



Shutterstock.com

# FLAG STATES & HUMAN RIGHTS REPORT 2020

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>4</b>	<b>7. MONITORING &amp; REPORTING</b>	<b>30</b>
<b>CONCEPT AUTHORS</b>	<b>5</b>	Introduction	30
<b>RESEARCH AUTHORS &amp; TEAM</b>	<b>5</b>	Malta	30
<b>ACKNOWLEDGEMENTS</b>	<b>6</b>	1.1 Paris Memorandum of Understanding (MoU)	30
<b>1. INTRODUCTION &amp; THE TEAM</b>	<b>7</b>	1.2 Reporting Under National Legislation	31
<b>2. PROJECT SUMMARY</b>	<b>7</b>	1.3 Reported Cases of Abuse Aboard Flagged Vessels	31
<b>3. CONSTRUCT &amp; METHODOLOGY</b>	<b>8</b>	India	32
The Central Question of the Project	8	1.1 Memorandum of Understanding	32
The Seven Sub-Questions Considered	8	1.2 Reporting Under National Legislation	33
The Three Stages	8	1.3 Reported Cases of Abuse Aboard Flagged Vessels	34
<b>4. REGISTRIES</b>	<b>9</b>	UAE	35
Introduction	9	1.1 Memorandum of Understanding	35
Malta	9	1.2 Reporting Under National Legislation	35
India	11	1.3 Reported Cases of Abuse Aboard Flagged Vessels	35
UAE	12	Conclusions	37
Conclusions	13	<b>8. OUTREACH: Q&amp;A TO FLAG STATES</b>	<b>38</b>
<b>5. HUMAN RIGHTS OBLIGATIONS</b>	<b>14</b>	Introduction	38
Introduction	14	Malta	38
Malta	16	India	39
1.1 Human Rights Law Treaties	16	UAE	39
1.2 Labour Treaties	17	Conclusions	40
1.3 Domestic and European Human Rights Law	17	<b>9. CONCLUSIONS &amp; RECOMMENDATIONS</b>	<b>41</b>
1.4 Other International Law Treaties	18	<b>RECOMMENDATIONS</b>	<b>43</b>
1.5 European Union Treaties	18	<b>MAP SHOWING LOCATION OF FLAG STATES</b>	<b>44</b>
India	19	<b>CONTACT US</b>	<b>45</b>
1.1 Human Rights Law Treaties	19		
1.2 Labour Treaties & International Law Treaties	19		
1.3 Domestic Law	20		
UAE	21		
1.1 Human Rights Law Treaties	21		
1.2 Labour Treaties & International Law Treaties	21		
1.3 Domestic Law	22		
Conclusions	24		
<b>6. NATIONAL POLICIES</b>	<b>25</b>		
Introduction	25		
Malta	25		
1.1 Training & Raising Awareness	25		
1.2 Compensation & Psychological Support	25		
India	26		
1.1 Raising Awareness	26		
1.2 Training, Compensation & Psychological Support	27		
UAE	28		
1.1 Compensation	28		
1.2 Training, Raising Awareness & Psychological Support	28		
Conclusions	29		

# 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
COLREG	Convention on the International Regulations for Preventing Collisions at Sea
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
EU	European Union
FINS	Forum for Integrated National Security
FTA	Federal Transport Authority (UAE)
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
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICS	International Chamber of Shipping
ILO	International Labour Organization
IMO	International Maritime Organization
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
MMA	Malta Maritime Authority
MMD	Mercantile Marine Department
MoU	Memorandum of Understanding
PSC	Port State Control
SAR	International Convention on Maritime Search and Rescue
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
UAE	United Arab Emirates
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea

# Flag States & Human Rights

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

## CONCEPT AUTHORS

### **DAVID HAMMOND ESQ.**

BSc (Hons), PgDL (London), Barrister (Non-Practising), Founder & CEO Human Rights at Sea

### **DR SOFIA GALANI**

LLB, LLM, PhD, FHEA University of Bristol Law School, United Kingdom

### **PROFESSOR STEVEN HAINES**

MA, PhD (Aberdeen), LLM (London), FRSA School of Law and Criminology, University of Greenwich

### **PROFESSOR RACHEL MURRAY**

LLB (Leicester), LLM (Bristol), PhD (W. England) University of Bristol Law School, United Kingdom

## RESEARCH AUTHORS & TEAM

### **RANA YOUNIS (TEAM LEADER)**

LLM International Law

### **MYLES ANDERSON**

LLB Law

### **LAUREN BALL**

LLB Law

### **THOMAS BROGDEN**

LLM General Legal Studies

### **HANNAH CLEGG**

LLB Law

### **LUCY DELAMERE**

LLB Law

### **ELEANOR GRIFFIN**

LLB Law

### **HARRY GRIMSHAW**

LLB Law

### **MUSHFIK KHAN**

LLM International Law and International Relations

### **WILLIAM PLANT**

LLB Law

### **DALMA WEBER**

LLM International Law and International Relations

### **ANA ZIGIC**

LLB Law

# Flag States & Human Rights

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



Shutterstock.com

## ACKNOWLEDGEMENTS

The research project team extends our sincerest gratitude to Dr Sofia Galani, Professor Rachel Murray and Paige Spicer of the Human Rights Law Clinic for the opportunity to undertake such research. Additionally, we would like to give special thanks to David Hammond Esq. and Professor Steven Haines of Human Rights at Sea for their guidance and steadfast commitment to human rights. Lastly, the previous project teams of 2018 and 2019 should be credited for providing frameworks on which this project was largely based.

# Flag States & Human Rights

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

## 1. INTRODUCTION & THE TEAM

This Research Project Report ('the Report') has been prepared by University of Bristol Law School graduate and postgraduate researchers in partnership with the independent UK human rights charitable NGO, Human Rights at Sea, as part of an established year-on-year joint research project ('the Project') with the University of Bristol's Human Rights Implementation Centre and Human Rights Law Clinic. The Project, with a focus on three flag States, independently reviewed and commented on the under-explored issue of flag State practice and their national and international human rights obligations.

The research team consisted of a diverse group of 12 University of Bristol Law School students with a common desire to complement the efforts of Human Rights at Sea to advance understanding of the promotion and protection of human rights in the maritime domain.

The conclusions are the result of an evidence-based approach. The recommendations contained herein were in no way influenced by the University of Bristol, the Human Rights Implementation Centre, Human Rights at Sea, or any other stakeholders beyond the research team.

## 2. PROJECT SUMMARY

In the Report, the three flag States identified for evaluation were Malta, India and the UAE, which offered a combination of both open and closed registries.

The starting point for the research was the principle that human rights obligations of States apply equally at sea, as they do on land. However, despite this, human rights are frequently violated at sea, while many violations remain unreported and unpunished. This is a relatively unexplored, undiscussed and often ignored issue. This is often due to the difficulty in monitoring violations at sea away from law enforcement agents and judiciary supervision. Thus, it is imperative that the monitoring, reporting and enforcement of States' human rights obligations at sea is continuously examined and challenged, in order to ensure more effective protection in practice.

The aim of the Project is to reveal deficiencies in human rights protections and offer informed recommendations. It is hoped that with such insight and a better understanding of how different flag States comply with their international human rights obligations, improved flag State assessments, and eventually amended flag State practices with transparent implementation, will come into force.



# Flag States & Human Rights

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

## 3. CONSTRUCT & METHODOLOGY

### 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 SEVEN SUB-QUESTIONS CONSIDERED

1. What are the human rights obligations of the flag States under international human rights law and regional human rights agreements?
2. Have the respective flag States enacted national legislation to implement their international human rights obligations at the domestic level?
3. Have there been any reported cases of human rights abuses on board vessels flying the flag of the States under review?
4. Have these cases been heard by any national court or UN treaty body?
5. How do flag States monitor human rights compliance on board vessels?
6. Are there any reporting mechanisms in place for complaints of human rights abuse?
7. Are there any national policies providing for the protection of human rights at sea: training, raising awareness, psychological support for human rights violations, compensation?

### THE THREE STAGES

#### Stage 1: Research

In the first stage, desk-based research was conducted to provide information on the ship registries of each flag State, international human rights and labour treaties each flag State has signed and/or ratified; and monitoring and reporting mechanisms. This involved reviewing primary sources including international human rights treaties, labour conventions, Memoranda of Understanding ('MoU') and national legislation. Secondary resources were also analysed. The data collected for Stage 1 is presented in **Sections 4, 5, 6** and **7** of the Report.

#### Stage 2: Outreach

The outreach stage was aimed at establishing a dialogue between the flag States under review and Human Rights at Sea to collect key information on the implementation of human rights on board vessels not available in the public domain. The results of this dialogue, wherever possible and where responded to, are presented in **Section 8** of the Report.

#### Stage 3: Conclusions and Recommendations

The final stage consisted of compiling all the information obtained in the above stages to analyse and summarise the findings. Thereafter, conclusions and recommendations are presented in **Section 9**.



## 4. REGISTRIES

### INTRODUCTION

In order to register a vessel under a flag, several certificates and other requirements, such as the age of the vessel or owner nationality, must be presented and approved by the flag State's registry.<sup>1</sup> Flag States operate 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, or 'flags of convenience', do not impose any nationality restriction 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.

### MALTA



Malta has an open registry and is held out as a "flag of convenience" and a "leading maritime centre".<sup>3</sup> It is possible for any individual to register a vessel without the need to travel to Malta. Transport Malta is the government department responsible for regulating transport across Malta, in the territorial and internal waters of Malta, and ship registration "is the responsibility of the Merchant Shipping".<sup>4</sup> Transport Malta enforces certain requirements for registration:

All types of vessels, including vessels under construction, may be registered in Malta provided that, inter alia, they are wholly owned by "legally constituted corporate bodies or entities irrespective of nationality, or by European Union citizens".<sup>5</sup> In regards to "trading ships of 25 years and over", such ships are not typically registered, while "ships of 15 years and over are required to undergo flag State inspection prior to provisional registration"; while those "of 10 years and over but under 15 years are subject to an inspection before or within one month of provisional registration".<sup>6</sup>

The procedure for the registration of a vessel in Malta is regarded as "straightforward".<sup>7</sup> Provisional registration has the same legal effect as the so-called permanent registration and can be completed very efficiently. A vessel is provisionally registered under the Malta flag for six months before formalities are finalised.<sup>8</sup>

1 'Open Registry' (Ship Inspection) <<http://shipinspection.eu/open-registry/>> accessed 8 June 2020; and 'Ship Registration Law' (HG.org) <<https://www.hg.org/ship-registration.html>> accessed 8 June 2020.

2 'Ship Registration Law' (HG.org) <<https://www.hg.org/ship-registration.html>> accessed 18 July 2020

3 'Malta: A Guide to Ship Registration' <<https://www.transport.gov.mt/ship-registration>> accessed 18 July 2020

4 'Transport Malta Maritime' <<https://www.transport.gov.mt/maritime/transport-malta-sea-99>> accessed 17 July 2020

5 'Malta: A Guide to Ship Registration' (n 3)

6 Ibid.

7 Ibid.

8 Ibid.

# Flag States & Human Rights



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

Provisional registration requirements involve: a registration application, or to change a ship's name; "proof of qualification to own a Maltese ship"; the ship's "International Tonnage Certificate"; proof that the ship is seaworthy; declaration of ownership; and importantly, a "Declaration of Maritime Labour Compliance".<sup>9</sup> If the vessel has been provisionally registered, and valid certificates are not complete, the vessel will have "a non-operational certificate of registry" issued. Any certificates registering a vessel in Malta is to be renewed every year.<sup>10</sup>

Additionally, there are provisions for both "bareboat charter registration of foreign ships under the Malta flag and also for the bareboat charter registration of Maltese ships under a foreign flag".<sup>11</sup> The main requirements for bareboat registration parallel the normal registration process, unless the vessel "is bareboat chartered to a body corporate, entity or such other person qualified to own a Maltese vessel"; the vessel is not Maltese and "is registered in compatible registry"; it is not even "registered in another bareboat registry"; and relevant documentation must be provided.<sup>12</sup>

Malta is regarded as an international maritime centre providing the whole range of maritime services and offers attractive incentives to owners, registered charterers and financiers of Maltese vessels of over 1,000 net tonnage.

