



HUMAN RIGHTS AT SEA



**Human Rights at Sea**  
Independent  
Briefing Note on  
**UAE Government**  
**Legal & Policy Position**  
**Supporting Maritime**  
**Protections for Seafarers**

# Human Rights at Sea

## INDEPENDENT BRIEFING NOTE ON UAE GOVERNMENT LEGAL & POLICY POSITION SUPPORTING MARITIME PROTECTIONS FOR SEAFARERS



## Human Rights at Sea Overview

Recent publicly reported events from October 2018 within the territorial waters and international waters offshore the United Arab Emirates (“UAE”) of the abandonment of seafarers for extended periods, some up to 33 months at the time of writing, has once again shone a necessary light on the abhorrent practice of abandoned seafarers by unethical ship owners. Often with the reality of minimal available direct access and recourse to effective legal and judicial remedies, unless championed by the flag State, port State authorities, or in the present case having the issue raised publicly through civil society and maritime welfare organisations, such unacceptable practices will continue with impunity and unchecked globally.

The following independent Briefing Note is aimed at highlighting the legal and policy developments by the UAE Government in combatting such issues, and protecting seafarers responsible for moving in excess of 90% of the world’s goods by sea from such poor working conditions and unacceptable human rights abuses.

While the UAE has not yet ratified the Maritime Labour Convention 2006, the current facts and evidence of abandonment in, and offshore UAE waters, suggests that an ongoing government review of this position to further safeguard international trade in the maritime supply chain is needed, and may well be shortly actioned through a proposed new maritime law in 2020 updating the extant 1981 law as announced by HE Dr Abdullah Al Nuaimi, Minister of Infrastructure Development, on Sunday 7 July 2019.

## 1. Introduction and Background to UAE Maritime Trade

- 1.1** The purpose of this note is to summarise some of the protections available to seafarers<sup>1</sup> under the laws of the UAE and to discuss recent developments in that jurisdiction relating to seafarer abandonment cases. Before doing so, we briefly introduce the UAE both as a legal jurisdiction and as a major maritime centre.
- 1.2** The UAE is a constitutional monarchy consisting of seven emirates; Abu Dhabi (the capital), Ajman, Dubai, Ras Al Khaimah, and Umm Al Quwain (which all have coastlines on the Persian Gulf), Fujairah (which has a coastline on the Gulf of Oman), and Sharjah (which has coastlines on both).
- 1.3** The UAE is a civil law system (as opposed to a common law system)<sup>2</sup>. This means that the laws are codified and there is no concept of binding judicial precedent (sometimes referred to as “judge made law”). Judges in the UAE therefore tend to have greater discretion regarding the application of the law to individual cases than in common law jurisdictions<sup>3</sup>.
- 1.4** The UAE can be contrasted with other countries (such as Saudi Arabia) which predominantly apply Sharia law. However, Sharia law principles permeate the law and there is a separate system of Sharia courts which, depending on the emirate, can have jurisdiction in certain criminal and personal status<sup>4</sup> cases.

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- 1.5 The UAE maritime sector was traditionally focused on fishing and, particularly in Dubai, pearling. However, the industry began to expand considerably in order to support the export of oil in the early 1960s<sup>5</sup>. Today, the main commercial and petroleum ports are Khalifa Port, Mina Zayed, Jebel Dhanna Ruwais and Das Zirku Mubarras (Abu Dhabi), Jebel Ali and Mina Rashid (Dubai), Fujairah Port (Fujairah), Ras Al Khaimah Port and Saqr Port (Ras Al Khaimah), Khor Fakkan and Port Khalid (Sharjah).
- 1.6 According to the United Nations<sup>7</sup> the UAE ranked i) 25th globally in fleet ownership by dead-weight tonnage<sup>7</sup>, and ii) 19th globally in terms of ownership of container-carrying fleet<sup>8</sup>. Dubai ranked 9th globally in the table of leading container ports<sup>9</sup>.
- 1.7 The UNCTAD Review 2018 also refers to a liner shipping connectivity index, which it says provides an indicator of a country's position within the global liner shipping network, which is "closely related to trade costs and trade competitiveness". The UAE experienced a significant improvement on the 2018 index compared with the 2017 index, and is now ranked 1st in Asia on this metric<sup>10</sup>.
- 1.8 In 2018, the UAE fleet consisted of i) 249 oil tankers, ii) 113 general cargo ships, iii) 221 container ships, and iv) 358 other types of ship<sup>11</sup>. In Dubai, the pleasure craft and cruise sectors have seen growth in recent years, as has the ship building industry<sup>12</sup>. In that emirate the maritime industry accounted for 7% of GDP (USD 7.3 billion) in 2018, almost double the figure from 2015 (USD 3.9 billion)<sup>13</sup>.
- 1.9 For 2018/2019, the International Chamber of Shipping ("**ICS**")<sup>14</sup> noted positive performance indicators for the UAE when assessing the effective enforcement of international maritime rules, including those pertaining to safety of life at sea, the protection of the marine environment, and the provision of decent working and living conditions for seafarers. In fact, the only potentially negative performance indicator recorded for the UAE was its non-ratification of the MLC (discussed below).

