



FLAG STATES AND HUMAN RIGHTS

A Study on Flag State Practice in Monitoring, Reporting and Enforcing Human Rights Obligations On Board Vessels

The University of Bristol Human Rights Implementation Centre
and The University of Bristol Human Rights Law Clinic
in partnership with Human Rights at Sea 17.07.18



HUMAN RIGHTS AT SEA



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1 | INTRODUCTION

The human rights obligations of States ought to apply in the maritime environment as equally as they do on land¹. The fact that human rights are violated at sea and yet may remain largely unaddressed is a pressing concern. The gap between human rights obligations and available means of monitoring, reporting and enforcement at sea compels an examination of the ways in which key actors contribute to the protection of human rights on board vessels, by flag States and coastal States.

The present report aims to apply academic legal research expertise to address the under explored issue of human rights at sea by examining flag States practice. The report was prepared by University of Bristol Law School postgraduate researchers in partnership with the independent UK human rights charity, Human Rights at Sea² as part of the University's Human Rights Implementation Centre and Human Rights Law Clinic. The Flag State Research Project was established to examine how flag States, especially open registries, comply with their domestic and international human rights obligations aboard vessels registered under their flags. Moreover, it aims to provide new insight into how to better assess flag State practice going forward.

In this case, the flag States identified for study are the Marshall Islands, Saint Kitts and Nevis, and the United Kingdom, which offer a combination of open registries in different regions.

THE PROJECT WAS STRUCTURED IN THREE STAGES

In the first stage, extensive background research on the ship registries, the human rights obligations, monitoring and reporting mechanisms of each flag state was conducted, and findings were catalogued in a database.

The second stage of the project consisted of direct outreach to the three flag States with the aim of establishing a dialogue using as a starting point standardised questions and offering the Flag States an opportunity to fill any relevant information gaps.

The third stage consisted of compiling all relevant information into a database, then analysing and summarising our findings and conclusions in the present report. In doing so, it was hoped that the project would reveal where there may be deficiencies at various levels of protecting human rights that could lead into informed recommendations on the implementation of human rights on board vessels.

The research team consists of a diverse group of 10 University of Bristol Law School students with a common desire to compliment the efforts of Human Rights at Sea to advance our understanding of promoting and protecting human rights in the maritime domain. The conclusions are the result of an evidence-based and consensus approach. The recommendations contained herein are in no way influenced by the University of Bristol, The Human Rights Implementations Centre, Human Rights at Sea or any other stakeholders beyond the student research team.



Photo Top Row:

Dr Sofia Galani (Supervisor), Anthony Morelli, Phoebe Spey, Adrià Ferrer-Monfort, Anthony Dillon, Adam Hardcastle, Lucie Laffont,

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¹ Statement by David Hammond. Founder of the independent maritime human rights charity, 'Human Rights at Sea' at the first London International Shipping Week September 2013 onboard HQS Wellington.

² <https://www.humanrightsatsea.org>

2 | PROJECT SUMMARY

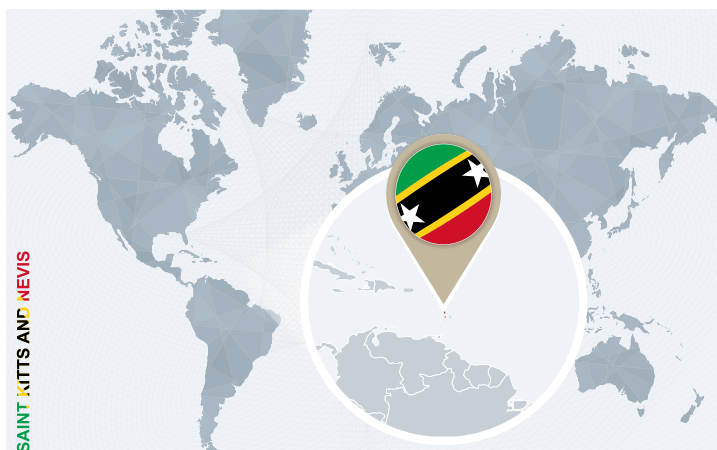
Human rights abuses occur within the marine environment; however, this is a relatively unexplored, undiscussed and often ignored issue. The aim of the project is to understand how different flag States comply with their international human rights obligations and through these findings to increase awareness of human rights abuses occurring at sea and the challenges in effectively monitoring and reporting them.

