



HUMAN RIGHTS AT SEA



All at Sea?

Is the Global Maritime Sector Effective in Business & Human Rights Implementation?

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Foreword

This independent Review from Human Rights at Sea is a welcome addition to our movement’s attempts to address “sea blindness” with risks and abuse at sea too often out of sight and therefore out of mind. Transparency is essential to progress.

This Review follows the first in the series issued in 2016. It brings together publicly available updates around current maritime-focused models, tools, initiatives and case studies, including a legislative review, into one single document with the aim to support ongoing and necessary awareness of the issues raised throughout the global maritime sector.

Shipping’s inherent links to global supply chains have businesses of every size associated with international shipping routes. There is a clear need for awareness and engagement for progress in the boats and vessels, and in law and policy development. On land, this engagement by businesses, investors, and governments is growing rapidly. At sea, less so.

Framing the concerns at sea raised by civil society organisations involves switching the industry’s approach from a race to the bottom, to a race *from* the bottom. This requires transparent and accountable reporting and continuous communication, especially from leading companies who are attempting to move in the right direction in what should be otherwise seen as a race *to the top*.

Alongside shipping, the global fishing industry, oil and gas companies, cruise lines and even artesian maritime workers, all have the need for continual access to talent, for competitive advantage, whilst the balancing of reputational risk and reward is present daily in the need and concerns of all stakeholders.

This is increasingly being challenged by seafarer’s organisations and civil society, supported by concerned citizens and consumers. Often consumers can only do this through trusted awareness and publicly available information against which they will make their informed choices.

This Review from Human Rights at Sea provides a vital new insight casting light on the global challenge to enhance working conditions of all workers at sea.

Phil Bloomer

Executive Director

Business and Human Rights Resource Centre

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**Business & Human Rights
Resource Centre**

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Glossary

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| Adverse Human Rights Impact | Any impacts that diminish, inhibit or otherwise limit or remove the enjoyment of a human right. |
| Coastal State | State which borders the ocean. |
| Code of Conduct | Policy document that establishes standards, rules and principles that employees and/or business partners must adhere to. |
| ESG | Environment, Social and Governance considerations that are used to evaluate sustainability performance. |
| Exclusive Economic Zone | Area in the ocean that extends beyond the territorial sea and up to 200 nautical miles from a coastal State's baselines. Coastal States are granted specific sovereign rights in this zone, particularly in relation to the exploration and exploitation of natural resources. |
| Flag of Convenience | Flag under which a vessel is registered that does not correspond to the vessel's owner. |
| Flag State | State where a vessel is registered. |
| Grievance Mechanism | Confidential complaints process that can be used by affected stakeholders such as individuals, employees, civil society and communities to obtain a resolution. |
| High Seas | Areas of the ocean that are not subject to State jurisdiction. |
| Human Rights Council | UN inter-governmental body with 47 State members which is responsible for the promotion and protection of all human rights around the world. |

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| Human Rights Due Diligence | Due diligence process that includes, at minimum, (i) identifying actual or potential human rights impacts, (ii) integrating and acting upon the findings, (iii) tracking the effectiveness of responses, and (iv) communicating how impacts are addressed. |
| Human Rights Impact Assessment | Assessment to identify and analyse the adverse impacts of business activities on rights-holders, including individuals, employees and communities. |
| International Bill of Human Rights | Refers to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. |
| Law of the Sea | Body of international law, including customary international law, treaties and international agreements governing the rights and duties of States. |
| Mandatory Human Rights Due Diligence Legislation | National legislation that creates human rights due diligence obligations for businesses and other State and non-State actors. |
| Maritime Labour Convention (MLC) | ILO Convention adopted in 2006 covering seafarers' rights at work. The MLC was adopted in conjunction with the IMO and entered into force in 2013. |
| Maritime Liens | Property right in vessel given to a creditor as a security for a debt or claim. |
| Port State | State in which a port is located. Ports are usually located within a coastal State's baselines and are therefore considered internal waters thus rendering ports subject to port States' territorial jurisdiction. |
| Port State Memoranda of Understanding (MOU) | Regional Memoranda of Understanding that establish port State control for merchant vessels in the form of harmonised vessel inspections and enforcement to target sub-standard ships. There are nine Port State MOUs: Paris MOU, Tokyo MOU, Indian Ocean MOU, Mediterranean MOU, Acuerdo de Viña del Mar, Caribbean MOU, Abuja MOU, Black Sea MOU, and Riyadh MOU. |
| Remediation | Process of stopping, reversing and redressing adverse human rights impacts and providing guarantees of non-repetition. |
| Territorial Sea | Area of ocean bordering a coastal State up to 12 nautical miles. A coastal State's sovereignty extends into the territorial sea. |
| UN Global Compact | Voluntary UN initiative based on CEO commitments to implement universal sustainability principles and to take steps to support UN goals. |
| UN Guiding Principles on Business and Human Rights | Non-binding guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations. The guidelines are based on three pillars. |
| UNGP Pillar I | The State has a duty to protect human rights. |

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|-----------------------------------|--|
| UNGP Pillar II | Businesses have a responsibility to respect human rights. |
| UNGP Pillar III | Victims of human rights abuses must have access to effective remedy. |
| Work in Fishing Convention (C188) | ILO Convention adopted in 2007 covering fishers' rights at work. The Convention came into force in 2017. |

Abbreviations

| | |
|--------|---|
| AI | Artificial Intelligence |
| C188 | ILO Work in Fishing Convention |
| CSR | Corporate Social Responsibility |
| ECHR | European Convention on Human Rights |
| EEZ | Exclusive Economic Zone |
| ESG | Environmental, Social, Governance |
| EU | European Union |
| HRAS | Human Rights at Sea |
| HRDD | Human Rights Due Diligence |
| HRIA | Human Rights Impact Assessment |
| ILO | International Labour Organization |
| IMO | International Maritime Organization |
| IPIECA | International Petroleum Industry Environmental Conservation Association |
| IUU | Illegal, Unregulated and Unreported |
| MLC | Maritime Labour Convention |
| MOU | Memorandum of Understanding |
| OECD | Organization for Economic Cooperation and Development |
| OHCHR | Office of the High Commissioner for Human Rights |
| SDG | Sustainable Development Goals |
| SME | Small and Medium Enterprises |
| STF | Seafood Task Force |
| UNCLOS | UN Convention on the Law of the Sea |
| UNGP | UN Guiding Principles on Business and Human Rights |

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Links

All links have been checked as working and live at the time of publishing.



Overview

Since their adoption by the UN Human Rights Council just over a decade ago in 2011, the UN Guiding Principles on Business and Human Rights ('UNGP' or 'Guiding Principles') have shaped the global understanding of business's responsibility to respect human rights standards and provide more effective remediation to victims for corporate failures. This includes both on land and at sea without exception throughout business ecosystems.

Human Rights at Sea (HRAS) is a UK-registered charitable NGO whose aim is to raise human rights awareness, implementation and accountability throughout the maritime environment with the vision to end human rights abuse at sea since 2014. HRAS, as a leading civil society voice on human rights issues in the maritime environment, has been a member of the UN Global Compact since 2015. The organisation's founding principle is that 'human rights apply at sea as they do on land'. In short, nobody should live in a human rights vacuum.

Since the adoption of the UNGP, HRAS has produced two independent international reports, several commentaries and a corporate fact sheet to examine how the UNGP are being applied in the maritime environment. The two main reports raise awareness for how human rights should be integrated into the policy and practice of companies that operate in the maritime sector, as well as their associated supply chains.

- 2016: An Introduction and Commentary to the 2011 UNGP and their Implementation in the Maritime Environment ISBN 978-0-9932680-5-2¹
- 2020: Human Rights at Sea Briefing Note: Are the 2011 UN Guiding Principles Working Effectively and being Rigorously Applied in the Maritime Industry? ISBN 978-1-913252-15-1²
- 2018: Implementing the UN Guiding Principles on Business and Human Rights in the Maritime Sector³
- 2014: Comment: Human Rights in business and legal engagement by the maritime industry⁴

This present non-exhaustive report develops previous HRAS maritime awareness work on the UNGP. It provides a review of the developments made under the UNGP, including progress made by different stakeholders in applying the UNGP in a complex maritime environment and a developing legal landscape that is increasingly mandating business actors to engage in human rights due diligence.

Looking forward the report raises the challenges of implementing UNGP in the maritime environment, as well as highlighting some of the exciting work being done to develop Pillars II and III of the Guiding Principles. Case studies show how some maritime actors are taking specific steps to fulfil aspects of the UNGP and can provide helpful resources for those facing similar challenges. Whilst these are encouraging first steps significant development work remains to be done to effectively fulfil the full breadth of the UNGP in the global maritime sector.

¹ <https://www.humanrightsatsea.org/sites/default/files/media-files/2022-02/HRAS%20UNGP%20Report%202016%20-%20low%20res%20dps%5B7%5D.pdf>

² https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_UN_Guiding_Principles_Briefing_Note_1_March_2020_SP_LOCKED%20%281%29.pdf

³ <https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS-IMHR2018-Business-and-Human-Rights-Key-Facts.pdf>

⁴ <https://www.humanrightsatsea.org/news/comment-human-rights-business-and-legal-engagement-maritime-industry>

Introduction

Billed as a new set of global guiding principles for business designed to ensure that companies do not violate human rights, the UN Guiding Principles on Business and Human Rights ('UNGP' or 'Guiding Principles') were adopted in 2011 by the UN Human Rights Council. The UNGP are the product of years of consultations and discussions that the late UN Special Representative, John Ruggie, held with stakeholders while holding the mandate of the Commission on Human Rights, the precursor to the Human Rights Council, on the issue of human rights and transnational corporations and other business enterprises. Since then, the UNGP have become the main international framework for corporate conduct regarding human rights. Wherever business enterprises may operate worldwide, they are expected to respect universal human rights.

This report builds on HRAS's two earlier reports on the UNGP⁵⁶. In recent years, increased attention has been placed on human rights issues in the maritime sector, largely due to two key developments. On one side, public awareness of labour abuses embedded in seafood supply chains has rapidly grown, as underscored by the international reporting of forced labour and associated human and labour rights abuses aboard Thai fishing vessels initiated by The Guardian's exposure⁷ in 2014 and recently variously exemplified by the content of the 2022 US State Department Trafficking in Persons (TIP) report⁸. More recently, increased coverage has brought the plight of seafarers during the COVID-19 pandemic to the forefront, as many have been stranded at sea for prolonged periods with difficulties in crew changes, access to medical facilities, closure of port state access and the late payment of wages resulting in historic levels of seafarer abandonment. This has resulted in a number of supporting business and human rights publications at UN agency level⁹ exemplified by the likes of the Maritime Human Rights Risks and the COVID-19 Crew Change Crisis tool¹⁰. These, however, are not new problems in the maritime sector despite the anomaly of the COVID-19 pandemic.

HRAS was established in 2014 to better advocate for the protection of human rights at sea and since then has spearheaded efforts to build consensus that universal human rights apply at sea, as they do on land. This has led to the first international effort to recognise human rights at sea as a general principle of international law, as represented by the 2019 Geneva Declaration of Human Rights at Sea¹¹.

This report provides both an introduction to the UNGP and highlights various ongoing developments and new initiatives in the maritime sector under the UNGP pillars. It also points to areas within maritime sectors where further work is needed to ensure that commercial engagement fully aligns with the Guiding Principles.