## 2. The MLC and Seafarer Protections under UAE Law

- 2.1 One of the main international treaties pertaining to the protection of seafarers' rights is the Maritime Labour Convention 2006<sup>15</sup> ("**MLC**").
- 2.2 The primary way in which seafarers are intended to gain protections under the MLC is for individual states to ratify its terms and implement domestic legislation requiring compliance on the ships flying its flag<sup>16</sup>. However, the MLC is also capable of having an indirect effect. This is because ships flying the flags of states that have not ratified may, in certain circumstances, be inspected when they enter the port of a member state for compliance. Where serious or repeated non-compliance with the MLC is detected, the member state may prevent the ship from sailing<sup>17</sup>.
- 2.3 The UAE has not ratified the MLC<sup>18</sup>. Instead, protections for seafarers can primarily be found in two pieces of domestic legislation; i) the Federal Maritime Law of 1981 ("**Maritime Law**"), and ii) Federal Law No 8 of 1980 concerning the Regulation of Labour Relations ("**Labour Law**").
- 2.4 It is beyond the scope of this note to undertake a detailed comparison of the protections afforded to seafarers under the MLC and these UAE laws. However, UAE law does address similar areas to the MLC, even if the particular standards adopted are not identical. This is illustrated by reference to the first four "Titles" of the MLC<sup>19</sup>:

<sup>1</sup> For consistency, we use the term "seafarer" throughout this note when discussing the relevant treaties and laws to refer to anyone working on board a ship. This includes "fishers" or "fisherfolk". Please note that the relevant treaties and legislation do not use precisely the same terminology.

<sup>2</sup> Please note that the UAE has several "offshore" free zones, some of which have their own court systems and non-criminal laws (for example, the Abu Dhabi Global Market and the Dubai International Financial Centre). We have limited our consideration to certain laws of the main "onshore" UAE jurisdiction for the purposes of this note.

<sup>3</sup> Including England and Wales and the United States of America. It should also be noted that the laws of the UAE are in Arabic and that translations should accordingly be treated with caution.

<sup>4</sup> Personal status cases concern matters such as the rights and protection of minors, guardianship, marriage, divorce and inheritance.

<sup>5</sup> Dubai Chamber of Commerce and Industry Economic Research Department, "UAE Economic Overview & Dubai Maritime Sector Report" dated May 2018 ("**DCCI Report 2018**"), page 10.

<sup>6</sup> See United Nations Conference on Trade and Development Review of Maritime Transport 2018 ("**UNCTAD Review 2018**").

<sup>7</sup> UNCTAD Review 2018, Table 2.3.

<sup>8</sup> UNCTAD Review 2018, Table 2.4.

<sup>9</sup> UNCTAD Review 2018, Table 4.4.

<sup>10</sup> UNCTAD Review 2018, page 33 and Table 2.7.

<sup>11</sup> DCCI Report 2018, page 10.

<sup>12</sup> DCCI Report 2018, page 12.

<sup>13</sup> DCCI Report 2018, page 15.

<sup>14</sup> See the ICS Shipping Industry Flag State Performance Table for 2018/2019. Similar reports are published by various Port State Control organizations, including the Paris and Tokyo MoUs. The Paris MoU publishes its "White, Grey and Black (WGB) list" annually, which it describes as presenting "... the full spectrum, from quality flags to flags with poor performance that are considered high or very high risk. It is based on the total number of inspections and detentions over a 3-year rolling period for flags with at least 30 inspections in the period." The UAE does not feature on any of the Paris MoU's WGB lists from July 2011 to present. The Tokyo MoU's Annual Report on Port State Control in the Asia-Pacific Region 2018 notes four inspections of UAE flagged ships between 2016 and 2018, none of which resulted in a detention.

<sup>15</sup> As amended in 2014 and 2016.

<sup>16</sup> MLC, Regulation 5.1.1(1).

<sup>17</sup> MLC, Standard A5.2.1(6) provides that "... where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of this Convention, and: (a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or ii) the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers' rights); the authorized officer shall take steps to ensure that the ship shall not proceed to sea..."

<sup>18</sup> [https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:11210:0:NO::P11210\\_COUNTRY\\_ID:103495](https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:11210:0:NO::P11210_COUNTRY_ID:103495).

<sup>19</sup> Please note that Regulations 2.6 to 2.8, 4.4 and 4.5 are not considered for the sake of brevity. The MLC is split into the Articles, the Regulations and the Code. The fundamental difference is that the Articles and the Regulations define the core rights whereas the Code contains the detail for the implementation of the Regulations. The Code is further divided into mandatory Part A "Standards", and non-mandatory Part B "Guidelines". The mandatory requirements of the MLC are therefore restricted to the content of the Articles, the Regulations and the Part A Standards of the Code (MLC, Article II, 1(e)).

