

## **COMMENTARY**

International Law Association of Ukraine

Introduction and dissemination of the Geneva Declaration on Human Rights at Sea (GDHRAS) 30 June 2023

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## **BACKGROUND**

It is estimated<sup>1</sup> that on any one day there are up to 30 million people living in, working on, or otherwise transiting the world's oceans and seas. This is the population equivalent of a medium sized country. Every person at sea is entitled to human rights protections under the generally accepted national and international rules of law. Furthermore, It is estimated that more than 45% of women at sea have been sexually abused. Between 32,000 - 100,000 fishers lose their lives at sea each year - fishing is the most dangerous peacetime occupation. Critical assessments are lacking as accurate figures are not available due to the scale and scope of abuses at sea, itself a unique environment which often prevents and precludes due process of investigation and enforcement.

The Geneva Declaration on Human Rights at Sea ("the Declaration")<sup>2</sup> is a civil society initiated soft law instrument designed to bring greater legal certainty and clarity to the emerging topic and narrative of 'human rights at sea', itself intimately linked to the protection of all persons at sea without exception. Conceived in February 2019 in Geneva, Switzerland by English legal Counsel David Hammond Esq., Chief Executive of the UK non-governmental organisation Human Rights at Sea (HRAS)<sup>3</sup> as a response to the ongoing systematic abuse of human rights at sea globally. The Declaration brings together existing international law and legal obligations, stating them clearly in one document. Clarity of purpose is enhanced by the inclusion of numerous examples of abuse, explanation of need and practical guidance for states to enable them to uphold legal norms for the protection of human rights at sea. The Declaration is intended as a catalyst and key soft-law reference document capable of inducing change to better protect the individual rights of all persons at sea through the requirement to uphold existing state obligations.

## **DEVELOPING HUMAN RIGHTS AT SEA**

Professor Steven Haines' chapter on 'Developing Human Rights at Sea' in the 2021 Oceans Yearbook<sup>4</sup> (Open Access) details the international law and ocean

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<sup>1</sup> By Human Rights at Sea.

<sup>2</sup> [www.gdhras.com](http://www.gdhras.com) / [www.humanrightsatsea.org/gdhras](http://www.humanrightsatsea.org/gdhras)

<sup>3</sup> [www.humanrightsatsea.org](http://www.humanrightsatsea.org)

<sup>4</sup> [https://brill.com/view/journals/ocyo/35/1/article-p18\\_3.xml?language=en](https://brill.com/view/journals/ocyo/35/1/article-p18_3.xml?language=en)

governance perspective in the historical and ongoing development of human rights protections at sea. He highlights the potential of a 'special regime' of human rights at sea first articulated by Professor Irini Papanicolopulu, including combinations of International Human Rights Law, the Law of the Sea, maritime law, labour law and refugee law. Further, Professor Haines explains that while "it is easy to claim that IHRL applies everywhere and that it does so on the seas and oceans to the same extent that it applies ashore within the territorial jurisdiction of States, we know in practice IHRL is not actually applied to the same degree across the globe. It applies universally, but it is not universally applied – and at sea it is hardly applied at all."

## **THE GENEVA DECLARATION**

The starting point of the Declaration is the accepted position of the universal nature and application of fundamental human rights<sup>5</sup>. It maintains that human rights are applicable to all people, regardless of whether they are living, working, or transiting on land or at sea. Being at sea does not remove state obligations to promote and protect fundamental human rights, nor does it mean an individual should not enjoy their human rights, freedoms and associated protections.

### **The Declaration has four fundamental principles that are fixed:**

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.

There are three supporting Annexes to the Declaration which may be periodically reviewed and updated.

- Annex A. Evidence of the scale of human rights abuses at sea. This demonstrates the context of and for the Declaration, and why it is needed.
- Annex B. Applicable human rights at sea. This highlights the universality of specific human rights and their application in the maritime environment.
- Annex C. Guidelines for promoting compliance with human rights at sea. This provides practical guidance to states about ways and means of protecting individual's human rights at sea.

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<sup>5</sup> International Bill of Human Rights comprising the [Universal Declaration of Human Rights](#) (UDHR), the [International Covenant on Economic Social and Cultural Rights](#) (ICESCR), and the [International Covenant on Civil and Political Rights](#) (ICCPR).

Most importantly, the Declaration gives practical guidance to states on how to ensure that human rights abuses at sea are detected, remedied, and ultimately ended. As a soft law instrument there is no ratification requirement as engaging states are only being asked to recognise the established legal position, not to create new law. Notably, there is nothing in the drafting the four fundamental principles which is new, controversial, or which creates additional responsibilities or duties for any state.

The Declaration was formally launched on 1<sup>st</sup> March 2022 in Geneva, Switzerland and thereafter was open for public consultation for a period of six months. No changes were submitted or made during the open consultation.