5 2016. An Introduction and Commentary to the 2011 UN Guiding Principles on Business and Human Rights and their implementation in the maritime environment <https://www.humanrightsatsea.org/sites/default/files/media-files/2022-02/HRAS%20UNGP%20Report%202016%20-%20low%20res%20dps%5B7%5D.pdf>

6 2020. An Introduction and Commentary to the 2011 UN Guiding Principles on Business and Human Rights and their implementation in the maritime environment. https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_UN_Guiding_Principles_Briefing_Note_1_March_2020_SP_LOCKED%20%281%29.pdf

7 <https://www.theguardian.com/global-development/2014/jun/10/-sp-migrant-workers-new-life-enslaved-thai-fishing>

8 <https://www.state.gov/reports/2022-trafficking-in-persons-report/>

9 <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/BusinessAndHR-COVID19.pdf>

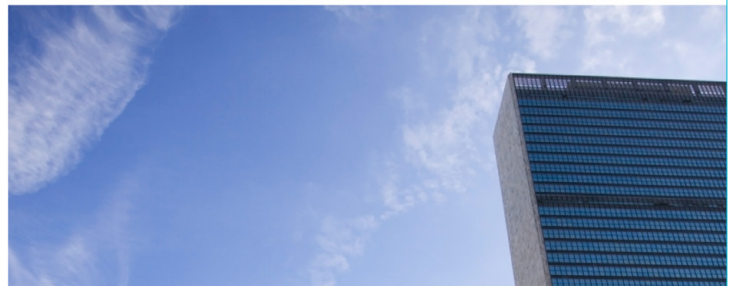
10 <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/maritime-risks-and-hrdd.pdf>

11 www.gdhras.com



ABOUT THE PROJECT

The Geneva Declaration on Human Rights at Sea confirms that human rights apply at sea as they do on land.



Geneva Declaration on Human Rights at Sea

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

In April 2019, HRAS published the first version of the Geneva Declaration on Human Rights at Sea after an initial drafting session with leading academic and operator experts with the final version issued 1 March 2022 in Geneva, Switzerland. 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.

The Declaration recognises the rules of International Human Rights and International Maritime Law and reflects the emerging customary cross-over of the two bodies of law.

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**



The Maritime Environment

The Geneva Declaration’s emphasis on the universality of human rights, even more so in the maritime environment, is important because the concept of the maritime environment is vital to understand the ecosystem in which human rights issues arise at sea.

The maritime environment is defined by HRAS as the setting in which State authorities, government agencies, business enterprises, and individuals work and operate throughout the maritime supply chain. This includes those employed throughout the life cycle of vessels (from the designing, constructing, manufacturing and dismantling of vessels) as well as the vessel’s actual use, including shipping, fishing, brokerage services, shipyards, dry-docks, construction and management of ports, freight-forwarding, insurance, education, seafarer and fisher recruitment, private maritime security companies, as well as related trade and charity associations that have a maritime focus.

The multidimensional maritime environment involves many different stakeholders, and it is key to understand these demographics in the context of human rights at sea. Global population of those engaged in fisheries alone is estimated to be around 38 million people¹². An estimated 90 percent of the global trade is transported by sea¹³ with an assessed 1.6 million commercial seafarers working at sea¹⁴. Associated with this figure are workers (and their families) whose livelihoods depend on the global shipping industry. Others are engaged in offshore oil, gas and renewable industries, in tourism and a range of other activities.

¹² <https://www.fao.org/3/cc0461en/online/cc0461en.html>

¹³ <https://www.un.org/sustainabledevelopment/wp-content/uploads/2017/05/Ocean-fact-sheet-package.pdf>

¹⁴ <https://www.ics-shipping.org/shipping-fact/shipping-and-world-trade-global-supply-and-demand-for-seafarers/>

Importantly, there are also increasing numbers of individuals using the seas and oceans as a means of migration, including in unregulated and trafficked circumstances. Elements of extreme labour exploitation can also easily arise at sea, including situations of forced labour at sea, for example in the case of some fishing vessels usually focused on distant water fleets, child labour and exploitation of victims of human trafficking. The constantly increasing numbers of people on the seas and oceans, as well as those whose livelihoods depend on the maritime economy, underscore a growing need for their protection against violations of their human rights.

The human rights and business nexus is ever-present in the maritime environment, given the importance of the maritime sector to global trade and food security. Yet, the UNGP lacks progress in implementation in this specific sector when compared to work done in other industries such as minerals, garment, agriculture and finance. In 2020, the HRAS briefing note on UNGP asked if the UNGP was being rigorously applied in the maritime industry. In response, David Hammond, CEO of HRAS, pointed out: “[T]here has been little concerted and collaborative effort by the shipping industry to embed the concept, develop unified policies, drive effective remedy and demonstrate public accountability in the field of business and human rights.”¹⁵

THE UN GUIDING PRINCIPLES THREE PILLARS



The UN Guiding Principles

This present report provides an overview of the developments related to the UNGP, including through increased mandatory human rights due diligence legislation, and the progress made in applying the UNGP in this complicated maritime environment, with particular focus on the maritime supply chain. It builds on HRAS' previous reports on the UNGP and mirrors the 'protect, respect and remedy' pillars of the UNGP:

Pillar I: State's duty to protect human rights.

Pillar II: Corporate responsibility to respect human rights; and

Pillar III: Human rights violations must be effectively remediated.

Looking ahead, the report raises the particular challenges of full implementation in the maritime environment and advocates for ways that we can better operationalise business and human rights at sea.

¹⁵ Quote 2020 report, page 2



Pillar 1: State Duty in the Marine Environment

The first pillar of the UNGP addresses the State duty to protect against human rights abuses by third parties, including corporations. This first pillar of a state duty to protect individuals from human rights violations intersects with the second concept in the ‘respect, protect and fulfil’ typology of a State’s human rights obligations under international law. Whereas a state’s obligation to respect human rights points to a State not taking any measure that would result in a violation of human rights, the obligation to protect human rights means that the State should take proactive measures to ensure that individuals under its jurisdiction do not suffer from human rights abuses.

Because the first pillar of the UNGP is a reiteration of the well-recognised State duty to protect against human rights harms by non-State entities, the obligation to protect human rights in the context of business and human rights is not a new development when compared with the ground-breaking work embodied by the second pillar on the corporate responsibility to respect human rights.

GUIDING PRINCIPLE 1:

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

Nonetheless, a general comprehension of Pillar I is important to both understand the context of Pillar II and the background of HRAS’s mission to advocate for the protection of human rights at sea. Same as on land, it is primarily States that have responsibility for enforcing human rights standards at sea. However, the unique nature of the sea means that ocean governance is regulated by the Law of the Sea. The UN Convention on the Law of the Sea (‘UNCLOS’), also often referred to as the ‘Constitution of the Oceans’¹⁶ deals with the specifics of maritime zone delimitation and associated internationally accepted rules and regulations, but notably does not explicitly cover human rights.

¹⁶ <https://legal.un.org/avl/ha/unclos/unclos.html>

On land, territorial jurisdiction of a State is intuitive, as we are accustomed to seeing physical signs at borders. At sea, however, jurisdiction, becomes complex and overlapping. In the context of the State duty to protect human rights at sea, three different types of jurisdictions come into the foreground: coastal State, port State and flag State jurisdiction.

Coastal States usually extend their territorial jurisdiction on land by 12 nautical miles from the shore into the sea, thereby creating the territorial sea. This zone is subject therefore to the jurisdiction of the coastal State and States are free to exercise their jurisdiction in line with specific limitations tied to the innocent passage of vessels as set out in UNCLOS¹⁷. Coastal States may also declare so-called ‘Exclusive Economic Zones’ (EEZ) which can extend for up to 200 nautical miles and grant coastal States jurisdiction over marine resources and activities tied to their exploitation, e.g., fishing and seabed exploitation.

Port States are those States with territorial jurisdiction over a port. This is important as, when in port, vessels enter the territorial jurisdiction of another State and may be subject to that State’s rules and oversight. For example, port States may be allowed to undertake inspections of vessels who request entry into port or are already there. Port State inspection regimes such as the Paris MoU¹⁸, Tokyo MoU¹⁹, the Maritime Labour Convention²⁰ (MLC 2006) and the ILO C188 Work in Fishing Convention²¹ are all important components of the State duty to protect human rights because they allow port States to investigate reports of human and labour rights violations on vessels that call into port, regardless of whether the vessel is registered domestically or abroad. However, some of these mechanisms are not widely implemented, thereby limiting their effectiveness and enforceability against violations.



17 UNCLOS, Art. 17

18 <https://www.parismou.org>

19 <https://www.tokyo-mou.org>

20 <https://www.ilo.org/global/standards/maritime-labour-convention/lang-en/index.htm>

21 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::PI2100_ILO_CODE:C188

South Africa detains a Fishing Vessel under Work in Fishing Convention

South Africa inspected and detained a fishing vessel in 2018 under the port State inspection mechanism provided for under the ILO Work in Fishing Convention, 2007. Following complaints by the crew about working conditions inspectors found problems on the vessel that included lack of documentation, including missing work agreements and crew lists, poor accommodation, and insufficient food for the crew. The vessel's lifebuoys were rotten, the vessel missed an anchor and the vessel's overall stability was of grave concern making it unseaworthy. Working conditions were also reported to be harsh.

The vessel was only released after the owner of the vessel was able to demonstrate that sufficient repairs and changes had been made to remediate all of the concerns identified.

https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_634680/lang--en/index.htm

Flag States are those States where a vessel is registered. Flags flown on vessels indicate where a vessel is registered. A flag State has jurisdiction over its vessels anywhere at sea, often exclusively, and has specific responsibilities concerning “administrative, technical and social matters” under the law of the sea²². Flag States must establish clear legal requirements for compliance with administrative, technical and social matters in line with international requirements and can ensure vessels' compliance with these requirements through inspections and other enforcement action as needed to ensure compliance.

With the territorial jurisdiction of States only extending to 12 nautical miles from the shore, and coastal States' jurisdiction over so-called 'Exclusive Economic Zones' (EEZ) up to 200 nautical miles covering approximately 40 percent of world oceans²³, well over 60 percent of the earth's surface is beyond the limits of coastal States' jurisdiction. This area is known as the high seas and no State has jurisdiction over these vast stretches of the water commons, meaning that a ship on the high seas is only subject to the jurisdiction of its flag State. In practice, however, it is extremely difficult for any flag State to exercise effective enforcement jurisdiction over a ship while it is out at sea. Locating a ship in this vast expanse and exercising any kind of control over it while out at sea can be extremely challenging and often next to impossible. However, satellite technology and related human activity initiatives such as Global Fishing Watch's 'Revolutionizing Ocean Monitoring and Analysis'²⁴ are ensuring that data about human activity at sea is shared publicly and creating opportunities for better monitoring.

The State duty to protect human rights in the marine environment becomes even more complex when we add the realities of the modern maritime industry. Vessels may be registered in one State (flag State), managed and operated by a business enterprise in another State, owned by a person or business enterprise in a third State and crewed by a multinational crew hailing from a variety of other States. All of these different States may be engaged in the State duty to protect human rights in some way and when sailing, this vessel may pass through territorial seas and stop in ports bringing additional State jurisdictions into play.

22 UNCLoS, Art. 94

23 <https://globalfishingwatch.org/fisheries/taming-the-oceans-wild-west/>

24 <https://globalfishingwatch.org>

These relatively confusing and overlapping scenarios mean that States often do not meet their duties under Pillar I, sometimes assuming that other States are better positioned to address the human rights risks. Consequently, a human rights vacuum is created at sea in which States fail to fulfil their duty to protect human rights.

One measure that is picking up momentum is the introduction of mandatory human rights legislation that is specifically targeted at business actors in terms of corporate reporting obligations. This includes the 2015 UK Modern Slavery Act²⁵, the 2017 French Duty of Vigilance Law²⁶, the 2018 Australian Modern Slavery Act²⁷, the 2019 Netherlands Child Labour Due Diligence Act²⁸, and the 2021 German Supply Chain Due Diligence Act²⁹. In addition, the EU proposal for corporate sustainability due diligence should be considered.³⁰ These developments in the regulatory landscape at the national level oblige business enterprises to take proactive steps to identify and prevent human rights violations. More detailed information on these laws can be found in the report's Annex A.

