

Human Rights at Sea – Written evidence (UNC0016)

WRITTEN EVIDENCE BY HUMAN RIGHTS AT SEA TO THE INTERNATIONAL RELATIONS AND DEFENCE COMMITTEE INTO THE INQUIRY ON THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) – ‘FIT FOR PURPOSE IN THE 21ST CENTURY’?

Summary

The written evidence addresses the **main challenges to the effective implementation of human rights at sea under the UNCLOS framework** against a background of well-documented abuses, state impunity, and complex supporting phenomena such as climate change, forced displacement, slavery, trafficking, and organised crime. The evidence presented by Human Rights at Sea (HRAS) outlines the current challenges faced in exposing abuses at sea, the minimal levels of explicit protection provided for under the UNCLOS framework and proposes four ways to address them.

1. First, it urges the UK government to prioritise and promote a common understanding of what ‘human rights at sea entails’ discarding the flawed perception that human rights at sea concerns only labour rights’ obligations of merchant seafarers.
2. Second, it suggests that the UK government supports the socialising and endorsement of the *Geneva Declaration on Human Rights at Sea*, a new soft law instrument that can fill in the explicit human rights at sea gaps in UNCLOS without opening up the Convention to re-negotiation.
3. Third, it proposes that the UK influences at the International Maritime Organisation (IMO), a more stringent regulation for the open registries that would hold flag states accountable for human rights abuses under their aegis.
4. Fourth, it recommends that the UK government pursues existing, as well as explores new avenues to remedy for sufferers of human rights abuse at sea, that are victim-centred, victim-led and are effective in law.

About Human Right at Sea

1. Human Rights at Sea (HRAS)¹ is a UK-based Charitable Incorporated Organisation (CIO) established in April 2014 for the benefit of the international community concerning explicit engagement in exposing and ending abuses at sea by acting as a global catalyst for change. It raises international awareness of human rights abuses at sea and delivers social justice through legal and policy developments around the world. Our Mission is to explicitly raise awareness, implementation, and accountability of human rights provisions throughout the maritime environment, especially where

¹ UK Registered Charity no. 1161673.

they are currently absent, ignored or being abuse. Our founding principle is that '**human rights apply at sea, as they do on land**'.

2. This submission responds to the following questions as outlined in the Inquiry's terms of reference. Our written evidence addresses the contemporary challenge of ensuring and protecting human rights at sea under the UNCLOS framework.

Q. In light of the challenges UNCLOS faces, is it still fit for purpose? Can or should UNCLOS be renegotiated to better address these challenges?

3. It is well acknowledged by international law of the sea experts² and civil society³ that UNCLOS has a distinct gap in relation to explicitly and comprehensively dealing with human rights' protections at sea. Despite its detailed regulation on maritime delimitation and states' jurisdictional competencies within the various maritime zones,⁴ as well as general guidance on how to use the oceans' natural resources in accordance with the principle of common heritage of mankind,⁵ UNCLOS says little, if anything, on the application of compliance and rights holders' protections of their fundamental human rights at sea.
4. In general, UNCLOS is premised on the two Grotian principles of the freedom of navigation on the high seas and the exclusive jurisdiction of the flag state.⁶ This is not to say that the Convention has failed, or that it has become irrelevant. UNCLOS is better understood as a 'framework general convention',⁷ setting the general rules and principles surrounding the use of the seas. It must also be seen as a product of its time, an instrument that could not have foreseen most of the contemporary human rights challenges we face in today's maritime environment.
5. Academics have been writing on the topic of human rights and the law of the sea as early as 2010.⁸ In 2014, Human Rights at Sea was the first civil

² Papanicolopulu, *International Law and the Protection of People at Sea* (Oxford University Press 2018), Haines, 'Developing Human Rights at Sea', 2021 35 (1) *Ocean Yearbook*, 18-51. Prof. Sir Malcom Evans Oral Evidence to the International Relations and Defence Committee, Wednesday 20 October 2021, available at <https://parliamentlive.tv/event/index/778f1185-6771-4133-9943-9300e4355ac6>, Dr Sofia Galani and Prof. Natalie Klein Oral Evidence to the International Relations and Defence Committee, Wednesday 3 November 2021, available at <https://parliamentlive.tv/event/index/731c1a6a-c96f-400c-9872-f1818c926513>

³ Human Rights at Sea written and oral advocacy since April 2014, <https://www.humanrightsatsea.org>.

