

# Geneva Declaration on Human Rights at Sea



HUMAN RIGHTS AT SEA

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## Foreword

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### **“Human rights are universal; they apply at sea as they do on land.”**

The emerging focus surrounding essential improvements in addressing fundamental human rights protections for all persons living, working, and transiting bodies of water globally has resulted in the need for a concise refocusing of existing bodies of international law in a single iterative document to define the fundamental principles underpinning the concept of human rights at sea.

The evolving global narrative around improving the ways and means by which abuses at sea are reported, investigated, and effectively remediated against implies that to be successful, a common language and basic legal understanding is required by all stakeholders. The aim of this publication is therefore to provide increased clarity and core reference material that can be relied upon for the truth of its contents.

This ongoing development work is set against a background of an environmental context that profoundly differs at sea from conditions on land, which is inadequately understood. It is compounded by a common perception of ‘sea blindness’ reflecting the often-cited misconception that what happens at sea is out of sight and therefore out of mind. In turn, this fosters conditions of impunity exploited by abusers within weak enforcement systems based upon a lack of public transparency and accountability.

This publication will be reviewed year on year by Human Rights at Sea. The four fundamental principles will remain stable and unchanging, while the supporting Annexes may be subject to specific review by external stakeholders, as necessary.

The publication should otherwise be used as guidance by port, coastal and flag State authorities and all other stakeholders interested in consolidating and expanding human rights protections supporting the single vision to end human rights abuse at sea.

Human Rights at Sea would like to specifically acknowledge the expert research and drafting support of Prof. Steven Haines, Professor of Public International Law, University of Greenwich, Prof. Anna Petrig, Professor of International Law and Public Law at the University of Basel, Switzerland, Prof. Irini Papanicolopulu, Associate Professor of International Law at the University of Milano-Bicocca, Italy, Dr. Sofia Galani, Assistant Professor in Public International Law at Panteion University, Athens, Greece, Dr. Elizabeth Mavropoulou, Head of Research, Human Rights at Sea and Visiting Lecturer at the University of Westminster, and Miss Anastasia Papapetrou (LL.M.) for her administrative support. Independent legal review was conducted by partners and associates of the international law firms Holman Fenwick Wilan LLP, DLA Piper LLP, Norton Rose Fulbright LLP and Reed Smith LLP, coordinated by Ms Voirrey Blount. The original idea was conceived by the NGO’s founder and CEO, David Hammond Esq.

# Geneva Declaration on Human Rights at Sea

## Setting the Scene

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The seas and oceans cover over 70% of the earth's surface. Activity at sea, both lawful and unlawful, is growing year on year. This is leading to an increase in the number of people at sea, currently estimated to be over 30 million men, women and children at any given moment.

The vast majority of these people are fishers, numbering approximately 40 million all told, with over 25 million estimated to be physically at sea at any time. Of the total, an estimated 20,000 are children working at sea and in coastal fisheries. Others are in shipping, in offshore oil and gas, and in the tourism industry. There are many more categories, such as passengers, holiday-makers, scientists and state officials on naval and coast guard vessels. Additionally, there are increasing numbers of people using the seas and oceans as a means of migration. Finally, there are people involved in unlawful activities.

There is significant and growing evidence of widespread, deliberate and often systematic abuse of human rights at sea. Examples are fishers, including young children, held in slavery on fishing grounds thousands of miles away from their families and home state; seafarers abandoned without pay or compensation; victims of sexual assault onboard passenger and cruise ships often left without legal protection or effective remedy; migrants and refugees, including children, smuggled or trafficked by criminals in life-threatening conditions; and people suspected of wrongdoing subjected to the use of excessive force and arbitrary detention without legal oversight.

People are disappearing, they are dying, they are being assaulted and they are abused at sea. If such human rights violations were occurring ashore, they would be well-publicised and addressed. However, they are happening at sea, out of sight, and those who could act to stop them are not always aware of the problem.

Human rights abuses at sea are frequently not reported, enforced, or remedied because of the challenging nature of the maritime environment. Abuses often occur far away from state authorities. The sea is a vast area to monitor, and policing is too frequently ineffective due to a lack of resources or an unwillingness to take action.

While the seas and oceans are a challenging environment and have unique characteristics that demand unique responses, this emphatically does not mean that human rights can be compromised in any way. The seas are free for all legitimate purposes; the abuse of human rights at sea is not a legitimate purpose in any circumstance.

People at sea are full beneficiaries of human rights; the fact that they may be at sea beyond the limits of territorial jurisdiction does not affect their human rights.