These laws are an important aspect of the duty under Pillar I of the UNGP to protect against business-related human rights violations. They are an example of the type of measures that States can take to meet their duty to respect human rights by creating an environment that promotes business respect for human rights, at home and abroad and establish obligations for businesses to identify, prevent, mitigate and remedy human rights violations. Same as on land, it is primarily States that are responsible to enforce human rights standards at sea. By introducing mandatory human rights due diligence through Pillar I, States can operationalise human rights at sea further by requiring actors in maritime supply chains to take proactive steps to respect human rights and remedy violations.



State-Level Engagement: UK House of Lords Report ‘UNCLOS: The Law of The Sea in the 21st Century

In light of the UK's role as a major maritime power, the UK Parliament's Upper House, the House of Lords International Relations and Defence Committee conducted a formal inquiry³¹ into whether the UN Convention on the Law of the Sea 1982 (UNCLOS) remained ‘fit for purpose’ forty years after its agreement.

25 <https://www.gov.uk/government/collections/modern-slavery-bill>

26 <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>

27 <https://www.legislation.gov.au/Details/C2018A00153>

28 <https://www.business-humanrights.org/en/latest-news/dutch-senate-votes-to-adopt-child-labour-due-diligence-law/>

29 <https://www.bmas.de/EN/Services/Press/recent-publications/2021/act-on-corporate-due-diligence-in-supply-chains.html>

30 https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

31 <https://www.humanrightsatsea.org/news/uk-house-lords-unclos-inquiry-un-convention-law-sea-still-fit-purpose>

The Inquiry looked at numerous issues, including technological developments, maritime security, human element engagement and state enforcement requirements in respect of the existing position of the 1982 Law of the Sea during both live and written evidence submissions in November and December 2021. It compared the existing Convention coverage with emerging trends of a 21st Century global society, itself benefiting from the maritime environment including related use of global supply chains at sea and which included the need for addressing human and labour rights at sea (Chapter 5).

This resulted in a Committee report³² looking at the effective operation of the Law of the Sea in the modern era³³. The report concluded that the current law of the sea displays gaps, especially with regards to the application of human rights at sea and invited the Government to consider advancing an agreement to address human rights abuses at sea.

The House of Lords specifically highlighted several matters pertaining to addressing human rights at sea including, but not limited to:

'190. UNCLOS has little to say about human rights. Nonetheless, it is clear that international human rights law applies to people at sea. But there are barriers to the application of human rights at sea in practice. The Government acknowledged the existence of these barriers but did not say how it intended to address them.'

'191. We ask that in its response to this report, the Government confirms that it considers international human rights law to apply equally at sea as it does on land, and to commit to taking a clear and unequivocal position on this both domestically and internationally.'

'192. We urge the Government to acknowledge that human rights at sea include a wide range of rights, and not just those pertaining to labour conditions, important though these are. In its response to us, we ask that the Government sets out what it considers its obligations to be concerning human rights at sea, including with reference to human trafficking and modern slavery.'

'193. The principle of exclusive flag state jurisdiction and the issue of flags of convenience poses a challenge to the effective monitoring and enforcement of human rights at sea. We reiterate our request for the Government to provide more detail on its review of this issue.'³⁴

The first question of what the UK Government is doing to protect human rights at sea was raised as an oral question by Human Rights at Sea Patron, Lord Teverson of Tregony, in the UK Parliament and was discussed in the House of Lords for the first time on 22 June 2021.³⁵

The UK Government responded on 31 May 2022³⁶ but this was viewed by the Committee as a disappointing response. On 19 July, the Committee's Chair, Baroness Anelay of St Johns, wrote to Lord Goldsmith of Richmond Park, Minister for Pacific and the Environment, the Foreign, Commonwealth & Development Office and the Department for Environment, Food and Rural Affairs, requesting further information from the Government on seven areas including flags of convenience and human rights at sea. The Chair stated: '...we were disappointed with the Government's response and would like to raise further questions.'³⁷

32 <https://committees.parliament.uk/work/1557/unclos-fit-for-purpose-in-the-21st-century/publications/>

33 <https://publications.parliament.uk/pa/ld5802/ldselect/ldintrel/159/15902.htm>

34 <https://committees.parliament.uk/committee/360/international-relations-and-defence-committee/news/161381/law-of-the-sea-in-21st-century-lords-committee-outlines-actions-for-government/>

35 <https://www.humanrightsatsea.org/news/hras-initiates-first-house-lords-discussion-human-rights-sea>

36 <https://committees.parliament.uk/publications/22581/documents/168699/default/>

37 <https://committees.parliament.uk/publications/23186/documents/169474/default/>

At the time of writing the UK Government has yet to provide clarifications around numerous issues raised; examples being:

In terms of the ‘Applicability of human rights law at sea’, it was stated:

‘We were disappointed with the Government’s responses to paragraphs 190, 191 and 192 of our report. The response acknowledges that while “human rights for workers ashore in the UK are enforced through tribunals/ the ECHR...there is scope to clarify where seafarers have access to these.” But it gives no detail on how the Government seeks to address these gaps. It also only refers to rights for workers and not wider users of the sea, which we explicitly asked about in our recommendation in paragraph 192.’

‘The response also does not confirm, as requested, that the Government considers international human rights law to apply equally at sea as on land. Instead, it refers to the application of the ECHR as applying equally in UK territorial sea as on land. This is a geographically restricted interpretation of human rights at sea and does not explicitly acknowledge the inherent rights of individuals wherever they are located. Further, while the response acknowledges there are jurisdictional complexities that exist at sea, this should not detract from the commitment that human rights law applies regardless of these jurisdictional complexities.’

In terms of ‘Flag states and human rights at sea’, it was stated:

‘In response to paragraph 193 of our report, the response again asserts that: “The record of compliance with international conventions by vessels on Open Registers is not significantly worse than that of vessels on other registries.” However, this does not address the issue of whether a flag state is able to enforce international law when a breach occurs, which is a particular concern for human rights. We ask that in response to question 2 above, you include reference to the specific challenges relating to flags of convenience and enforcing human rights at sea.’

In terms of ‘Justice for victims of human rights abuses at sea’ it was stated:

‘The response to paragraph 219 of our report was very brief. The response acknowledges that “internationally the applicable jurisdiction for victims of human rights abuses at sea may be difficult to ascertain”, and that there is “scope to clarify where victims may bring a complaint or case in the UK”, but it does not provide this clarification.’

Key for HRAS is the point on ‘A unified approach to human rights at sea’, where it was stated:

‘A reply to paragraph 232 of our report was missing from the response. Paragraph 232 said:

“Piecemeal solutions will not be sufficient. We call on the Government to work with like-minded partners to advance a unified approach to human rights at sea. This will need to draw together practical solutions to challenges including mass migration, forced labour, physical and sexual crimes, and crimes committed by privately contracted armed security personnel, and must lead to the creation of new mechanisms to address the issue.”

Crucially, the House of Lords Committee stated: ‘We would like to reiterate this recommendation and ask again whether the Government is planning to work towards a unified approach to human rights at sea.’



Pillar II: Corporate Responsibility in the Maritime Supply Chain

The second pillar of the UNGP sets out the responsibility for business enterprises to respect human rights. Guiding Principle 11 states that businesses should avoid infringing on the fundamental rights of others under any circumstance and address negative human rights impacts with which they are involved. This responsibility applies to all business enterprises regardless of their size, sector, operational context, ownership and structure³⁸.

GUIDING PRINCIPLE 12:

The responsibility of business enterprises to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

The UNGP have identified three essential steps for business enterprises to fulfil their corporate responsibility to respect human rights³⁹:

- 1. Adopt a Policy Commitment on Human Rights;**
- 2. Engage in Human Rights Due Diligence; and**
- 3. Remedy adverse human rights impacts they cause or to which they contribute.**

The following section highlights case studies of how maritime actors are taking specific steps to fulfil aspects of the UNGP and provides a sample overview of resources for those facing similar challenges. Whilst these are encouraging first steps work remains to be done to effectively fulfil the full breadth of the UNGP in the maritime sector.

³⁸ Guiding Principle, 14

³⁹ Guiding Principle, 15

Policy Commitment on Human Rights (Guiding Principle 16)

Effective human rights policies must be appropriate and relevant to the actual and potential impacts of the business enterprise. They should be informed by relevant expertise and approved by senior leadership of the business enterprise. The Guiding Principles are clear that human rights are indivisible, meaning that companies cannot choose to only respect some rights but not others and that negative impacts cannot be 'off-set' by generalised activities to promote human rights or those with philanthropic aims⁴⁰.

Business enterprises must commit to respecting all human rights and identify and address their human rights impacts throughout their entire operations. This means that a human rights policy requires a different coverage than what typically falls under the scope of corporate social responsibility (CSR) and sustainability policies, such as voluntary community engagement and environmental topics.

Once adopted, business enterprises should make publicly available their human rights policy and actively communicate it, internally and externally, to all personnel, business partners and other relevant parties. Enterprises also need to ensure that their human rights policy commitment is integrated into their operational policies and all relevant business processes, such as changes in procurement practices and how new suppliers are contracted.



RESOURCE

Code of Conduct - Delivering on Seafarer Rights

The Sustainable Shipping Initiative (SSI) in collaboration with the Institute for Human Rights and Business (IHRB) and the Rafto Foundation have developed a Code of Conduct to ensure that seafarers' rights and welfare are respected⁴¹. Addressed to shipowners, ship operators, charterers and cargo owners, the Code was drafted to focus on valuing seafarers, including the full spectrum of their human rights. Whilst the Code reinforces the Maritime Labour Convention and other relevant conventions, it does not provide detailed health and safety requirements but rather assumes that the Code of Conduct will be integrated with relevant health and safety requirements into an overall management system for the protection of seafarers.

The Code can be a useful tool resource to reinforce a human rights policy and used as a first step by commercial entities in their commitment to develop better respect for human rights.

40 GUIDING PRINCIPLES, II, Commentary

41 <https://www.sustainableshipping.org/wp-content/uploads/2021/10/Seafarers-rights-Code-of-Conduct.pdf>

Tuna Industry: Thai Union's Human Rights Policy

In 2017, Thai Union, the world's largest tuna company, began working with Greenpeace on a far-reaching program to reform the company's environmental and labour practices⁴², including developing and strengthening Thai Union's human rights commitments.

Thai Union's Human Rights Policy⁴³, published in 2018, includes a clear commitment to respect human rights in Thai Union's operations, supply and value chains, while also leveraging its important role in the wider global seafood industry and be a leading agent of change for human rights for the industry.

Thai Union commits to implementing its Human Rights Policy by deploying six pillars under the company's Human Rights Due Diligence Framework that closely map the Organization of Economic Cooperation and Development's (OECD) Due Diligence Guidance for Responsible Business Conduct⁴⁴:

DUE DILIGENCE FRAMEWORK SIX PILLARS



© Image Shutterstock

42 <https://www.greenpeace.org/international/press-release/7207/thai-union-commits-to-more-sustainable-socially-responsible-seafood/>

43 <https://www.thaiunion.com/files/download/sustainability/policy/20181128-tu-human-rights-en.pdf>

44 <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

Human Rights Due Diligence

Developing a human rights policy and the process of human rights due diligence are closely linked. Human rights due diligence (HRDD)⁴⁵⁴⁶ is a cornerstone of the corporate responsibility to respect human rights.



