



HUMAN RIGHTS AT SEA



Human Rights at Sea Briefing Note

Are the 2011 UN Guiding Principles Working Effectively and being Rigorously Applied in the Maritime Industry?

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BRIEFING NOTE - ARE THE 2011 UN GUIDING PRINCIPLES WORKING EFFECTIVELY
AND BEING RIGOROUSLY APPLIED IN THE MARITIME INDUSTRY?

“Over the last seven years there 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. This has been exacerbated by too much corporate social responsibility talk in the margins followed by too little action, in particular from leading membership bodies. This has left individual operators who are focused on delivering positive social change to make the necessary internal adjustments without over-arching policy direction, guidance and senior industry support. Meanwhile, civil society continues to show the leadership on the topic, but remains hindered by a lack of industry support for wider human rights protections and therefore, the subject continues to remain stymied reinforcing the collective industry ‘profit over people’ approach.”

David Hammond, CEO, Human Rights at Sea
1 March 2020



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BACKGROUND

Since the United Nations Guiding Principles on Business and Human Rights (“the Guiding Principles”) were adopted in 2011 there has been widespread customary acceptance across governments, business, Non-Governmental Organisations (“NGOs”) and International Organisations (“IOs”) of the idea that corporations have **“a responsibility to respect human rights”**. Business and Human Rights frameworks¹ have consequently adopted the principle and leading corporate human rights programs base themselves on this concept².

Global businesses are increasingly integrating the concept, principles and terminology established by the Guiding Principles in daily activities, but how effective are they today?



In 2016, Human Rights at Sea issued the first publication of its kind exploring the Guiding Principles in the maritime environment titled: “An Introduction & Commentary to the 2011 UN Guiding Principles on Business and Human Rights & their Implementation in the Maritime Environment”³. The document was intended to start to raise the issue of the effective understanding, education and application of the Guiding Principles in the whole maritime supply chain.

Eight years after their adoption and three years after the charity first reviewed the Guiding Principles in relation to the maritime sector, it now appears a good time to pause and ask: **“Are the UN Guiding Principles effectively working and being rigorously applied in the maritime industry?”**

OVERVIEW

The Guiding Principles are unique in that, instead of setting out new principles, they merely sought to clarify the then still unresolved question of **‘what responsibility do corporations have vis á vis human rights?’** They did this by setting out three basic principles, namely:

- 1. It is the State’s duty to protect human rights,**
- 2. Corporations have a responsibility to respect human rights, and**
- 3. Human rights violations must be effectively remediated.**

1 E.g. OECD Due Diligence Guidance for Responsible Business Conduct, <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>.

2 E.g. UN Global Compact, <https://www.unglobalcompact.org/>.

3 <https://www.humanrightsatsea.org/wp-content/uploads/2015/05/HRAS-UNGP-Report-2016-low-res-dps.pdf>

4 Guiding Principle on Business and Human Rights (“Guiding Principle”), 11.

5 Guiding Principle 13.

6 Edwin Dela Cruz, Filipino Seafarers – “Perfect Workers” in a Deeply Flawed Cruise Industry, Tourism Watch, 11 May 2018, <https://www.tourism-watch.de/en/focus/filipino-seafarers>.

7 Code of Business Conduct and Ethics, Royal Caribbean Cruises, Ltd., http://www.rclcorporate.com/content/uploads/16051587_Ethics-Brochure_ENG_v1.pdf, Code of Conduct Business Partner, Carnival Corporation plc. <https://www.carnivalcorp.com/static-files/4d443110-1e4d-4c8c-916e-8dc870fe48b8>

8 <https://www.miamiherald.com/news/sexual-assault-is-the-most-publicly-reported-crime-on-cruises-but-companies-say-its-rare-11142409>; it is reasonable to assume that sexual assault is still underreported: Thomas R. Panko and Tony L. Henthorne, *Crimes at sea: A review of crime on board cruise ships*, International Journal of Safety and Security in Tourism/Hospitality, 2017, https://www.palermo.edu/Archivos_content/2017/Economicas/journal-tourism/edicion20/00_CrimeAtSea.pdf.