⁴ UNCLOS Part II – Part X.

⁵ UNCLOS Part XI – XV.

⁶ UNCLOS Articles 87, 90, 91 94.

⁷ Treves, 'Human Rights and the Law of the Sea' (2010) 28 (1) *Berkeley Journal of International Law*. 1 (2010) available at

<https://oceanfdn.org/sites/default/files/Human%20Rights%20and%20the%20Law%20of%20the%20Sea.pdf>

⁸ Indicatively only, Treves (above footnote 7), Petrig, *Human Rights and Law Enforcement at Sea* (Brill 2014), Geiss & Petrig, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press 2011), Petrig & Hammond 'Deprivation of Liberty at Sea'

society organisation to be specifically established with an explicit mandate to raise awareness on human rights abuses at sea. Its role is to unambiguously profile and evidence abuses towards rights' holders working at sea for the justification to significantly improve compliance with human rights law at sea. Further, it seeks innovative routes to effective remedy that are victim-led.

6. It can be said that 'human rights at sea' is a relatively recent narrative in the long history of UNCLOS that has however entered maritime and human rights related policy agendas at UN, regional and national levels. This Inquiry is one such example. The greatest acknowledgement of the interdependence of lives and livelihoods at sea with the international law of the sea was this year's UN World Oceans Day theme that brought people and human rights to the centre of ocean governance.⁹
7. So long as UNCLOS says more about protecting the fish and the ocean's resources than protecting people, there will always be a gap concerning human rights protection at sea.¹⁰ Having said this, UNCLOS should not be opened to re-negotiation. Firstly, such a multilateral process is unrealistic in the current political climate. Secondly, a re-negotiation of UNCLOS would not yield the desirable outcomes in incorporating the explicit application of human rights law provisions at sea. For historical context, the international conferences on the law of the sea lasted nine years before UNCLOS was concluded.¹¹ A process of renegotiation could even jeopardise what is currently in the Convention.
8. A change and reasoned update is however now necessary to the current fragmented 'out of sight, out of mind' approach to protecting human rights at sea, and which will create a single international rule-based regime. This point will be covered at the end of the submission.

Q. What are the main challenges to the effective implementation of human rights at sea under the UNCLOS framework in 2021?

9. The effective implementation of UNCLOS is set against three major challenges, one conceptual and two legal. (1) The conceptual challenge on the absence of a shared and common international understanding of what 'human rights at sea' is; (2) the legal challenge in relation to the fragmented nature of international law and the absence of a dedicated legal regime that

MARSAFENET COST Action IS1105 - Human Rights at Sea, Evans & Galani 'Piracy and the Development of International Law' in Koutrakos, P. & Skordas, A. (eds.). *The Law and Practice of Piracy* (Oxford: Hart Publishing 2015), Papanicolopulu, *International Law and the Protection of People at Sea* (Oxford University Press 2018).

⁹ <https://unworldoceansday.org>

¹⁰ Prof. Sir Malcom Evans Oral Evidence to the International Relations and Defence Committee, Wednesday 20 October 2021, available at <https://parliamentlive.tv/event/index/778f1185-6771-4133-9943-9300e4355ac6>.

¹¹ The United Nations Convention on the Law of the Sea (A historical perspective), https://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm

unifies international human rights, refugee, labour, and law of the sea provisions;¹² (3) the legal challenge posed by the exclusive jurisdiction of the flag states on the high seas. Compounding this are additional challenges reflected by the often limited or entirely absent ability to enforce against human rights obligations at sea by flag state administration entities. This reflects consistently poor flag state accountability dominantly by open registries (Flags of Convenience) often protected by the corporate veil from commercial accountability, as an effective licensee of the coastal state. This is further compounded by conflicting legal obligations between the commercial flag administration and shipowner, ship manager, insurer and legal contractual requirements for strict confidentiality.¹³ This system being one of the single most significant barriers to transparency as to the scale of human, labour and social rights abuses at sea.