There are a number of advocated advantages to using the Malta flag.<sup>13</sup> Malta offers progressive reductions in registration and tonnage tax costs for younger ships; no restrictions on nationality of the master, officers and crew; no restrictions on the sale or transfer of shares of a company owning Maltese vessels; and no restrictions on the sale or mortgaging of Maltese vessels.<sup>14</sup> Maltese vessels are subject to zero trading restrictions and are typically given preferential treatment in certain ports.<sup>15</sup>



9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

13 'Official Guide to Ship and Yacht Registries' <<https://www.guidetoshipregistries.com/shipregistries-country/malta>> accessed 18 July 2020

14 Ibid.

15 'Malta: A Guide to Ship Registration' (n 3)

# Flag States & Human Rights

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



## INDIA



India has a closed registry. The Mercantile Marine Department ('MMD'), the bureau under the Directorate General of Shipping of the Ministry of Shipping of India, manages the registry.<sup>16</sup> The duty of the MMD is to apply India's Merchant Shipping Act 1958 which includes the provisions for the registration of vessels.<sup>17</sup>

A ship can only be registered if the applicant is an Indian citizen, or has residency in India, a company established in India as its principal place of business, or a registered cooperative society.<sup>18</sup> All Indian ships "unless it is a ship which does not exceed fifteen

tons net and is employed solely in navigation on the coasts of India" can be registered.<sup>19</sup> However, ships which are considered registerable should be registered at designated ports of entry, such as Bombay, Calcutta and Madras. Where the ship is registered will be considered the port to which the ship belongs.<sup>20</sup> On completion of registration, the Registrar grants a "certificate of registry" which can only be used "for the lawful navigation of the ship".<sup>21</sup>

Before the registry, the Registrar is entitled to survey and measure the ship. On application, this also means that the ship will be "marked permanently" before the actual registry.<sup>22</sup> The procedure for the registration of a vessel in India is as follows:

- a) A declaration of ownership is needed, which declares whether the applicant(s) is a sole proprietor, joint owner or a company made before a Registrar, or an Indian Consular Officer. They must also provide statements that prove their Indian citizenship, "when and the place where the ship was built or if the ship is built outside India", the name of the ship's master and "the number of shares in the ship in respect of which he or the company... claims to be registered as owner".<sup>23</sup>
- b) The MMD requires documentation such as a builder's certificate, "containing a true account of the proper denomination and the tonnage of the ship as estimated by him and the time when and the place where she was built". For second-hand ships, an instrument of sale is required to show that the ship was transferred, and the ship is registered under the correct name.<sup>24</sup> Lastly, 14-days' notice must be given to the Registrar of the ship's name (before this, the Director General of Shipping must also approve of the name and give the ship an official number).<sup>25</sup>

The Indian Central Government has the power to inquire into the title of an Indian ship if there is any doubt as to a ship's title.<sup>26</sup> If such evidence is not given, then this could mean that the ship could be liable for forfeiture.<sup>27</sup>

16 Government of India: Ministry of Shipping (Department of Shipping), Mercantile Marine Department <<http://www.mmd.gov.in/>> accessed 19 July 2020.

17 India Merchant Shipping Act 1958 <<http://legislative.gov.in/sites/default/files/A1958-44.pdf>> 19 July 2020.

18 Ibid., Section 21, Part V

19 Ibid., Section 22

20 Ibid., Section 23

21 Ibid., Section 34-35

22 Ibid., Section 27-28

23 Ibid., Section 29

24 Ibid., Section 30

25 Part V of the India Merchant Shipping Act 1958 (n 17)

26 Ibid., Section 33

27 Ibid.

# Flag States & Human Rights

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



## UAE



UAE has a closed registry and the UAE Federal Transport Authority, Land & Maritime ('FTA') is responsible for the registration of UAE ships and oversees the national ship register. There is an ongoing debate on whether a separate open registry should be established to cater for foreign ship owners, but this has not been established as of yet.<sup>28</sup> Vessel registration is mostly regulated by the UAE Federal Maritime Law 1981.<sup>29</sup> The FTA enforces certain requirements for registration:

Firstly, a ship is only eligible to be registered if the applicant is a UAE citizen, or a corporate entity with 51% of its capital owned by UAE nationals and only comprising of UAE directors.<sup>30</sup> Only vessels that have a total weight above 10 tonnes should be registered. The competent authorities responsible for the registration are situated in three main offices; Abu Dhabi, Dubai and Sharjah.<sup>31</sup>

The procedure for the registration of a vessel in the UAE is as follows. The FTA regulates UAE flag registration, and this can include commercial and leisure vessels "chartered for commercial purposes".<sup>32</sup> The documentation required for registration includes: an application form containing the vessel's current and former names, the last port of registration, when and where the vessel was built, the type of vessel (including tonnage and dimensions), the mortgage and personal details of the mortgagee creditor (i.e. name, nationality, etc.);<sup>33</sup> a copy of the company's trade licence and a power of attorney of the company's signatory.<sup>34</sup>

Vessels applying for registration can be refused due to age restrictions.<sup>35</sup> Further, "any oil or gas tanker which is over ten years old on 1 January in the year in which registration thereof is sought" are also not permitted for registration.<sup>36</sup>

It is important to note that not all vessels are required to undergo federal registration, as fishing and leisure boats, as well as those weighing less than 10 tons, are exempted.<sup>37</sup> Leisure boats can also be owned by foreign nationals.<sup>38</sup>

28 M. Khan, J. Newdigate & O. N. Omar, 'Securing Ship Finance Transactions in the UAE' (Al Tamimi & Co, Oct 2016), <<https://www.tamimi.com/law-update-articles/securing-ship-finance-transactions-in-the-uae/#:~:text=Vessel%20registration%20is%20largely%20governed%20by%20the%20UAE%20Commercial%20Maritime%20Law%20No.&text=The%20UAE%20maintains%20a%20closed,entities%2C%20are%20eligible%20for%20registration>> accessed 19 July 2020

29 UAE Federal Maritime Law 1981

30 Khan et. al. (n 28); and M. Forwai, S. Mamdouh, C. Turpin & A. Tricoli, 'Shipping in the United Arab Emirates' (Fichte & Co, 2 July 2018), <<https://www.lexology.com/library/detail.aspx?g=32979f94-f0ef-4990-b9ac-9ffcc4b5d7e0>> accessed 19 July 2020

31 'Official Guide to Ship and Yacht Registries: United Arab Emirates' <<https://www.guidetoshipregistries.com/shipregistries-country/united-arab-emirates>> accessed 19 July 2020

32 Forwai et. al. (n 30)

33 Ibid.; and Article 27, UAE Federal Maritime Law 1981

34 Forwai et. al. (n 30)

35 Ibid.

36 Article 19, UAE Federal Maritime Law 1981

37 Ibid., Article 18; and Forwai et. al. (n 30)

38 Forwai et. al. (n 30)

# Flag States & Human Rights



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

There are a number of advantages in flying the UAE flag.<sup>39</sup> Vessels registered with the UAE are able to engage in: “coastal navigation between state ports”, “towage and piloting”, or “fishing or cruising” in UAE waters.<sup>40</sup> Without registration, foreign vessels cannot engage with any of the above activities, and can only stay in UAE waters for a limited 21-day period. This can only be extended further by requesting permission from the FTA.<sup>41</sup>



seeshooteatrepeat / Shutterstock.com

## CONCLUSIONS

A clear distinction between the three states is that Malta operates on the basis of an open registry, while India and the UAE have closed registries. This distinction certainly has an impact on the flag States’ respective registration administrative requirements, and the amount of ships under a flag State. Indeed, Malta currently has the biggest share of registered ships in terms of number of flags and tonnage and is also the EU’s largest shipping register.<sup>42</sup> India and the UAE, however, both have closed registries and have more administrative requirements in place and which require to be met before flag coverage is awarded.

39 Ibid.

40 Ibid.

41 Ibid.

42 Malta Chamber, ‘Malta’s Shipping Register Remains Largest In The EU’ (Malta Chamber, 27 Sept 2017) <<https://www.maltachamber.org.mt/en/malta-s-shipping-register-remains-largest-in-the-eu>> accessed 1 July 2020

# 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

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

#### Additionally considered

- International Convention for the Protection of All Persons from Enforced Disappearance ('ICPPED'), 6 February 2007

#### Law of the Sea and IMO Treaties

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

# Flag States & Human Rights

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

## Labour Treaties

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

## Domestic and European Human Rights Law

- Constitution of Malta, 21 September 1964
- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) ('ECHR'), 3 September 1953
- European Convention Act, 19 August 1987
- India Merchant Shipping Act, 15 December 1958
- India Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017
- Malta Merchant Shipping Act, 6 April 1973
- Malta Maritime Authority Act, 2 August 1991
- UAE Federal Maritime Law, 1981



# Flag States & Human Rights

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



## MALTA

Despite being the 10th smallest nation in the world in terms of land mass, Malta is the 6th largest flag State in the world and is the largest EU flag State.<sup>43</sup> In light of this, Malta's human rights obligations are all the more important. In general, Malta has ratified a large number of international treaties and has adopted domestic human rights laws. However, there remain legislative gaps as a result of non-ratification of some specific treaties, and as such there is always more that can be done to better protect human rights.

### 1.1 Human Rights Law Treaties

Of the nine UN treaties, Malta has ratified all but one; the ICMW.<sup>44</sup> This is significant because migrant workers form a growing proportion of the Maltese workforce,<sup>45</sup> and without legislative protection they are vulnerable to human rights abuses. A 2018 report found that migrant workers sometimes worked in conditions which fell below the Maltese government's minimum expected standards.<sup>46</sup> Malta has also failed to ratify the Optional Protocol to the ICESCR,<sup>47</sup> under which victims of abuses of the ICESCR can have their complaints reviewed by the UN Committee on Economic, Social and Cultural Rights.<sup>48</sup> Despite failing to ratify the Treaty or the Optional Protocol, Malta remains committed to protecting the rights of migrant workers through the termination of their automatic migrant detention policy<sup>49</sup> and participation in the EU refugee relocation programme.<sup>50</sup> In general, Malta does recognise human rights but, as noted by the Commissioner for Human Rights for the Council of Europe, "further ameliorations are required."<sup>51</sup> These could include the ratification of certain treaties, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which could provide greater human rights protections for Malta's growing number of migrant seafarers.<sup>52</sup>



- 43 Lloyd's List Maritime Intelligence 'Top 10 Flag States of 2018' <<https://lloydslist.maritimeintelligence.informa.com/LL1125024/Top-10-flag-states-2018>> accessed 9 January 2020
- 44 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990
- 45 Malta 2018 Human Rights Report (United States Department of State), 17 <<https://www.state.gov/wp-content/uploads/2019/03/MALTA-2018-HUMAN-RIGHTS-REPORT.pdf>> accessed 22 December 2019
- 46 Ibid.
- 47 Ratification of 18 International Human Rights Treaties' (UN Human Rights Officer of the High Commissioner) <<http://indicators.ohchr.org/>> accessed 9 January 2020
- 48 Article 2, Optional Protocol to the International Convention on Economic, Social and Cultural Rights 2008
- 49 Maltese Office of Home Affairs and National Security, Strategy for the Reception of Asylum Seekers and Irregular Migrants (9 November 2015)
- 50 European Solidarity: A Refugee Relocation System (European Commission 2015) <[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2\\_eu\\_solidarity\\_a\\_refugee\\_relocation\\_system\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_en.pdf)> accessed 11 January 2020.
- 51 Letter from Commissioner for Human Rights to Minister for Home Affairs and National Security of Malta (dated 14/12/2017) <<https://rm.coe.int/letter-to-mr-michael-farrugia-minister-for-home-affairs-and-national-s/168077ff9e>> accessed 2 January 2020
- 52 International Convention on the Protection of All Migrant Workers and Members of their Families 1990

# Flag States & Human Rights

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



## 1.2 Labour Treaties

Malta has been a member of the ILO since 1965<sup>53</sup> and has ratified all the ILO Treaties, except for the Work in Fishing Convention, No. 188. However, it should be noted that the Work in Fishing Convention has not yet been widely ratified; as of 2020, only 17 states had ratified the Convention.<sup>54</sup> It is also of little practical significance, because the Maltese fishing industry has a negligible economic contribution to the Maltese economy and is already regulated by domestic law.<sup>55</sup>

## 1.3 Domestic and European Human Rights Law

Protection of fundamental human rights is guaranteed by the Maltese Constitution<sup>56</sup> and the ECHR, which was ratified in 1967 and incorporated into domestic law by enactment of the European Convention Act.<sup>57</sup> Malta also incorporated the International Labour Convention Rules into their domestic legislation through the Merchant Shipping Act.<sup>58</sup> In an effort to improve the domestic protection of human and labour rights, the Maltese government created the Malta Maritime Authority ('MMA') in 1991,<sup>59</sup> whose mandate was the administration of Malta's Registry of Shipping and Seamen.<sup>60</sup> The MMA has subsequently been incorporated into Transport Malta, the government department responsible for regulating transport across Malta, but it remains responsible for upholding standards of human rights on board Maltese-flagged vessels.