The time to act has come. A legal order ensuring safe and secure seas and oceans requires that all people at sea enjoy human rights, that violations are effectively addressed, and that victims are provided with an effective remedy. The public order of the oceans, including the protection of human rights for all people, is a collective responsibility of the international community.

It is primarily states that have responsibility for enforcing human rights at sea, in particular, flag states, coastal states and port states.

Other actors, such as international organisations, non-governmental organisations, civil society bodies, private companies, masters of vessels, security personnel onboard vessels and consumers, also need to recognise and act upon their own roles in the protecting of human rights at sea.

## Aim

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The aim of the *Geneva Declaration on Human Rights at Sea* is to recall existing legal obligations, to raise global awareness of human rights abuses at sea, to generate a concerted international response to them and to ensure an effective remedy for those who are abused. Overall, the Declaration aims to promote a culture of compliance with human rights at sea.

## Fundamental Principles

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The protection of human rights at sea rests on the following four fundamental principles:

- 1. Human rights are universal; they apply at sea, as they do on land.**
- 2. All persons at sea, without any distinction, are entitled to their human rights.**
- 3. There are no maritime specific reasons for denying human rights at sea.**
- 4. All human rights established under both treaty and customary international law must be respected at sea.**

## ANNEXES

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- A.** Evidence of Human Rights Abuses at Sea
- B.** Applicable Human Rights at Sea
- C.** Guidelines for Promoting Compliance with Human Rights at Sea

## **ANNEX A: EVIDENCE OF HUMAN RIGHTS ABUSES AT SEA**

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The seas and oceans have an estimated regular population of around 30 million people. This is equivalent to the population of a medium-sized state. The population of the seas and oceans does, of course, occupy a vast interconnected space which, at over 70 per cent of the Earth's surface, is far more extensive than the territory of any single state.

As a result, people are relatively thinly spread, and social interaction is profoundly restricted. Indeed, in reality, it is mostly limited to the confines of individual sea-going vessels. This means that there are very few observers able to bear witness to most abuses of human rights standards at sea. For this reason, many instances of abuse are unlikely to be recorded by the media and civil society organisations in ways that irregular and unlawful activities are subject to monitoring and reporting ashore. An added and unfortunate feature of the abuse that takes place at sea is that much of it occurs beyond the territorial limits of state jurisdiction - on the high seas, a vast area that is relatively ungoverned and largely un-policed.

These factors result in a maritime environment in which vulnerable people can be abused by others, with the perpetrators frequently acting with impunity and with little or no risk of censure or sanction. While instances of abuse are reported daily, it is crucially important to understand that by no means all are placed on record for the simple reason that they happen to people who are physically remote from mainstream society and largely 'out of sight and out of mind'.

Despite all of this, substantial evidence of abuse has been collected by civil society bodies in the past decade. An extensive reporting of the scale of human rights abuses at sea can be found in the work of the UK based NGO Human Rights at Sea. Analysis of this substantial and increasing body of evidence reveals a profoundly disturbing number of issues of growing concern from an international human rights law perspective.

It is of vital importance that the seas and oceans are continually monitored for cases of human rights abuses, with all of the rights listed in Annex B of the Declaration being at risk. What follows represents necessarily examples of those situations and activities that have been identified as posing a serious risk of abuse within the maritime environment. The list of abuses and threats to human rights included below, while not exhaustive, represents a clear and irrefutable set of examples of more than sufficient concern to justify the development of the Geneva Declaration on Human Rights at Sea:

- Criminal Violence and Threats to Life and Security
- Sexually Motivated Crime
- Slavery and Forced Labour in the Fishing Industry
- Breaches of Maritime Labour Rights
- Threats to Seafarers' and Maritime Workers' Welfare
- Abandoned Seafarers
- Failures in, Equality and Inclusion
- Children's Rights
- Irregular Mixed Migration and People Trafficking

Each of these deserves some amplification.

## **Criminal Violence and Threats to Life and Security**

Historically, the most feared and serious form of threat to the security of ships and people at sea has been from piracy, its significance leading to it becoming the first ‘international crime’ with a body of law developed specifically to deal with it. It needs to be stressed that maritime piracy, a scourge since classical times, has never been eradicated. The significant profile of Somali-based piracy in recent years raised general awareness of this age-old maritime criminal enterprise. As the International Chamber of Commerce’s International Maritime Bureau (IMB) data-base reveals, however, piracy is not merely a regional problem confined to the Indian Ocean but potentially a global issue, with it having become in recent years a persistent problem in parts of South and East Asia and, currently, off the West Coast of Africa.