The central research question of this project is: how do flag States comply with their international human rights obligations vis-à-vis persons on board vessels registered under their flag?

The main research question was divided in two sub-questions:

1. How do flag States monitor human rights compliance on board vessels and
2. Are there any reporting procedures in place to help facilitate and demonstrate compliance?

In answering these questions, the project investigates the obligations that flag States have under article 94 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and international human rights law. More specifically, the project looked into the obligations of three flag States, the Marshall Islands, Saint Kitts and Nevis, and the United Kingdom. Each of these flag States have different ship registries and human rights obligations. The project has therefore sought to address the main research questions for each state separately in an attempt to build a picture of how individual states attempt to comply with their human rights obligations on board their vessels. The overarching goal of the 'Flag State and Human Rights' is to answer the main research questions in relation to each flag State, building a database that will offer a clear picture of how flag States comply with their human rights obligations on board vessels registered under their flag.



3 | METHODS

The project was divided in three stages and combined desk based background research, outreach to key representatives and stakeholders of the three flag States and data analysis and reporting. In the first stage, we conducted desk-based research reviewing primary sources, such as international human rights treaties, labour conventions, Memoranda of Understanding (MOUs) and national legislation available online. We also reviewed secondary resources, such as official government publications and UN reports. Government websites of each flag State were used to find information on the practices of each state and contact information for the outreach stage of the project.

The purpose of reviewing and collecting this data was to:

1. Summarise the international human rights and labour obligations of each flag state, and the mechanisms and reporting procedures, if any, each flag State has for ensuring compliance with human rights on board their vessels;
2. Highlight any lack of key information regarding the human rights obligations of each flag State;
3. Identify key contacts that we could use during the outreach stage.

The information collected at Stage 1 was fed into a database created for each flag State, providing information on:

- a) All international human rights and labour treaties each flag State has signed and/or ratified;
- b) Monitoring and reporting systems, if any, each flag State uses to ensure compliance with human rights;
- c) Information on where/how the ship registries of each flag State operate;
- d) Key government officials and representatives involved in the operation of ship registries, seafarers trade unions, coast guard, etc.

The data collected in the Stage 1 is presented and analysed in the Sections 4, 5 and 6 of this report. For outreach to flag States (Stage 2), the contacts identified at Stage 1 were employed to establish a channel of communication with each flag State for the purpose of collecting key information on the implementation of human rights on board vessels not available in the public domain. We identified 7 key questions and drafted a questionnaire (see Section 7) that we shared with the various flag State representatives. This was an attempt to engage with the flag States and receive their input in order to include further information on their practices in our final report. Stage 3 required sorting and analysing the data and findings of Stage 1 and 2, thereafter drawing the conclusions and recommendations outlined in Section 8 of the present report.

4 | REGISTRIES

In order to register a vessel under a particular flag, several certificates and other requirements, such as the age of the vessel or owner nationality, must be presented and approved by the flag State registry. Closed registries are those that only permit vessels owned by persons residing or companies registered in the country to be registered under the flag of that country. By contrast, open registries or 'flags of convenience' do not impose any nationality restriction in the registration process. The requirements of ship registries serve in-part to ensure compliance with international regulations related to safety and pollution prevention, as well as living and working conditions of seafarers. In order to verify that vessels adhere to international standards set out in the Paris and Tokyo Memorandum of Understandings (MoU), Port State Control (PSC) acts as a maritime inspection and enforcement mechanism. PSC inspection records form the basis of MoU 'White', 'Grey' and 'Black' list flag ratings, which reflect high, medium and low compliance respectively. Since the first point of compliance with internationally accepted standards is the requirements and due diligence of ship registries, they play a key role in managing human rights obligations more broadly.