Furthermore, as a contracting party of the Council of Europe, Malta must maintain human rights standards in accordance with the European Court of Human Rights' ('ECtHR') jurisprudence. Inherent in this is Malta's responsibility to uphold the European Convention on Human Rights<sup>61</sup> upon its flagged vessels, as enshrined in *Medvedyev v France*.<sup>62</sup> Malta's compliance with the jurisprudence of the ECtHR is especially important with regards to the ongoing migrant crisis, as Malta continues to experience an exponential increase in migrant vessels arriving on its shores.<sup>63</sup>

53 International Labour Organisation 'Country Profiles: Malta' <[https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110\\_COUNTRY\\_ID:103111](https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:103111)> accessed 23 December 2019

54 International Labour Organisation '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 22 January 2020

55 Food and Agricultural Organisation of the United Nations 'Fishery and Aquaculture Country Profiles: Malta' <<http://www.fao.org/fishery/facp/MLT/en>> accessed 15 January 2020

56 Articles 32-45, Chapter IV of the Constitution of Malta 1964

57 European Convention Act 1987 (Chapter 319 of the Laws of Malta)

58 Merchant Shipping Act 1973 (Chapter 324 of the Laws of Malta)

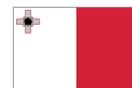
59 Section 3, Part 1 of the Malta Maritime Authority Act 1991 (Chapter 352 of the Laws of Malta)

60 *Ibid.*, Section 6

61 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1953

62 *Medvedyev v. France* App No 3394/03 (29 March 2010)

63 Denise Grech, 'Sea arrivals of migrants Shoots up by 1,000 in just one year' (Times of Malta, 2 May 2019) <<https://timesofmalta.com/articles/view/sea-arrivals-of-migrant-skyrocket-by-over-1000-in-just-one-year.708897>> accessed 23 June 2020



## Vessels Carrying Migrants

In *Hirsi Jamaa v. Italy*<sup>64</sup> the ECHR placed an increased obligation on States and their agents to exercise caution when intercepting vessels carrying migrants, since a collective expulsion could result in a breach of the ECHR, specifically Articles 3 and 4.<sup>65</sup> This principle was then further strengthened in *Sharifi and Others v. Italy and Greece*,<sup>66</sup> wherein migrants aboard another intercepted vessel were collectively expelled, resulting in a breach of Articles 3 and 4 of the ECHR.

### 1.4 Other International Law Treaties

Malta has ratified all of the essential international maritime treaties, in addition to the domestic protections outlined above. As part of its broad ratification of international maritime treaties, Malta is committed to tackling the growing migrant crisis. This commitment consists of Malta's ratification of the International Convention on Maritime Search and Rescue,<sup>67</sup> which places an obligation on Malta's Naval Forces to rescue any individuals in distress at sea.<sup>68</sup> Malta, in addition to the ratification of the UNCLOS,<sup>69</sup> has acceded to the SOLAS,<sup>70</sup> which strengthens the Maltese Naval Force's obligation to protect the safety of those in distress at sea. Malta's exemplary record of ratification of international law treaties is indicative of the importance of the Maltese shipping industry and their desire to ensure adequate protections are available on vessels flying their flag in line with Malta's duty under Art. 94 UNCLOS<sup>71</sup> to effectively exercise its jurisdiction and control over its flagged vessels.

### 1.5 European Union Treaties

Malta's fishing industry is primarily regulated by the EU's General Fisheries Commission for the Mediterranean.<sup>72</sup> Moreover, Malta's fishing industry is further regulated through its obligations under the EU's Illegal Unreported and Unregulated Fishing Regulation,<sup>73</sup> Control Regulation<sup>74</sup> and the Fishing Authorisation Regulation,<sup>75</sup> all of which regulate the behaviour of fishing vessels, not only in EU waters, but also in third-party waters.

64 *Hirsi Jamaa v. Italy* App No 27765/09 (23 February 2012)

65 Articles 3 and 4, *European Solidarity: A Refugee Relocation System* (European Commission 2015) (n 47)

66 *Sharifi and Others v. Italy and Greece* App No 16643/09 (21 October 2014)

67 International Convention on Maritime Search and Rescue (27 April 1979)

68 *Ibid.*, Chapter 2, Section 2.1.1

69 United Nations Convention on the Law of the Sea 1982

70 International Convention for the Safety of Life at Sea (as amended) 1974

71 Article 94, International Convention on the Protection of All Migrant Workers and Members of their Families 1990

72 European Fisheries Control Agency, General Fisheries Commission for the Mediterranean <<https://www.efca.europa.eu/en/content/gfcm>> accessed 18 January 2020

73 Council Regulation (EC) 'IUU Regulations' No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (29 September 2008)

74 Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (20 November 2009)

75 Council Regulation (EC) No 1006/2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters (29 September 2008)

# Flag States & Human Rights



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

## INDIA

### 1.1 Human Rights Law Treaties

Of the nine UN treaties, India has only ratified six of them; the ICCPR, CEDAW, ICERD, ICESCR, CRC (and its two optional protocols extending the CRC) and the CRPD.<sup>76</sup> It is yet to ratify the CAT or the ICMW.<sup>77</sup> In regard to the CAT, they have only provided signatures; while this indicates a general acceptance of its provisions, it has not yet ratified these treaties and therefore cannot be regarded as having consented to be legally bound by them.<sup>78</sup> This is significant, as without legislative protection migrant workers are vulnerable to human rights abuses. Moreover, notably, India have refused to accept individual complaints procedures under the treaties they have ratified.<sup>79</sup> This indicates potential discrepancies between the ratification and actual application of the treaties<sup>80</sup> and brings into question India's commitment towards protecting and promoting human rights.

### 1.2 Labour Treaties and International Law Treaties

India has ratified the UNCLOS. Furthermore, India collaborates with the UN specialised agency of the IMO which implements measures covering all areas of international shipping, including "ship design, construction, equipment, manning, operation and disposal".<sup>81</sup> Despite India's positive involvement with the UN, neither UNCLOS nor IMO specifically relate to human rights at sea and therefore, in relation to this study, this does not demonstrate that India is taking the necessary steps towards improving its legislative framework with regards to human rights at sea by incorporating internationally recognised human rights into its laws.

India also ratified the MLC, an international agreement of the ILO establishing seafarers' rights to decent conditions of work. It focuses on five main areas: minimum requirements for seafarers to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security and compliance and enforcement.<sup>82</sup> While this Convention provides a certain degree of protection for seafarers in relation to their labour rights, it is not broad enough nor adequate to specifically address other human rights issues at sea such as slavery, human trafficking and the physical abuse of seafarers.

In 2019, the Indian National Human Rights Commission ('NHRC'), a public body with the function of protecting and promoting human rights in India, met with representatives from the Indian Maritime Industry to discuss human rights abuses in relation to seafarers. The NHRC noted that there was a "lack of local and international mechanisms to address these increasingly common situations".<sup>83</sup> Furthermore, a report on the human rights of seafarers by a Mumbai based think tank, Forum for Integrated National Security ('FINS') recognised that, "despite India being one of the founding flag states of the IMO and despite the rapid rise in human rights abuses of seafarers, there remains a failure to analyse and address these concerns across the Indian maritime supply chain."<sup>84</sup>

76 UN Treaty Body Database <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN)> accessed 8 July 2020; and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990

77 Ibid.

78 Ibid.

79 Ibid.

80 Ibid.

81 'Introduction to IMO' (International Maritime Organisation) <<http://www.imo.org/en/About/Pages/Default.aspx>> accessed 10 July 2020

82 Maritime Labour Convention 2006

83 S. Nadkarni, 'National Human Rights Commission Discusses Seafarer Rights - IHS Markit Safety At Sea' (Safetyatsea.net, 2019) <<https://safetyatsea.net/news/2019/national-human-rights-commission-discusses-seafarer-rights/>> accessed 4 September 2020

84 Ibid.

# Flag States & Human Rights



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

## 1.3 Domestic Law

Before independence, the maritime laws in India were governed by the British government. The Coasting Vessels Act, 1838, Inland Steam Vessels Act, 1917, Admiralty Offences (Colonial) Act, 1849, Indian Registration of Ships Act, 1841, Indian Ports Act, 1908, Control of Shipping Act, 1947, are some of the regulations which dealt with various aspects of the maritime in India.<sup>85</sup>

The Indian Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 was enacted to consolidate the laws relating to admiralty. The Indian Admiralty Act repealed all the outdated provisions relating to admiralty. As per Section 3 of the Act, the jurisdiction concerning admiralty matters shall be vested in the respective High Courts, and the courts shall exercise their authority within the territorial waters of their jurisdiction.<sup>86</sup>

The Indian maritime laws are provided under Section 4 of the Admiralty Act 2017. Section 4 of the Act states: "The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any... loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel."<sup>87</sup> Section 5 of the Admiralty Act relates to the arrest of a vessel in rem. Under this section, the High Court may order for the arrest of any vessel within its jurisdiction.<sup>88</sup> While these sections on the surface do not appear to represent substantive legislative action concerning the violation of human rights in Indian waters, it could be used to protect the right to life at sea.

India does provide for certain labour rights under its national framework. The most major labour Acts being; The Minimum Wages Act 1948, The Payment of Wages Act 1936, The Trade Unions Act 1926, The Industrial Disputes Act 1947, The Factories Act 1948.<sup>89</sup> These Acts deal with issues ranging from the health and safety of workers to their wages and remuneration; however, despite this, it is noted that, the "violation of labour rights is widespread in practice. Low awareness of rights, corruption, under-staffed regulatory bodies, unreliable or unsophisticated trade union leadership, and adjudicatory delays make the realisation of labour rights only a dream in many instances."<sup>90</sup>

85 STA Law Firm, 'India: Ship Arrests And Indian Maritime Law' (STA Law Firm 24 June 2019) <<https://www.mondaq.com/india/Transport/817974/Ship-Arrests-And-Indian-Maritime-Law>> accessed 26 January 2020

86 India Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017

87 Ibid., Section 4

88 Ibid., Section 5

89 'Labour Laws and Constitution of India' (toppr) <<https://www.toppr.com/guides/legal-aptitude/labour-laws/labour-laws-and-constitution-of-india/>> accessed 4 September 2020

90 S. Deva, *Background Paper for India's National Framework on Business and Human Rights* (Ethical Trading Initiative) <<https://www.ethicaltrade.org/resources/india-national-framework-business-and-human-rights-background-paper>> accessed 4 September 2020

# Flag States & Human Rights

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



## UAE

### 1.1 Human Rights Law Treaties

Despite being elected to the UN Human Rights Council for three-year terms in both 2013 and 2015,<sup>91</sup> the UAE have only ratified six of the UN human rights treaties.<sup>92</sup> The UAE have ratified the CAT, CEDAW, the ICERD, CRC (and an optional protocol extending the CRC) and the CRPD.<sup>93</sup> In addition, the UAE have refused to accept individual complaint procedures under treaties they have ratified, which indicates potential discrepancies between the ratification and actual application of the treaties.<sup>94</sup>

### Violations of CEDAW

This is supported by the findings of the Human Rights Watch in 2018, which details a “sustained assault” by the UAE on freedom of expression and women’s rights<sup>95</sup> in contradiction with their obligations under the CEDAW.

### 1.2 Labour Treaties and International Law Treaties

Based on information provided by the International Chamber of Shipping (‘ICS’) Industry Flag State Performance Table 2018/19, which compiles publicly available data regarding the performance of flag States in terms of Port State Control records, IMO meeting attendance and ratification of international conventions, the UAE have ratified all of the above mentioned international legal conventions (including UNCLOS and SOLAS) with the exception of the MLC.