10. The three challenges are further exacerbated in considering the contemporary narratives that increasingly have people and their fundamental human rights at the centre of UN, state and international public discussion. For example:

- The slow onset environmental degradation caused by sea level rise, inundation, and shoreline change threatening the very existence of small island developing states (SIDS) with the projected long-term impact to be forced displacement of their permanent population.¹⁴
- The challenge of forced displacement and the ever-increasing use of the sea for migratory purposes, including in search of asylum and safe havens from persecution and human rights violations. According to UNHCR,¹⁵ there are 82.4 million forcibly displaced persons. Of those, 26.4 million are refugees many of whom cross the Mediterranean Sea, the Pacific Ocean, the Andaman Sea, and the English Channel fleeing persecution and harm. The duty to render assistance to people in distress at sea under UNCLOS and customary international law,¹⁶ the prohibition of *non-refoulement* under refugee and human rights law,¹⁷ and the prohibition of

¹² This is the main thesis defended in Papanicolopulu, *International Law and the Protection of People at Sea* (Oxford University Press 2018).

¹³ Haines, 'From mare liberum to mare legitimum', Maritime Foundation, 28 October 2021, available at <https://www.maritimefoundation.uk/publications/maritime-2021/from-mare-liberum-to-mare-legitimum/>

¹⁴ L.A., R.F. McLean, J. Agard, L.P. Briguglio, V. Duvat-Magnan, N. Pelesikoti, E. Tompkins, and A. Webb, 2014: Small islands. In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, available at https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap29_FINAL.pdf. "In extreme cases, the remaining territory of affected states may no longer be able to accommodate their population, and such states may disappear entirely from the surface of the earth. When this happens, the population would become permanently displaced to other countries". Kalin 'Conceptualising Climate-Induced Displacement' in McAdam (ed) *Climate Change and Displacement* (Hart Publishing 2010), 81-103.

¹⁵ UNHCR Global Trends on Forced Displacement 2020, available at <https://www.unhcr.org/flagship-reports/globaltrends/>.

¹⁶ UNCLOS, Article 98 (1).

¹⁷ 1951 Refugee Convention, Article 33(1), International Covenant on Civil and Political Rights, Article 7,

collective expulsion¹⁸ all of which trigger human rights' protections at sea.

- Organised maritime crime, including people smuggling, slavery, trafficking, and drug trafficking is a sophisticated and profitable enterprise for criminal gangs operating at transnational level, which constantly challenge transnational law enforcement operations and dated conceptions of jurisdiction.

11. Set against the above stated areas of concern, from a civil society perspective Human Rights at Sea has and continues to witness consistent attacks on the human rights of people who live work and transit the sea. This is driven by an absence of access to effective remedy and ever-increasing impunity of violators, be those state or non-state actors who take advantage of protection gaps, lack of UN institution accountability, jurisdictional conflicts, or commercial entities who hide behind the corporate veil. In the past eight years Human Rights at Sea has been witness to some of the most egregious human rights abuses occurring at sea. Those include:

- **Excessive work conditions.** Merchant seafarers being subjected to substandard working conditions with their physical and mental well-being under constant threat resulting in crew suicides in turn leading to dependants being subject to impoverishing living conditions and long-term debt bondage. The humanitarian crew crisis seeing seafarers working excessively under extended contracts beyond the 11-month legislative maximum and being deprived of their right to be repatriated to their families. The lack of timely access to medical facilities by port state authorities, the failure to repatriate deceased crew, and crew often subject to working conditions which sometimes amounted to forced labour.¹⁹
- **Loss of life at sea.** Death is a common occurrence at sea, either in the context of employment²⁰ or sea crossings.²¹ Unexplained deaths also continue such as the case of Third Officer Cristito M. Acosta in 2020.²² A 23-year-old Indian seafarer ended his life on board a tanker abandoned along with the crew in a UAE port this year.²³

Convention Against Torture, Article 3 and European Convention on Human Rights, Article 3.

¹⁸ European Convention on Human Rights, Protocol 4, Article 4.

¹⁹ Ivana Carionni Burnett, OP-ED. Crew Voices: Fearful, Frustrated, Fatigued, Forgotten (June 2020), <https://www.humanrightsatsea.org/2020/06/09/op-ed-crew-voices-fearful-frustrated-fatigued-forgotten/>.

²⁰ Death of Master, Food and Water Shortages and Failure in State Support leaves Crew Desperate (June 2021) <https://www.humanrightsatsea.org/2021/06/11/death-of-master-food-and-water-shortages-and-failure-in-state-support-leaves-crew-desperate/>.