9 *ibid.*

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1. THE CORPORATE ROLE - Respecting Human Rights

When expanding on the corporate responsibility to respect human rights, the Guiding Principles explain that this means corporations should not infringe on human rights and address any adverse human rights impacts they might be involved in⁴. In order to achieve this, they require companies to develop a human rights policy, conduct human rights due diligence and remediate human rights violations⁵.

1.1 Developing a Human Rights Policy

Effective human rights policies must be appropriate and relevant to the actual and potential impacts that a company's activities might have. Further, they should be informed by relevant expert input and approved by a company's leadership. This means that a human rights policy will usually require a different coverage than what corporate social responsibility ("CSR") and sustainability policies typically cover, which tend to cover areas such as community engagement and environmentally-focused topics.

In the maritime sector, where so-called human rights policies exist, these frequently fall short of the standards attempting to be set by the Guiding Principles, and often fail to give real effect to the corporate responsibility to respect human rights, or to give full consideration to specific industry risks.

Example: Carnival Corporation & Royal Caribbean

For example, despite evidence of widespread exploitative working conditions on board cruise ships⁶, the two largest cruise lines, Carnival Corporation & Plc and Royal Caribbean Cruises Ltd. failed to address known risks related to crews' working conditions and elevated risk of exploitation in their Codes of Conduct⁷. Surprisingly, both companies apparently failed to establish clear public policies dealing with sexual harassment, although this has been reported to be the most commonly reported crime in the US cruise industry with 220 cases reported to the US Department of Transportation between 2016 and early 2019⁸. Carnival Corporation and Royal Caribbean's policies also do not seemingly publicly and transparently acknowledge the unique jurisdictional challenges in the maritime industry and in particular on international cruise lines, instead demanding compliance with "applicable law", but failing to clarify what this means in any detail⁹. This is notable because a single cruise vessel can not only navigate several jurisdictions in one transit leg, but that the same issue is compounded on an extended voyage by passing through multiple jurisdictions. Both Carnival Corporation and Royal Caribbean have been contacted for comment, but at the time of writing, none has been received.

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Example: MSC Divina

The legal challenges surrounding which jurisdiction applies where a crime is committed on the high seas was recently evidenced in the case of the MSC Divina where an accused Italian rapist could not be tried in Spain because the alleged crime had occurred on a Panamanian-flagged ship in international waters and involved non-Spanish residents; the English victim was apparently left without justice or remedy¹⁰.

When contacted by Human Rights at Sea in April 2019, MSC pointed out that: “It is probably needless to say that our Company takes incidents like the one at stake very seriously and it is our priority to ensure that the victim is supported and protected in whatever way. As also widely reported by media, immediately after the incident was brought to our attention, Ship’s command has taken all proper measures to protect the victim and her family and have reported the occurrence to the law enforcement authorities of the first port of call (Valencia) allowing them to take the person accused under custody.”

“Authorities of the country of residence of the victim as well as those of the country of residence of the person accused have been informed. In addition, we have promptly liaised with the Flag Administration and provided all information needed for them to start an investigation. The competent bodies of the Republic of Panama have since taken over the matter and a public attorney has been appointed to investigate.”

“We can only confirm that the ship responded very promptly when alerted to these allegations and took the necessary measures to protect the victim from the person accused and involve the competent authorities.”

¹⁰ *Rape at Sea, Flag State jurisdiction and the Search for Justice*, Human Rights at Sea, 15 Apr 2019, <https://www.humanrightsatsea.org/2019/04/15/rape-at-sea-flag-state-jurisdiction-and-the-search-for-justice/>; Elisabeth Malin, *Report of Sexual Assault on Cruise Ship Shows Gaps in International Law*, The New York Times, 19 Apr 2019, <https://www.nytimes.com/2019/04/19/us/cruise-ship-crimes-laws.html>. <https://www.business-humanrights.org/en/commentary-alleged-rape-on-msc-divina-ship-highlights-need-for-clear-understanding-of-flag-state-responsibilities-at-sea>.

¹¹ Guiding Principle 11, Commentary.

¹² Guiding Principle 16.

¹³ <https://www.maersk.com/news/articles/2017/01/03/breaking-the-stalemate>.

¹⁴ <https://www.maersk.com/about/sustainability/shared-value/leading-change-in-ship-recycling-industry>.