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*"Due diligence has been defined as "such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent [person] under the particular circumstances; **not measured by any absolute standard, but depending on the relative facts of the special case.**" In the context of the Guiding Principles, human rights due diligence comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake ... **to meet its responsibility to respect human rights.**"⁴⁷*

In operational terms, HRDD the responsibility to respect human rights requires that business enterprises are able to "know and show" that they are respecting human rights by having in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to respect human rights, to serve as basis for embedding this commitment throughout the enterprise and in business relationships;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how the enterprise addresses its impacts on human rights.
- (c) Processes to enable the remediation of any adverse human rights impacts the enterprise causes or to which it contributes.⁴⁸

45 Guiding Principle 17

46 <https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices>

47 <https://shiftproject.org/hrdd-outcomes-standard/>

48 <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Session18/CompanionNoteDiligenceReport.pdf>

EU Perspective

HRDD is being extensively developed by the European Union focusing on a proposal⁴⁹ respecting human rights and the environment in global value chains.⁵⁰

"His proposal is a real game-changer in the way companies operate their business activities throughout their global supply chain. With these rules, we want to stand up for human rights and lead the green transition. We can no longer turn a blind eye on what happens down our value chains. We need a shift in our economic model. The momentum in the market has been building in support of this initiative, with consumers pushing for more sustainable products. I am confident that many business leaders will support this cause." Didier Reynders, Commissioner for Justice, 23 February 2022.

From an EU perspective, the new due diligence rules will apply to the following companies and sectors:

EU Companies:

Group 1: all EU limited liability companies of substantial size and economic power (with 500+ employees and EUR 150 million+ in net turnover worldwide).

Group 2: Other limited liability companies operating in defined high impact sectors, which do not meet both Group 1 thresholds, but have more than 250 employees and a net turnover of EUR 40 million worldwide and more. For these companies, rules will start to apply 2 years later than for group 1.

Non-EU companies active in the EU with a turnover threshold aligned with Group 1 and 2, generated in the EU. Small and medium enterprises (SMEs) are not directly in the scope of this proposal.

The proposal will be presented to the European Parliament and the Council for approval. Once adopted, Member States will have two years to transpose the Directive into national law and communicate the relevant texts to the Commission.

Human rights due diligence should never be a one-time exercise but rather become an integrated part of all levels of a business enterprise's decision-making and the way it conducts business. HRDD requires active engagement and responses from an enterprise as the operating contexts, economic and political realities and other factors shift and present new opportunities or adverse human rights impacts.

HRDD Involves a Minimum of Four Processes



49 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>

50 https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

This section reviews resources and provides case studies in relation to conducting HRDD. Most of these focus on assessing and actual and potential human rights impacts and, to a lesser degree, on addressing impacts. Work remains to be done to ensure that these activities are enhanced with the necessary transparency, communication and effective monitoring.

Human Rights Impact Assessments



Human rights impact assessments (HRIA) are a process that allow any business enterprise to identify, prioritise and address any actual and potential human rights risks that it may cause or contribute to through its own activities or may be directly linked to its operations, products or services by its business relationships⁵¹. Human rights impact assessments can therefore help companies to fulfil the first two processes of HRDD.

RESOURCE

Human Rights Impact Assessment and Toolbox

The Danish Institute for Human Rights has developed a Human Rights Impact Assessment Guidance and Toolbox to assist practitioners, businesses and financial institutions in conducting effective HRIAs to assess and address the adverse impacts of business activities on human rights⁵².

⁵¹ Guiding Principle 17a

⁵² [https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox#:~:text=Human%20rights%20impact%20assessment%20\(HRIA,discrimination%20into%20the%20assessment%20process](https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox#:~:text=Human%20rights%20impact%20assessment%20(HRIA,discrimination%20into%20the%20assessment%20process)



Wesfarmer's Human Rights Issues Assessment & Modern Slavery Statement

In the 2021 financial year, Wesfarmers engaged a third-party human rights consultant to conduct a salient human rights issues assessment across the Group. This assessment included:

- **Discussions in cross-functional human rights working groups**
- **Overarching human rights and modern slavery risk management gap analyses**
- **Human rights risk mapping for operations, supply chains and other business relationships**
- **An assessment of each risk based on scale, scope, irremediability and likelihood of potential or actual human rights impact**⁵³

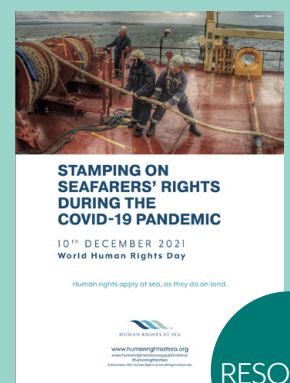
Following this assessment, Wesfarmers classified maritime cargo shipping and charter vessels as high risk for modern slavery.

For more than 12 months, Wesfarmers closely monitored the now widely reported human rights risks to global shipping seafarer welfare attributable to COVID-19. To mitigate the risk of modern slavery in their shipping supply chains, they engaged their shipping partners on these issues. To address the issue of crew changes Wesfarmers wrote to all its carriers during the year and these confirmed whether they were working within the International Maritime Organisation (IMO) framework, together with various ILO and other maritime labour conventions to protect the health and welfare of seafarers. Wesfarmers engaged Human Rights at Sea to advise on appropriate contract clauses to include in head agreements with carriers to further assist in safeguarding the human rights of seafarers. In the 2021 financial year, Wesfarmers reviewed and enhanced the modern slavery clauses in their shipping contracts and continue to engage these partners regularly on this issue, seeking confirmation that their practices and controls are adequate⁵⁴.

Maritime Human Rights Risks and the COVID-19 Crew Change Crisis

The UN Office of the High Commissioner for Human Rights (OHCHR) has published a tool to support human rights due diligence in relation to the COVID-19 crew change crisis in the maritime sector⁵⁵. COVID-19 related measures imposed by governments, including travel bans, embarkation and disembarkation restrictions or suspension in the issuance of travel documents, have severely strained the working conditions in the global shipping sector, resulting in a humanitarian and safety crisis as hundreds of thousands of seafarers are trapped onboard vessels. This has led to severe human rights risks, impacting seafarers' rights to physical and mental health, family life and freedom of movement. As seafarers are often required to work beyond the 11-month limit established by the Maritime Labour Convention no immediate end is in sight and some situations may amount to forced labour.

The OHCHR identifies a clear business responsibility to undertake human rights due diligence in line with the UNGP and its tools provide an overview of good practices to address the specific risks that have emerged in the wake of COVID-19. The OHCHR also notes that in some cases good human rights due diligence may involve companies to use their individual and collective leverage on governments themselves to ensure that seafarers' rights can be respected.



53 https://www.wesfarmers.com.au/docs/default-source/sustainability-documents/2108261641-wesfarmers-2021-modern-slavery-statement.pdf?sfvrsn=387a12bb_32

54 <https://www.humanrightsatsea.org/2021/09/13/wesfarmers-modern-slavery-statement-2021-focuses-on-seafarers-human-rights-protections/>

55 <https://www.ohchr.org/Documents/Issues/Business/maritime-risks-and-hrdd.pdf>



Due Diligence in the Extractives Industries at Sea

In extractive industries, such as oil, gas or mining, the supply chain is as long as it is complex. Having a comprehensive due diligence process in extractive industries at sea is the same as it is on land, with the supply chain composed of the exploration, extraction, transportation, processing, distribution and consumption of the resource and its derivatives⁵⁶.

IPIECA, the global oil and gas industry association previously known as the International Petroleum Industry Environmental Conservation Association, has contributed to the oil and gas sector with a guidance on how to implement a due diligence system. The implementation consists of the six following points⁵⁷:

- 1. Vision: Articulate the vision and objectives of the company through a code of conduct, CSR policy or a human rights policy**
- 2. Accountability: Establishing appropriate roles and assignments to address the responsibility within any organisation**
- 3. Planning: Taking into consideration the position of stakeholders, communities, external sources, and assessing strategies for human rights issues**
- 4. Implementation: Impacts findings should be incorporated into the business management plan.**
- 5. Review: Establish a set of indicators and tracking systems**
- 6. Improve: Continuously identify opportunities for improvement**

⁵⁶ <https://www.unpri.org/download?ac=5081>

⁵⁷ <https://www.ipieca.org/resources/good-practice/human-rights-due-diligence-guidance/>



Seafood Task Force Tuna Handbook

The Sea Food Task Force (STF)⁵⁸ is an industry-led organisation that aims to promote the application of social and environmental standards within the seafood supply chain. The STF emphasises addressing illegal, unreported and unregulated (IUU) fishing because it believes that environmental and social issues, including labour abuse, are closely linked to IUU fishing.

The STF has developed a Code of Conduct and detailed Auditable Standards that apply both to the land-based supply chain and work at sea. The Code is made up of 15 basic principles covering areas such as hiring practices and employment contracts, compensation, working hours, treatment of employees, wages and benefits. The STF has published a handbook specifically for tuna vessels which gives implementation guidance for the 15 principles in the tuna fishing context⁵⁹. The resource is available in English, Indonesian, Korean, Simplified and Traditional Chinese, Spanish and Vietnamese⁶⁰.

The handbooks are a practical way in which specific knowledge gaps concerning the prevention of adverse human rights impacts can be addressed and provide relevant sector-specific guidance. The STF has yet to publish further information about the effectiveness of the handbooks.

58 <https://www.seafoodtaskforce.global/>

59 <https://www.seafoodtaskforce.global/resources/>

60 <https://www.seafoodtaskforce.global/resources/>



UK Fishing Industry Transparency

The Anglo-North Irish Fish Producers Organisation (ANIFPO)⁶¹ started engagement with Human Rights at Sea International, the not-for-profit subsidiary consultancy of HRAS⁶², to review their recruitment and employment of non-EEA nationals, especially from the Philippines, Ghana, Sri Lanka and Indonesia. The consultancy assisted the sector in their mandatory due diligence process, in particular by developing policies to comply with the UK Modern Slavery Act. As a second step, ANIFPO commissioned an independent assessment of their work in 2017 and 2018⁶³, which allowed them to identify and embark on areas for improvement.

61 <https://www.seasource.com/anifpabout>

62 <https://www.humanrightsatsea.org/anifpo-year-two-fisheries-human-rights-audit-2018>

63 <https://www.humanrightsatsea.org/wp-content/uploads/2017/08/HRAS-ANIFPO-NON-EEA-PROJECT-REPORT-FINAL-LOCKED-Issued-20170803.pdf>; https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/ANIFPO_SeaSource_Response_Statement_on_HRAS_Business_and_Human_Rights-Audit_Report_2019.pdf



RESOURCE

RISE (Roadmap for Improving Seafood Ethics)

RISE⁶⁴ offers a go-to resource for seafood companies to uphold legal and ethical labour conditions and safeguard worker well-being. The platform provides free access to guidance on how to implement practices related to eight aspects of human rights due diligence such as developing commitments, assessing risks, building capacity, remediation and communication. The roadmap is built upon three core foundations: responsible recruitment, worker engagement and decent work and remains under continuous development.

RIGHTSHIP

RESOURCE

RightShip Crew Welfare Assessment Tool

Along with the Code of Conduct on Seafarers' Rights the Sustainable Shipping Initiative (SSI), the Institute for Human Rights and Business (IHRB) and the Rafto Foundation have developed a crew welfare self-assessment tool hosted by RightShip⁶⁵. The self-assessment intends to provide guidance on how to adopt the Code of Conduct and track progress against three levels of accreditation: basic, intermediate and excellent.