The United Kingdom Ship Register (UKSR) maintains a high-level of rigour in the application approval to maintain its 'White' list classification with both the Paris and Tokyo MoUs. While understood to be a closed registry, the UKSR does include options for registration by non-national companies and individuals³, the limits of which are generally bound by the principle of 'genuine link' to the flag State. Consequently, the UKSR could be best described as a 'hybrid' registry. To fly the UK flag, an application must be received and approved by a UKSR Recognised Organisation. A streamlined certification process exists under the alternative compliance scheme (ACS) for ships that have not been detained in the past 3-year period before the application and have had fewer than five deficiencies in the past 12-month period. Non-UK certified officers can work on UK flagships with an online application for a Certificate of Competency ensuring equivalent competency. The certificate of competency makes the UK flag registration internationally accessible, but there are still significant checks throughout the UKSR application process.

The Marshall Islands is a state which holds an open registry, enabling foreign-owned ships to be registered under its flag through a quick, easy and relatively inexpensive registration process. In March 2017, the Marshall Islands registry became the second largest in the world, with a total 231,853,515 DWT and 3,796 vessels. The Marshall Islands ship registry, which is headquartered in Reston, Virginia, US, allows online applications with few restrictions at a relatively low cost. The flag is on the 'White' list in the Paris MOU.

Saint Kitts and Nevis also operates an open registry, making it easy to register a vessel under its flag. Relatively few requirements must be met before flying the Saint Kitts and Nevis flag. For instance, no vessel age restrictions are imposed, although vessels over 20 years old may be subjected to an inspection and all the necessary documents required to register a vessel can be submitted online. The St. Kitts and Nevis ship registry is based in Essex, UK. Saint Kitts and Nevis is blacklisted by the Paris MOU and grey listed by the Tokyo MOU.

Ship registries vary significantly in type and as a result the extent of obligations placed on shipowners also differs. Closed registries, such as the UK, offer a higher level of safeguard against the operation of a vessel likely to violate the terms of MoUs or other international obligations. Conversely, open registries, such as those operated by the Marshall Islands and Saint Kitts and Nevis seem to prioritise ease of access over stringent compliance. Further, the distance, both physical and perhaps organisational, between the flag State and the private entity operating the registry may create opportunities for negligent or nefarious shipowners and remove a critical barrier for the monitoring and enforcement of international law obligations, such as environmental legislation or safety standards. Monitoring and enforcing human and labour standards on board vessels is also challenging, especially for those vessels registered under an open registry flag. This project will look into the human rights obligations of the UK, the Marshall Islands and Saint Kitts and Nevis and the way they monitor human rights compliance and report any human rights abuses that take place on board their vessels.

³ <https://www.gov.uk/guidance/uk-ship-register-for-merchant-ship-and-bareboat-charter-100gt>

5 | HUMAN RIGHTS OBLIGATIONS

The treaties considered relevant for the purpose of assessing flag State compliance at sea were the nine core United Nations human rights treaties and their additional protocols, as well as those conventions related to maritime and labour obligations. They are:

HUMAN RIGHTS TREATIES

1. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 21 December 1965
2. International Covenant on Civil and Political Rights (ICCPR), 16 December 1966
3. International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966
4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 18 December 1979
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 10 December 1984
6. Convention on the Rights of the Child (CRC), 20 November 1989
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), 18 December 1990
8. International Convention for the Protection of All Persons from Enforced Disappearance (CPED), 20 December 2006
9. Convention on the Rights of Persons with Disabilities (CRPD), 13 December 2006