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Off-setting

The Guiding Principle's Commentary clarifies that the requirement to respect human rights cannot be offset through alternative commitments or activities to support and promote human rights¹¹. This means for example, that a company's support of a local education initiative as part of their CSR strategy cannot offset possible cases of modern slavery aboard vessels in their supply chain. Whilst a human rights policy may be integrated into CSR or sustainability strategies these do not automatically equate to the same thing and companies must take care to not fall short of the Guiding Principles requirement.

So What?

In order to bring a human rights policy to life, the policy must be implemented through relevant business processes, internal and external communication and employee training¹². Companies should ensure the policy actually works with other business processes, adapt practices where needed and ensure that employees are aware of the human rights policy and fully engaged in implementing it. This means that companies in the maritime industry need to engage in a more thorough analysis to understand what steps must be taken to ensure the policy can be properly implemented and think about issues such as how a human rights policy will affect procurement decisions, or assure approval of suppliers or companies dealing with company assets sold on to third parties.

Example: Maersk

"Maersk is introducing contractual steps to ensure that its sales contracts include a strong financial incentive for ship recycling to be carried out responsibly."¹³

Notably, this point appears to have been a previous failing with the global shipping company, Maersk, who have had a responsible ship recycling policy based on the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships in place since 2009¹⁴. Nevertheless, in the following years public reports showed that Maersk was indirectly bringing vessels to substandard ship-breaking yards in Bangladesh and India by acting through intermediaries¹⁵. This practice both incurred significant human costs, including worker exploitation in poor environmental conditions and ships being dismantled in extremely dangerous conditions¹⁶. By not incorporating specific social and environmental clauses in their service contracts and from public record effectively working through known third parties with less than ideal human rights records, Maersk's policy on ship recycling was previously not thoroughly implemented in their business activities, though Human Rights at Sea has since been assured by Maersk that such end-of-life business activities are no longer undertaken and strong due diligence procedures are now implemented. Maersk has been contacted for comment, but at the time of writing no response has been received.

By creating incomplete human rights policies, or not implementing these properly throughout all their business processes, maritime companies fail to create a foundation and precedence for later transparent human rights due diligence on the public record.



15 Platform News - Maersk incited business partner to opt for worst breaking practices for 14 ships, NGO Shipbreaking Platform, 28 Oct 2016, <https://www.shipbreakingplatform.org/platform-news-maersk-incited-business-partner-to-opt-for-worst-breaking-practices-for-14-ships/>, and *Maersk's Toxic Trade: The North Sea Producer Case*, NGO Shipbreaking Platform, <https://www.shipbreakingplatform.org/spotlight-north-sea-producer-case/>.
16 <https://www.shipbreakingplatform.org/our-work/the-problem/>; <http://stories.publiceye.ch/ships/>.

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1.2 Human Rights Due Diligence

Human rights due diligence is a multi-part process that involves:

1. Assessing actual and potential human rights impacts,
2. Integrating and acting upon the findings,
3. Tracking responses, and
4. Communicating how impacts are addressed¹⁷.

When deployed properly, human rights due diligence can be a powerful tool to help companies understand how their business may be impacting human rights throughout their operations and where this is the case, how to act upon those findings. Unfortunately, maritime companies risk taking a high-level and too simplistic approach that disregards the unique steps human rights due diligence requires.

For example, when assessing risk, companies should take care to not just ask “what is the risk to our social acceptance as a company?” but rather “what is the risk of us impacting people’s human rights?”¹⁸ or even engage in a full human rights impact assessment¹⁹.

Human rights due diligence is repeatedly referred to as an ongoing, dynamic²⁰ and iterative²¹ process, meaning that it requires active engagement from companies to assess and address human rights impacts. A first step can simply require maritime companies to map out which actors are active in their supply chain and who relevant stakeholders might be. For example, companies should be able to identify all manning and recruitment agencies from which they source crew and fishermen. This is an important first step that is all too frequently ignored, but which can allow for effective stakeholder engagement, a key component of human rights due diligence.