This is significant as, although there are provisions within UAE domestic law to protect seafarers, without the treaty itself being ratified there is room for deviation, as will be demonstrated by analysis of the domestic legal provisions. One of the most important elements of the MLC in reference to the seafarers is an amendment made in 2017 which determined that seafarers who have been abandoned and unpaid for two months can claim their wages through mandatory insurance.<sup>96</sup>

Although the UAE have introduced similar provisions through domestic law, it is arguably not to the extent that is dictated by the MLC. The UAE’s reluctance to ratify the MLC may be explained by the insistence of the MLC to establish union rights for workers. Studies have shown that 89% of the labour force in the UAE are migrant workers,<sup>97</sup> and there are multiple examples of the UAE being reluctant to extend the rights afforded by the MLC to their labour force. This is supported by the refusal of the UAE to ratify the ICMW, which leaves migrant workers vulnerable to human rights abuses.

91 ‘UAE elected to UN Human Rights Council’, *The National Staff*, November 2013, <<https://www.thenational.ae/uae/uae-elected-to-un-human-rights-council-1.360548>> accessed 8 July 2020; and ‘UAE wins human rights council seat for second three year term’, *Permanent Mission of the United Arab Emirates to the United Nations*, October 2015 <<https://www.un.int/uae/news/uae-wins-human-rights-council-seat-second-three-year-term>> accessed 8 July 2020

92 UN Treaty Body Database <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=184&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=184&Lang=en)> accessed 8 July 2020

93 Ibid.

94 Ibid.

95 ‘United Arab Emirates: Events of 2018’, *Human Rights Watch*

96 K. McVeigh, ‘Seafarer abandoned for three years of the UAE will be home in time for Christmas’, (*The Guardian*, January 2019) <<https://www.theguardian.com/global-development/2019/dec/20/seafarer-abandoned-for-three-years-off-uae-will-be-home-in-time-for-christmas>> accessed 10 January 2020

97 ‘United Arab Emirates: Events of 2018’, *Human Rights Watch*

# Flag States & Human Rights



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

## Labour Rights Bill

Although in 2017 the President signed a Bill which guarantees labour rights for domestic workers for the first time, this doesn't prevent employers discriminating the wages of migrant workers by nationality.<sup>98</sup>

It should also be noted that, despite not having ratified the MLC, the UAE does have generally positive markers on the ICS Shipping Industry Flag State Performance Table 2018/19.<sup>99</sup> The ICS data indicates that although UAE vessels did not meet the set requirement of inspections set by two of the Port State Control ('PSC') authorities to be included on their White lists, UAE ships suffered no port State detentions within the particular PSC regions,<sup>100</sup> which means that UAE flag ships which have been subject to port state control have been found to comply with labour and environment standards.

### 1.3 Domestic Law

Although the UAE have not ratified the MLC, the national laws in place in the UAE do offer some protection for seafarers,<sup>101</sup> many of which are in line with obligations they would have under the MLC. For example, Article 172 of the UAE's Federal Maritime Law 1981 states that "it shall not be permissible for basic hours of work to exceed eight hours per day". This requirement is in line with the guidance of the MLC in Regulation 2.3. Similarly, Article 186 of the Federal Maritime Law states that "During the course of the voyage the operator must provide food and accommodation on board the vessel for the crew, free of charge", which is also in line with MLC Regulation 3.1.

The Federal Maritime Law also includes other protections, such as preventing a ship operator from withholding wages from crew members<sup>102</sup> and ensuring that crew members are entitled to compensation as well as their wages when a ship is abandoned.<sup>103</sup> This indicates that there has been an effort made by the flag State to comply with human rights obligations at the domestic level. This is supported by the fact that UAE authorities have "already bolstered existing shipping regulations" by taking the step to ensure that "shipping operators have insurance to cover crew salaries for up to four months" which is in the same vein as the 2017 amendment to the MLC mentioned above.<sup>104</sup>

In spite of this, it has been noted by organisations, such as the media platform Safety4Sea and Human Rights at Sea, that although the domestic legislation addresses similar issues to those outlined by the MLC, the "particular standards adopted are not identical", which indicates perhaps that protections for seafarers under the current domestic law of the UAE are not comprehensive enough.<sup>105</sup> This indicates that there could be more explicit protection for the seafarers going further than the current domestic provisions.

98 Ibid.

99 'ICS: Flag State Performance Table' (Ics-shipping.org, 2020) <<https://www.ics-shipping.org/free-resources/flag-state-performance-table>> accessed 19 July 2020; and see also <<https://practiceguides.chambers.com/practice-guides/shipping-2020/uae>> for other maritime treaties that have been ratified by the UAE

100 Ibid.

101 Human Rights at Sea, 'Independent Briefing Note on UAE Government Legal and Policy Position Supporting Maritime Protections for Seafarers', (July 2019), 2; and The Maritime Executive, 'Independent Review of UAE Protections for Seafarers Released' (December 2019) <<https://www.maritime-executive.com/article/independent-review-of-uae-protections-for-seafarers-released>> accessed 29 March 2020

102 Safety4Sea, 'UAE new maritime law to protect seafarers' abandonment and allow foreign ownership' (July 2019) <<https://safety4sea.com/uae-new-maritime-law-to-protect-seafarers-abandonment-and-allow-foreign-ownership/>> accessed 10 January 2020

103 Ibid.

104 Ibid.

105 Human Rights at Sea (n 101), [2.4]

# Flag States & Human Rights



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

## Food and Accommodation Aboard Vessels

For example, Article 186 of the Federal Maritime Law 1981 states that the ship operator “must provide food and accommodation on board the vessel for the crew, free of charge”. In terms of accommodation, this is in line with Regulation 3.1 MLC 2006, however the MLC does go further and states in s.1(a) of Regulation 3.1 that accommodation should be “safe decent and in accordance with the relevant provisions of this standard”.

This is supported by criticism of the current law by campaigners for seafarer protection. One of the main criticisms of the national law is the fact that there is no legal mechanism which allows seafarers ease of access to legal remedies because they have “difficulty finding and communicating with the relevant authority in a timely manner”.<sup>106</sup> Jan Engel de Boer has stated that cases of abandonment in UAE territory take advantage of the fact that crew members only have a right to wages paid through the sale of a vessel if they do not leave the ship.<sup>107</sup> This suggests that although provisions for the protections of seafarers are present in the national law, they are almost inaccessible to those who need them, as the abandoned seafarers struggle to communicate with anyone who can enforce their rights on their behalf due to a lack of resources and inability to leave their ship without forfeiting their rights.

However, it is notable that a proposed new maritime law is about to be introduced by the UAE government which will amend the Federal Maritime Law, and which the Chairman of the UAE Federal Transport Authority (‘FTA’) has stated will “completely overhaul the 1981 law”.<sup>108</sup> Although not yet implemented, the law aims to:<sup>109</sup>

- i. protect abandoned seafarers;
- ii. effectively deal with ‘ghost ships’ in UAE waters;
- iii. allow 100% ownership to non-UAE nationals of vessels registered in the UAE;
- iv. extend the State’s authority to fight drug and human trafficking occurring in foreign vessels within UAE territorial waters;
- v. widen the range of marine debts acceptable to arrest a vessel; and
- vi. establish a new dispute mechanism to alleviate pressure on the courts.

Although the aims of the new law are promising, until it is implemented it is difficult to predict the effect it will have, if any, on cases of human rights abuses on UAE-flagged vessels.

<sup>106</sup> Ibid., 2; and The Maritime Executive (n 101)

<sup>107</sup> Business-HumanRights.org, ‘UAE: Case of abandoned ship, Azraqmoiah, comes to close after crew repatriated after two years’, (June 2019) <[https://www.business-humanrights.org/en/uae-case-of-abandoned-ship-azraqmoiah-comes-to-close-after-crew-repatriated-after-two-years-0?text\\_only=true](https://www.business-humanrights.org/en/uae-case-of-abandoned-ship-azraqmoiah-comes-to-close-after-crew-repatriated-after-two-years-0?text_only=true)> accessed February 2020

<sup>108</sup> Safety4Sea (n 102)

<sup>109</sup> O. N. Omar, ‘New Maritime Law’, *Al Tamimi and Co.* <<https://www.tamimi.com/law-update-articles/new-maritime-law/>> accessed January 2020

# Flag States & Human Rights

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

## CONCLUSIONS

In comparison to Malta and India, the UAE's non-ratification of the MLC, as well as the core UN human rights conventions, represents a challenging gap in the widest protection of human rights at sea. Malta and India are not beyond reproach either, as both have certain shortcomings with regard to the national investigation and enforcement of human rights standards at sea.

Malta, for instance, should be highlighted for the ratification of international treaties and human rights compliance, but it does seemingly appear to devalue the interests of migrant seafarers by failing to ratify the ICMW and Work in Fishing Conventions. While the latter may be considered of little practical significance as Malta has domestic regulations in place for this anyway, complying with these treaty commitments would be a welcome denouncement of far-right and anti-immigration populism spreading across Europe.

India also has ratified a broad range of conventions, but like Malta, has failed to ratify the ICMW. However, it has refused the effect of treaty complaints procedures. This renders the actual application of the human rights treaties questionable. It is clear, therefore, that while the UAE has a more noticeable human rights gap and should aim to ratify outstanding treaties, Malta and India still have room for state-level improvement.





## 6. NATIONAL POLICIES

### INTRODUCTION

The national policies outlined below detail the provisions that each flag State employs for training and effectively raising awareness of human rights at sea, as well as the existence of compensation or psychological support mechanisms for victims of any human rights violations. Establishing such policies showcases the willingness of the authorities of the three flag States in the implementation of human rights aboard their vessels and their general commitment to ensuring adequate human rights protection at sea.

### MALTA

#### 1.1 Training and Raising Awareness

The Merchant Shipping (Maritime Labour Convention) Rules 2013,<sup>110</sup> as well as the Merchant Shipping (Training and Certification) Regulations 2001<sup>111</sup> incorporate the training and certification requirements into national law. These regulations, by design, aim to achieve high safety standards on board vessels under the Maltese Flags.<sup>112</sup> STCW's preamble demonstrates that the training is designed to promote safety of life and property at sea.<sup>113</sup>

The training which must be carried out does not appear to contain any specific training at any level of shipping company as to the rights that can be expected from those on board the ship.<sup>114</sup> Within the employment legislation for seafarers in Malta (incorporated into the Merchant Shipping Act derived from the seafarers' working and social conditions in the ILO), there is various information which must be provided to the seafarer upon the commencement of the employment contract.<sup>115</sup> Some of this information pertains to the rights that the seafarer can expect with regard to working conditions.<sup>116</sup> While this is not official training, it shows an effort on the part of the Maltese authorities to uphold satisfactory conditions for workers on board their vessels.

The above demonstrates a willingness on the part of the Maltese authorities to increase the awareness of human rights of the crew on board the vessel. While there is training in place, Malta could look to ensure that senior officers on the vessel have received some form of human rights awareness training. This would inevitably be filtered down to the rest of the crew.

#### 1,2 Compensation and Psychological Support

While there is a complaint mechanism in place for seafarers, there does not appear to be any system in place whereby individuals can receive compensation or psychological support as victims of human rights abuses.<sup>117</sup> To rectify this, Maltese authorities may wish to encompass information on support which seafarers may be entitled to alongside the information provided to them upon the commencement of their employment.

110 [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=94496](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94496)

111 [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=86803](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=86803)

112 Malta Merchant Shipping (Training and Certification) Regulations 2001

113 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978

114 Ibid.; see also Maritime Labour Convention 2006

115 International Labour Organisation 'Country Profiles: Malta' (n 53)

116 Ibid.

117 Ibid.

# Flag States & Human Rights

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



## INDIA

To date, India has no robust or focused legislation that specifically addresses the concept of human rights at sea. Nevertheless, it has, to a degree, engaged in discussions with the NGO Human Rights at Sea, and has ratified several UN human rights treaties but has yet to demonstrate substantial progress to improve their legislation concerning human rights at sea.<sup>118</sup>

### 1.1 Raising Awareness

There has been positive engagement by the Indian government with Human Rights at Sea where the inaugural national-level seminar on the issue was held on 28 February 2019. In March 2019, the FINS think tank hosted the NGO.<sup>119</sup> India's Director General of Shipping, Shri Amitabh Kumar, made a statement that recognised the increasing "instances of the exploitation of their human rights" at sea and that "Indian seafarers have been the largest group to suffer".<sup>120</sup> Further, a commitment was implied by the Director General that hopefully, human rights at sea for India will be strengthened in future.