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### Minimum Requirements for Seafarers to Work on a Ship

- 2.5** Regulation 1 of the MLC prohibits seafarers under the age of 16 working on ships, and restricts the ability of seafarers under 18 to engage in night work and other types of work likely to jeopardise their health and safety.
- 2.6** The Maritime Law contains no restrictions regarding the age of seafarers. However, protections do exist under the Labour Law, which prohibits the employment of individuals under 15<sup>20</sup>, and imposes restrictions regarding the employment of individuals aged between 15 and 18<sup>21</sup>.
- 2.7** Regulation 1.2 of the MLC prohibits seafarers from working unless they have been assessed by a duly qualified medical practitioner and certified as medically fit to perform their duties. Regulation 1.3 of the MLC prohibits seafarers from working unless they are competent to perform their duties and have successfully completed training for personal safety.
- 2.8** The Maritime Law requires that all shipowners<sup>22</sup> must comply with the relevant secondary legislation regarding health and medical services on ships<sup>23</sup>, and that the seafarers of UAE flagged ships must be qualified in accordance with standards defined in secondary legislation<sup>24</sup>.
- 2.9** Regulation 1.4 of the MLC requires that seafarers have access to efficient, adequate and accountable systems for recruitment and placement on board ships without charge to the seafarer. There are no similar provisions in the UAE Maritime or Labour Laws<sup>25</sup>.

### Conditions of Employment

- 2.10** Regulation 2.1 of the MLC requires that seafarers have clear, written and enforceable contracts of employment. Specific requirements are set out relating to (*inter alia*) the number of signed originals and where they are to be deposited, how the seafarer can access copies, mandatory minimum content requirements and minimum notice periods.
- 2.11** The basic position under UAE law is that the Labour Law shall apply to the seafarer's contract of employment, subject to any specific provisions of the Maritime Law or secondary legislation issued thereunder<sup>26</sup>. The Maritime Law provides that a seafarer's contract shall be in writing, and that the ship's master must keep copies<sup>27</sup>.
- 2.12** Regulation 2.2 of the MLC requires that seafarers shall be paid for their work regularly in intervals of no more than one month, and that shipowners take measures to enable seafarers to transmit their earnings to the seafarer's families or dependants.
- 2.13** The Maritime Law provides that the seafarer's wages shall be paid at the time and place specified in the contract, or in accordance with maritime custom where not specified<sup>28</sup>. The Labour Law provides that wage payments shall be made on at least a monthly basis<sup>29</sup>. There is no provision in the Maritime or Labour Laws relating to the transmission of seafarer's earnings to family and dependants.
- 2.14** Regulation 2.3 of the MLC requires that member states regulate the hours of work and rest for seafarers. In particular, the maximum hours of work shall not exceed 14 hours in any 24 hour period and 72 hours in any seven day period<sup>30</sup>. The Maritime Law prohibits work exceeding 12 hours per day<sup>31</sup>, except in the case of an emergency<sup>32</sup>.
- 2.15** Regulation 2.4 of the MLC requires that seafarers be given paid annual leave (two and a half days per month), and that they be granted shore leave. The Labour Law provides that seafarers shall be entitled to this level of paid annual leave, but only where the seafarer's period of service is more than one year<sup>33</sup>.
- 2.16** Regulation 2.5 of the MLC provides that seafarers have the right to be repatriated at no cost to themselves in circumstances where the employment agreement expires whilst they are on board, where the agreement is terminated<sup>34</sup>, and where the seafarer can no longer carry out their duties. The MLC further requires that member states provide financial security for the purposes of repatriation (and other matters).
- 2.17** The Maritime Law provides that the shipowner is responsible for the repatriation of seafarers in circumstances where an incident occurs during a voyage which necessitates disembarkation<sup>35</sup>. In these circumstances, the shipowner is responsible for the costs of the transport, accommodation and subsistence incurred during repatriation. The Labour Law provides that, on termination of a seafarer's contract of employment the seafarer must be repatriated to the place of recruitment, or any other place agreed upon by the parties, at the employer's cost<sup>36</sup>. The UAE has recently implemented measures relating to the provision of insurance for repatriation of seafarers under this Regulation (and for protection in the case of abandonment, see Section 3).

<sup>20</sup> Labour Law, Article 20.

<sup>21</sup> See Labour Law, Article 23. These include restrictions against working at night in an "industrial undertaking." This term is not defined in the Labour Law. However, the UAE has ratified the Hours of Work (Industry) Convention, 1919 which provides that this term includes "... (d) transport of passengers or goods by road, rail, sea or inland waterway, including the handling of goods at docks, quays, wharves or warehouses, but excluding transport by land." There are also restrictions regarding working hours. Article 25 of the Labour Law provides that individuals between the ages of 15 and 18 are only permitted to work for six hours per day (including breaks totaling at least one hour) and cannot be required to work overtime or during rest days.