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Example: The Tuna Industry

When the Business & Human Rights Resource Centre released a report in June 2019 surveying tuna companies' due diligence practices they found that only 20% of the surveyed companies had actually mapped their supply chains whilst only one company was able to identify specific source countries of their tuna²², let alone other actors in the supply chain. The inability to identify specific vessels, let alone recruiters and other actors in their supply chains significantly undermines companies' ability to engage in any kind of effective human rights due diligence.

Maritime companies must seek to take due diligence approaches that are appropriate to the industry and that address the real risks that exist in the maritime environment. Although maritime companies can and should learn from other industries and how these engage in human rights due diligence, these approaches will require adaptation to the maritime environment²³. The industry will require specific tools that are appropriate to human rights risks on board vessels and in the operating context of the industry. The Institute for Human Rights and Business has published a useful guide identifying possible adverse impacts in the ship life-cycle. Steps include identifying stages from vessel design and building, through operation and to breaking and recycling²⁴ and provide helpful assistance to identify unique human rights risks in the maritime sector, however few companies are engaging a full review to date.



Example: The Norwegian Pension Oil Fund

More encouragingly other actors who are less immediately linked with the maritime industry but with great influence are beginning to drive change in the maritime industry through their own due diligence exercises. The Norwegian Pension Oil Fund announced in 2018 that they would be withdrawing funding from four carriers due to their practice of beaching vessels in Pakistan and Bangladesh "based on an assessment of the risk of severe environmental damage and serious or systematic violations of human rights²⁵".

17 Guiding Principle 17.

18 Björn Fasterling, *Human Rights Due Diligence as Risk Management: Social Risk Versus Human Rights Risk*, Business and Human Rights Journal, Vol. 2, 2017, pp. 225-242.

19 See for example the Danish Institute for Human Rights: <https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox>.

20 OECD Due Diligence Guidance for Responsible Business Conduct, <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-Responsible-Business-Conduct.pdf>.

21 UN Working Group on Business and Human Rights, *Companion note II to the Working Group's 2018 report to the General Assembly (A/73/163)*,

<https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf>

22 *Out of Sight: Modern Slavery in Pacific Supply Chains of Canned Tuna*, Business & Human Rights Resource Centre, 2019,

https://www.business-humanrights.org/sites/default/files/Out%20of%20Sight%20Modern%20Slavery%20in%20Pacific%20Supply%20Chains%20of%20Canned%20Tuna_4.pdf.

23 For example, the FAO has started work on developing Due Diligence Guidance for the fishing industry: <http://www.fao.org/in-action/globefish/news-events/details-news/en/c/1202285/>.

24 *The Ship Lifecycle: Embedding Human Rights from Shipyard to Scrapyard*, Institute for Business and Human Rights, June 2019, https://www.ihrb.org/uploads/briefings/Ship_Lifecycle_June_19.pdf.

25 <https://www.nbim.no/en/the-fund/news-list/2018/decisions-on-exclusion-and-observation-from-the-government-pension-fund-global/>.

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1.3 Remediation

Once adverse human rights impacts have been identified, the Guiding Principles require corporations to actively engage in remediating these either through direct action or coordinating with other actors²⁶.

In practice, remediation often proves difficult for business actors due to the complex systemic issues underlying the human rights impact, more so in the maritime industry. For example, remediation of human trafficking of seafarers may require companies to deal with complex global labour recruitment networks over which companies have limited leverage²⁷.



Example: Seafarers Abandoned on Kish Island, Iran

<https://www.humanrightsatsea.org/wp-content/uploads/2018/11/HRAS-Case-Study-2-Kish-Island-Iran-.pdf>

Seventeen seafarers from India, Ethiopia and the Philippines were abandoned by various maritime companies on Kish Island in Iran where they experienced severe substandard conditions, including substandard food and limited access to fresh water. None of the seafarers had been paid for over two years and some of the seafarers spent more than a year on the island waiting to be paid outstanding salaries, to be signed off and repatriated to their home countries. The seafarers' contracts had expired and they were left in limbo waiting for the return of their identity papers. Supporting documentation had also been retained by the shipping companies they were employed by. After contacting an NGO for support, the seafarers were able to obtain payment of their outstanding salaries and were repatriated. However, some seafarers reported that their employers had deducted the repatriation costs and the return fare of 400 USD²⁸.