Such statements confirm that currently no dedicated human rights regime to protect the rights of seafarers exists in India, and there is limited cooperation between India and existing human rights bodies. However, the above demonstrates a willingness on the part of the Indian authorities to increase the awareness of human rights at sea. This is a step in the right direction and has significance, since it was "the first time that a State has recognised and been engaged in the emerging 'Human Rights at Sea' concept and surrounding debate established by the charity of the same name".<sup>121</sup>

There was also further engagement between India and Human Rights at Sea in 2019 leading to the production of several reports. Times of India Mumbai stated that 25 ships off the Mumbai coast posed significant danger with one, the MT Tag Navya, being abandoned and unmanned within port limits.<sup>122</sup> One report detailed discussions over the topic of 'Human Rights at Sea of Indian Seafarers',<sup>123</sup> which involved NHRC Delhi members, officials from the Ministry of Shipping and Ministry of External Affairs, delegates from FINS, and civil society representatives. The report focused more specifically on examples of abuses towards Indian seafarers as opposed to abuses in Indian waters. It included statistics on the number of Indian stranded seafarers in specific locations. The report endeavoured to find out more information on unreported cases of illegal detention and imprisonment of Indian seafarers in foreign waters. Another report confirmed that there had been a series of regional state-level outreach engagements between Human Rights at Sea and the Indian National Human Rights Commission. The charity was invited by the Commission to engage in discussions on the future of human rights protections within the Indian sub-continent, across the Indian regional maritime and business-related space.<sup>124</sup>

118 S. Galani 'The "New" Human Rights at Sea Debate', (The Maritime Executive, 2 December 2018) <<https://www.maritime-executive.com/editorials/the-new-human-rights-at-sea-debate>> accessed 26 January 2020

119 Human Rights at Sea, 'Indian Government engages in Human Rights at Sea debate' (Human Rights at Sea, 1 March 2019), <<https://www.humanrightsatsea.org/2019/03/01/indian-government-engages-in-human-rights-at-sea-debate/>> accessed 27 January 2020

120 Ibid.

121 Ibid.

122 S. Deshpande, 'Plea to shift 25 ships that pose danger off Mumbai coast', (Times of India) <<https://timesofindia.indiatimes.com/city/mumbai/plea-to-shift-25-ships-that-pose-danger-off-mumbai-coast/articleshow/70082817.cms>> accessed 31 January 2020

123 Human Rights at Sea, 'India Driving National Human Rights at Sea Agenda' (Human Rights at Sea, 15 July 2019) <<https://www.humanrightsatsea.org/2019/07/15/india-driving-national-human-rights-at-sea-agenda/>> accessed 27 January 2020

124 'Indian National Human Rights Commission engages with Human Rights at Sea' (Human Rights at Sea, 18 Oct 2019) <<https://www.humanrightsatsea.org/2019/10/18/indian-national-human-rights-commission-engages-with-human-rights-at-sea/>> accessed 27 January 2020

# Flag States & Human Rights



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

## 1.2 Training, Compensation and Psychological Support

There does not appear to be any official system in place whereby human rights training is obligatory, a process where individuals can receive compensation, or the provision of dedicated state-level sponsored psychological support for victims of rights abuses. Such provisions are invariably left to civil society, welfare or NGOs to provide. To rectify this, Indian government authorities may wish to encompass information on support which seafarers may be entitled to alongside the information provided to them when they are employed as part of a vessel's crew.





## UAE

As the UAE has not ratified the MLC, the enforcement of labour standards at sea is governed by domestic legislation under the UAE Federal Maritime Law 1981, and the Federal Law No 9 of 1980 concerning the Regulation of Labour Services. In 2018/2019, the International Chamber of Shipping noted positive performance indicators when assessing the effective enforcement of these rules, including the provision of decent working and living conditions for seafarers.<sup>125</sup>

### 1.1 Compensation

Regulation 2.1 of the MLC requires clear, written and enforceable contracts of employment. The Regulation of Labour Services applies to seafarers' contracts subject to maritime law, which provides that a contract shall be in writing.<sup>126</sup> In terms of payment, maritime law provides that wages be paid at the time and place specified in the contract or in accordance with maritime custom. The labour law provides that wage payments shall be made at least on a monthly basis.<sup>127</sup>

Unlike in Regulation 2.2 of the MLC, there is no provision in domestic law in relation to the transmission of the seafarer's earning to family and dependants. Maritime law provides that the ship owner must provide free treatment for seafarers if they sustain any injury or illness while in service of the ship, the affected seafarer shall also be entitled to his full wage during the voyage.<sup>128</sup> The seafarer shall be entitled to his full wage should he die after the commencement of the voyage and the ship owner must pay for the funeral costs if he dies in the service of the ship. Should the seafarer die as a result of defending the ship, cargo or passengers, his heirs shall be entitled to a sum equivalent to three months wages.<sup>129</sup>

### 1.2 Training, Raising Awareness and Psychological Support

There does not appear to be accessible information available in relation to state-level policies for training, raising awareness or psychological support for human rights protections and/or violations. There is a concern that there is little to no information as to national policies protecting the psychological well-being of seafarers and in relation to raising public awareness. While there are minimum requirements for the conditions of seafarers being met,<sup>130</sup> the lack of awareness hinders recourse and effective remedy for human rights violations. There are also apparent substantial gaps in information as to national policies supporting the training and welfare of seafarers. It will be interesting to see what protections, if any, the new maritime law might offer in regard to the welfare and well-being of seafarers.

125 'ICS: Flag State Performance Table' (n 99)

126 Article 170, UAE Federal Maritime Law 1981

127 Ibid., Article 56

128 Ibid., Articles 62, 164, 187(1), and 118(2)

129 Ibid., Articles 183, 189, and 194

130 'ICS: Flag State Performance Table' (n 99)

# Flag States & Human Rights

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

## CONCLUSIONS

There seem to be varying approaches taken in regard to training, raising awareness, compensation and psychological support by each flag State. With regards to training and raising awareness, this is important so as to ensure that those operating on the vessels flying their flag are adequately trained on the relevant human rights that apply at sea.

For example, while Malta does not employ any official training policies, they have showcased a commitment to raising awareness on human rights on board their vessels. However, there are a lack of any official compensation or psychological support mechanisms.

In regard to India, it is evident that no such national policies exist to provide the required levels of protection. That being said, key actors in the field have shown engagement with the issues of human rights violations at sea. Therefore, there is every indication that in the coming years India will endeavour to create legislation specifically concerned with tackling this specific issue.

The UAE has national policies in place for compensation, but there are a lack of policies relating to training, awareness raising and psychological support. Overall, there is a clear need for all three flag States to better improve their national policies. These need to be outlined clearly and official policies should be established and followed to ensure that crews on ships have a clear awareness of their rights on board ships, are adequately trained on this and given sufficient opportunities for compensation and support.



Shutterstock.com



## 7. MONITORING & REPORTING

### INTRODUCTION

Having established the human rights obligations and the national policies of flag States, this section will explore the procedures that are in place to monitor compliance with and enforcement of human rights on the vessels that fly the flags of Malta, India and the UAE. The Paris and Tokyo MoUs are of significant relevance in this respect, as they provide evidence of flag-State performance with regional standards in relation to the inspections and detentions. Under the Paris MoU, the performance of flag States is determined by the total number of inspections and detentions over a three-year period, which are determined by their compliance with regional standards on labour rights, environmental legislation and safety measures. 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 a record of poor performance with many of their vessels having been detained, while those classified as White are considered as high-compliance flags.

### MALTA

Malta is one of the largest and fastest growing flag States in the world.<sup>131</sup> It has clear national legislation in place in the Merchant Shipping Chapter of its Municipal Code.<sup>132</sup> While there is no direct reference to human rights within Chapter 234, it provides rights which can be expected of seafarers and an opportunity to report breaches of these rights.<sup>133</sup> The lack of reference to human rights within the municipal code could be indicative of a failure to fully understand the various abuses of human rights at sea.

#### 1.1 Paris Memorandum of Understanding (MoU)

As members of the Paris and Tokyo MoUs, which are multinational agreements between maritime administrations, Maltese vessels have been subject to inspections, allowing inspectors to report labour rights abuses aboard vessels.<sup>134</sup> Maltese monitoring policy predominantly relies upon seafarers reporting labour rights abuses on board vessels. Malta asserts that it has an open line of communication with seafarers and vessels which can be accessed through a dedicated email address or seafarer representatives. Maltese-flagged vessels were inspected 196 times by the relevant Paris MoU authorities, which is higher than their commitment of 152 inspections.<sup>135</sup> Furthermore, Malta is 20th on the MoU White List for 2018 and Malta exceeded the criteria for 'Low Risk Ships' in July 2019.<sup>136</sup> However, 38.3% of these inspections resulted in a finding of a 'deficiency' under the Paris MoU regulations.<sup>137</sup>

131 Lloyd's List Maritime Intelligence 'Top 10 Flag States of 2018' (n 43)

132 Merchant Shipping Act 1973 (Chapter 324 of the Laws of Malta)

133 Ibid, Article 155

134 Paris MoU on Port State Control, 'Annual Report 2018', 22 <<https://www.parismou.org/system/files/2018%20Annual%20Paris%20MoU.pdf>> last accessed 2 May 2020

135 Ibid.

136 Ibid., 27

137 Ibid., 24

# Flag States & Human Rights

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



## 1.2 Reporting Under National Legislation

The Maltese Municipal code contains a chapter of Merchant Shipping Law applicable to vessels registered under the flag of Malta.<sup>138</sup> While the legislation does not specifically refer to human rights, it does contain provisions which outline the rights of individuals on board vessels and a process whereby ship masters of Maltese vessels are duty bound to allow the complainant to discuss the complaint with an appropriate inspector or a consular officer of Malta.<sup>139</sup> This is according to the Merchant Shipping Act, Chapter 234, Maltese Municipal Code (155). Failure to comply with the legislation will result in a fine for the ship's master.<sup>140</sup> As well as asserting the right to report complaints on board a ship, the act also provides the ship's master with instructions to allow the complainant to go offshore and make the complaint.<sup>141</sup>

While not all human rights abuses manifest themselves in injury or death, if there are any reports made of casualties on board a vessel as per Part VII Merchant Shipping Article 312-317, an investigatory process shall be carried out. While not specifically referring to human rights, this legislation enables a ship's company to report complaints regarding circumstances of abuse on board the vessel.<sup>142</sup>

Furthermore, while there is an investigatory process relating to incidents which occur on vessels, these investigations do not apply to smaller incidents where breaches in human rights do not result in the injury or death of a seafarer.<sup>143</sup> While this legislation undoubtedly assists in the protection of rights on board vessels for seafarers, Maltese authorities could seek to incorporate the specific ability of seafarers to report human rights abuses while on the high seas into national legislation.

## 1.3 Reported Cases of Abuse Aboard Flagged Vessels

Concerns have been raised about the treatment of the Maltese Port Authority of non-Maltese flagged, migrant rescue vessels attempting to dock in Malta,<sup>144</sup> but there have been no serious, documented instances of human rights abuses on Maltese-flagged ships. On the other hand, Malta has faced significant criticism from the ECtHR for its migrant detention policy under Article 14(1) of the Immigration Act,<sup>145</sup> which mandated that immigrants should be served with removal orders and detained on land until their removal from Malta.<sup>146</sup>

### Detaining Migrants on Land

This was most notable in the cases of *Aden Ahmed v. Malta*<sup>147</sup> and *Suso Musa v. Malta*.<sup>148</sup> In *Aden Ahmed*, the ECtHR held that the conditions at the Ta' Kandja Detention Centre violated the applicants Art. 3 ECHR right against inhumane and degrading treatment. Similarly, in *Suso Musa*, the ECtHR held that the conditions in the detention centre where the applicant was held violated the applicant's Art. 5(1) right to liberty and security. However, as has been previously noted, Malta has since scrapped its controversial automatic detention policy.