‘Piracy’ is rather narrowly defined in the Law of the Sea, and the term does not adequately capture the broad range of security threats to shipping and the legitimate users of the seas and oceans. Attacks on shipping, instances of armed robbery and seizures of smaller vessels may be motivated and perpetrated by political groups as well as those seeking private financial gain. Politically motivated maritime terrorism is a serious potential threat - the motivation of the group carrying out an attack at sea is no guide to the extent to which innocent victims will be affected. Whether it is ‘piracy’ legally defined or some other form of violent criminal enterprise against ships, those embarked in them can be held hostage for ransom and be physically and sexually abused.

## **Sexually Motivated Crime**

Evidence of sexual abuse at sea can be found wherever and whenever the sexually vulnerable are to be found. There is, for example, particular risk of sexual crime in the context of people trafficking, including those being trafficked against their will or under false pretences for the purpose of forced prostitution.

There is evidence also of sexual crimes being committed onboard passenger-carrying vessels. Cruise ships are sailing the seas and oceans with considerable numbers of passengers embarked. They are sizeable floating communities, many consisting of several thousand people, both passengers and workers. While at sea, these significant communities are not officially policed by the flag states entitled to exercise exclusive jurisdiction. As a result, crimes committed onboard are not properly investigated and those responsible for criminal acts are not prosecuted. The crimes include those of a sexually motivated nature. The shipping companies have a clear interest in avoiding publicity about criminal activity onboard their vessels and it is difficult to arrive at an accurate assessment of its nature and scale. Nevertheless, evidence has emerged of an effective jurisdictional vacuum that seemingly allows the perpetrators of violent and sexually motivated crimes to escape justice. It also means that the victims of such crimes have no effective remedy for the violence they have been subjected to.

## **Slavery and Forced Labour in the Fishing Industry**

There is substantial evidence of the use of slave labour in the global fishing industry, with crew-members recruited under false pretences and then forced to remain onboard vessels for extended periods, with no pay and subject to abusive conditions. The full scale of this problem is only just emerging and, by its hidden nature, is difficult to quantify precisely.

Slavery appears especially likely onboard fishing vessels engaged in Illegal, Unreported or Unregulated (IUU) fishing. Vessels engaged in IUU fishing may remain on distant fishing grounds for months - even years - without any return to port, their crews are trapped onboard with no prospect of a return to land or their homes and families.

Around 20% of the global fish catch is the product of IUU fishing activity. It is not a marginal problem, with as many as 5 or 6 million fishers involved in IUU fishing activity globally. Of course, it is important to stress that not all vessels so engaged will be using slave labour, but the nature of this irregular sector of the industry is such that even those whose employment is unforced and paid are vulnerable to degrading and inhuman conditions and inadequate pay while at sea.

A particularly disturbing feature is the likelihood that many fishers kept in slave conditions are eventually 'lost at sea'; they simply disappear. An injured or sick fisher trapped in slave conditions, no longer of use and regarded as a liability by those running the operation, is easily disposed of, their disappearance serving as a warning to others onboard of their likely fate if they do not do as required.

What is perhaps most disturbing about slavery at sea today is the fact that flag states are turning a blind eye to it and that there is no concerted international effort to eradicate it. No significant maritime power or collection of powers accepts responsibility today for combating slavery at sea. While ships involved in the slave trade were forced off the oceans in the past, modern slave ships are allowed to sail the oceans without fear of interdiction.

## Breaches of Maritime Labour Rights

There are two notable international conventions that deal with employment rights and standards at sea. The first is the Maritime Labour Convention (MLC) of 2006, which lays down employment conditions for seafarers working in the shipping industry. The second is the ILO Work in Fishing Convention of 2007, which attempts to provide the same protections for those working as fishers. Neither of these are human rights instruments and, while they do include rights that are also reflected in international human rights law, they do not include all the human rights to which seafarers are entitled. Having said that, there is clearly a sense in which compliance with these two conventions, if fully implemented and enforced, would serve to improve the treatment of those working at sea. The MLC is widely ratified and is enforced, in particular, through inspections of merchant vessels during their visits to ports in states prepared to exercise port state jurisdiction. The Work in Fishing Convention only entered into force in 2017 and is so far not widely ratified or effectively enforced.

There is substantial evidence that, despite the MLC and the Work in Fishing Convention, the human rights of those working at sea onboard merchant ships or fishing vessels are not fully respected, protected or fulfilled. There is significant evidence of poor working conditions, inadequate pay and breaches of basic health and safety arrangements. While the MLC provisions include arrangements for enforcement through the exercise of port state jurisdiction, there are relatively few instances of the required conditions being effectively monitored and enforced. While seafarers' organisations and unions do act to encourage compliance with international standards, there is significant evidence that flag and port states are not all meeting their responsibilities to monitor and to ensure compliance with human rights standards or to take appropriate and effective action against those who are abusing or failing to meet them.