Example: The Elite Way Case

<https://www.humanrightsatsea.org/wp-content/uploads/2018/12/HRAS-Case-Study-UAE-Seafarer-Abandonment-Dec-18-SECURED.pdf>

The maritime company Elite Way abandoned nearly 40 crew on eight vessels during 2017 and 2018 and some of the last seafarers were only repatriated in 2019 after spending more than three years aboard one of the vessels, the MV Azraqmoiah off the UAE coast²⁹. Crew members reported they were only paid several months of the pending salary but not the full amount they were owed. This situation was aggravated as some crew members reported having paid significant recruitment fees. Despite this situation, Elite Way was reported to still be actively operating and recruiting Indian seafarers via a recruitment agency³⁰.

When setting up their human rights program, many companies do not contemplate the need for remediation and therefore lack an adequate process to address adverse human rights impacts once identified through the due diligence process. In other cases companies may struggle to identify the right partners to address human rights impacts on location. This may be due to not knowing which available partners there are or because no such partners exist in the first place.

In conclusion this can mean that even where a company may be aware of their adverse human rights impacts, they may still be failing to adequately remediate these impacts on their own or may only be remediating impacts partially. One solution may be the need for maritime companies to join together along with other actors and campaign for States to enact legislation.

²⁶ Guiding Principle 22.

²⁷ E.J.F. *Blood and Water*, <https://ejfoundation.org/resources/downloads/Blood-water-06-2019-final.pdf>.

²⁸ Human Rights at Sea, *Case Study Seafarers' Abandonment on Kish Island, Iran*, <https://www.humanrightsatsea.org/wp-content/uploads/2018/07/HRAS-Case-Study-Seafarers-Abandonment-on-Kish-Island-Iran-1.pdf>.

²⁹ "Indian cook stranded at sea off UAE for 38 months to fly home", *Gulf News*, 12 June, 2019, <https://gulfnews.com/uae/indian-cook-stranded-at-sea-off-uae-for-38-months-to-fly-home-1.64559780>.

³⁰ Safety at Sea, *Elite Way Marine Services abandons crew in UAE*, 20 December, 2018, <https://safetyatsea.net/news/2018/elite-way-marine-services-abandons-crew-in-uae/>.

³¹ "Revealed: Asian slave labour producing prawns for supermarkets in US, UK", *The Guardian*, 10 Jun 2014, <https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>.

³² Daniel Murphy, Josh Stride, *Assessing Government and Business Responses to the Thai Seafood Crisis*, 2016.

³³ "Joint Statement on Thai Fishing Industry", *Human Rights Watch*, 17 Aug 2018, <https://www.hrw.org/news/2018/08/17/joint-statement-thai-fishing-industry>.

³⁴ <http://www.imo.org/en/OurWork/Legal/Pages/Seafarer-abandonment.aspx>.

³⁵ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_554767.pdf.

³⁶ <https://www.itfglobal.org/en/news/modern-slavery-uk-waters-cannot-be-tolerated>.

³⁷ <http://www.imo.org/en/OurWork/Legal/Pages/Seafarer-abandonment.aspx>.

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Example: Thai Seafood

The need to act jointly across the industry was understood by companies when seafood companies were confronted with horrific human rights abuses on vessels feeding into their supply chains in the Thai fishing industry³¹. It was recognised that many of the actions required to remediate human rights abuses could not be taken by business alone and so industry, NGOs and the European Union coordinated to apply pressure on the Thai government to adopt measures to address some of the most egregious issues. As a result, the Thai government has taken significant steps³² to pass and implement legislation. Despite the process being slow, fraught with setbacks and facing constant danger of being undermined³³ remediation of adverse human rights impacts required strong State participation in order to be effective and lasting.

Example: Lodestar P&I

Another example can be found in the case of seafarer abandonment. According to the International Maritime Organization (“IMO”), 4,866 seafarers had been registered as abandoned between 2004 and 2018³⁴ and a solution to address and remediate such cases was to add a compulsory requirement for insurance to the Maritime Labour Convention (“MLC”).³⁵ This would retribute abandoned seafarers for unpaid wages. However, three cases of seafarer abandonment in 2017, involving three vessels belonging to a Turkish company and stranded in the UK highlighted the system’s limitations when the P&I club responsible for abandonment insurance, Lodestar, refused to pay out to the seafarers claiming it was premature to trigger the abandonment clause, despite the facts of abandonment being in evidence³⁶. Furthermore, the IMO reports that of the 44 cases of seafarer abandonment reported in 2018, eight cases involved flag States that have not yet ratified the MLC³⁷, highlighting the important role effective legislation plays.