138 Merchant Shipping Act 1973 (Chapter 324 of the Laws of Malta)

139 Ibid., Article 155

140 Ibid.

141 Ibid.

142 Ibid., Articles 312-317

143 Ibid.

144 G. Pianigiani, 'Malta Cracks Down on a Humanitarian Ship that Carried Migrants', (New York Times 2 July 2018) <<https://www.nytimes.com/2018/07/02/world/europe/malta-migrant-ships-crackdown.html>> last accessed 2 May 2020

145 Article 14(1), Immigration Act (Chapter 217 Laws of Malta) 1970

146 Ibid., Article 14(2)

147 *Aden Ahmed v. Malta* App No 55352/12 (23 July 2013)

148 *Suso Musa v. Malta* App No 42337/12 (9 December 2013)



## INDIA

### 1.1 Memorandum of Understanding

India is part of the Indian Ocean MoU.<sup>149</sup> The Indian Ocean MoU is a port state control organisation modelled on the Paris MoU and covers the region of the Indian Ocean. Its member states regularly conduct port inspections on vessels registered in a foreign country.<sup>150</sup> According to the report of the Indian Ocean MoU, out of the 18 inspections occurred on Indian vessel between the 1 January and 31 December 2019, only one vessel ended up in detention.<sup>151</sup> This result shows a modest improvement compared to the 2018 data with 19 inspections and two detentions in the Indian Ocean MoU region.<sup>152</sup>

India's performance as a flag State is also monitored by the Paris and Tokyo MoUs. Indian vessels underwent 59 inspections out of which five ships were detained according to the Paris MoU report between the period of 2017 and 2019.<sup>153</sup> The 2019 report of the Tokyo MoU shows 248 inspections and 14 detentions during the same two years.<sup>154</sup> Based on the number of inspections and that of ships detained, India has been listed as a Grey flag State by both MoUs, which indicates a "medium-compliance" for flag performance.<sup>155</sup> In 2018, India set the goal to become a White-listed flag State of both the Paris and Tokyo MoUs by 2019-2020.<sup>156</sup> This has not yet been achieved.

### 1.2 Reporting Under National Legislation

The Indian Directorate General of Shipping, under the Ministry of Shipping, is responsible for the "...implementation of shipping policy and legislation so as to ensure the safety of life and ships at sea."<sup>157</sup> However, there are only few actual methods available to monitor or report human rights violations.

Firstly, in terms of domestic legislation, sections 88-218A of the India Merchant Shipping Act on the employment, treatment, payment, litigation and conditions of work of seafarers working on Indian vessels lay down the standards to control and regulate maritime labour.<sup>158</sup> Although Section 132 stipulates that disputes with regards to agreement with the crew between "...the master, owner or agent of a ship and any of the crew of the ship, ... shall be submitted to the shipping master", according to section 11 of the Act, complaints can be submitted at ports.<sup>159</sup> Similarly, Section 184 states if a seaman wants to make a complaint then it can be done ashore.<sup>160</sup> This makes it significantly more difficult to report violations to official state institutions in a timely manner.

149 'Indian Ocean Memorandum of Understanding on Port State Control' <<http://www.iomou.nic.in/moumain.htm>> accessed 2 July 2020.

150 Ibid.; and see also Arquivo. 'Port State Control' (2009) <[https://arquivo.pt/wayback/20090707103852/http://www.imo.org/Safety/mainframe.asp?topic\\_id=159](https://arquivo.pt/wayback/20090707103852/http://www.imo.org/Safety/mainframe.asp?topic_id=159)> accessed 2 July 2020

151 Indian Ocean Memorandum of Understanding on Port State Control (n 137)

152 Directorate General of Shipping, India 'Annual Report on Port State Control and Flag State Implementation' (2018), 67 <[https://www.dgshipping.gov.in/WriteReadData/CMS/Documents/201908050523572458274Annual\\_Report\\_PSCFSI\\_2018\\_Revised2.pdf](https://www.dgshipping.gov.in/WriteReadData/CMS/Documents/201908050523572458274Annual_Report_PSCFSI_2018_Revised2.pdf)> accessed 27 March 2020

153 'Paris Memorandum of Understanding 'White, Grey and Black List', <<https://www.parismou.org/detentions-banning/white-grey-and-black-list>> accessed 18 July 2020

154 Port State Control Committee of the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MOU), 'Annual Report on Port State Control in the Asia-Pacific Region' (2019), 34 <<http://www.tokyo-mou.org/doc/ANN19-f.pdf>> accessed 30 June 2020

155 Ibid.; and see also Paris Memorandum of Understanding (n 152)

156 Directorate General of Shipping, India 'Annual Report on Port State Control and Flag State Implementation' (2018) (n 151), 5

157 Directorate General of Shipping, 'India: About Us', <<https://www.dgshipping.gov.in/Content/AboutusTop.aspx>> accessed 1 February 2020.

158 Sections 88-2018A, India Merchant Shipping Act 1958 <<http://legislative.gov.in/sites/default/files/A1958-44.pdf>> accessed 3 March 2020

159 Ibid., Sections 11 and 132

160 Ibid., Section 184

# Flag States & Human Rights



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

The Merchant Shipping (Maritime Labour) Rules 2016 incorporates the MLC regarding minimum requirements of ship working conditions, and flag State responsibilities.<sup>161</sup> Section 26 sets out the multi-step complaints procedure. At each stage, there is a prescribed time limit within which the issue can be resolved. Complaints are submitted first to the Head of Department of the seafarer, then to the Master of the Ship and finally to the owner. Only after these stages can the problem be reported to any competent authority.<sup>162</sup> This process, on the one hand, enables seafarers to report rights violations immediately on board. On the other hand, this procedure can delay the redress of even less serious rights violations and it is questionable how effective and immediate a solution would be in more serious cases.

Secondly, India maintains a blacklist of shipping companies and ships that have violated the relevant provisions "with regard to non-settlement of seafarers wages, taking remuneration for employment of seafarers, abandonment of owners, etc".<sup>163</sup> These are also blocked in the Directorate General's e-database.<sup>164</sup> Even though this is an effective way to raise awareness, no actual measures are in place to monitor, report and ultimately prevent violations.

Under UNCLOS and SOLAS, India investigates casualties on vessels flying its flag.<sup>165</sup> The main goal is to raise awareness and to implement effective measures to prevent future accidents and to make changes needed in present policies. In 2019, India published a report of brief case studies of maritime casualties that occurred on Indian vessels and/or on Indian waters. Major changes have been adopted in maritime training to provide Indian seafarers with better training modules as a result. Also, to be informed in time, a centre has been established to report any maritime casualties immediately.<sup>166</sup> The centre is available via mail, telephone and an online platform.<sup>167</sup>



161 Chapter II-VI of the Merchant Shipping (Maritime Labour) Rules 2016, <[https://www.dgshipping.gov.in/WriteReadData/userfiles/file/merchant\\_shipping\\_maritime\\_labour\\_rules2016.pdf](https://www.dgshipping.gov.in/WriteReadData/userfiles/file/merchant_shipping_maritime_labour_rules2016.pdf)> accessed 30 June 2020

162 Ibid., Section 26

163 Directorate General of Shipping, 'India: Blacklist', <[https://www.dgshipping.gov.in/WriteReadData/News/201906210403361603372Blacklist\\_Crew\\_190619.pdf](https://www.dgshipping.gov.in/WriteReadData/News/201906210403361603372Blacklist_Crew_190619.pdf)> accessed 10 February 2020

164 Ibid.

165 Directorate General of Shipping, 'India: Casualty Investigation', <<https://www.dgshipping.gov.in/Content/CasualtyInvestigation.aspx>> accessed 10 July 2020

166 Directorate General of Shipping, 'India: Report on Shipping Casualties 2014, 2015 & 2016' (2019), i and 1-3, <[https://www.dgshipping.gov.in/writereaddata/ShippingNotices/201907180516294513521CASULATY\\_REPORT\\_2014-16\\_NT.pdf](https://www.dgshipping.gov.in/writereaddata/ShippingNotices/201907180516294513521CASULATY_REPORT_2014-16_NT.pdf)> accessed 10 July 2020

167 DGCOMM Centre, 'Online Casualty Reporting', <<http://online-casualty-reporting.quolam.com/>> accessed 10 July 2020

# Flag States & Human Rights



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

## 1.3 Reported Cases of Abuse Aboard Flagged Vessels

In India, according to Shri Amitabh Kumar, Director General of Shipping, the most urgent human rights issue is the “non-payment of wages and abandonment of seafarers”.<sup>168</sup> The following three court cases available underpin his statement:

### The Omkara Prem

In the case of *Bhargavi Vandana Shankar v. State of Gujarat*, the dredger of the ship, Omkara Prem was forced to leave the Port of Porbandar on 14 June 2019, despite serious defects making it unseaworthy<sup>169</sup> and a notice of abandonment by the ship’s Captain on 11 June 2019. The Captain lodged a complaint with the Director General of Shipping saying the ship had no fuel, water and food and hadn’t been paid for over three months. The Captain’s wife was forced to move a habeas corpus petition in Gujarat high court alleging illegal confinement of her husband.<sup>170</sup> The crew were subsequently released, and the petition did not survive.

### The Malaviya Twenty

The ship, Malaviya Twenty was detained in the UK by the Maritime Coastguard Agency after its crew was found to not have been paid. They then placed a prohibition notice on the vessel due to defects.<sup>171</sup> It was reported the crew had to be fed by local people and grow vegetables on the deck<sup>172</sup>. The ship was eventually sold to a Greek company who paid an undisclosed fee thought to cover the crew’s wages.<sup>173</sup>

### The Tag Navaya

In *Arjun Singh Kalra v. Union of India*, the vessel, the Tag Navaya was anchored for months off the Nhaua Sheva International Container Terminal because of a financial dispute between the owners and a fuel supplier. The crew were denied requests to disembark and the government ignored further requests despite supplies running out by the 21 April 2019.<sup>174</sup> Eventually, the condition of the crew resulted in a petition to the court<sup>175</sup> after the ship had been arrested which permitted the crew to “disembark from the said vessel forthwith... without any demur”.<sup>176</sup> There has been no further reporting on this incident.

168 The Maritime Executive, ‘Indian Government Makes Human Rights at Sea Commitment’ (The Maritime Executive, 2019) <<https://www.maritime-executive.com/article/indian-government-makes-human-rights-at-sea-commitment>> accessed 7 February 2020

169 N. Khakhariya, ‘Ship declared unfit forced to sail out of Porbandar port’ (The Times of India, 16 June 2019), <<https://timesofindia.indiatimes.com/city/rajkot/ship-declared-unfit-forced-to-sail-out-of-porbandar-port/articleshow/69802542.cms>> accessed 20 June 2020

170 *Bhargavi Vandana Shankar v. State of Gujarat [2019] R/SPECIAL APPLICATION NO.6490 of 2019*

171 R. Tappenden, ‘Abandoned seafarers: Hungry, penniless and far from home’ (BBC, 21 Feb 2020) <<https://www.bbc.co.uk/news/uk-england-51008251>> accessed 20 June 2020

172 Marine Industry News, ‘Abandoned seafarers: hungry, penniless and far from home’ (*Marine Industry News*, 24 Feb 2020), <<https://marineindustrynews.co.uk/abandoned-seafarers-hungry-penniless-and-far-from-home/>> accessed 10 July 2020

173 Tappenden (n 70)

174 ‘Vessel Tracker: Tag Navya’ <<https://www.vesseltracker.com/en/Ships/Tag-Navya-8819081.html>> accessed 10 July 2020

175 *Arjun Singh Kalra and Ors v. Union of India And 10 Ors*, Writ Petition (LODG.) No. 1500 (15 May 2019)

176 *Ibid.*, [7]

# Flag States & Human Rights



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

## UAE

### 1.1 Memorandum of Understanding

The UAE is not a member of the main MoUs; Paris or Tokyo. Nevertheless, in 2018, the FTA and the International Transport Workers' Federation ('ITF') signed a Memorandum of Understanding to work together to protect seafarers' rights.<sup>177</sup> In 2019, the UAE Shipping Association became a full member of the ICS.<sup>178</sup> According to the 2019 ICS Flag State Performance Table, the UAE suffered no detentions, but did not meet the relevant minimum requirement of inspections to be included in the Paris or Tokyo MOU White Lists.<sup>179</sup> In order to be included on the White List, a flag State must have undergone at least one inspection in the previous three years.

### 1.2 Reporting Under National Legislation

Under the UAE Federal Maritime Law 1981, it is provided that the master of a ship shall keep a daily log recording any accidents,<sup>180</sup> and report on any unusual incidents.<sup>181</sup> Aside from this requirement, there does not seem to be adequate reporting mechanisms that are clearly available and in place concerning human rights abuses of seafarers.

There is minimal available direct access to effective remedies.<sup>182</sup> There is a heavy reliance on media reporting, for example in the context of seafarer abandonment, in which the issue was raised publicly "through civil society and maritime welfare organisations".<sup>183</sup> The concern then is that unless there are effective legal and judicial remedies in place that can be effectively accessed, practices such as seafarer abandonment and various other human rights abuses will go unchecked.