## Seafarers' and Maritime Workers' Welfare

Seafarers' and maritime workers' welfare is constantly at risk, despite the best efforts of a range of well-motivated welfare organisations. The inadequacy of welfare provision globally was manifestly obvious for all to see during the most challenging circumstances of the COVID pandemic. The substantial impact of this led to a major crisis within the global shipping industry, which featured inadequate medical provision, little or no supply of essential personal protection equipment, the refusal of port authorities to facilitate crew changes, a lack of welfare visits to ships in port and even a lack of basic and essential logistics provision and communications. Seafarers were trapped onboard ships for months on end with no welfare support, no chance of returning home to families and no emotional support, leading to a major mental health crisis.

A Human Rights at Sea report published on World Human Rights Day on 10 December 2021, in the second year of the COVID crisis, listed the glaring breaches of seafarers' rights during the pandemic. It dealt with and described issues to do with the disruption to crew changes, the denial of 'Key Worker' status to seafarers', the extension of contracted employment times, damage to the mental well-being of seafarers and their families, the reduction of wages and frequent underpayment or non-payment of salaries, the impact on families, the denial of medical care ashore for those suffering illness onboard ships, the unavailability of COVID-19 vaccinations, and the abandonment of seafarers following the bankruptcy of shipping companies.

## Abandoned Seafarers

The final feature of the COVID crisis just referred to was the marked increase in the abandonment of seafarers. This is ordinarily a disturbingly common practice within the shipping industry. It has been noticeably worse during the recent pandemic generated crisis – a crisis that seems likely to become a permanent or semi-permanent feature into the future as financial pressures reduce margins in international shipping and as international travel continues to be disrupted. This has placed enormous strain on both the seafarers themselves and on the welfare organisations and unions that exist to care for them and provide support. Today, the shipping industry is profoundly international in its character, with ships registered in states having little in the way of a genuine link to either the vessels themselves, their owners or the crews employed onboard. For a variety of commercial and financial reasons in a highly competitive environment, ship-owners may no longer be able to fund their operations, their ships may be unable to continue operating, may be laid up in ports and waters far from their ports of registry and, crucially, far from the homes of those working onboard. The collapse and bankruptcy of shipping companies - a disturbingly frequent occurrence - or even the investigation and arrest of vessels suspected of involvement in criminal activity, leads typically to crews being trapped onboard, a freeze on their pay, and their subjection to lengthy periods of incarceration.

When merchant ship crews are trapped onboard in such circumstances, it is common for them to be denied access to the shore and for them to have no way of returning home. With nobody to fund them, logistics services to ships may no longer be available, with food, fuel, water and electricity supplies cut off and telephone, radio and internet communications disrupted. Those who work at sea can easily find themselves abandoned by their employers and prevented from disembarking and returning home or seeking further employment. The profound mental strain they are placed under in such circumstances

represents a serious breach of their human rights. Flag states and port states have responsibilities to protect the human rights of seafarers in such situations, but in far too many cases are failing to meet their obligations.

## **Failures in Diversity, Equality and Inclusion**

There is wide recognition of significant issues with diversity, equality and inclusion in relation to work and employment in the maritime sectors. The evidence of sexual, racial, religious and other forms of discrimination, including towards women and towards lesbians, gays, bisexual and transgender workers, is on the increase.

Sadly, this should not be surprising. Even in societies ashore that are striving for sexual equality in the workplace and regarded as diverse and open and generally welcoming of gender differences, there remain important shortcomings that require constant attention from governments. The maritime sectors are profoundly international as well as being traditionally male-dominated working environments, employing people from all racial and religious backgrounds. Unfortunately, this actual diversity does not lead to an environment of equality. Indeed, quite the opposite is apparent. Inequality is a plain and obvious fact, reflected in the evidence that employment practices at sea lead to shipping companies employing the cheapest labour they can find. In a highly competitive and truly international market, labour costs are a significant overhead. Cheap labour is favoured for hard financial reasons. To facilitate its employment, the bulk of international merchant shipping is today registered on 'open registries' and not with the traditional maritime powers.

Civil society organisations, the seafarers' unions and welfare organisations, as well as the International Maritime Organisation (the United Nations specialised agency focused on the global shipping sector), acknowledge the challenges and are all working to combat discrimination and mitigate its worst effects. Despite this, the evidence demonstrates that significant human rights abuses to do with discrimination and inequality remain a profoundly disturbing feature of the maritime environment. There is currently no concerted international effort to establish a diverse, equal and inclusive environment at sea.