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2. THE STATE'S ROLE - Protecting Human Rights

The Guiding Principles are built around corporate and State roles. While the corporate responsibility to respect human rights has garnered much attention, it is important to recall that the Guiding Principles are built on the foundational State duty to protect human rights.

Where the State duty to protect is discussed in the context of business and human rights, focus is usually given to the need for better legislation and a "smart mix" of tools³⁸ to require and equip business actors to respect human rights. Examples of where this has happened are the UK Modern Slavery Act³⁹, the California Supply Chain Transparency Act⁴⁰, the Australia Modern Slavery Act⁴¹, as well as the French Duty of Vigilance Act⁴².

However, although these types of laws are a positive step forward, their primary purpose is to require companies to report publicly on their due diligence, still placing the full onus of human rights due diligence on companies. This approach is especially critical in the maritime sector where companies deal with a complex network of applicable jurisdictions and weak enforcement of human rights at sea. In effect this can mean that comprehensive due diligence becomes much more difficult for companies, especially when seeking to remediate adverse human rights impacts as demonstrated by the case of the Thai fishing industry above.

For example, the fishing industry faces a high risk of modern slavery aboard vessels, perpetuated by international recruitment practices with manning agencies charging seafarers and fishermen upfront recruitment fees, thereby leaving workers indebted and in a situation of forced labor⁴³. Although these practices have been widely documented and Human Rights at Sea has found that these practices are widespread across the entire maritime sector⁴⁴ and many companies know of this happening on vessels supplying them, there is no clear and immediate solution for how to remediate these human rights impacts.

Example: Taiwan Recruitment Practices

An investigation into the Taiwanese fishing industry led by Human Rights at Sea, identified the entrenched use of so-called middlemen or brokers in the industry who act as an intermediary between crew and employers. The investigation received numerous cases and reports of middlemen misusing their power and abusing fishermen in different ways, such as money disputes and introducing fees, delaying wage payment or even illegally deducting from crew salary, thereby causing crew to be indebted. The report found that these practices typically meet the ILO's definition of forced labour⁴⁵.

Some companies are starting to adopt the "Employer Pays"⁴⁶ principle, with associated policies prohibiting workers to be charged recruitment fees. However, these policies are difficult to enforce in a complex international recruitment system based on the exploitation of workers. In order for any corporate remediation efforts to be effective, flag States and home States of manning and recruitment agencies must support efforts by enacting legislation prohibiting these practices and develop enforcement and agency licensing mechanisms to ensure only legally registered agencies operate⁴⁷.

Example: Pacific Forum Fisheries Agency

One recent positive step has been the Pacific Forum Fisheries Agency's ("FFA") amendment of their Harmonised Minimum Terms and Conditions for Access by Fishing Vessels ("MTCs") to include new minimum terms and conditions for crew employment in both foreign and domestic fleets operating in the Pacific Islands region⁴⁸. The MTCs are largely based on the ILO C188 Work in Fishing Convention⁴⁹ and will be implemented via national legislation and licensing conditions and failure to meet the MTCs will result in a ban on fishing in FFA member waters.

Example: FerrySafe

It is estimated that approximately 3,000 people die in passenger vessels per year⁵⁰ of which the majority of accidents (99.8%) occurred in the domestic ferry industry in non-OECD countries between 2009 and 2018⁵¹. Although international passenger shipping is governed by IMO safety legislation, the domestic ferry industry is not governed by this framework and safety standards are set and enforced individually at country level. In order to address the growing calls for action, the IMO issued the Manila Statement⁵² in April 2015 in which Guidelines were developed to assist administrations, owners, donors of ships, managers, masters and crews, consultants and shipyards in their roles to facilitate safe operations. FerrySafe, a project led by Interferry, noted in a report in June 2019⁵³ that whilst some accidents can be ascribed to human factors, inadequate safety training and safety features aboard vessels, there is also clear evidence that vessel design and construction can render vessels unseaworthy. More importantly, the report stated that despite significant influence and drive from the industry, a change in ferry safety would require active State involvement through government oversight and enforcement of a new safety regime⁵⁴.