<sup>22</sup> We use the term "shipowner" throughout for consistency. However, it should be noted that the MLC and the relevant UAE laws do not use precisely the same terminology, and we refer to the MLC, Article II(1)(i) and the Maritime Law, Article 135.

<sup>23</sup> Maritime Law, Article 62.

<sup>24</sup> Maritime Law, Article 164. Please refer to Ministerial Decree No 127 of 2001 and Administrative Decision No 34 of 2016 which contain standards regarding qualifications and manning levels for shipping. Administrative Decision No 7 of 2018 contains further standards relating to the UAE's implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (SCTW), 1978.

<sup>25</sup> It should be noted that the Labour Law provides for a department within the Ministry of Human Resources and Emiratisation ("MOHRE") established for the purposes of helping UAE nationals find employment.

<sup>26</sup> Maritime Law, Article 169(2).

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### Accommodation, Recreational Facilities, Food and Catering

- 2.18** Regulation 3.1 of the MLC requires that safe and decent accommodation and recreational facilities be provided for seafarers<sup>37</sup>. The Maritime Law provides that this be provided free of charge, with the particular standards to be defined in secondary legislation<sup>38</sup>.
- 2.19** Regulation 3.2 of the MLC requires that seafarers be provided with food and drinking water of appropriate quality, nutritional value and quantity that adequately takes into account the differing cultural and religious backgrounds. It further provides that food will be provided to seafarers free of charge, and that those employed as ship's cooks must be trained and qualified for the position. The Maritime Law provides that the shipowner must provide food free of charge, with the particular standards to be defined in secondary legislation<sup>39</sup>.

### Health Protection, Medical Care, Welfare and Social Security Protection

- 2.20** Regulation 4.1 of the MLC requires that seafarers are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board, at no cost to them. The Maritime Law provides that the shipowner must provide free treatment for seafarers if they sustain any injury or illness whilst in the service of the ship<sup>40</sup>. The affected seafarer shall also be entitled to his full wage during the voyage<sup>41</sup>. The particular standards are left to be defined in secondary legislation<sup>42</sup>.
- 2.21** Regulation 4.2 of the MLC requires that the shipowner provide material assistance and support to seafarers with respect to the financial consequences of sickness, injury or death occurring while they are serving under a contract of employment<sup>43</sup>. The MLC further requires that a system of financial security be established in respect of seafarer's "contractual claims"<sup>44</sup>.
- 2.22** Paragraph 2.20 is repeated. In addition, the Maritime Law provides that a seafarer shall be entitled to his full wage should he die after the commencement of the voyage<sup>45</sup>, that the shipowner must pay the seafarer's funeral costs if he dies in the service of the ship and in those cases deposit with the relevant maritime department the wages and other sums owed to the seafarer in cash<sup>46</sup>. Further, if a seafarer should die as a result of defending the ship, cargo or passengers, his heirs shall be entitled to a sum equivalent to three months' wages<sup>47</sup>. The UAE has recently implemented measures relating to the provision of insurance for seafarers under this Regulation (see Section 3).
- 2.23** Regulation 4.3 requires that seafarers are provided with occupational health protection, and that they live, work and train on board ship in a safe and hygienic environment. In particular, the MLC requires the adoption of effective implementation of occupational health and safety programmes on ships, including the training of seafarers<sup>48</sup>, the adoption of reasonable precautions to prevent occupational injuries and diseases on board ship<sup>49</sup> and implementation of requirements for inspecting, reporting and correcting unsafe conditions, and reporting of accidents<sup>50</sup>.
- 2.24** The Maritime Law provides that ships registered in the UAE must obtain a safety certificate, and that secondary legislation will establish the criteria for such a certificate<sup>51</sup> and also specify the required safety equipment on board<sup>52</sup>. It further provides that the master shall keep a daily log, recording among other things any accidents<sup>53</sup>, and prepare reports where any unusual incident occurs<sup>54</sup>.

<sup>27</sup> Maritime Law, Article 170. The seafarer's contract must include the date and place of the agreement, the name, age, nationality and residence of the seafarer, the type of work to be performed, the wages and manner of payment, details regarding relevant permits, the date of sailing and the ports of embarkation and debarkation. See Maritime Law, Article 171. Similar provisions are also found at Articles 35 and 36 of the Labour Law. The Labour Law includes further relevant provisions, including those relating to notice periods. In this regard we note that the shortest notice period provided under the Labour Law is seven days in the case where the employee is paid on a daily basis and has been employed for less than one year (Labour Law, Article 117(2)).

<sup>28</sup> Maritime Law, Article 180.

<sup>29</sup> Labour Law, Article 56.

<sup>30</sup> It also prescribes that the minimum hours of rest shall not be less than ten hours in any 24-hour period and 77 hours in any seven day period.

<sup>31</sup> Maritime Law, Article 172.

<sup>32</sup> Maritime Law, Articles 127 and 178.

<sup>33</sup> Labour Law, Article 75. Prior to that, seafarers are entitled to two days per month where the period of service is between six months and one year.

