instruments ratification and human rights compliance should be important criterion when determining whether a flag state meets the standards required to qualify as a white list flag state. Rather than human rights standards these MoUs seem to prioritise regulations on boat sizes as well as environmental concerns. Therefore, the MoUs need to include human right protection as a contributing factor. Finally, the compartmentalisation leads to the fact that states can be at the bottom of the white list and still enjoy the image of a white-listed flag state; which, in itself, is an issue that needs to be addressed.

Finally, the report notices that human rights at sea is not mentioned as a goal of any maritime authorities. The domestic maritime authorities could greatly improve the enforcement of human rights at sea by expressly mentioning this as a purpose of the organisation. This would create awareness and promote an environment in which a reporting mechanism for human rights violations at sea could be envisioned. Furthermore, the domestic maritime authorities could establish a monitoring mechanism that would ensure enforcement of the maritime obligations. Currently, they seem to monitor compliance without actually enforcing the human rights protection which is vital to vulnerable seafarers. This makes it more symbolic in nature and would explain the lack of motivation of flag states to respond to this report.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

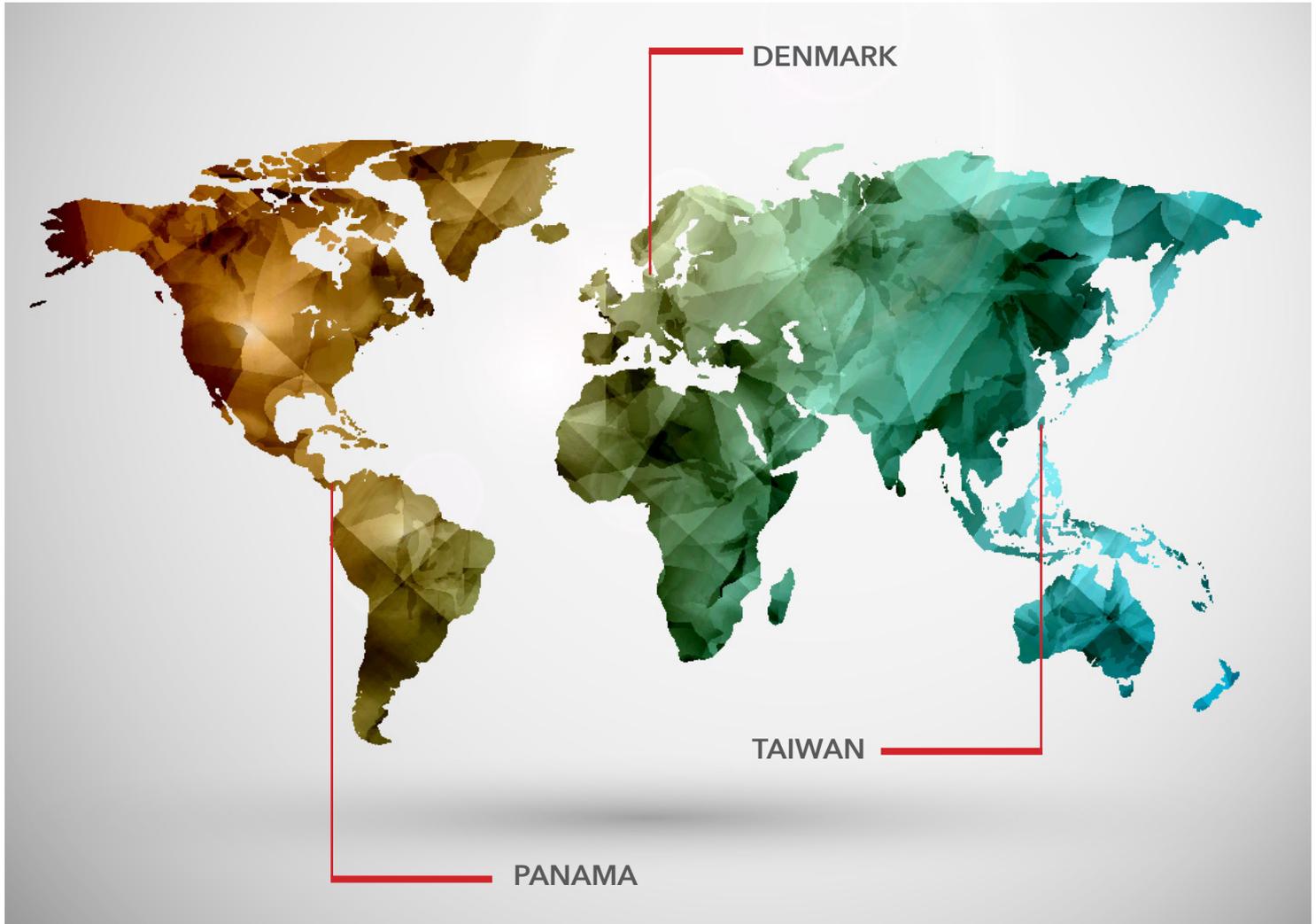
**HAVING ADDRESSED THE PROBLEMS AND DEFICIENCIES OF THE THREE FLAG STATES EVALUATED, SOME GENERAL RECOMMENDATIONS HAVE BEEN DRAWN:**

- 1.** Flag states must ratify the core UN human rights treaties, IMO and ILO Conventions which provide for safety, human and labour standards. That said, it is not enough to merely ratify the treaties. A flag State needs to put in place bespoke mechanisms for the implementation of their human rights obligations.
- 2.** Flag States need to improve the clarity of their websites, publish investigations, and ensure better access to information. Flag States should regularly update their contact details to allow more swift complaints to be made and to create a user-friendly complaint mechanism. Where no complaint mechanism is available, it is of utmost urgency to establish a point of contact for vulnerable workers at sea.
- 3.** Achieving a white list status on the Paris and Tokyo MoUs should not be considered the 'end game' for flag States. In this way, the MoUs' compartmentalisation should be challenged. Instead, human rights and labour standards should be part of the inspections and considered as part of the listings.
- 4.** The respective Maritime Authorities - such as the PMA and DMA - should explicitly mention human rights obligations as purposes of their organisations. The Maritime Authorities should become actively involved in the enforcement of maritime-related treaties. Suggested improvements involve the authorities conducting an Annual Report on Human Rights at Sea which presents empirical studies on human rights violations and requiring a specific standard for the effectiveness of communications.

# Flag States & Human Rights

AN EVALUATION OF FLAG STATE PRACTICE IN MONITORING, REPORTING AND ENFORCING HUMAN RIGHTS OBLIGATIONS ON BOARD VESSELS

## MAP SHOWING LOCATION OF THE FLAG STATES



The Human Rights Implementation Centre is a leading institution for the implementation of human rights, that works in collaboration with a number of organisations and bodies, including those in the United Nations, the African Commission on Human and Peoples' Rights, the Council of Europe, governments and organisations at the national level.

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**General Enquiries:**

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Tel: +44 (0)117 3315218 Email: [hric-admin@bristol.ac.uk](mailto:hric-admin@bristol.ac.uk)

# Who We Are

## BACK GROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **Research, Education, Advocacy and Lobbying** specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.

## OUR MISSION

To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.



## KEEP IN CONTACT



We welcome any questions, comments or suggestions. Please send your feedback to:  
Human Rights at Sea, VBS Langstone Technology Park, Langstone Road, Havant. PO9 1SA. UK



Email: [enquiries@humanrightsatsea.org](mailto:enquiries@humanrightsatsea.org)



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on Board Vessels

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