## **Child Labour**

There are estimated to be around 20,000 vulnerable children working at sea. A child is defined as anyone below the age of 18 years. While some children may be on the threshold of adulthood, the lack of respect for, the inadequate protection and the failure to fulfil their rights are still causes of great concern. In addition, though there are some children on the brink of adulthood, there are also a great many working at sea who are much younger. It is known that some of these are trapped in slavery, but even those who are not are still subject to extremely challenging working conditions, including situations amounting to forced labour. The bulk of those children working at sea are employed in the fishing industry, which apart from anything else, is widely acknowledged as one of the most dangerous occupations globally. Fishers are frequently injured, suffering death or serious disability during the conduct of routine fishing operations. In bad weather, vessels can easily be lost at sea, especially when financial challenges result in them being less than fully maintained and equipped. Children are easily traumatised by ill-treatment, the effects of which can last a lifetime. It is not only physical abuse and risks to life and limb, but also the deprivation of life-enhancing rights, including, for example, the right to education, that represent serious human rights violations.

## Irregular Mixed Migration and People Trafficking

There is one maritime activity that does generate a substantial amount of international publicity and controversy. This is irregular mixed migration by sea. For the purpose of the Geneva Declaration on Human Rights at Sea, the term 'irregular mixed migration' covers a host of different activities, from migration for economic reasons by people seeking a better life for themselves and their families, refugees fleeing profoundly threatening situations in their own countries and seeking protection through asylum, as well as people being trafficked by criminally motivated gangs and networks for the purpose of forced labour, including of a sexual nature.

Although the majority of these people are themselves doing nothing unlawful, it is common to see them referred to as illegal migrants. Those involved in facilitating their movement by sea may well be criminally motivated, however, either by trafficking vulnerable people for forced labour or 'selling' the means by which otherwise lawful migrants achieve their objectives. The provision of unsafe boats to carry people across potentially dangerous expanses of the ocean has become a profitable 'business' for criminal gangs and, in the absence of alternatives, the only option for people seeking refuge from persecution. In recent years, this has been a significant issue in the Central and Eastern Mediterranean Sea and in the English Channel/La Manche between the European continent and the United Kingdom.

Mixed migrant flows across the seas and oceans is not a new phenomenon, however, nor is it likely to be a short term issue. Migration has always been a feature of human existence, and forced displacement is today's greatest humanitarian and development challenge. As global population levels increase, the absolute scale of migration will also increase. Irregular mixed migration by sea is likely to be a permanent feature of our world. How it is dealt with is a highly controversial issue, with no easy solutions. Recent experiences with it have involved attempts to prevent movement by the interdiction of migrant vessels, including attempts to force them to return to their points of departure (pushbacks). The human rights issues raised by the rise in irregular mixed migration at sea include those to do with the smuggling and trafficking activities of criminals taking advantage of the vulnerable and the physical safety of those at sea. All mariners have a responsibility under the Law of the Sea to render assistance to those at risk on the seas and oceans irrespective of their migration status. This includes those state officials acting in response to irregular mixed migration.

## Concluding Comments

The evidence gathered to date on the provision, protection and fulfilment of human rights at sea demonstrates emphatically that the seas and oceans are far from being a safe and secure environment for the millions of people who have a legitimate right to be there and those who find themselves there against their will. It is a matter of considerable concern that little effort is being orchestrated by the international community to tackle criminal enterprises that have no respect for the human rights of those they encounter on the seas and oceans. Not even the major maritime powers have so far attempted to coordinate a global effort to counter threats to human rights at sea.

This is not a responsibility for major powers alone, however. As the Guidelines contained in Annex C demonstrate, there is much that all states can contribute to that process. Indeed, those Guidelines have been deliberately drawn up in direct response to the accumulation of evidence alluded to in this Annex. As the evidence of human rights shortcomings and violations continues to accumulate, this Annex will be reviewed and updated when necessary.

## ANNEX B: APPLICABLE HUMAN RIGHTS AT SEA

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International human rights law is a developing body of law consisting of a combination of instruments with international - or near-universal - application and others that are regionally focused. For the purposes of the *Geneva Declaration on Human Rights at Sea*, which is deliberately drafted to have global application, the rights and obligations referred to generally are primarily derived from the following international instruments:

- **Universal Declaration of Human Rights (UDHR)** (UNGA Res 217, adopted 10 Dec 1948)
- **International Covenant on Civil and Political Rights (ICCPR)** (adopted 16 Dec 1966, entered into force 23 Mar 1976) UN Treaty Series Vol.999
- **International Covenant on Economic, Social and Cultural Rights (ICESCR)** (adopted 16 Dec 1966, entered into force 3 Jan 1976) UN Treaty Series Vol.993
- **Convention on the Rights of the Child (CRC)** (adopted 20 Nov 1989, entered into force 2 Sep 1990) UN Treaty Series Vol.1577
- **Convention Relating to the Status of Refugees (Refugee Convention)** (adopted 28 Jul 1951, entered into force 22 Apr 1954) UN Treaty Series Vol.189