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3. CONVENTION ON BUSINESS AND HUMAN RIGHTS

Parallel to the Guiding Principle's 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.

In 2014, with support of approximately 600 NGOs, the so-called "Treaty Alliance"⁵⁵, the UN General Assembly established an open-ended intergovernmental working group on transnational corporations and other business enterprises concerning human rights (OIEGWWG) within the UN Human Rights Council⁵⁶ and in July 2018, under the Chairmanship of Ecuador, a "Zero Draft" was presented to make the start of formal negotiations⁵⁷. Since then, a further Revised Draft was published on 16 July, 2019⁵⁸.

The Revised Draft focuses on access to justice and remedy for victims of corporate human rights abuse and establishes requirements for States to enact legislation making human rights due diligence mandatory. The Revised Draft has made several improvements on the Zero Draft and now extends to all business corporations and not just transnational corporations and it is expressly consistent with the Guiding Principles⁵⁹. In short, the Revised Draft continues to advocate for human rights due diligence as the means for preventing human rights violations by business actors.

This is an important development in that work towards a Convention appears to be heading in a consistent direction with the Guiding Principles whilst strengthening some of the current shortcomings under the soft law principles such as calling for mandatory due diligence legislation and creating access to remedy under the international framework.

It is likely that the process to obtaining a Convention on Business and Human Rights will still take some time and maritime companies will do well to continue to align themselves with the Guiding Principles in the meantime.



37 <http://www.imo.org/en/OurWork/Legal/Pages/Seafarer-abandonment.aspx>.

38 Guiding Principle 3, Commentary.

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

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

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

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

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Human Rights at Sea

BRIEFING NOTE - ARE THE 2011 UN GUIDING PRINCIPLES WORKING EFFECTIVELY AND BEING RIGOROUSLY APPLIED IN THE MARITIME INDUSTRY?



4. CONCLUSION

The Guiding Principles are built around corporate and State roles. While the corporate responsibility to respect human rights has garnered much attention, it is important to recall that the maritime environment poses a very high risk for abuses of human rights at sea, while ignorance of the subject matter compounds the willingness to effectively address transgressions in law and policy.

Because many human rights abuses happen out of sight and mind there is far less incentive to investigate allegations, while the complex web of national and international laws and regulations disincentivises drives for better legislation and effective enforcement, especially by those flag States with poor access to constabulary and judicial support, and who have come to rely upon lucrative commercial income from flag registrations, thereby potentially compromising national legal requirements to investigate and prosecute.

Compounded by a current lack of collective unity and agreed policy from the top down on the subject matter, business and human rights, and in particular the human rights piece, remains marginalized and not taken seriously in the commercial context. The subject is left to be championed by individuals from a CSR perspective, though invariably it is because their professional role dictates as much, while often compounded in terms of difficulty to gain traction against a background of internal resistance to change.

Nonetheless, the Guiding Principles have great potential to improve human rights at sea by expanding responsibility for human rights at sea to commercial maritime companies and not just the default reliance on State intervention. As highlighted above, for the Guiding Principles to be effective, companies must take their human rights requirements seriously and avoid paying lip-service to the issue, but instead transparently and overtly tackle the unique challenges and complexities of the maritime environment when assessing and addressing human rights' impacts in the supply chain.

At the same time, States must recognize that much more needs to be done at a regulatory and enforcement level to protect human rights at sea. For commercial maritime companies to be able to fully respect human rights, States must make sure, at the very minimum, national legal frameworks and supporting legislation is available, or developed where necessary and most importantly, robustly enforced in order to support the widest application of human rights at sea through the resultant deterrent effect.

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Who We Are

BACK GROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **R**esearch, **E**ducation, **A**dvocacy and **L**obbying specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

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

OUR MISSION

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



STAY IN CONTACT



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HUMAN RIGHTS AT SEA



Human Rights at Sea Briefing Note

Are the 2011 UN Guiding Principles Working Effectively and being Rigorously Applied in the Maritime Industry?

Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment. Its aim is 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.

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