The Declaration has been drafted by a group of leading human rights and maritime law experts, some of whom have given oral and written evidence to the 2021-2022 United Kingdom's House of Lords International Relations and Defence Committee Inquiry into whether the UN Convention Law of the Sea (UNCLOS) is fit for purpose in the 21<sup>st</sup> Century, or not.<sup>6</sup> The UK Inquiry, noting that the Convention is viewed as an international framework instrument, highlighted that UNCLOS is not universally considered as being fit for purpose for protecting human rights at sea in the present day legal, societal and commercial maritime context.<sup>7</sup>

## **THE PROTECTION OF PEOPLE AT SEA**

The protection of people at sea is a relatively recent field in academic research with much of its development taking place in the last three decades. This does not mean that people at sea were not considered before in terms of the protection of their rights. There are several instances when states and scholars addressed the protection of some people at sea, in limited circumstances. These examples include:

- The sinking of the Titanic, in 1912, prompting states to adopt the first Convention for the Safety of Life at Sea (SOLAS).<sup>8</sup>
- The International Labour Organisation (ILO), when first constituted, adopted in 1920 a convention on the minimum age for going at sea (C058 - Minimum Age (Sea) Convention (Revised), 1936 (No. 58)).<sup>9</sup>

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<sup>6</sup> <https://committees.parliament.uk/work/1557/unclos-fit-for-purpose-in-the-21st-century>

<sup>7</sup> <https://committees.parliament.uk/work/1557/unclos-fit-for-purpose-in-the-21st-century/publications/>

<sup>8</sup> [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx)

<sup>9</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C058](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C058)

- The Vietnamese boat people crisis in the period between 1975 and 1980 prompted significant language for the Convention on Search and Rescue (the SAR Convention) adopted in 1979.<sup>10</sup>
- The need to protect human life prompted inclusion of a duty to rescue in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).<sup>11</sup>

Since then, major maritime related events that attracted the attention of stakeholders and the public have led to significant modern-day law and policy developments. These include:

- **Law enforcement operations** at sea prompted the first cases decided by international courts and tribunals on the protection of people at sea, including the 1999 MV Saiga 2 case<sup>12</sup> decided by the International Tribunal for the Law of the Sea (ITLOS), the 2001 Xhavara and Others v. Italy and Albania case<sup>13</sup> submitted to the European Court of Human Rights (ECtHR), and, most importantly, the 2008 Medvedyev and others v. France judgment by the ECtHR.
- **Piracy** off the coasts of Somalia prompted scholarly research and debate on the protection of human rights at sea. See Prof Anna Petrig's 2014 book on Human Rights and Law Enforcement at Sea.<sup>14</sup>
- **Irregular migration** in the Mediterranean prompted not only scholarly debate, but also the adoption of milestone decisions by international human rights bodies that confirm the application of human rights at sea, including the 2012 Hirsi Jamaa and Others v. Italy judgment by the ECtHR and the 2021 case on A.S., D.I., O.I. and G.D. v. Italy and Malta examined by the UN Human Rights Committee.<sup>15</sup>
- **The world crewing crisis**, prompted by Covid-19, brought to the attention of the general public the plight of seafarers and prompted the International Maritime Organisation (IMO), ILO, other UN Agencies and leading shipping entities to adopt urgent policy measures to address the sufferings of seafarers.<sup>16</sup>

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<sup>10</sup> [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-\(SAR\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx)

<sup>11</sup> <https://www.imo.org/en/OurWork/Legal/Pages/UnitedNationsConventionOnTheLawOfTheSea.aspx>

<sup>12</sup> <https://www.itlos.org/en/main/cases/list-of-cases/case-no-1/>

<sup>13</sup> [https://www.echr.coe.int/documents/d/echr/CLIN\\_2001\\_01\\_26\\_ENG\\_815318](https://www.echr.coe.int/documents/d/echr/CLIN_2001_01_26_ENG_815318)

<sup>14</sup> <https://brill.com/display/title/25261?language=en>

<sup>15</sup> <https://legalresearch.blogs.bris.ac.uk/2021/05/the-views-of-the-human-rights-committee-in-a-s-d-i-o-i-and-g-d-v-italy-and-the-right-to-life-at-sea/>

<sup>16</sup> <https://news.un.org/en/story/2021/05/1091372>

- **The illegal invasion of Ukraine** and the ongoing war in its territory have highlighted the need to protect seafarers in the case of armed conflict.

In her 2018 book 'International Law and the Protection of People at Sea'<sup>17</sup>

Professor Irini Papanicolopulu pioneered an approach to the protection of people at sea which supports the Declaration's intent and considers that:

- All people at sea deserve protection.
- States have the duty to protect people at sea and this is a general principle of international law.
- This protection is due whenever a person is subject to the jurisdiction of the state, either because there is a rule of international law that allows the state to exercise its power over the person (*de iure* jurisdiction), or because there is a *de facto* exercise of state power on a person, whether legally or illegally.

### **ADVANTAGES TO UKRAINE IN SUPPORTING THE DECLARATION**

Besides the need for a Ukrainian introduction to this new soft-law instrument, there are several legal and policy advantages to state support.

The Declaration will:

- 1) Allow Ukraine to solidify its position as a recognised maritime state and main source of professional seafarers supporting the global economy.
- 2) Reassert Ukraine's position as a human rights defender and advocate not just within the European sphere of influence, but globally for reinforcing rights' protections for all persons on land and at sea.
- 3) Position Ukraine to tackle harmful issues such as maritime crime and security activities, and the associated exploitation of persons at sea.
- 4) Supports Ukraine in its UN and European Union (EU) credentials as a state that follows the international rule of law and upholds individual protections and rights.

Finally, state support will allow Ukraine to leverage its human rights position and lawful conduct in law against states which threaten its national security and identity.

ENDS.

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<sup>17</sup> <https://doi.org/10.1093/oso/9780198789390.001.0001> Online ISBN: 9780191831249 Print ISBN: 9780198789390 Publisher: Oxford University Press