MARITIME LAW TREATIES

1. UN Convention on the Law of the Sea (UNCLOS), 10 December 1982
2. Intervention Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 29 November 1969
3. Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 20 October 1972
4. International Convention for the Safety of Life at Sea (SOLAS), 1 November 1974
5. Athens Convention Relating to the Carriage of Passengers by Sea (PAL), 13 December 1974
6. Convention on Limitation of Liability for Maritime Claims (LLMC), 19 November 1976
7. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 7 July 1978
8. International Convention on Maritime Search and Rescue (SAR), 27 April 1979
9. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), 10 March 1988

LABOUR TREATIES

1. Forced Labour Convention (No. 29), 28 June 1930
2. Freedom of Association and Protection of the Right to Organise Convention (No. 87), 9 July 1948
3. Right to Organise and Collective Bargaining Convention (No. 98) 1 July 1949
4. Equal Remuneration Convention 1951 (No. 100), 29 June 1951
5. Discrimination (Employment and Occupation) Convention (No. 111), 25 June 1958
6. Minimum Age Convention (No. 138) 26 June 1973
7. Worst Forms of Child Labour Convention (No. 182), 17 June 1999
8. Maritime Labour Convention (MLC), 7 February 2006
9. Work in Fishing Convention No.188, 16 November 2007

5 | HUMAN RIGHTS OBLIGATIONS|cont.

The UK has ratified all the core international human rights instruments, as well as the relevant maritime and labour conventions. Moreover, as a European State, the UK has additional obligations originating from its membership to the European Union and the European Council. Consequently, the UK has a large number of obligations to which it is required to adhere.

The Marshall Islands have ratified only three core human rights treaties; the CRC, the CEDAW and the CRPD. Despite low ratification rate of core human rights treaties, the Marshall Islands has ratified the majority of the IMO conventions. Furthermore, its ratification record of the relevant labour conventions is poor. More specifically, the Marshall Islands has not ratified any of the eight fundamental ILO conventions, nor the Optional Protocols that are specifically directed towards the suppression of transnational trafficking and smuggling of migrants, issues of particular relevance to the research question.

Saint Kitts and Nevis has ratified three out of the nine core human rights treaties. More specifically, it is a party to the CRC, CEDAW and the CERD. In contrast, the ratification record of Saint Kitts and Nevis concerning maritime and labour conventions is very high, as it has ratified almost all relevant treaties listed above.

The high level of implementation of IMO standards across all flag States is most likely explained by the commercial importance of the registries in these flag states as large contributors to their economies. By ratifying and complying with the obligations incorporated therein, the public image of the registry is strengthened and its appeal to potential clients is elevated. However, the UK, as a State with a more robust economy and public infrastructure, does not face the same difficulties that have been invoked by the Marshall Islands and Saint Kitts and Nevis, such as a lack of human resources, inadequate resources and underdeveloped infrastructures.

We conclude that there are various possible determinants to the variance in ratification rate of the different types of treaty under consideration related to both political will and resources. It is promising that all flag States appear willing to ratify the IMO treaties, and to a lesser extent the ILO standards, as these are instrumental in guaranteeing seafarers their human rights while at sea. However, we suggest that this should not be to the detriment of the core human rights treaties: the ideal scenario would see all flag States ratify the whole range of the core human rights treaties, despite limited transposition and enforcement thereafter.



6 | MONITORING AND REPORTING

With flag State human rights obligations established, it is necessary to identify specific human rights monitoring regimes, if any, and to catalogue the procedure seafarers would follow in order to report human rights abuses on board vessels. In doing so, we looked for National Human Rights Institutions (NHRIs), Non-Governmental Organisations (NGOs) and other relevant sources of monitoring and reporting. The Paris and Tokyo MoUs are of significant relevance in this respect, as they provide evidence of flag performance in relation to the inspections and detentions. MoUs incorporate a three-level grade of compliance; White, Grey and Black, which indicate high to low compliance. Usually, States on the black list have demonstrated poor performance with many of their vessels having been detained. Under the Paris MoU, flag State performance is determined by the total number of inspections and detentions over a 3-year period. Flag States classified as 'White' are considered as high-compliance flags, while 'Black' listed flag states have a poor inspection performance records.

