



Why our thinking on human rights at sea should not end with seafarers

It is generally accepted that human rights apply at sea, although there is no convention recognizing or proclaiming the existence and extent of such rights. However, the rights of those at sea continue to be abused. In recent years, much of the focus has rightly been on seafarers and the situation is improving, although there is still far to go. But there are countless others at sea, some of whom might be considered ‘less deserving’, whose rights should be recognised and protected.

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For far too long, seafarers have not been given the recognition, support, and respect that they deserve. Fortunately, over the past couple of years this has started to change, helped in no small part by the exposure of their plight during the Covid-19 pandemic. But despite progress, the human rights of seafarers continue to be abused.

The ongoing situation with the 26 crew members of the [Heroic Idun](#), wrongfully detained first in Equatorial Guinea and then Nigeria, which is now in its sixth month, is regrettably far too common an occurrence.

However, seafarers are not the only people on the high seas who deserve our recognition, support and respect. Whilst there are approximately two million seafarers, there are an estimated 39 million fishers working at sea. Beyond that, there are unnumbered migrants, refugees and others at sea. Whether the activities those individuals are undertaking are legal or illegal, they each have basic human rights that should be recognized and respected.

To give an illustration of the scale of human rights problems with fishers, recent research by the FISH Safety Foundation, an international non-profit working to make the global fishing industry safer, puts the annual death rate at over 100,000. There are reports of fishers being duped into joining fishing boats and then prevented from leaving for months or years, receiving little or no pay. Those reports suggest that this is not an issue limited to any one particular part of the world.

It is generally accepted that human rights apply at sea, although there is no convention recognizing or proclaiming the existence and extent of such rights. It is often said that the UN Convention on the Law of the Sea (UNCLOS) has more to say about protecting fish and the marine environment than about protecting people. But even though human rights apply at sea, the approach to jurisdiction under human rights law differs significantly to the law of the sea. That is because the tendency for human rights to be linked to national territory means that on the high seas, over which no country has sovereignty, the jurisdictional link can be more difficult to establish. The result is fragmented jurisdiction.

A state will have human rights jurisdiction over its territorial waters, but that is restricted in practice because of a vessel's right of innocent passage. Human rights jurisdiction will apply where the state has effective control over a vessel and those onboard. But the extent of that jurisdiction can be uncertain. The flag state has jurisdiction over those vessels flagged with it, and corresponding human rights obligations under that flag state's national laws. But in most instances the shipowner is unlikely to be domiciled within and subject to the legal jurisdiction of the flag state. The same applies for the crew, which may be comprised of multiple nationalities. Non-flag state actors are restricted in their right of access to the vessel. There are limited rights of visitation on the high seas, typically only where piracy or other international crimes are suspected.

Beyond legal jurisdictional difficulties, the unfortunate reality is that aside from seafarers, there is little political will to take positive action on human rights at sea. Even then, the support received by seafarers from their respective nations varies. This was illustrated during the Covid-19 pandemic by some nation states not designating seafarers as key workers or refusing to permit crew changes.

More problematically, the political approach to migrants is often actively hostile. Migration by sea is predominantly treated as a maritime security issue because it is dealing with the smuggling of people. But just because an issue relates to maritime security, it does not mean that human rights obligations ought no longer to apply.

Even where there exists the political will, the ability of states to enforce human rights is challenging. The simple fact of the geographical remoteness of the flagged vessel from the flag state is the most significant hurdle. Another is the need to monitor or access that flagged vessel, which relies on physical access at sea through the flag state's own naval or coastguard personnel, or in port from compliant port states. For the most part open registries do not have

sizeable navies with the ability to police the high seas. Coalition naval forces dedicated to policing the high seas, such as the EU Naval Force (EU NAVFOR), do their part but the vastness of the oceans means that only a small proportion of infringements are ever detected.

The failure of some countries to sufficiently recognize and enforce the human rights of all those at sea, means that commercial ships and their crews are often left to bear the burden of the situation. Masters are blamed for the presence of stowaways. Vessels transiting the Mediterranean divert to rescue migrants at sea, as is their duty under SOLAS, only to find themselves unable to disembark those saved, as occurred with the [Maersk Etienne](#) in September 2020.

But despite these difficulties, there has been positive progress over the past year.

In March 2022, the charity Human Rights at Sea published the Geneva Declaration on Human Rights at Sea. Its stated aim 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.

In March 2022, the UK's House of Lords published an analysis of UNCLOS, coinciding with its 40th anniversary. Part of that report considered human rights at sea, concluding that whilst it is clear it applies to people at sea, there are barriers to its application in practice. The report requested the UK Government set out its obligations in respect of human rights at sea, including for human trafficking and modern slavery.

In December 2022, the UK Foreign, Commonwealth and Development Office brought together stakeholders from the maritime world, including representatives from the IMO, NATO, the EU Naval Force, the ICS, the IG, the GMF, Nautilus International, the ITF, Human Rights at Sea, the Greek, Norwegian, British and Dutch Governments, and leading academics to consider human rights at sea. Its recommendations included the need for better monitoring and data gathering, for the removal of barriers to effective enforcement, and for state champions to push for change at intergovernmental level.

So, turning to the title, why should our thinking on human rights at sea not end with seafarers? The simple answer is that unless there is a general acceptance that human rights apply to all of those at sea, with a corresponding preparedness of nation states to protect and enforce those rights, no person at sea can be reassured that their rights will be protected. It is dangerous for human rights to be selectively applied to those deemed sufficiently deserving of them. It is also all too easy for a person to lose those rights if their situation changes; take for example the seafarer arrested for a suspected crime. Unless every suspected criminal detained at sea is afforded their basic human rights, whether pirate, illegal fisher, people smuggler or seafarer, it is more difficult to insist that any individual is entitled to those rights.

This article is based on a speech the author gave at an event on Human Rights Law at Sea at Wilton Park, a forum organized by the UK's Foreign, Commonwealth and Development Office, in December 2022.