²¹ Deaths on Maritime Migration Routes to Europe Soar in First Half of 2021: IOM Brief, <https://www.iom.int/news/deaths-maritime-migration-routes-europe-soar-first-half-2021-iom-brief>

²² HRAS Case Study, Missing Seafarers and Fishermen Reporting Programme, Third Officer Cristito Acosta (May 2020) https://www.humanrightsatsea.org/wp-content/uploads/2020/05/HRAS_MISSING_SEAFARER_MSRRP_CRISTITO_ACOSTA_CASE_STUDY_19_MAY_2020_SP_LOCKED.pdf

The IOM has reported that deaths of migrants and refugees at sea have almost doubled in 2021.²⁴ Since 2014, a total number of 22,842 missing people have been recorded in the Mediterranean only.

- **Violent and sexual crimes.** Crimes committed on board cruise ships, including sexual assaults, are rarely investigated by competent authorities and, frequently occur in situations that are jurisdictionally confusing.²⁵ Many victims are denied justice in the wake of the abuse to which they have been subjected.²⁶
- **Migrant and refugee abuses.** Maritime pushbacks of refugees and migrants in countries where they are subject to torture and inhumane treatment.²⁷
- **Fisheries abuses.** There are an estimated 27 million fishers in the world, with many working on substandard working conditions often amounting to modern slavery.²⁸ This is before we review the egregious abuses endemic in the SE Asian coastal and distant water fishing fleets.²⁹

Q. What should be the priorities for the UK Government regarding the future of UNCLOS and the international law of the sea? In what areas can or should the UK be a leader?

12. **Prioritisation of common understanding and language.** The priorities of the UK government regarding the future of UNCLOS should be framed around addressing through policy and legislative developments the three challenges identified in paragraph 9. First, addressing the conceptual challenge on what 'human rights at sea' means, requires a shared understanding that human rights are wider than simply established labour

²³ Tragic seafarer suicide on asphalt tanker vessel off UAE coast (January 2021) <https://www.humanrightsatsea.org/2021/01/30/updated-tragic-seafarer-suicide-on-asphalt-tanker-vessel-off-uae-coast/> .

²⁴ Deaths on Maritime Migration Routes to Europe Soar in First Half of 2021: IOM Brief, <https://www.iom.int/news/deaths-maritime-migration-routes-europe-soar-first-half-2021-iom-brief>

²⁵ Haines, 'From mare liberum to mare legitimum', Maritime Foundation, 28 October 2021, available at, <https://www.maritimefoundation.uk/publications/maritime-2021/from-mare-liberum-to-mare-legitimum/> Spanish court frees cruise rape suspect, Times UK (April 2019) <https://www.thetimes.co.uk/article/spanish-court-frees-cruise-rape-suspect-pnldn8bm6>

²⁶ Rape at Sea, Flag State Jurisdiction and the Search for Justice (April 2019) <https://www.humanrightsatsea.org/2019/04/15/rape-at-sea-flag-state-jurisdiction-and-the-search-for-justice/>

²⁷ Legal action before the ECtHR against Italy over its coordination of Libyan Coast Guard pull-backs resulting in migrant deaths and abuse (May 2018), <https://www.humanrightsatsea.org/2018/05/08/legal-action-before-the-ecthr-against-italy-over-its-coordination-of-libyan-coast-guard-pull-backs-resulting-in-migrant-deaths-and-abuse/>

²⁸ Report highlights important gaps in company efforts to address modern slavery in Pacific tuna fisheries (March 2021) <https://www.humanrightsatsea.org/2021/03/24/report-highlights-important-gaps-in-company-efforts-to-address-modern-slavery-in-pacific-tuna-fisheries/> .

²⁹ HRAS Baseline Study On the Awareness and Application of Human Rights in Taiwan's Fishing Industry, https://www.humanrightsatsea.org/wp-content/uploads/2020/06/HRAS_Baseline_Study_on_the_Awareness_and_Application_of_Human_Rights_in_-_Taiwans_Fishing_Industry_October_2019_SP_LOCKED.pdf

rights and standards on board UK flagged vessels.³⁰ As demonstrated by the first Parliamentary debate on human rights at sea brought before the House of Lords,³¹ the UK government maintains a flawed perception that the protection of human rights at sea concerns only its labour obligations. Human rights abuses affect any person found at sea be it for employment, recreation, military, or migration purposes.³²