The United Kingdom is considered as a White, or low risk, flag State under the Paris and Tokyo Memorandum of Understanding. The European Union Maritime Safety Agency (EMSA) has adopted the same system of classification (Low Risk Profile, Standard Risk Profile or High-Risk Profile), with the UK ranked a Low Risk Profile flag State. Member States of the EU undertake inspections of ships calling at their ports through the PSC system. The Maritime Coastguard Agency conducts expanded inspections of foreign-flagged ships calling at UK ports or anchorages, which consist of detailed checks of construction elements and safety systems, such as the structural condition of the ship, the emergency system, fire safety systems or life-saving appliances. While human rights are not central to these inspections, seafarers' living and working conditions are taken into account into deciding whether the ships meet the requirements to qualify as a "low risk profile". In terms of human rights monitoring, the treaties ratified by the UK are not directly legally enforceable in UK courts, but they do constitute binding obligations in international law. This means the Parliament, the Equality and Human Rights Commission and civil society can hold the Government accountable to the terms of the treaties. Trade unions are found to be a valuable lobbying mechanism for individuals who have complaints about rights violations and claim to fill in the monitoring gaps left by other actors. However, it is not clear which national mechanisms are available to seafarers or individuals on board vessels whose rights have been violated, nor to what extent trade unions influence governmental policies and the protection of human rights.

The Marshall Islands domestic legislation sets out several monitoring and reporting duties in relation to the implementation of the MLC 2006, all of which is outsourced to a US company - International Registries Inc. (IRI). This delegation may be necessary

because the Marshall Islands itself lacks the capacity and expertise to orchestrate such mechanisms domestically and because the ship registry is also based in the US. Therefore, the flag State may be uninformed of the quantity, severity and causes of violations occurring on board its vessels because it is removed from the monitoring activity. Oversight and accountability between the Marshall Islands and IRI is unclear. The Marshall Islands has a Human Rights Commission, but no information could be found on its activity or contact information, other than its implementing statute. Very little information could be found on the available complaints procedures and the reporting outcomes. However, it should be noted that the Marshall Islands is on the 'white list' of both the Tokyo and Paris MoUs, meaning its vessels will incur less scrutiny in these ports due to their high standards.

The level of human rights protection of seafarers in Saint Kitts and Nevis is poor, as no reference to human rights protection at sea could be detected. Due to limited human rights treaty ratification record, human rights monitoring and reporting infrastructure intended to provide protection to seafarers is absent. The human rights monitoring bodies that were identified appeared not to consider the issue of human rights violations at sea. They offered no specific guidance as to procedures or standards in this regard. As such, they are perhaps ill-suited and ill-prepared to address these violations, should they occur. More specifically, concerning national human rights institutions, the only identifiable organisation operating in Saint Kitts and Nevis is the Office of the Ombudsman. However, no information, except for Ombudsman's appointment act and name, could be collected. Finally, Saint Kitts and Nevis is on the 'Black List' of the Paris and in the 'Grey List' of the Tokyo MoU. This classification indicates poor flag performance due to the high number of vessel detentions. It can, therefore, be concluded that Saint Kitts and Nevis requires additional monitoring and reporting infrastructure in order to comply with its human rights obligations over its flagged-vessels.