Comment: Whilst the self-assessment can be a useful first step to familiarize companies with potential risks, it does not fulfil the requirements of HRDD for assessing and addressing actual and potential human rights impacts. The tool does not gather worker evidence, nor does it prompt any clear actions on the basis of risks identified, or otherwise provide for remediation of human rights impacts identified. Although the platform allows companies to share self-assessments with interested stakeholders, it does not automatically require results to be transparently published or otherwise to be communicated in line with HRDD. Finally, the self-assessment does not provide independent validation and oversight arguably making the accreditation levels achieved meaningless.⁶⁶

64 <https://www.riseseafood.org/>

65 <https://rightship.com/solutions/shipowner/crew-welfare-self-assessment-tool/>

66 For further information see: <https://www.humanrightsatsea.org/news/rightship-crew-welfare-opinion>

RESOURCE

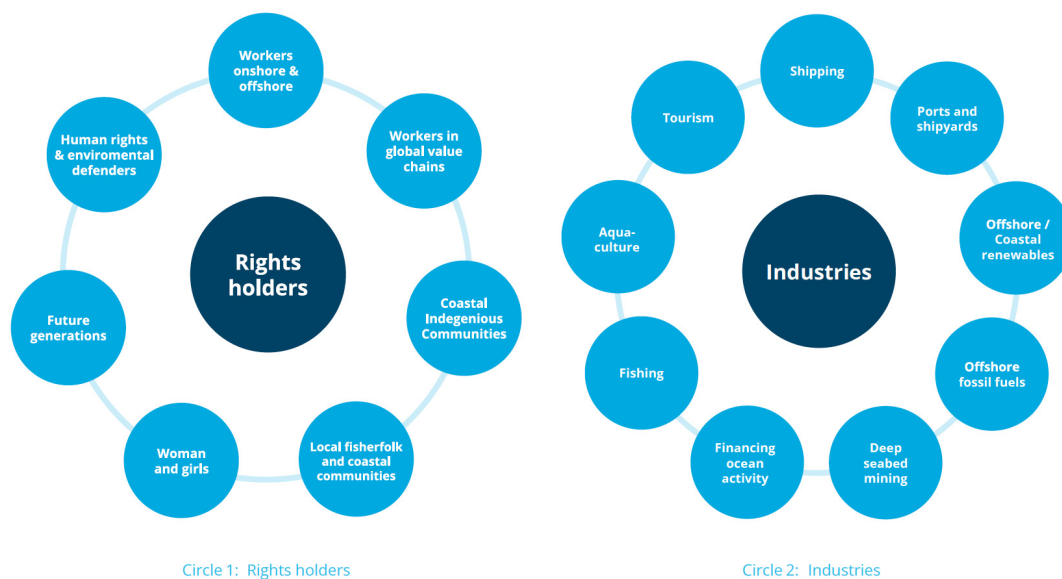
Ocean and Human Rights Platform & the Ship Lifecycle Principles (SLPs)

The Institute for Human Rights and Business (IHRB) and the Rafto Foundation have formed the Ocean and Human Rights Platform as a platform to raise awareness to prevent and address adverse human rights impacts across ocean industries⁶⁷. The platform has activities in shipping, ports and shipyards, and coastal wind energy. A key project that falls under the new platform are the ‘Ship Lifecycle Principles’.

The Ship Lifecycle Principles (SLPs)⁶⁸ were developed by the Institute for Human Rights and Business (IHRB) the Rafto Foundation and the Danish Institute for Human Rights (DIHR) in an effort to increase awareness of human rights standards across all shipping operations. The draft Principles were opened for consultation with the express aim of becoming a recognised benchmark for the shipping sector, including companies, workers, communities and other organisations involved in the sector. The Principles are also intended to become a working tool for actors to conduct due diligence and address identified risks. Upon adoption, the Principles will be supplemented with practical tools and implementation guides.

The SLPs put workers and local communities at the centre and are addressed to all businesses involved in a ship’s lifecycle, including shipowners, operators, managers, designers, shipyards, cargo owners, ports, agents, cash buyers and ship recycling facilities. The purpose of the SLPs is to provide a common framework for all of these businesses to understand and respect human rights and to create a holistic picture for all actors of the typical human rights risks and responsibilities. This is important as human rights risks may arise not only through a business actor’s own activities but also through their business relationships.

The Principles are aligned with relevant maritime conventions, including the ILO Maritime Labour Convention (MLC), International Maritime Organisation (IMO) Conventions, the UN Convention on the Law of the Sea (UNCLOS), and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel).⁶⁹



67 <https://www.ihrb.org/focus-areas/oceans/ocean-platform/>

68 <https://www.ihrb.org/focus-areas/shipping/the-ship-lifecycle-embedding-human-rights-from-shipyard-to-scrapyard>

69 <https://www.unep.org/resources/report/basel-convention-control-transboundary-movements-hazardous-wastes>

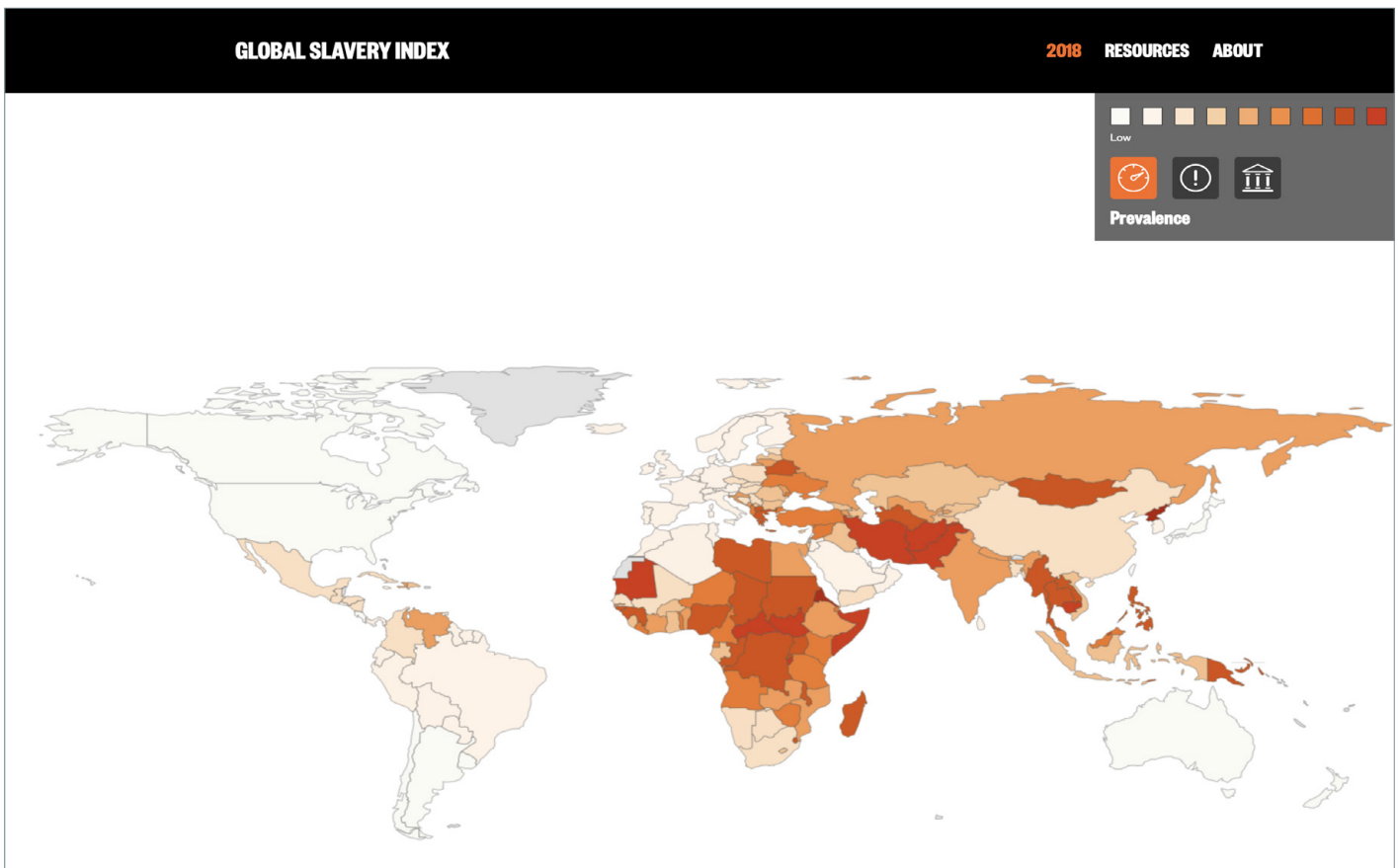
RESOURCE

The Global Slavery Index

The Global Slavery Index⁷⁰ is a publicly available index created by the Walk Free Foundation⁷¹ which provides data on the prevalence and geographical variation of modern slavery across countries and industries. The Index also measures government action around and responses to modern slavery and modern slavery risks. This data can be used to inform companies’ assessment of actual and potential risks when addressing modern slavery specifically.

The Index is currently in its fourth edition and the methodology is based on prevalence estimation techniques. The Walk Free Foundation also partners with Gallup to complete national surveys and further data is generated through risk-model extrapolation and systems estimation. The Foundation aims to provide the most comprehensive data on global modern slavery at country level and to continue to refine the applied methodology and improve evidence based to achieve this.

The Index is supplemented by in-depth qualitative reports and measurements on issues related to modern slavery. For example, more detailed reports are available on risks of forced labour in the fishing industry as well as regional reports focusing on the Pacific region in 2020⁷².



70 <https://www.globalslaveryindex.org/>

71 <https://www.walkfree.org/projects/the-global-slavery-index/>

72 <https://www.walkfree.org/news/2020/new-report-reveals-widespread-modern-slavery-and-human-rights-violations-in-australia-new-zealand-and-the-pacific/>



RESOURCE

Initiative on Responsible Ship Recycling Standards (RSRS)

Recognizing the risks and challenges involved in the ship recycling industry and acknowledging the impact of the finance sector in international shipping, Dutch banks ABN AMRO, ING and NIBC jointly developed the Responsible Ship Recycling Standards (RSRS) for ship financing⁷³. The initiative encourages compliance with the standards on the EU Ship Recycling Regulation, the 2009 Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships and other international environmental standards. Although the focus of the RSRS is environmental rather than human rights, environmentally responsible practices have direct human rights implications and the RSRS can provide guidance to indirectly address human rights impacts.

⁷³ <https://www.ing.com/Sustainability/ING-ABN-AMRO-and-NIBC-present-the-responsible-ship-recycling-standards.htm>

Business Relationships and Adverse Human Rights Impacts

The UNGP corporate responsibility to respect human rights extends beyond activities of business enterprises that cause or contribute to negative human rights impacts. Guiding Principle 13(b) is clear that this corporate responsibility also means that business enterprises should seek ‘to prevent or mitigate adverse human rights impacts that are *directly linked* to their operations, products or services by their business relationships’⁷⁴, even in such cases where they have not contributed to these adverse impacts. These include violations in their supply chains.



Human Rights Defenders and Business

EXAMPLE

The Business and Human Rights Resource Centre (BHRRC), tracks abuses made by companies to human rights defenders by tracking cases around the world and asking companies to respond to the allegations made by the defender or the investigation⁷⁵. At the time of writing, BHRRC has 4,000 attacks and lawsuits tracked in its online portal.

Underpinned by the UN Declaration on Human Rights Defenders,⁷⁶ human rights defenders can be important allies for business actors and their importance is recognised by the UNGP as they can provide a key role in conducting effective due diligence. Instead of viewing human rights defenders as adversaries, business actors should see them as important expert resources and stakeholders in their HRDD.

Despite some of the more promising progress under Pillar II there is still a relative lack of accountability and impunity for actors engaged in human rights violations. Although some well-developed human rights mechanisms exist at the international, regional and domestic levels, it is clear that victims of maritime human rights abuses are not accessing these in any significant number and are consequently left without remedy as per Pillar II of the UNGP.