### Examples of Individual Human Rights Applicable at Sea

The following list of rights derived from the list of instruments above are those of significance at sea. The list is not exhaustive, and the sources listed are kept to a minimum for the purpose of this Annex:

- **Right to life** (Art.3 UDHR; Article 6, ICCPR)
- **Right not to be tortured** (Art.5 UDHR; Art.7, ICCPR; Article 6, CRC)
- **Right to non-refoulement** (Art.33 Refugee Convention)
- **Right not to be enslaved** (Art.4 UDHR; Art.8 ICCPR)
- **Right to an effective remedy** (Art.8 UDHR; Art.2 ICCPR)
- **Right to liberty** (Art.3 UDHR; Art.9 ICCPR)
- **Right not to be arbitrarily arrested and detained** (Art.9 UDHR; Art.9 ICCPR)
- **Right to privacy** (Art.12 UDHR; Art 17 ICCPR; Art.16 CRC)
- **Right to freedom of expression** (Art.19 UDHR: Art.19 ICCPR; Art.13 CRC)
- **Right to freedom of religion** (Art.18 UDHR; Art.18 ICCPR; Art.14 CRC)
- **Right to seek asylum** (Art.14 UDHR)
- **Right to freedom of association** (Art.20 UDHR; Art.22 ICCPR; Art.15 CRC)
- **Right to form and join a trade union** (Art.23 UDHR; Art.22 ICCPR; Art.8 ICESCR)
- **Right to family life** (Art.16 UDHR; Art.23 ICCPR; Art.10 ICESCR)

- **Rights of the child** (Art.24 ICCPR; CRC)
- **Right to fair remuneration and equal pay** (Art.23 UDHR; Art.7 ICESCR)
- **Right to safe and healthy working conditions** (Art.23 UDHR; Art.7 ICESCR; Art.32 CRC)
- **Right to rest, leisure and paid holiday** (Art.24 UDHR; Art.7 ICESCR; Art.31 CRC)
- **Right to social security** (Art.22 UDHR; Art.9 ICESCR, Art.26 CRC)
- **Right to education** (Art.26 UDHR; Art.13 ICESCR; Art.28 CRC)
- **Right to property** (Art.17 UDHR)

## Regional Human Rights Conventions

While the list of human rights above is derived from the international human rights instruments already listed, the following regional conventions will also have relevance within the regions for which they were intended and in relation to the various states-parties to them. They are likely to be of significance beyond their 'regions', as flag states, parties to these regional conventions will have human rights obligations onboard vessels registered to them wherever in the world those vessels happen to be located. The regional instruments are:

- ***European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)***
- ***American Convention on Human Rights (San Jose Pact)***
- ***Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol)***
- ***African Charter on Human and Peoples' Rights (Banjul Charter)***
- ***Arab Charter on Human Rights (ACHR)***
- ***Association of Southeast Asian Nations Human Rights Declaration (ASEAN Declaration)***

# ANNEX C: GUIDELINES FOR PROMOTING COMPLIANCE WITH HUMAN RIGHTS AT SEA

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## 1. INTRODUCTION

### Aim

These Guidelines have been prepared primarily for states to use as a means of ensuring compliance with human rights at sea. They provide guidance on conduct that is either necessary, according to existing rules of international law, or put forward as good practice. These Guidelines aim to promote a culture of compliance with human rights at sea.

### Legal Status

These Guidelines are not in and of themselves legally binding, but they do reflect existing international law.

### Addressees

The principal addressees of these Guidelines are states, including port states, coastal states and flag states. These Guidelines are also addressed to other entities, including but not limited to international organisations, corporate entities, non-governmental and civil society entities, and individuals involved in ensuring compliance with human rights at sea.

### Structure

These Guidelines are divided into sections that provide guidance for states and the other entities to action within the following maritime zones:

- Internal waters;
- Territorial waters;
- Exclusive Economic Zones (“EEZ”); and
- High seas.

Although not addressed specifically in this Annex, states may have rights and obligations arising within other maritime zones, including but not limited to:

- Contiguous zones;
  - Archipelagic waters;
  - Territorial waters within international straits (in which transit passage rights apply);
  - Continental shelves; and
  - The seabed beyond national jurisdiction (“Area”).
- Further, states must have a special regard for stateless vessels, and port and coastal states must consider what obligations they may have towards the persons onboard such vessels, particularly relating to any human rights obligations.