<sup>34</sup> In the case of termination by the seafarer there must be "justified reasons".

<sup>35</sup> Maritime Law, Article 190(1). There are exceptions where the disembarkation is by order of a foreign power when the ship is in port, or where the disembarkation is pursuant to the agreement of the shipowner and the seafarer.

<sup>36</sup> For the purposes of the Labour Law, the costs of repatriation include the value of the travel ticket and whatever additional entitlements may have been agreed under the contract of employment (for example in relation to family members and shipping of belongings). See Labour Law, Article 131 bis. However, where the reason for the termination is attributable to the seafarer, he shall bear these costs if he is able. See Labour Law Article 131.

<sup>37</sup> The MLC draws particular attention to: i) the size of rooms, ii) heating and ventilation, iii) noise and vibration, iv) sanitary facilities, v) lighting, and vi) hospital accommodation.

<sup>38</sup> Maritime Law, Article 186.

<sup>39</sup> Maritime Law, Article 186.

<sup>40</sup> Maritime Law, Article 187(1).

<sup>41</sup> Maritime Law, Article 188(1).

<sup>42</sup> Maritime Law, Articles 62 and 164.

<sup>43</sup> In particular, shipowners are required to provide financial security to ensure compensation in the event of the death or long-term disability of seafarers due to occupational injury, illness or hazard (MLC, Standard A4.2.1(1)(b)), to pay the costs of medical treatment until the affected seafarer has either recovered or the affliction has been declared of a permanent character (MLC, Standard A4.2.1(1)(c)) and shipowners shall pay the costs of burial expenses in the event of a seafarer's death on board or ashore during the period of engagement (MLC, Standard A4.2.1(1)(d)).

<sup>44</sup> MLC, Standard A4.2.2(1) defines contractual claims as "... any claim which relates to the death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarer's employment agreement or collective agreement."

<sup>45</sup> When engaged on a one-way voyage. In the case of a return voyage, the entitlement will be to half wages (if death occurs on the outward voyage) and to full wages (if the death occurs on the return voyage). See Maritime Law, Article 183.

<sup>46</sup> Maritime Law, Article 189.

<sup>47</sup> In the case of the seafarer being engaged for a voyage, his heirs shall be entitled to a sum equal to the wages of the voyage. See Maritime Law, Article 194.

<sup>48</sup> MLC, Standard A4.3(1)(a).

<sup>49</sup> MLC, Standard A4.3(1)(b).

<sup>50</sup> MLC, Standard A4.3(1)(d).

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### 3. Seafarer Abandonment

- 3.1** Seafarer abandonment is defined under the MLC as a situation in which the shipowner i) fails to cover the cost of the seafarer's repatriation, ii) has left the seafarer without necessary maintenance and support, or iii) has otherwise unilaterally severed their ties with the seafarer, including failure to pay contractual wages for a period of at least two months<sup>55</sup>. Seafarer abandonment is a global problem. Since establishing a database in 2004, the International Maritime Organisation has recorded 366 abandonment cases affecting 4,866 seafarers. Of the cases reported in 2018, a number involved flag States that had not ratified the MLC; Bahrain, the Democratic Republic of the Congo, Dominica, the United Republic of Tanzania and the UAE<sup>56</sup>.
- 3.2** We published a case study<sup>57</sup> in December 2018, in which we highlighted the abandonment of approximately 40 seafarers in UAE waters, together with considerable outstanding wages and lack of sufficient food, water, fuel and medical supplies. This was not the first such documented case<sup>58</sup>, and was followed by a series of individual and related case studies aimed at raising awareness and detailing the consequences of abandonment to seafarers and their families<sup>59</sup>. Similar stories have also been reported in the UAE press<sup>60</sup>.
- 3.3** The UAE authorities have reacted to these cases. We refer to Administrative Decision No 1 of 2018 On the Compulsory Insurance Requirements Related to the Shipowners' Liabilities Towards Sailors in the State of the United Arab Emirates<sup>61</sup>, as amended by Federal Decision No 95 of 2018<sup>62</sup> ("**Decision 1 of 2018**"). The same applies to i) UAE flagged ships<sup>63</sup>, ii) foreign commercial ships licensed by the UAE Federal Transport Authority (Land and Marine) ("**FTA**")<sup>64</sup>, and iii) foreign commercial ships entering UAE waters<sup>65</sup>.
- 3.4** The same provides that shipowners<sup>66</sup> shall:  
"*...provide insurance coverage for every [seafarer<sup>67</sup>] working on the vessel under an insurance policy covering the following insurance liabilities:*  
1 - *Deportation expenses and basic necessities' expenses such as food, care, healthcare, salaries due to the [seafarers] up to four months in case of Desertion<sup>68</sup> of the [seafarer] according to the Regulation (2.5), standards ((A2.5.2 and guidelines (B.2.5) stated in the [MLC].*  
2 - *Compensation for death or long-term disability resulting from the occupational hazards set forth in the Maritime Labour Contract or the collective agreement contract according to Regulation (4.2), standards (4.2A) and guidelines (B4.2) of the [MLC]"*
- 3.5** Shipowners of i) UAE flagged ships, and ii) foreign commercial ships licensed by the FTA are under an obligation to procure insurance from an FTA approved provider and to provide that authority with a copy of the insurance certificate within seven days of receipt<sup>69</sup>. The shipowners of foreign commercial ships entering UAE waters are under an obligation to procure insurance from providers approved by their flag State<sup>70</sup>. The insurance certificates must include certain details relating to the individual seafarers<sup>71</sup>, and must be clearly displayed in an area accessible to all seafarers on the ship<sup>72</sup>.
- 3.6** The FTA are entitled to inspect the ships to which Decision 1 of 2018 applies in order to monitor compliance. In the case of i) UAE flagged ships, and ii) foreign commercial ships licensed by the FTA non-compliance may result in the suspension of the relevant licenses<sup>73</sup>. In the case of foreign commercial ships entering UAE waters non-compliance will initially result in a warning being issued. In the event of repeated non-compliance, the FTA may prohibit the entry of the foreign ship into UAE waters<sup>74</sup>.
- 3.7** The effect of Decision 1 of 2018 is accordingly that the UAE has implemented the protections against seafarer abandonment, and also those related to compensation for death or long-term disability, anticipated by the MLC. In implementing these protections, the UAE has exceeded the mandatory requirements of the MLC by requiring that the Part B "Guidelines" also be given effect to. The UAE has also required that ships flying foreign flags entering its waters effect the relevant insurances.
- 3.8** It remains to be seen to what extent the shipowners of UAE flagged ships, or those otherwise operating in UAE waters, will voluntarily comply with Decision 1 of 2018. However, FTA Circular No 11 of 2018<sup>75</sup> confirms that the FTA is willing to exclude ships belonging to shipowners who have been involved in seafarer abandonment cases from UAE waters<sup>76</sup>.