⁷⁴ Emphasis added

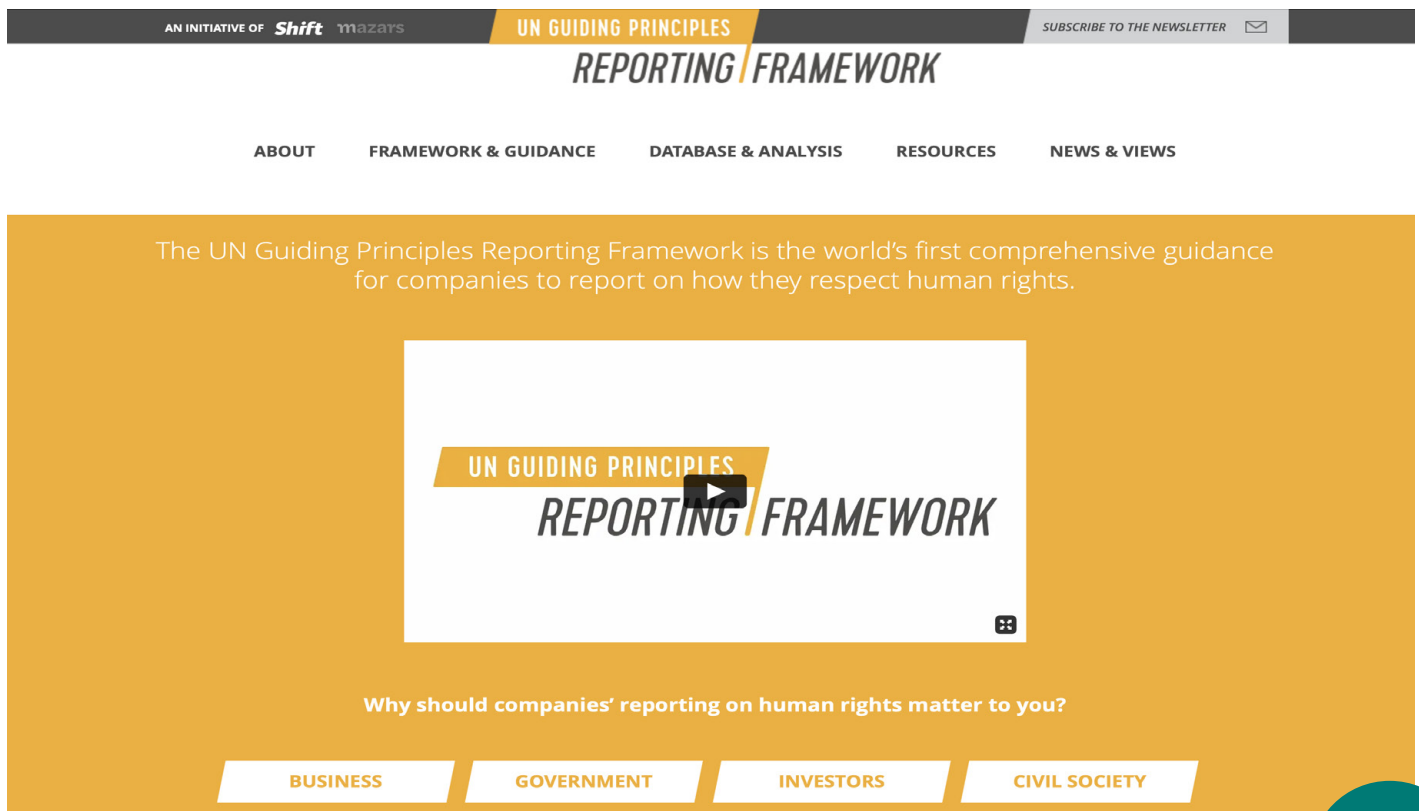
⁷⁵ <http://www.business-humanrights.org/en/bizhrds>

⁷⁶ <https://www.ohchr.org/en/civic-space/declaration-human-rights-defenders>

Communication and Public Reporting

The UNGP require companies to both ‘know and show’ their respect of human rights in practice⁷⁷ in ways that are meaningful and accessible.

This means the business enterprises should both report on their human rights impacts and explain how they are being addressed. Some things that need to be kept in mind are that communication must be accessible for all intended audiences. This could mean that information is made available through regular postings on websites but may also involve in-person meetings or virtual meetings, annual reports or other media engagement. In addition, the information needs to be sufficient to evaluate the adequacy of an enterprise’s response. Care must also be taken that the communication does not create risks to affected stakeholders, personnel or legitimate requirements of commercial confidentiality.



RESOURCE

UN Guiding Principles Reporting Framework

The UN Guiding Principles Reporting Framework⁷⁸ offers an online tool developed by Shift⁷⁹ and Mazars LLP⁸⁰. The Framework is focused on providing guidance for reporting but also offers a helpful structure for companies who are starting to think about remediation strategies. The tool helps companies to evaluate specific aspects of their existing grievance mechanisms, including the ability to access a grievance mechanism, how complaints are processed and whether remediation has been effective⁸¹.

77 Guiding Principle, 21

78 <https://www.ungpreporting.org/>

79 <https://www.shiftproject.org/>

80 <https://www.mazars.com/>

81 <https://www.ungpreporting.org/reporting-framework/management-of-salient-human-rights-issues/remediation/>

Human Rights in Maersk 2021 Sustainability Report

Maersk's 2021 Sustainability Report reverts to reporting on human rights separately rather than integrating it into other reporting areas as done in previous years. This follows Maersk conducting a corporate-level human rights assessment in 2021 to understand potential and actual human rights risks and impacts across the company's value chain. The report references Maersk's publicly posted human rights policy statement and provides an overview of how its implementation is governed via its ESG governance framework.

The report notes that the 2021 human rights assessment identified the most salient human rights risks as: health and safety, working conditions, modern slavery and access to remedy. The report also identifies emerging issues linked to data security and just transition. These areas are to be defined and prioritised for 2021 with more reporting to be expected later in 2022.

Whilst this is a promising start, the 2021 report does not explain why and in what context these risks are salient, nor how stakeholders have been consulted in relation to determining these risks. Beyond mentioning modern slavery and access to remedy as salient human rights risks these areas are not further brought up explicitly in the report. For example, discussion about how Maersk has dealt with the crew change crisis does not mention the risk of modern slavery nor how these issues might have been remediated.

Another area that the report dedicates attention to is that of safety and security. Here, Maersk focuses on health and safety in relation to eliminating fatalities and life-altering injuries as well as piracy protection measures. However, it does not address other forms of safety and security issues such as sexual violence that can be experienced on board vessels. A section dedicated to diversity, equity and inclusion only considers Maersk's activities in relation to harassment and bullying but not more serious and physical forms of harassment and assault.

Two female cadets have brought claims against Maersk in 2022 claiming that they were sexually harassed and raped on board Maersk vessels and alleging that Maersk carries responsibility as the company did not have adequate measures in place to protect these women from their abusers⁸². One cadet, Hope Hicks, alleges that she was plied with alcohol and raped by a Maersk first engineer in 2019 while completing her mandatory at-sea training at the US Merchant Marine Academy (USMMA) though it was alleged that a "culture of fear" at the Academy silenced students who alleged they were sexually harassed and assaulted.⁸³

Whilst it is unclear at the time of writing whether sexual violence was identified as a less salient human rights impact in Maersk's 2021 risk assessment (their Sustainability Report only identifies the most salient risks), such a risk must be comprehensively addressed by the company as part of its human rights' due diligence strategy.

82 <https://edition.cnn.com/2022/06/15/business/maersk-rape-lawsuits-students-invs/index.html>; <https://insurancemarineneeds.com/insurance-marine-news/usmma-midshipman-goes-public-in-alleged-rape-case-on-board-maersk-usa-vessel/>

83 <https://edition.cnn.com/2022/02/16/us/merchant-marine-academy-usmma-sexual-assault-rape-invs/index.html>



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Pillar III: Access to Remedy for Human Rights Violations at Sea

The third pillar under the UNGP establishes that victims of human rights abuses must be given access to an effective remedy where a human rights infringement has occurred. Under the Guiding Principles **an effective remedy may be either judicial or non-judicial**⁸⁴.

The Guiding Principles recognise that, even with the best policies and practices, a company may still cause or contribute to adverse human rights impacts whether because these were either unforeseen or not preventable⁸⁵.

Once human rights impacts have been identified, it is a company's duty to remediate these either through direct action or by coordinating with other actors⁸⁶. This may happen through a company grievance mechanism but may also require other approaches. Frequently, human rights impacts are tied to underlying systemic issues and in many cases, companies find it challenging to tackle these issues due to a lack of subject-matter expertise or limited resources.



© Image Dyesebel M. Diaz. 'Serving humanity across the sea' LIFE AT SEA 2022

84 Guiding Principles, 25

85 Guiding Principles, 22

86 Guiding Principles, 22

OHCHR Accountability and Remedy Project III

The Office of the High Commissioner for Human Rights (OHCHR) published the Accountability and Remedy Project (ARP III) Report⁸⁷ which focused on non-State-based grievance mechanisms and was developed in response to a mandate from the Human Rights Council which had requested the OHCHR 'to identify and analyse challenges, opportunities, best practices and lessons learned with regard to non-State-based grievance mechanisms that are relevant to the respect by business enterprises for human rights [...]'⁸⁸.

The ARP III's focus includes company-based grievance mechanisms, grievance mechanisms developed by industry, multi-stakeholder or other collaborative initiatives and independent accountability mechanisms of development finance institutions and provides recommendations for how these mechanisms can enhance their effectiveness as well as take advantage of opportunities for greater cooperation with other entities and mechanisms.

The report recognises the special advantages of non-State-based grievance mechanisms which can include speed of both access and remediation, lower costs as well as possible transnational reach⁸⁹. They are also able to fill gaps especially where a specific grievance may not give base to a legal claim and fill a significant gap in that way. Nevertheless, the OHCHR in its report recognises that despite these advantages as well as the clear mandate under the UNGP, non-State-based grievance mechanisms often fail to fulfil these functions as rights holders are often unable to access or even identify available mechanisms and remedies which in themselves are frequently partial at best⁹⁰.

The OHCHR calls for States themselves to facilitate access to non-State-based grievance mechanisms but also provides some clear and specific recommendations for non-State-based grievance mechanisms. The report identifies the following aspects and provides detailed guidance and action points for each:

- Mechanisms must be effective in dealing with business-related human rights harm⁹¹,
- Mechanisms must be legitimate⁹²,
- Mechanisms must be accessible⁹³,
- Mechanisms must be predictable⁹⁴,
- Mechanisms must be equitable⁹⁵,
- Mechanisms must be transparent⁹⁶,
- Mechanisms must be rights-compatible⁹⁷,
- Mechanisms must be a source of continuous learning⁹⁸,
- Mechanisms are based on engagement and dialogue⁹⁹, and
- Proactive and constructive cooperation between developers and operators of non-State-based grievance mechanisms in order to raise standards and promote good practice¹⁰⁰ and with relevant partners and institutions to enhance outreach and promote coherent and effective systems of accountability with respect to the resolution of grievances arising from business-related human rights harms¹⁰¹.

87 https://www.ohchr.org/EN/Issues/Business/Pages/ARP_III.aspx

88 https://www.ohchr.org/EN/Issues/Business/Pages/ARP_III.aspx#overview

89 <https://undocs.org/A/HRC/44/32>, para 6

90 Ibid, para 7

91 Ibid, Policy Objective 6

92 Ibid, Policy Objective 7

93 Ibid, Policy Objective 8

94 Ibid, Policy Objective 9

95 Ibid, Policy Objective 10

96 Ibid, Policy Objective 11

97 Ibid, Policy Objective 12

98 Ibid, Policy Objective 13

99 Ibid, Policy Objective 14

100 Ibid, Policy Objective 15

101 Ibid, Policy Objective 16

The Human Rights at Sea Arbitration Tribunal Project

In light of the gaps in current remedial systems, HRAS and Shearman & Sterling LLP are developing a concept for using international arbitration as a means to provide victims of human rights abuses at sea with an alternative route to effective remedy and justice while at the same time combating impunity for those responsible for human rights abuses¹⁰².