### Style

As far as possible, these Guidelines deliberately avoid the use of technical legal language. They are drafted to be read and understood by anyone.

## The Currency of the Guidelines

These Guidelines reflect the law and an assessment of good practice in relation to human rights at sea as of January 2022.

## 2. CORE LEGAL OBLIGATIONS

In order to promote and safeguard human rights at sea and to meet their legal obligations where applicable, all states are to ensure that:

- Required or otherwise appropriate domestic legislation has been enacted;
- Domestic courts have the necessary competence to recognise and address violations of human rights of individuals onboard vessels within their jurisdiction and domestic legislation is sufficient to empower the local courts to punish any individual or entity liable for any human rights violation;
- Administrative monitoring and enforcement action is consistently taken.

Any state that exercises jurisdiction is to ensure that appropriate sanctions for violations of human rights at sea can and will be imposed to provide effective deterrence and to deprive those breaching human rights at sea of any benefits accruing from their illegal activities.

States must respect, protect and fulfil human rights at all times, notably during routine monitoring and enforcement operations and subsequent judicial proceedings. States are to safeguard human rights on vessels even where the purpose of monitoring or enforcement is not related to the protection of human rights specifically.

States exercising jurisdiction must notify other relevant states (such as a coastal state alerting a flag state) that enforcement action has been taken and again where that action is likely to lead to judicial proceedings.

## 3. GUIDELINES FOR FLAG STATES

Ordinarily, a vessel is entered on the register of vessels maintained by the administration of the country in which the vessel is flagged (the flag state). This enables the vessel to possess national character and the flag state to exercise jurisdiction. Further, the persons onboard the vessel will acquire rights as provided by the law of the flag state.

The jurisdiction of flag states extends at all times to all vessels flying their flag, regardless of location or of the activities in which such vessels are engaged, even if those vessels may also be subject to the jurisdiction of other states.

Flag states are under an obligation to exercise jurisdiction over ships flying their flag, including to ensure compliance with human rights.

Where necessary to meet these obligations, flag states should seek to cooperate with other states, for example, by requesting a coastal or port state to detain a vessel for breaches of flag state laws or regulations.

## Within Internal Waters and Port Limits

Without prejudice to flag states' obligations to exercise jurisdiction over all vessels flying their flag, flag states should respect the sovereignty and relevant domestic laws of other states when their vessel is within the internal waters of that other state. The flag state should nevertheless not abdicate its own responsibility to respond, as appropriate, to any human rights violation on such a vessel.

It is good practice for flag states to seek to ensure that the masters of all vessels flying their flag cooperate with the authorities of the coastal or port state to ensure compliance with human rights onboard their vessels while they are present in other states' internal waters and port limits.

Conversely, masters will be best placed to report any violations to flag states who, in the absence of successful intervention by the vessel owners, should exercise jurisdiction whenever possible under flag state law and take steps, as above, to seek to enforce the rights of persons onboard and, where possible, to ensure that sanctions are levied against the perpetrators.

## Within Territorial Waters

Breaches of human rights onboard a vessel may render passage through territorial waters “non-innocent” and justify the intervention of coastal states. Flag states should cooperate fully with coastal states in order to ensure compliance with human rights onboard vessels on passage through territorial waters.

## Within the EEZ

Flag states are obliged to accept that vessels flying their flag and engaged in activities that fall within the sovereign rights or jurisdiction of the coastal state must submit to licence conditions relating to compliance with human rights imposed by the coastal state in its EEZ. This includes submitting to coastal states' inspections to monitor human rights compliance. Flag states should cooperate fully with coastal states in order to ensure compliance with human rights onboard vessels while in the EEZ.

## On the High Seas

Flag states have obligations to ensure compliance with human rights law onboard all vessels flying their flags on the high seas. In order to do so, it may be necessary for the flag state to seek the cooperation of other states.

## 4. GUIDELINES FOR PORT STATES

Vessels visiting ports automatically submit to the jurisdiction of the state in which the port is located. Port states' human rights obligations, as set out in the local domestic and applicable international law, are fully applicable within their port limits. The port states' jurisdiction and its human rights obligations partly overlap with those of the flag state of any foreign vessel present within port limits.

It is good practice for port states to monitor flag states' compliance with human rights onboard their vessels while those vessels are present in port, and to take necessary steps to ensure an effective remedy for those individuals whose rights may be breached.