<sup>51</sup> Maritime Law, Article 50.

<sup>52</sup> Maritime Law, Article 136. Please refer to Ministerial Decree No 22 of 1988 which contains standards for the provision of safety equipment (lifeboats, lifejackets, communication and emergency signaling devices, firefighting equipment etc).

<sup>53</sup> Maritime Law, Article 156.

<sup>54</sup> Maritime Law, Article 159.

<sup>55</sup> MLC, Standard A2.5.2(2).

<sup>56</sup> <http://www.imo.org/en/OurWork/Legal/Pages/Seafarer-abandonment.aspx>.

<sup>57</sup> "A Practice of Human Rights Abuse: More than Thirty Seafarers of Three Vessels Stranded in the UAE for Two Years Pending Sign Off" dated 11th December 2018, <https://www.humanrightsatsea.org/2018/12/11/hras-exposes-case-of-40-abandoned-seafarers-in-uae/>.

<sup>58</sup> "New case of seafarer abuse exposed on UAE flagged vessel" dated 13 July 2017, <https://www.humanrightsatsea.org/2017/07/13/new-case-of-seafarer-abuse-exposed-on-uae-flagged-vessel/>. See i) "A Family Update for Captain Ayyappan Swaminathan" dated 8 March 2019, <https://www.humanrightsatsea.org/2019/03/08/abandoned-indian-seafarer-family-statement-on-behalf-of-captain-swaminathan/>, ii) "A Family Update for Chief Engineer Gorropotu Venkatarao" dated 13 March 2019, <https://www.humanrightsatsea.org/2019/03/13/abandoned-indian-seafarer-family-statement-on-behalf-of-chief-engineer-gorropotu-venkatarao/>, and iii) "Indian Family Stories of the Consequences of Seafarer Abandonment: AB Mayur Gawade Family, Pune, India" dated 24 March 2019, <https://www.humanrightsatsea.org/2019/03/24/abandoned-indian-seafarer-family-statement-on-behalf-of-ab-mayur-gawade-off-uae-coast/>.

<sup>60</sup> The National, "Mission provides vital service for abandoned 'ghost ships' of the UAE", dated 20 May 2018 and Gulf News "UAE Cracks Down on Ship Owners who Abandon Seafarers" dated 31 March 2018.

<sup>61</sup> Dated 14 January 2018. Guidance for the implementation of the same (including a list of FTA approved insurance providers) was issued by way of FTA Circular No 6 of 2018, which was subsequently updated by way of FTA Circular No 1 of 2019 ("FTA 1 of 2019").

<sup>62</sup> Dated 26 December 2018.

<sup>63</sup> Decision 1 of 2018, Article 2(a)(1).

<sup>64</sup> Decision 1 of 2018, Article 2(a)(2).

<sup>65</sup> Decision 1 of 2018, Article 2(a)(3). Please note that the scope of the implementation was amended by way of FTA 1 of 2019 to include ships of those categories of all sizes (including with a gross tonnage of less than 200 tons).