An arbitration-based mechanism of redress for human rights abuses at sea addresses both the procedural and the substantive dimensions of a victim's right to a remedy. It does so by providing:

- (i) a neutral and visible forum in which human rights issues could be resolved.
- (ii) a procedure that is both efficient and financially accessible to victims.
- (iii) an adjudicative process that is highly specialised and tailored to the sensitivities of human rights issues as well as to the particularities of the maritime space; and
- (iv) binding arbitral awards that would be enforceable internationally.

The project published a white paper on 'Arbitration as a Means of Effective Remedy for Human Rights Abuses at Sea'¹⁰³ which sets out the broad parameters of the arbitration-based system and discusses both the benefits and challenges of such a system. The paper identifies the inadequacies of current systems and finds that arbitration could fill these gaps effectively.

As such, the human rights at sea arbitration initiative have identified five key objectives:

1. Identifying the essential parameters of an arbitration-based system specifically tailored to address human rights at sea issues, including: (i) neutrality; (ii) transparency; (iii) accessibility to victims; (iv) ability to cater to particularly sensitive human rights issues; and (v) ability to enforce award internationally.
2. Demonstrating, including through speech and publication, the value and benefits that such a system could generate, not only for potential victims, but also for States, companies and individuals with a maritime nexus.
3. Developing a set of arbitral rules optimized for use in human rights at sea arbitrations.
4. Setting the groundwork for various users' involvement in this system, including model offers of consent to arbitrate that can be given by States or private parties and model arbitration clauses for use in employment and other contracts.
5. Working with key players in the maritime space (including flag States, coastal States, shipowners and operators, financial institutions and other companies engaged in, or with some nexus to, maritime activity) to ensure sufficient participation and buy-in for human rights at sea arbitration to function.

Further information can also be found in the project's victim flowchart¹⁰⁴ which offers a visual presentation for how this process might work and identifies key activities and milestones.

¹⁰² <https://hrasarb.com/>

¹⁰³ <https://hrasarb.com/documents/>

¹⁰⁴ <https://hrasarb.com/documents/>



HRAS PUBLICATION

Photo Credit: Shutterstock.com

ABANDONMENT OF SEAFARERS: BACKGROUND, LEGAL STATUS, REMEDIES & PRACTICAL ADVICE

APRIL 2021

Using Maritime Liens as Remedy for Seafarers

HRAS and Reed Smith LLP published a guidance document concerning the abandonment of seafarers and providing legal and practical advice concerning available remedies¹⁰⁵. Because most seafarer abandonment occurs in the context of an employer's bankruptcy seafarers are often left last in line as they compete with other creditors for payment.

Maritime liens arise automatically in relation to a number of claims related to the vessel and attach to the vessel itself, thereby surviving even transfer of ownership. They can be a way for seafarers' claims to take precedence over most other claims against the vessel and can include sums payable to seafarers in respect of employment on the vessel.

Although maritime liens are automatic, their enforcement is not and HRAS and Reed Smith provide guidance to seafarers how to follow the legal procedure to secure enforcement.

¹⁰⁵ https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_Abandonment_of-Seafarers_REPORT_APRIL21_SP_LOCKED.pdf

CONCLUSION

The UNGP have been in place for over a decade, but the degree and quality of their implementation across global supply chains require significantly more investment and development to demonstrate lasting impact. This is especially so throughout the maritime sector.

The UNGP are certainly here to stay, and they are changing business practices, but still not quickly enough. This is even more so the case when we consider the fast-moving developments in mandatory human rights due diligence legislation being enacted in a growing number of countries, which may well prove to be the ‘game changer’ with the onus on the mandatory legal requirement to act, investigate and publicly report.

Previous Human Rights at Sea reporting has highlighted that some related business activities are being implemented in the sector, including the introduction of tools, public reviews and evidence gathering mechanisms. Unfortunately, many such activities are still conducted behind the corporate veil with limited disclosure and even more limited accountability. This is despite increasing consumer interest and civil society pressure for business actors to become more transparent, openly accountable and to actively show integrated use of the UNGP within their business models.

As this review has highlighted, some promising developments and initiatives are taking place in the sector under Pillar II. However, much more must be done to ensure that these practices become widespread and the industry norm, that due diligence exercises go beyond simply identifying human rights impacts and rightly move towards effectively addressing their impacts.

Besides achievements under Pillar II, much more work must also be done in relation to Pillar III to ensure that effective remedy is made available to victims and survivors of abuse at sea and, importantly, that such cases are not hidden from public scrutiny.

It is, therefore, now up to all maritime sector stakeholders, including those related to merchant shipping, passenger transport, offshore oil and gas and fishing, to apply the available tools, learn from peers who are further ahead and come together at industry-level with all stakeholders to achieve widespread change.

For those business entities who are reading this report and only just beginning to act in relation to their human rights responsibilities, the following sections provide key resources for getting started, overviews of global initiatives and useful pointers to human rights due diligence legislation.

Getting Started: A Basic HRAS Corporate Reference Model

Consistently collecting human rights data to identify good, mediocre and poor practices using recognised tools while being transparent in showing the facts behind the data is vital to increasing human rights protections within companies globally. HRAS has identified that by referencing the ongoing benchmarking and case studies of companies inside the likes of technology, food and apparel industries, many maritime businesses still have to step up their corporate efforts and focus in developing and actioning their CSR and ESG policies, and better assuring effective mandatory due diligence. This can be ably demonstrated by the work undertaken by the BHHRC.

Using technology including AI tools to gain an increased understanding of the root causes, associated challenges and needs of the maritime industry will allow specific identification of those sectors and entities in need of more help in terms of guidance, education, awareness, or professional external assistance. This includes the fisheries, cruise line, oil and gas sectors, as well as indigenous communities, for example. HRAS believes that by partnering with like-minded actors having expertise in the usage of benchmarking tools will allow commercial entities and civil society to make a real difference in the protections of human rights at sea.

Companies just beginning to integrate the UNGP into their business and operations often find the process daunting and challenging. HRAS believes that the following corporate questions can guide companies as they start to navigate their human rights journey.

Corporate Questions

General

Q. Do we genuinely understand what the UNGP are and why their integration and implementation will benefit our business and associated supply chains?

Policy

- Does our executive leadership support the implementation of the UNGP?
- Do we have the relevant professional expertise to advise our senior management team and Board correctly?
- Do we have a policy commitment to upholding and effectively implementing the UNGP?
- Do we have a set of core corporate principles and values that uphold the UNGP and specifically, the second pillar of 'Respect' as a matter of agreed company policy?
- Do we integrate human rights impact assessments and mandatory human rights due diligence into all our commercial contracts as part of our standard terms and conditions for new and existing business within our supply chain?
- Do we have employees trained in human, labour and social rights and what they mean for the business, our delivery, and our market function?

Assessing Human Rights Impacts

- Do we understand our business and supply chain and know which actors may be affected by our action or inaction?
- Do we have internal implementing guidelines across the business for the UNGP and reflecting core values of transparency, accountability and effective remedy?
- Do we have a developed internal compliance system to pro-actively identify and limit any potential human rights abuses?
- Do we have an implementation policy for awareness about, and the correct use of human rights impact assessments?
- Do we have a company stakeholder engagement plan and are both international and external stakeholders consulted on our human rights policies and procedures?
- Do we have an operational level and effective, independently reviewed grievance mechanism in place where our employees and other affected stakeholders can lodge grievances?
- Do we have independent and qualified external assessors to undertake periodic reviews and health-checks of our UNGP implementation reporting to the senior management team and Board?

- Do we have a team regularly reviewing and reporting on the existing, updated and emerging legislation of countries where our company undertakes its operations to comply with human rights and business-related laws in the local jurisdictions?

Providing Access to Effective Remedy

- Do we have an operational-level and effective independently reviewed grievance mechanism in place where our employees and other affected stakeholders can lodge grievances without fear of retribution and black-listing?
- Do we have any potential barrier that could prevent affected stakeholders from accessing our operational-level grievance mechanism, and what can we do to facilitate access to effective remediation for those affected by negative human rights impacts?

Communication

- Do we have a dedicated team making sure the company complies with mandatory due diligence, as required by law?
- Do we have a reporting mechanism and system for the publication of 'lessons identified' and 'lessons learned' which can be shared both internally and externally?
- Do we have a policy of public transparency under the 'know and Show Principle', or are we using a corporate veil for collated data?

GLOBAL INITIATIVES

Next to the UNGP, other global initiatives have emerged calling for business to actively engage in the protection and promotion of human rights. Although of a non-binding character, these initiatives are strongly shaping and framing expectations with regards to corporate action and build upon each other's work.

UN Global Compact

Founded in 2000, the UN Global Compact is one of the oldest and the world's largest sustainability initiative with over 10,400 member companies from 166 countries¹⁰⁶. It calls businesses to align strategies and operations with universal principles on human rights, labour, environment, and anti-corruption¹⁰⁷ and is accordingly built around Ten Principles on which member companies are required to report.

Following the adoption of the UN Sustainable Development Goals (SDGs), the Global Compact developed Action Platforms to inspire new and leading approaches to sustainable business. One of the Action Platforms focuses on Sustainable Ocean Business¹⁰⁸ and aims to create growth and jobs to accelerate work across the SDGs. Human rights in the renewable energy industry and the food industry hold significant importance to not only protect and maintain oceans in a healthy and sustainable manner but also to make a difference in Goal 14: Life Below water¹⁰⁹.

¹⁰⁶ <https://www.unglobalcompact.org/>

¹⁰⁷ <https://www.unglobalcompact.org/what-is-gc>

¹⁰⁸ <https://www.unglobalcompact.org/take-action/ocean>

¹⁰⁹ <https://www.globalgoals.org/goals/14-life-below-water/>

UN Sustainable Development Goals

In 2015 the UN adopted the 2030 Agenda for Sustainable Development which includes 17 interconnected Sustainable Development Goals (SDGs)¹¹⁰. Unlike previous development goals, the SDGs clearly acknowledge that the success of sustainable development will depend on the active engagement of both the public and private sector. As such, the SDGs see an important role for corporate social responsibility and corporate sustainability reporting.

All 17 goals are interconnected, meaning that success in one area can also affect success in another¹¹¹. This is relevant as maritime companies may find they can make relevant contributions to a range of goals, depending on their own business and operational structure. To assist companies in navigating the goals and their many targets, the SDG Compass¹¹² was developed as a resource to support companies to align their strategies with the SDGs and to measure and manage their actual contributions. The SDG Compass breaks down 5 steps for companies that involve Understanding the SDGs, defining priorities, Goal setting, Integrating and Reporting & Communication¹¹³.

The OECD Due Diligence Guidance

The Organisation for Economic Co-operation and Development (OECD) adopted a Guidance on Due Diligence for Responsible Business Conduct in 2018 to provide practical support to companies on how to conduct due diligence to avoid and address actual and potential adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance¹¹⁴.

With respect to human rights, the OECD Guidance aligns with UNGP's four steps for human rights due diligence and mirrors sector-specific OECD Due Diligence Guidance for agriculture¹¹⁵, the financial sector¹¹⁶, minerals¹¹⁷, and garment & footwear¹¹⁸, which all emphasise human rights policy commitments, impact assessments, remediation and transparency.