If a port state becomes aware that a human rights violation has occurred, or is being committed, onboard a foreign vessel visiting its port or in its waters, it must exercise jurisdiction and take steps to investigate and prevent any such violation from continuing or reoccurring. Such steps could include detaining a vessel until

its owners and operators have taken the necessary steps promptly to ensure an effective remedy for those individuals whose rights have been breached. It should also include the application of sanctions, including detention for those found guilty of egregious breaches of human rights onboard as set out in the relevant domestic criminal law. Flag states and the state in which the seafarers are nationals are encouraged to support appropriate remedies and sanctions imposed by port states.

## **5. GUIDELINES FOR COASTAL STATES**

### **Within Internal Waters**

Internal waters and any vessel present in them fall within the jurisdiction of the coastal state. The coastal state's jurisdiction will exist alongside that of the flag state of any foreign vessel present within its internal waters.

A coastal state's human rights obligations are fully applicable within its internal waters as they are on land. It is good practice for coastal states to monitor flag states' compliance with human rights onboard their vessels while those vessels are present within internal waters. If a coastal state becomes aware that a human rights breach has occurred or is being committed onboard a vessel present in internal waters, it should act to protect its interests and to comply with its human rights obligations, including taking the necessary steps to ensure an effective remedy for those whose human rights have been breached.

### **Within Territorial Waters**

All states have a right to innocent passage through the territorial waters. Coastal states have jurisdiction over foreign vessels passing through their territorial waters, particularly if those vessels engage in activities that are prejudicial to the peace, good order and/or security of the coastal state. Violations of human rights onboard a vessel present in territorial waters may compromise the good order of the coastal state and may render passage non-innocent.

States are encouraged to treat known or reasonably suspected human rights violations as inconsistent with an innocent passage and to exercise jurisdiction over such a vessel (by stopping, boarding, inspecting and/or detaining it) in order to safeguard human rights and to seek to sanction those responsible for the violations.

A coastal state is to ensure that its domestic legislation, which protects human rights, extends those protections to its territorial waters, provides effective enforcement action for breaches of the same and gives its domestic courts the necessary power to deal with violations of human rights occurring onboard vessels within its territorial waters.

If a warship or other government-owned, operated or requisitioned vessel on non-commercial service exercises innocent passage through a coastal state's territorial waters and is suspected of having compromised its "innocence" as a result of human rights violation(s) onboard, the coastal state has the right to demand such a vessel immediately to leave its territorial waters.

### **Within the EEZ**

Within the EEZ, coastal states have exclusive jurisdiction and must comply with their human rights obligations in relation to artificial islands, installations and structures and within 500 metre safety zones related to them.

The coastal state should extend its legislation, administrative procedures of control and the competence of its courts to human rights violations that occur onboard any vessels engaged in the exploration or exploitation of economic resources within the EEZ and on artificial islands, installations and structures, and onboard any vessel engaged in marine scientific research.

It is the right of the coastal state to issue licences for all activities to do with the economic exploitation of the zone, including fishing, exploration and exploitation of mineral resources and marine scientific research activities. It is emerging practice that such licences be issued on condition that the licensees, in relation to all types of vessels used to carry out the licensed activity, comply with human rights. The coastal state should conduct routine inspections of any vessels operating under a licence regime within its EEZ, including to ensure compliance with human rights.

While flag states retain jurisdiction over vessels engaged in economic activity within the EEZ, those vessels are also subject to the jurisdiction of the coastal state, which has human rights obligations in relation to those present onboard.

## 6. GUIDELINES FOR OTHER STATES

In various situations, there may be states not acting as either port states, coastal states or flag states, which may, nevertheless, have jurisdiction to intervene to safeguard human rights.

Any state whose nationals are present at sea has human rights obligations towards them, regardless of their location and the situation in which they find themselves.

Any states deploying vessels for enforcement operations at sea (including any interception or boarding operations), have human rights obligations in relation to any persons involved.

## 7. STATELESS VESSELS AND HUMAN RIGHTS

Not all vessels will have a nationality at all times. In such case, identifying which states have human rights obligations in relation to persons onboard can be difficult, especially if some of those persons are themselves apparently stateless or are either unwilling or unable to declare their nationality. This can have a profound effect on the prospect of human rights of those onboard being safeguarded.

Any state dealing with stateless vessels, notably in law enforcement operations, is obliged to comply with human rights obligations in relation to any persons onboard.

A vessel may be rendered stateless if it is removed from one official registry without simultaneous transfer to another. While a flag state has a right to remove any vessel from its registries, in doing so, it risks undermining the protection of the human rights of persons onboard. For this reason, it is submitted as good practice that the administration of the flag state will not remove any vessel from its register (irrespective of the justification for doing so) until such time as the vessel is entered on another flag state register or otherwise comes within the jurisdiction of a port state so that the rights of persons onboard are safeguarded.

# Geneva Declaration on Human Rights at Sea



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