### 1.3 Reported Cases of Abuse Aboard Flagged Vessels

The shortcomings of UAE domestic provisions for the protection of seafarers is evidenced by data collected by the ILO Database on Reported Incidents of Abandonment of Seafarers, which indicates that there have been at least ten cases of seafarer abandonment in UAE waters.<sup>184</sup>

177 ITF Global, 'UAE Commits To Protecting Seafarers In Signing Of Historic Memorandum With The ITF' (Itfglobal.org, 2020) <<https://www.itfglobal.org/en/news/uae-commits-protecting-seafarers-signing-historic-memorandum-itf>> accessed 19 July 2020

178 'UAE Shipping Association Becomes A Full Member Of The International Chamber Of Shipping' (Ics-shipping.org, 2020) <<https://www.ics-shipping.org/news/press-releases/2019/09/24/uae-shipping-association-becomes-a-full-member-of-the-international-chamber-of-shipping>> accessed 19 July 2020

179 'ICS: Flag State Performance Table' (n 99)

180 Article 156, UAE Federal Maritime Law 1981

181 Ibid., Article 159

182 'World Report 2019: Rights Trends in United Arab Emirates' (Human Rights Watch, 2019) <<https://www.hrw.org/world-report/2019/country-chapters/united-arab-emirates>> accessed 1 May 2020.

183 Human Rights at Sea (n 101)

184 International Labour Organisation Database on Reported Incidents of Abandonment of Seafarers, <<https://www.ilo.org/dyn/seafarers/seafarersBrowse.list>> accessed February 2020

# Flag States & Human Rights



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

## Elite Way Marine Services

Examples include the case of Elite Way Marine Services, in which the crew of the MV Tamim Aldar were trapped on board the ship with no access to air conditioning, power, or regular food and water for 34 months, and hadn't been paid for 29 months.<sup>185</sup> In an article written by The Guardian, the crew stated that they were "depressed, helpless and afraid for their lives" but couldn't leave the ship because they faced arrest and a two-year prison sentence, and because 'the vessel represents their bargaining power for unpaid wages'.<sup>186</sup> Although Elite Way were eventually banned from operating in UAE waters, it is clear that there was no efficient legal mechanism to ensure a fast and safe solution to the problem. The ship MV Al Nader was also part of the Elite Way Marine Services case, in which AB Mayur Gawade and the rest of the crew was abandoned on a UAE flag ship vessel in UAE waters, and suffered 18 months without pay. He was only occasionally able to access the services he needed to communicate with his family and those who could help him access legal procedures, and it is notable that this support was voluntary, from other vessels and charities, and not state organised help.<sup>187</sup>

## The Doha IV

The database also details the case of the ship Doha IV, a UAE flag ship abandoned in 2015. The six-person crew on board ran out of water, food provisions and wages were unpaid for at least a month before the abandonment on the basis that the owner and bareboat charterer of the vessel were having a legal dispute over legal rights to the vessel. In 2016, the crew were repatriated without pay, and there has been no update on the official database since then to indicate whether they were able to recover the earnings they were owed.<sup>188</sup>

The charity Mission to Seafarers reported about 400 'ghost ships' anchored between Abu Dhabi and Ras al-Khaimah awaiting permission to come to port, and a further 150 ships waiting on the east coast.<sup>189</sup> The charity describes ghost ships as those with an "unseen workforce" sometimes with "hundreds" of crews.<sup>190</sup> The people on board these ships rely heavily on emergency aid provided by charities such as Mission to Seafarers, with their desperate situations usually caused when sub-standard shipowners run into difficulties in their operations, leaving the crew in desperate situations.<sup>191</sup> If it is the case that "poor management by maritime companies"<sup>192</sup> is to blame for increasing abandonment cases,<sup>193</sup> then it is paramount that the domestic law of the UAE has provisions to hold these companies to account and enable easy access to protective legal mechanisms for the crew. The cases above support the assertion that there is a gap in the law that must be filled if the UAE is to have the capacity to properly protect seafarers in its waters.

185 McVeigh (n 96)

186 Ibid.

187 Human Rights at Sea, 'Abandonment Case Study: Indian Family Stories of the Consequences of Seafarer Abandonment: AB Mayur Gawade Family, Pune, India' <[https://www.humanrightsatsea.org/wp-content/uploads/2019/03/HRAS\\_Indian\\_Seafarer\\_Abandonment\\_Family\\_AB\\_Gawade\\_Case\\_Study\\_2019\\_SP\\_LOCKED.pdf](https://www.humanrightsatsea.org/wp-content/uploads/2019/03/HRAS_Indian_Seafarer_Abandonment_Family_AB_Gawade_Case_Study_2019_SP_LOCKED.pdf)> accessed February 2020

188 International Labour Organisation Database on Reported Incidents of Abandonment of Seafarers (n 173)

189 The Mission to Seafarers, 'Mission provides vital service for abandoned 'ghost ships' of the UAE' (May 2018) <<https://www.missiontoseafarers.org/news/mission-provides-vital-service-for-abandoned-ghost-ships-of-the-uae>> accessed February 2020

190 Ibid.

191 Ibid.

192 Business-HumanRights.org (n 107)

193 McVeigh (n 96)

# Flag States & Human Rights

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

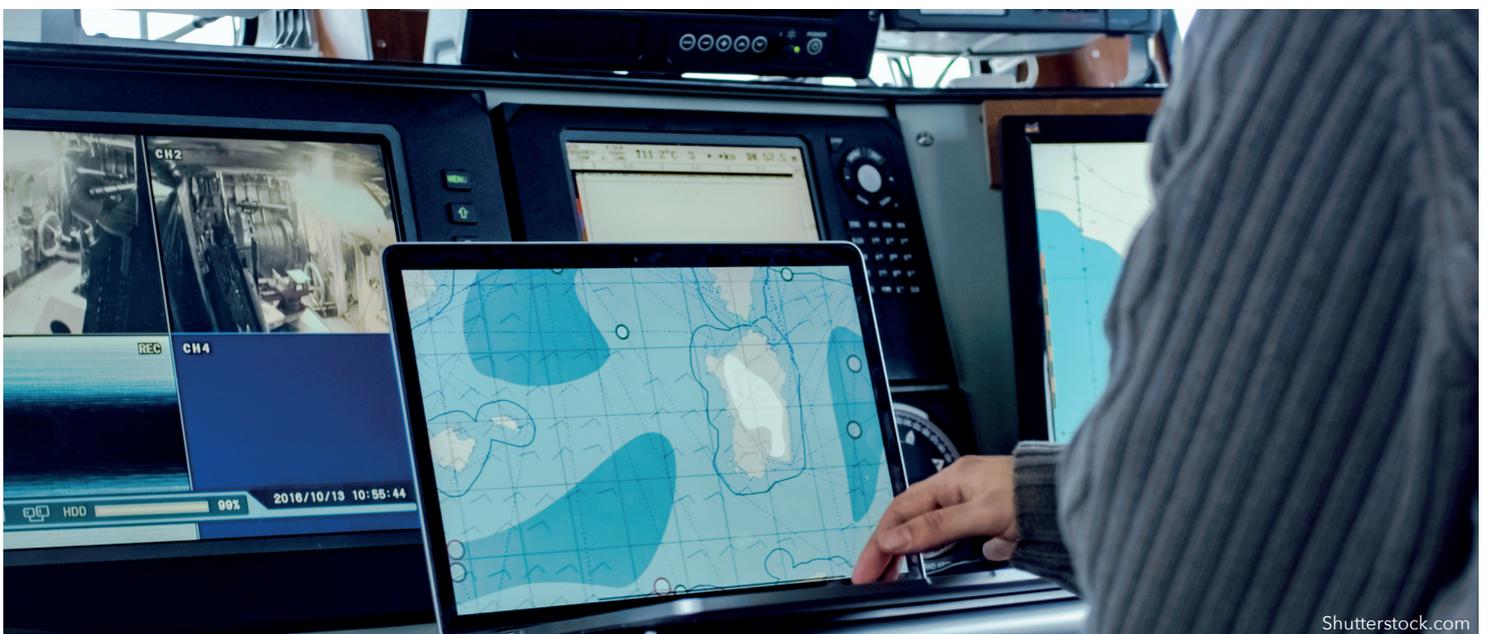
## CONCLUSIONS

There are varying highlighted mechanisms in place in each flag State to ensure a degree of monitoring and reporting of human rights issues that come to light. According to the Paris MoU, Malta is listed as a White flag State, while India is listed as a Grey flag State. By contrast, the UAE is not party to the Paris or Tokyo MoUs. 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 protection of seafarers on board UAE-flagged vessels often relies on media, welfare or NGO organisation reporting, rather than via available and promulgated state-level complaint mechanisms. This is evidenced by the apparent failure of the UAE to meet the necessary requirements of the Paris or Tokyo MoU lists which suggests that more regular vessel inspections are needed. While there are, thus far, no reported human rights violations for the Malta flag State which the authors are aware of, there is room for improvement in terms of clear reporting and complaints mechanisms to be made available for seafarers.

India's performance has improved with each year by adopting appropriate policy measures in order to accomplish their aims of improving their reputation. However, while there is a clear political willingness to do better, it is publicly difficult to identify the initiatives and mechanisms put in place to actually improve India's records on reported human rights abuses at sea. The non-payment of wages and abandonment of seafarers are clearly the most pressing issues.

In sum, more public policy and legislative development is needed by all three flag States to better improve their working conditions on board vessels under their flag, and to ensure more effective transparent reporting and monitoring mechanisms are put in place. MoU evaluations reflect compliance with human rights obligations to a limited extent. Thus, the monitoring and protection of human rights should become a priority and part of flag State day-to-day business.





## 8. OUTREACH: Q&A TO FLAG STATES

### INTRODUCTION

The second stage of the project comprised of outreach attempts made by Human Rights at Sea on behalf of the Project team 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 the questions listed below. The Project team received responses from Malta and the UAE only, which are recorded below.

1. How do you, as a 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?

### MALTA

Human Rights at Sea received the following responses from the IMO representative of Malta on 7 May 2020:

#### 1. How do you, as a flag State, ensure the protection of the human rights of seafarers on board vessels registered under your flag?

Malta is party to the Maritime Labour Convention, 2006, as amended and has been so since its adoption. The Convention, termed to be a 'bill of rights' for seafarers, has been transposed into Maltese law by means of the Merchant Shipping (Maritime Labour Convention) Rules S.L. 234.51. The Maltese Maritime Administration has 'built' an infrastructure to ensure that ships registered under the Merchant Shipping Act are fully compliant and that any infringement or complaint is immediately dealt with and rectified.

#### 2. How can seafarers report human rights violations on board vessels that fly your flag?

Malta ensures that ships flying its flag have on board complaints/reporting procedures that would be accessed by seafarers to report any infringement. Furthermore, the Administration maintains a constant monitoring program through its global network of flag State inspectors. The Maltese Administration can also be directly accessed through dedicated email addresses or through seafarer representatives, with whom Malta maintains a sterling relationship.

#### 3. How many complaints are received by the flag administration each year?

To date, no human rights violation complaints have been received.

# Flag States & Human Rights

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



## 4. How do you investigate allegations of human rights abuses under your jurisdiction?

Should the Administration receive allegations of human rights abuses, an investigation would immediately be conducted as per applicable procedures which may involve an on-site inspection by flag State Inspectors which may also include one-to-one interviews with the involved personnel.

## 5. What remedies do you have in place for human rights violations on board vessels registered under your flag?

See reply no 1.

## 6. Do you have any human rights reporting and assurance requirements for vessels registered under your flag?

See replies 1 and 2.

## 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?

Queries are to be directed to: [mlc.tm@transport.gov.mt](mailto:mlc.tm@transport.gov.mt)

## INDIA



Human Rights at Sea repeatedly tried to establish contact and follow up the request for receiving answers to the proposed questions without success. Consequently, this Report includes the findings of our research without direct engagement with the Indian flag State authorities. Should India wish to respond at a later point in time, this information could be published in an updated edition of the Report.

## UAE



Human Rights at Sea received the following responses from the UAE FTA representative, Captain Abdulla Darwish Al Hayyas, United Arab Emirates Director of Maritime Transport Affairs (2 June 2020) on 2 June 2020:

### 1. How do you, as a flag State, ensure the protection of the human rights of seafarers on board vessels registered under your flag?

- 1) By ensuring the country is ratifying most of the maritime conventions, so as to have quality ships with quality companies.
- 2) Working to ratify the MLC, although it's not covering all the aspects of the human rights but it's a step toward seafarers' protection.
- 3) Enforcing compulsory insurance to protect the seafarers and their welfare in case of abandonment.
- 4) Zero tolerance against owner neglecting their crew, by suspending the ship certificates and operations and banning the company activities.
- 5) If required, provide legal assistance to the crew in need through a specialised legal firm.
- 6) Cooperating with seafarers' associations and HRAS and other organisations, so as to improve any condition or implement new regulation based on their advice.