13. **Legal and Policy development.** The legal challenges to be directly addressed are ones of effective implementation and compliance with human rights' obligations. The immediate focus relates to the need for a complementary and unified application of the various self-contained regimes concerning human rights at sea, including UNCLOS, human rights law, refugee law and labour law standards. The UK can be a global leader in championing this much-needed framework on human rights at sea by endorsing the *Geneva Declaration on Human Rights at Sea*.³³ The Declaration recalls existing legal obligations and provides guidance for coastal, flag and other states on how to protect, respect and ensure human rights at sea. **As soft law instrument, the Geneva Declaration can supplement UNCLOS and fill in the human rights at sea gap, without opening the Convention to re-negotiation.**

14. The second challenge would require a careful reconsideration of the exclusive jurisdiction of the flag states under UNCLOS in relation to duties of the flag state to cooperate with other states in the protection of human rights. Finally, a more stringent regulation for the open registries that would hold the flag state accountable for human rights abuses on board vessels flying its flag must be examined and implemented at IMO level.

Q. What enforcement mechanisms exist (or are needed) to pursue infringements of human rights law at sea?

15. The mechanisms of monitoring compliance with human rights law provisions at sea are national, regional, and international with regional and international mechanisms to be complementary to national ones. Firstly, states must ensure that they enact appropriate domestic legislation where domestic courts have the necessary competence to recognise and address violations of human rights of individuals on board vessels, or at sea within their

³⁰ Galani, 'The First Parliamentary Debate on Human Rights at Sea: One Step Forward, Two Steps Back?' EJIL TALK! (July 2021) <https://www.ejiltalk.org/the-first-parliamentary-debate-on-human-rights-at-sea-one-step-forward-two-steps-back/>.

³¹ Hansard Parliament, Human Rights at Sea Volume 813: debated on Tuesday 22 June 2021 <https://hansard.parliament.uk/lords/2021-06-22/debates/0E1323AD-B307-4E2B-AD14-A3C13BA880A3/HumanRightsAtSea>.

³² Galani, 'The First Parliamentary Debate on Human Rights at Sea: One Step Forward, Two Steps Back?' EJIL TALK! (July 2021) <https://www.ejiltalk.org/the-first-parliamentary-debate-on-human-rights-at-sea-one-step-forward-two-steps-back/>.

³³ Geneva Declaration on Human Rights at Sea www.gdhras.com

jurisdiction and that the domestic legislation is sufficient to empower the local courts to punish any individual or entity liable for any human rights violations. At a regional level there are courts that can hear individual petitions for human rights abuses at sea.³⁴ At UN level, most human rights treaties provide for monitoring and enforcement through established committees. These committees can hear individual complaints against a state party. The issue with these quasi-judicial fora is that they require the consent of the state to hear individual communications and that their admissibility criteria require that the applicant exhausts domestic remedies available, that are often non-existent or non-effective. The costs to the applicants are high and it can take up from eight to ten years to be awarded compensation for damages.³⁵

16. What is needed is alternative routes to remedy that are more accessible to the victim, faster, and overall victim-sensitive and oriented. Such mechanisms can only be complementary to domestic, regional, and international judicial and quasi-judicial fora. One such option currently being explored is the use of arbitration as an alternative dispute resolution mechanism for human rights abuses at sea.³⁶
17. Lastly, the UK government should establish a specific mandate within the UK's national human rights committee, the Equality and Human Rights Commission, to look exclusively at compliance with human rights at sea and/or appoint an independent special envoy to address the same.

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³⁴ The European Court of Human Rights is such one example. More and more strategic litigation is being pursued before the ECtHR. *Hirsi Jammaa and others v Italy* (Grand Chamber 2012 ECtHR). See also recent applications filed against Italy and Greece here <https://www.glanlaw.org/aegean-push-backs> . There is also the Inter-American Court of Human Rights, the African Court of Human and Peoples Rights.

³⁵ In January 2021, the Committee under the ICCPR found Italy in violation of its obligations under the Covenant in particular in violation of the right to life as provided in Article 6 of the ICCPR read alone, and in conjunction with Article 2 (3), in the context of Search and Rescue (SAR) operations of migrants at sea. According to the HRC, Italy delayed and failed to actively provide rescue to 200 migrants on the high seas in 2013. Read more at <https://www.humanrightsatsea.org/2021/01/28/the-right-to-life-italy-found-by-un-in-violation-of-the-right-to-life-of-migrants-at-sea/>

³⁶ Human Rights at Sea Arbitration, Arbitration as a Means of Effective Remedy for Human Rights Abuses at Sea, <https://hrasarb.com> .