# Human Rights at Sea

## INDEPENDENT BRIEFING NOTE ON UAE GOVERNMENT LEGAL & POLICY POSITION SUPPORTING MARITIME PROTECTIONS FOR SEAFARERS

### 4. Other Remedies under UAE Law

- 4.1** The developments noted in the previous section are promising and, assuming they are enforced, will bring the UAE in line with the relevant parts of the MLC. However, there remains the possibility of non-compliance in which case the seafarer will not obtain the relevant protections. A detailed analysis of the remedies potentially available under UAE law in these circumstances is beyond the scope of this note. However, we draw attention to the following:
- 4.2** Under the Maritime Law, unpaid wages under a contract of maritime employment are considered a “maritime debt”<sup>77</sup>. This concept is broadly analogous to that of the “*maritime lien*” or “*maritime mortgage*” as referred to in various international treaties<sup>78</sup>. A seafarer wishing to recover a maritime debt can apply to the courts for arrest of the ship, or any other ship owned by the relevant shipowner<sup>79</sup>. Once a ship is arrested a expedited procedure exists for adjudication of the debt and, if valid, the sale of the ship to satisfy the debt<sup>80</sup>.
- 4.3** Where the shipowner is a UAE entity or the employment contract is registered with MOHRE it is likely that the seafarer will obtain the protections of the Labour Law. This would include the procedure for amicable settlement before the MOHRE<sup>81</sup>. If an amicable settlement is not achieved within two weeks the dispute is then referred to the competent court. Our understanding is that the timeframe between filing the complaint with MOHRE and obtaining a court judgment can be as short as a few months. The courts are also able to order immediate execution (ie, enforcement) of the first instance decision, even where the case is subject to appeal, so long as this remedy is specifically requested<sup>82</sup>.
- 4.4** We also note that on 7 July 2019 it was announced in the UAE press<sup>83</sup> that a new UAE maritime law is being drafted which will introduce, among other matters, new protections for abandoned seafarers. It is anticipated that the drafting of the law will be completed in 2019 and that it will come into effect in 2020. The details of the protections have not yet been made public, but according to the reporting sources will include granting the FTA and other UAE authorities greater powers to intervene in such cases.

### 5. Conclusion

- 5.1** Whilst not having ratified the MLC, the UAE does afford protections to seafarers under its current domestic legislation. These protections have recently been significantly expanded and, if the relevant measures are complied with, should provide effective insurance protections for seafarers in the case of abandonment.
- 5.2** In the event that the seafarers do not have the benefit of the intended insurances, there are still other potential ways of pursuing remedies under UAE law. However, obtaining these remedies is unlikely to be straightforward in all cases, particularly where a claimant does not have adequate funding and may have difficulty identifying and communicating with the appropriate parties (as may be the case where abandonment has taken place). It should also be noted that limitation periods under UAE law can expire quickly, with seafarers potentially losing their ability to obtain any compensation as a result<sup>84</sup>.
- 5.3** The proposed development of a new maritime law to come into force in 2020 may reinforce seafarer protections on land and at sea, though the detail and application will need to be effective in terms of the provision of legal remedies which deter human rights abuses towards seafarers. This should include the prevention of criminalisation of seafarers, and prosecution of offenders.

<sup>66</sup> Defined as the “... [r]egistered owner as stated in the vessel's registration certificate or any entity or person responsible for the management or operating of the vessel instead of the owner, such as the vessel management company or the lessee in case of rent of unequipped vessel.”

<sup>67</sup> The term used in translation is “sailor”, defined as the “[p]erson bound by an employment contract on the vessel, and considered the helmsman of the Sailors with regard to the employment contract.”

<sup>68</sup> Defined as the “... Shipowner severing the relationship with the [seafarer] before expiry of his employment contract and the Desertion thereof without ensuring his subsistence costs, such as housing, food, care and healthcare, deporting him to his home country and not paying his wages or contractual fees for a period of not less than two months.”

<sup>69</sup> Decision 1 of 2018, Article 4(1).

<sup>70</sup> Decision 1 of 2018, Article 4(2).

<sup>71</sup> Including their names and names of their beneficiaries. See Decision 1 of 2018, Article 4(3).

<sup>72</sup> Decision 1 of 2018, Article 4(4) and (5).

<sup>73</sup> Decision 1 of 2017, Article 7(1) and (2).

<sup>74</sup> Decision 1 of 2018, Article 7(3).

<sup>75</sup> Dated 6 June 2018. FTA Circulars are published online at <https://fta.gov.ae/en/home.aspx>.

<sup>76</sup> The FTA banned ships belonging to two entities from operating in UAE waters “... [f]or the sake of protecting seafarer's rights, and due to the repeated cases of seafarer's abandonment...”

<sup>77</sup> Maritime Law, Article 115.

<sup>78</sup> See the i) Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages 1926, ii) the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages 1967, and iii) the International Convention on Maritime Liens and Mortgages, 1993.