# Flag States & Human Rights



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

## 2. How can seafarers report human rights violations on board vessels that fly your flag?

By communicating directly to the FTA through emails or phone, or through their embassies or as in most cases through different seafarers' associations and organisations, who have direct and good communication with the FTA.

## 3. How many complaints are received by the flag administration each year?

We didn't start keeping track until recently, however we receive both from foreign and UAE flag, less for UAE flag as we have small number of ships under the flag, but in general we receive around 2-3 cases a month mainly from foreign flags, some cases solved quickly, we don't see lengthy suffering situation where crew are suffering for months and years as before, after the country has introduced some legislation to protect the seafarers in our waters.

## 4. How do you investigate allegations of human rights abuses under your jurisdiction?

By thorough investigation with the crew onboard, UAE fleet mainly operating in UAE so reaching them is easy.

## 5. What remedies do you have in place for human rights violations on board vessels registered under your flag?

Legal action, suspending ship certificates and operations, banning vessels and companies.

## 6. Do you have any human rights reporting and assurance requirements for vessels registered under your flag?

The flag is complying with the IMO and local requirements, a more specific assurance and reporting is not in place yet.

## 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?

Please contact me [abdulla.alhayyas@fta.gov.ae](mailto:abdulla.alhayyas@fta.gov.ae), and for any information required we will assist as long as it's for the sake of seafarers.

## CONCLUSIONS

The flag State responses received from Malta and UAE appear consistent with the publicly available information found during the second research stage of this Report. There is a clear public position by those flag States to proactively provide clear and informative guidance related to human right obligations, monitoring and protections.

# Flag States & Human Rights

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

## 9. CONCLUSIONS & RECOMMENDATIONS

The Project research first reveals a disparity in the number of international human rights treaties ratified by Malta, India and the UAE. Whereas both Malta and India have ratified most human rights treaties apart from the ICMW, the UAE has yet to ratify several major UN human rights treaties, namely the ICCPR, ICESCR, ICPPED, the ICMW (and the MLC). Ratifications are an important step to ensure that human rights are adequately protected in practice. Such omissions in ratifying international conventions and treaties are concerning, as this means that established and customary international obligations cannot be guaranteed to be implemented with regards to addressing human rights abuses at sea.

Specific monitoring and reporting mechanisms expressly recording human rights violations are also lacking or absent, especially specifically dealing with human rights violations at sea. There is therefore uncertainty about the actual levels or scale of abuse at sea due to the absence of public complaints procedures that would otherwise guarantee effective reporting, and highlight routes to redress for human rights abuses on board flagged vessels.

Seafarers can be vulnerable when isolated at sea for long periods of time. In such instances, it is essential that public, accessible and transparent reporting procedures are available that ensure those seafarers are not exploited, nor left unprotected. The lack of published reports recording cases of actual or suspected abuse prevents transparency, remediation and policy development.



Any effective system of human rights protections relies significantly on the availability of transparent resources, established legal protections and the political will to enforce. Open registries, such as Malta, currently place emphasis on economic viability rather than on the human rights protection of seafarers. For example, Malta has clear human rights obligations derived from the various international instruments they have ratified and must provide routes to reporting and remediation for victims. Thus, the other two flag States need to establish similar, if not better, transparent public complaints procedures and routes to transparent investigations and remediation. The accessibility of such processes would need to be improved and made clear to seafarers, while also addressing impediments which currently hinder the number of complaints being filed.

# Flag States & Human Rights

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

Malta is a White flag State and India is listed as Grey, while the UAE is not listed due to its failure to meet the necessary inspection requirements. 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. There is also a substantial difference between the human rights enforcement in each of the States. Thus, the MoUs should consider expanded rationale for ratings and publicise the data used to assign ratings.

Human rights instruments ratification record and human rights compliance should be an important criterion when determining whether a flag State meets the standards required to qualify as a White flag State. These MoUs appear to prioritise regulations on vessel sizes, as well as environmental concerns over the significance of labour standards. Therefore, the MoUs need to include human right provisions and protections as a contributing factor for their assessments.

With regard to the flag States examined in previous team reports, this Report once again notices the clear lack of an explicit mention of the goal to explicitly address the issue of 'human rights at sea' by any of the three maritime authorities.

By expressly mentioning such a purpose, maritime authorities could greatly improve the enforcement of human rights at sea. This not only raises much needed international awareness, but fosters an environment for more effective public reporting mechanisms to ensure the effective enforcement of maritime obligations. Currently, there seems to be a lack of awareness and enforcement of human rights protections at sea, which leaves seafarers exposed to the risks of abuse. This makes it more symbolic in nature and would explain the lack of motivation of flag States to respond to this Report.



Shutterstock.com

# Flag States & Human Rights

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

## RECOMMENDATIONS

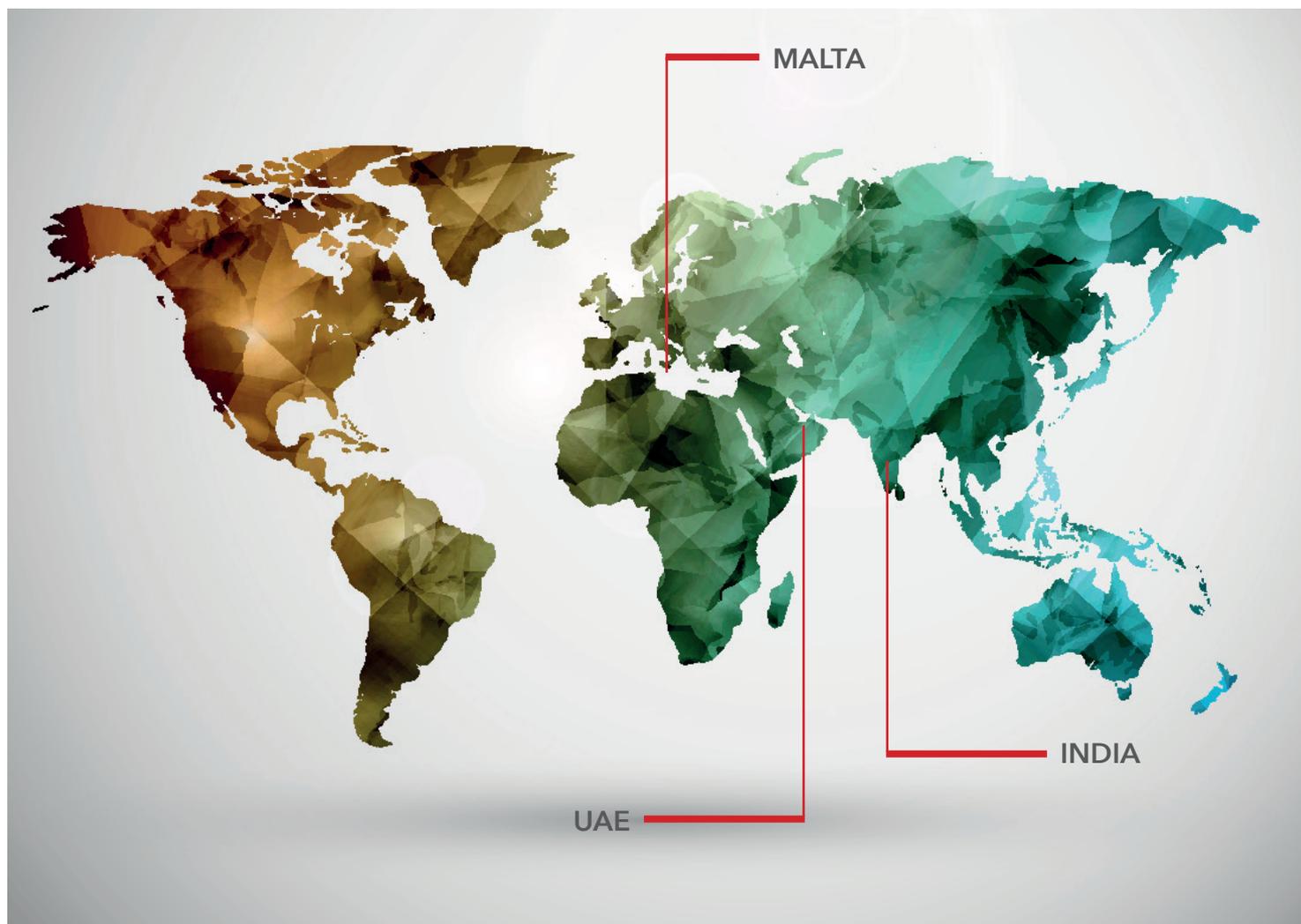
The Project team make the following five recommendations:

- 1. Ratifications.** Flag States should ratify all core UN human rights treaties, IMO and ILO Conventions which provide for safety, human and labour standards. Further, a flag State needs to put in place mechanisms for the implementation of their human rights obligations and provide for individual complaint procedures.
- 2. Publicly Available Information.** Flag States need to improve the clarity of their websites, publish findings of investigations and ensure better access to information. Relevant information, reporting procedures and remedies should be made available online by each flag State.
- 3. Reporting.** Transparent and clear reporting mechanisms should be put in place that will allow persons on board vessels to complain of human rights abuses. If such mechanisms already exist, they need to be more accessible and user-friendly by regularly updating contact details online. Where no complaints mechanism is available, it is of utmost urgency to establish a point of contact for vulnerable seafarers in addition to established welfare organisations.
- 4. Compliance.** Compliance with human rights obligations on board vessels is a significant consideration that needs to be factored in the assessment of flag States under established MoU mechanisms. In cases where MoUs consider such factors, a clear explanation should be provided on how compliance with human rights obligations are measured and applied.
- 5. Human Rights at Sea Policies.** Respective Maritime Authorities such as the MMA, FTA and MMD should explicitly mention the focus on addressing issues relating to human rights at sea as a standardised policy position. Immediate improvements involve the authorities conducting an Annual Report on Human Rights at Sea which presents empirical studies on levels of human rights violations, policy positions, policy and legislative protections, and the results of all actions taken to provide remediation for victims.

# 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.

**The Centre leads a portfolio of research, encompassing six themes:**

**Implementation | The African Human Rights System | Torture Prevention & OPCAT | Mental Health | National Human Rights Institutions | Human Rights at Sea**

HRIC works at the national level with governments, statutory and constitutional bodies, such as national human rights institutions and civil society organisations; and at the international level with regional bodies (such as the African Commission and Court on Human and Peoples Rights, the AU, the Council of Europe, and the Organisation for Security and Co-operation in Europe); and institutions under the UN, both treaty bodies, the Special Procedures and the Office of the United Nations High Commissioner for Human Rights.

**General Enquiries:**

Human Rights Implementation Centre, School of Law, University of Bristol, Wills Memorial Building, Queen's Road, Bristol, BS8 1RJ, UK

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

# Who We Are

## BACKGROUND

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 **R**esearch, **A**dvocacy, **I**nvestigation and **L**obbying 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.



## STAY 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)



[www.humanrightsatsea.org](http://www.humanrightsatsea.org)



As an independent charity, Human Rights at Sea relies on public donations, commercial philanthropy and grant support to continue delivering its work globally. Was this publication of use to you? Would you have paid a consultant to provide the same information? If so, please consider a donation to us, or engage directly with us.



[www.justgiving.com/hras/donate](http://www.justgiving.com/hras/donate)



**ONLINE DEDICATED NEWS**  
[www.humanrightsatsea.org/news/](http://www.humanrightsatsea.org/news/)



**CASE STUDIES**  
[www.humanrightsatsea.org/case-studies/](http://www.humanrightsatsea.org/case-studies/)



**PUBLICATIONS**  
[www.humanrightsatsea.org/publications/](http://www.humanrightsatsea.org/publications/)

## OUR CONSULTANCY. INSTRUCT US



We are promoting and supporting:



Proud to be 'Green'

All of our publications are printed on FSC certified paper so you can be confident that we aren't harming the world's forests. The Forest Stewardship Council (FSC) is an international non-profit organisation dedicated to promoting responsible forestry all over the world to ensure they meet the highest environmental and social standards by protecting wildlife habitat and respecting the rights of indigenous local communities.



# FLAG STATES AND HUMAN RIGHTS REPORT 2020

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

ISBN 978-1-913252-25-0