The OECD Due Diligence Guidance for Minerals from Conflict-Affected and High-Risk Areas has been widely adopted by the minerals and metals industries and is considered industry-wide best practice for responsible business due diligence. Five industry programmes governing a range of minerals and metals and encompassing both “up-stream” and “down-stream” actors from fields as diverse as jewellery, mining and electronics and spanning the supply chain from raw material all the way to final product, participated in an assessment to determine how they support business alignment for the responsible sourcing of minerals.¹¹⁹

Working Towards a UN Convention on Business and Human Rights

Parallel to the Guiding Principles' development and implementation, many actors have held that the challenges presented by business and human rights require a hard law solution in the form of a formal convention at the international level that clearly establishes corporate responsibilities and addresses jurisdictional challenges related to enforcing claims against corporations for human rights violations.

¹¹⁰ <https://sustainabledevelopment.un.org/?menu=1300>

¹¹¹ <https://unstats.un.org/sdgs/report/2018/interlinkages/>

¹¹² <https://sdgcompass.org/>

¹¹³ <https://sdgcompass.org/>

¹¹⁴ <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

¹¹⁵ <http://mneguidelines.oecd.org/rbc-agriculture-supply-chains.htm>

¹¹⁶ <http://mneguidelines.oecd.org/rbc-financial-sector.htm>

¹¹⁷ <http://mneguidelines.oecd.org/mining.htm>

¹¹⁸ <http://mneguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm>

¹¹⁹ <http://mneguidelines.oecd.org/industry-initiatives-alignment-assessment.htm>

In 2014, with support of approximately 600 NGOs, the so-called “Treaty Alliance”¹²⁰, the UN General Assembly established an open-ended intergovernmental working group on transnational corporations and other business enterprises concerning human rights (OEIGWG) within the UN Human Rights Council¹²¹ and in July 2018, under the Chairmanship of Ecuador, a “Zero Draft” was presented to make the start of formal negotiations¹²². Since then, three revised Drafts have been published each year in 2019, 2020 and most recently in September 2021¹²³.

The Third Revised Draft is informed by discussions held in 2020 following the Second Draft and although the Third Draft has not made significant changes from the Second Draft it has primarily taken the opportunity to clarify aspects such as the scope. Thus, the treaty applies to all internationally recognised human rights that are binding on the State parties. However, the treaty still falls short of consistently aligning with the

formulations found in the UNGP, one recommendation and has been encouraged to further strengthen this. The Second Draft further contains significant provisions clarifying access to remedy for victims of human rights abuse and seeks to clarify the rules of legal liability for business abuse of human rights.

Nevertheless, commentators have pointed out that the Third Draft has made relatively few changes compared to the Second Draft and has still failed to create a potentially ratifiable treaty, leaving room for further future negotiation and possible participation of to-date hesitant States¹²⁴.

Annex A: Business and Human Rights Legislation

Considering the limited success that voluntary approaches to business and human rights have had in the past decade, there is growing momentum in demands for countries to require mandatory human rights reporting. Some countries and state blocks have already taken steps in this regard.

The UK Modern Slavery Act (2015)

The UK Modern Slavery Act¹²⁵ requires commercial organizations with an annual turnover above £36 million to publish a modern slavery statement at the end of the financial year. The definition of commercial organisations includes any company, without distinction of domicile or incorporation, carrying on their business or part of their business in the UK.

Although the Act does not expect companies to guarantee that all their supply chains are slavery free, the Statement must describe the main actions a company has taken during the financial year to deal with modern slavery risks. Where no such steps have been taken, the Statement must clearly state this. Whilst the law is not prescriptive about how a modern slavery statement must be structured, the Home Office’s statutory guidance echoes the Act’s recommendations and encourages companies to develop statements that cover at least six areas that include a description of policies and due diligence processes, risk assessment and management, key performance indicators and existing training structures¹²⁶.

¹²⁰ <https://www.treatymovement.com/>

¹²¹ https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9

¹²² <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf>

¹²³ <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf>

¹²⁴ <http://opiniojuris.org/2021/09/03/the-third-revised-draft-of-a-treaty-on-business-and-human-rights-modest-steps-forward-but-much-of-the-same/>

¹²⁵ <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

¹²⁶ <https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide>

The Modern Slavery Statement Registry¹²⁷ allows companies to upload their statements and makes these statements searchable. It also links to guidance on how to complete a modern slavery statement. In 2021, more than 21,000 uploaded statements to the registry¹²⁸. Previously, statements were housed and analysed by the Modern Slavery Register¹²⁹ whose analysis of 10,561 Statements made by 13,370 companies found that only 23% of Statements met all of the requirements and recommendations under the Act.

A consultation run by the UK Government in 2019 concluded, inter alia, that there needed to be mandated reporting areas rather than the voluntary reporting and that section 54 of the Act would be extended to public bodies¹³⁰ and in 2021 every ministerial government department published its own modern slavery statement¹³¹.

French Duty of Vigilance (2017)

On February 21, 2017. The French National Assembly adopted a law establishing a duty of vigilance for large multinational firms carrying out all or part of their economic activity in France¹³². The law requires parent companies to implement mechanisms to identify and prevent human rights violations resulting either from their own activities, from activities of companies they control or from their subcontractors and suppliers. The law applies to companies who employ at least 5,000 workers in their head office, direct and indirect subsidiaries in France or 10,000 workers in the company, direct and indirect subsidiaries, where the headquarters is located in France.

In contrast to other laws such as the UK Modern Slavery Act¹³³ and the California Transparency in Supply Chains Act¹³⁴ which only establish reporting requirements, the French law requires companies to establish, publish and implement a so-called vigilance plan.

The Commercial Code¹³⁵ specifies that the vigilance plan must include:

- A mapping that identifies, analyses and ranks risks,
- Procedures to regularly assess risk,
- Appropriate actions to mitigate or prevent risks,
- An alert mechanism or grievance mechanism,
- A monitoring scheme to follow up on implemented measures and assess their efficiency.¹³⁶

German Supply Chain Due Diligence Act (2021)

Europe's largest economy announced its new due diligence law for supply chains¹³⁷ in July of 2021. The law requires companies to monitor their own operations and their direct suppliers and to take action if they find violations. The law will go into effect for companies based or registered in Germany and employing more than 3,000 employees in 2023 and for companies based or registered in Germany with more than 1,000 employees in 2024.

127 <https://modern-slavery-statement-registry.service.gov.uk/>

128 <https://www.gov.uk/government/publications/2021-uk-annual-report-on-modern-slavery/2021-uk-annual-report-on-modern-slavery-accessible-version>

129 <http://www.modernslaveryregistry.org/>

130 <https://www.gov.uk/government/consultations/transparency-in-supply-chains/outcome/government-response-accessible-version>

131 <https://www.gov.uk/government/publications/2021-uk-annual-report-on-modern-slavery/2021-uk-annual-report-on-modern-slavery-accessible-version>

132 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>

133 <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

134 <https://oag.ca.gov/SB657>

135 Article L225-102-4

136 <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000035181820&cidTexte=LEGITEXT000005634379&dateTexte=20170714>

137 https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgblI2Is2959.pdf#_bgbl_%2F%2F%5B%40attr_id%3D%27bgblI2Is2959.pdf%27%5D_1632392480083

Specifically, companies must identify, assess, prevent and remedy human rights and environmental adverse impacts in their supply chains and own operations and ensure that employees of indirect suppliers have access to a grievance mechanism. Companies are also required to report annually on their due diligence measures and to publish these on their website.

Netherlands Child Labour Due Diligence (2019)

In 2019, the Dutch Senate adopted the Child Labour Due Diligence Law¹³⁸. The law is expected to come into force at some point in 2022¹³⁹. The law aims to prevent goods and services produced with child labour from being delivered to consumers in the Netherlands and therefore requires companies to submit a Statement to regulatory authorities declaring they have carried out due diligence related to child labour in their full supply chains. Many aspects of interpretation and implementation of the law still need to be determined

by general administrative order and so remain unclear; however, it appears that the law requires companies to assess whether there is a reasonable presumption that goods and services have been produced with child labour. Where this is determined in the affirmative, companies are then required to draw up an action plan in line with international guidelines to address the identified impact¹⁴⁰.

The Australian Modern Slavery Act (2018)

On 29 November 2018, the Modern Slavery Bill passed both houses and became law in 2019¹⁴¹. The Act requires entities based in Australia to report on the risk of modern slavery within their operation and supply chains on an annual basis. Whilst it goes further in its requirements than its UK counterpart, specifically by requiring companies to report on their effectiveness in addressing risks, the Act does not specify how this needs to be done. Similar to the UK Modern Slavery Act, its effectiveness is limited simply to requiring transparency.

US Legal Instruments

The USA has several legal instruments on the books that require companies to either engage in direct due diligence or to otherwise demonstrate they have considered and addressed their adverse human rights impacts.

The Uyghur Forced Labor Prevention Act¹⁴² came into force in 2022 and establishes a rebuttable presumption that the importation of any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People's Republic of China, or produced by certain entities, is prohibited by Section 307 of the Tariff Act of 1930 and that such goods, wares, articles, and merchandise are not entitled to entry to the United States. The presumption applies unless the Commissioner of U.S. Customs and Border Protection (CBP) determines that the importer of record has complied with specified conditions and, by clear and convincing evidence, that the goods, wares, articles, or merchandise were not produced using forced labor¹⁴³.

138 <https://zoek.officielebekendmakingen.nl/stb-2019-401.html>

139 <https://ondernemersplein.kvk.nl/wet-zorgplicht-kinderarbeid/>

140 <https://www.mvoplatform.nl/en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law/>

141 <https://www.legislation.gov.au/Details/C2018A00153>

142 <https://www.congress.gov/bill/117th-congress/house-bill/1155/text>

143 <https://www.cbp.gov/trade/forced-labor/UFLPA>

Section 1502 of the Dodd-Frank Act¹⁴⁴ requires public companies in the USA to disclose their use of tin, tungsten, tantalum and gold in their products and determined whether these were sourced from the Democratic Republic of the Congo (DRC) or its neighbouring countries and to perform specific due diligence to ensure that this did not benefit armed groups in the region. The Security Exchange Commission’s (SEC) so-called Final Rule¹⁴⁵ requires companies tasked to engage in due diligence to follow the OECD Guidance on Minerals from Conflict-Affected and High-Risk Areas established or to perform their own due diligence to the same level.

In 2015 and 2019 the **Federal Acquisition Regulations (FAR)**¹⁴⁶ were amended to prohibit the use of any forms of forced labour, severe human trafficking or procuring commercial sex acts during the performance of a government contract¹⁴⁷.

Also, in 2015 the **US Trade Facilitation and Trade Enforcement Act** was passed to amend section 307 of the 1930 Tariff Act¹⁴⁸, thereby closing a loophole on banning imports of goods produced with forced labour or indentured child labour. As a consequence, all importing companies must now conduct supply chain due diligence to prove to US Customs and Border Protection (CBP) that their products were not made using forced labour. The CBP may issue withhold release orders where information reasonably but not conclusively indicates that merchandise made with forced labour or indentured child labour is imported¹⁴⁹.

Ends.



© Image Clarisse Joy Rodriguez. 'The SEA-CRET FRONT LINER AT SEA (DRY DOCK)' STILL AT SEA (2020)

144 <https://www.congress.gov/111/plaws/publ203/PLAW-111publ203.pdf>

145 <https://www.sec.gov/rules/final/2012/34-67716.pdf>

146 <https://www.acquisition.gov/browse/index/far>

147 FAR 22.1704 and FAR 52.222-50

148 <https://uscode.house.gov/view.xhtml?path=/prelim@title9/chapter4&edition=prelim>

149 <https://www.cbp.gov/trade/programs-administration/forced-labor>

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 investigations of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

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

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

OUR MISSION

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

STAY IN CONTACT



We welcome any questions, comments or suggestions. Please send your feedback to:
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Email: enquiries@humanrightsatsea.org



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.



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