<sup>79</sup> Maritime Law, Article 116. If the ship is chartered to a charterer with the right of management the charterer is solely responsible for the maritime debt, and the seafarer may arrest any ship belonging to the charterer. See Maritime Law, Article 117.

<sup>80</sup> Maritime Law, Articles 120 et seq.

<sup>81</sup> Labour Law, Article 6.

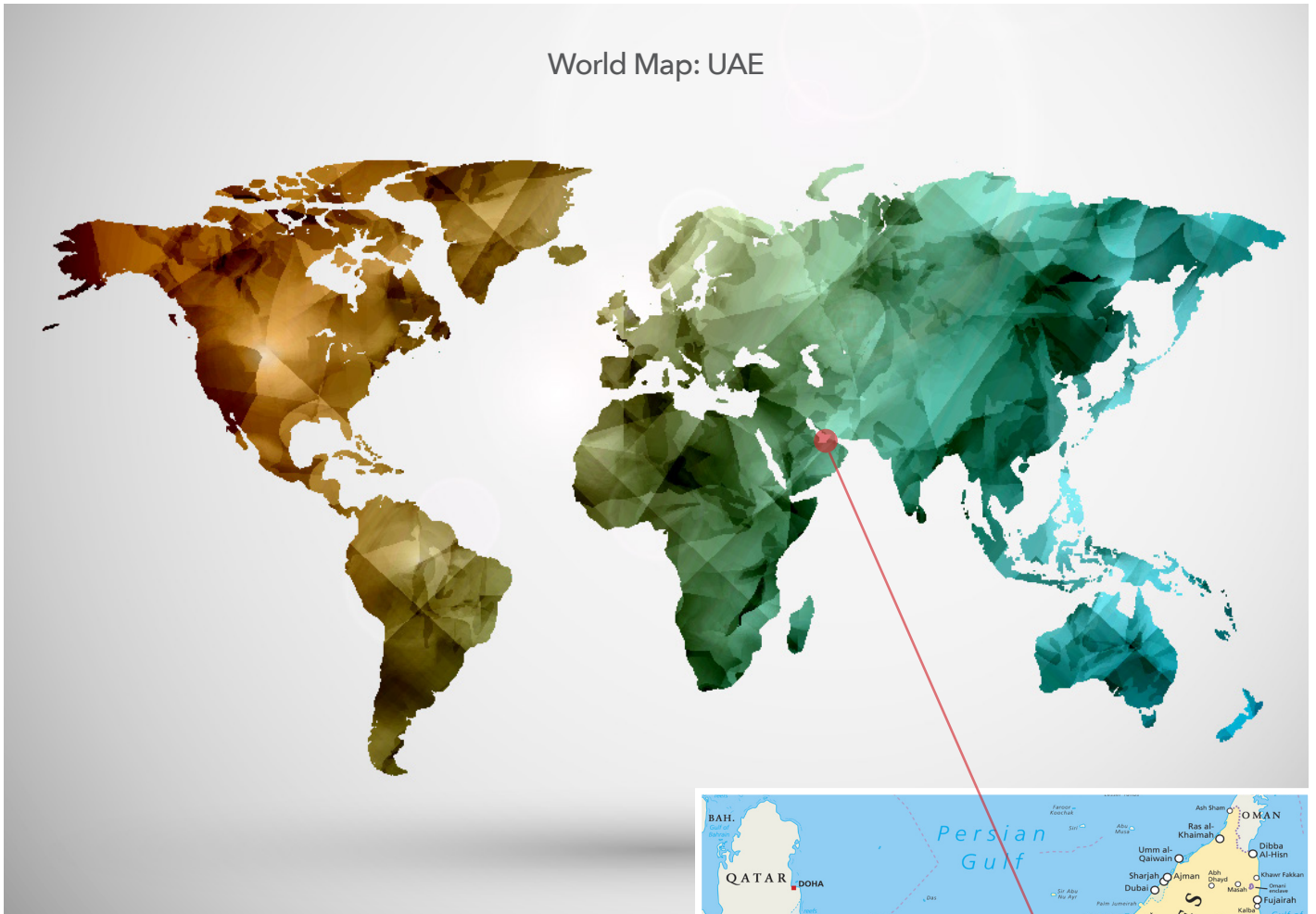
<sup>82</sup> UAE Cabinet Decision No 57 of 2018, Article 79(5)).

<sup>83</sup> The National, “UAE to overhaul maritime laws to protect sailors and allow foreign ownership”, dated 7 July 2019 and Khaleej Times “New UAE maritime law to be launched in 2020” dated 7 July 2019.

<sup>84</sup> For example, Article 93(1) and (2) of the Maritime Law provide that a claim in respect of payments under a seafarers' employment contract will be time-barred after one year from the maturity of the debt. The same time limit applies to claims under the Labour Law (see Article 6).



World Map: UAE



Disclaimer

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Human Rights at Sea Independent Briefing Note on UAE Government Legal & Policy Position Supporting Maritime Protections for Seafarers

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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