Our research indicates that there may be little correlation between a state's human rights record and its status in the MoU. For the UK, its 'white' status reflects its high ratification of human rights treaties and would indicate a higher level of compliance with its human rights obligations. However, the Marshall Islands also attains 'white' status, despite its low ratification rate and the lack of accessible information with regards to human rights compliance. Conversely, Saint Kitts and Nevis is amongst the blacklisted flag states, a ranking reflective of its inadequacies concerning both human rights and maritime standards. We conclude that it is uncertain how informative an indicator the MoU inspections are in terms of being well equipped to identify and monitor human rights standards, specifically whether they can identify systematic practices of human rights violations, such as human trafficking or ill treatment of seafarers or persons on board that vessel, or whether the inspection retains a focus on structural and safety standards alone.

7 | OUTREACH

The second stage of the project comprised of a series of outreach attempts to the publicly available and most relevant contacts identified in Stage 1. More specifically, the IMO representatives of the three flag States, or their closest identifiable alternative, were the recipients of letters containing a series of questions related to the protection of the human rights of seafarers and the remedies available to them.



The following questions are those which were sent to the IMO representatives of the UK, the Marshall Islands, Saint Kitts and Nevis:

1. How do you [flag State] ensure the protection of the human rights of seafarers on board vessels registered under your flag?
2. How can seafarers report human rights violations on board vessels that fly your flag?
3. How many complaints are received by the flag administration each year?
4. How do you investigate allegations of human rights abuses under your jurisdiction?
5. What remedies do you have in place for human rights violations on board vessels registered under your flag?
6. Do you have any human rights reporting and assurance requirements for vessels registered under your flag?
7. Do you have an internal point of contact with whom we can maintain an ongoing dialogue about this investigative project and can you disclose the policies requested and any other information which may assist our work?

Unfortunately, no response to these questions was provided by the selected points of contact. Given the limited scope of outreach to just three flag States, at this time few conclusions can be drawn from Stage 2. However, it is seemingly consistent with limited publicly available information and effort by the flag States to proactively provide clear and informative guidance related to human right obligations and monitoring.

8 | CONCLUSIONS AND RECOMMENDATIONS

The research conducted reveals a high disparity in the number of human rights treaties ratified by the UK, Saint Kitts and Nevis and Marshall Islands. Whereas the UK has ratified most human rights instruments, the Marshall Islands and Saint Kitts and Nevis have only ratified three each. This has important implications when analysing the compliance and enforcement of flag States with their human rights obligations, as without ratification there can be no legal obligations for the State. Nevertheless, almost all IMO and ILO conventions were ratified by the flag States examined, with the exception of Marshall Islands. It should be noted that these conventions are of great importance to the project, since they entail provisions for the protection of human rights of seafarers, such as socio-economic rights.

Specific monitoring and reporting mechanisms dealing with human rights violations are lacking or absent, especially those dealing specifically with violations at sea. There is much uncertainty due to the absence of public complaints procedures that would guarantee effective redress for human rights abuses on board vessels. Seafarers are especially vulnerable for being isolated in the ocean for long periods of time and therefore require a public, accessible and transparent procedure which ensures that they are not being exploited or left unprotected. These mechanisms should be made clear to seafarers prior to their maritime activities, both as a registration requirement and through accessible, clear and simple procedures published on relevant websites.

Any system of human rights protection relies heavily on the availability of resources and political will. Especially in the cases of Saint Kitts and Nevis and Marshall Islands, the size of the State on the one hand combined with the lack of resources and the size of the registry on the other hand, makes it even more difficult for such a monitoring mechanism to exist. Further, open registries such as those described, place emphasis on economic viability rather than on the protection of the human rights of seafarers. In the case of the UK, there are many clear human rights obligations derived from various international human rights instruments, as well as the public resources to meet those obligations. However, available means for seafarers to submit complaints concerning human rights violations as well as public information regarding this issue are lacking. This could be interpreted as a lack of political will to accommodate for and protect the human rights of seafarers.

While the Paris and Tokyo MOUs classification is relevant in assessing the compliance of flag states with international safety, security and environmental standards, the extent to which the White, Grey and Black rating indicate actual adherence to human rights obligations is questionable. Thus, the MOUs should consider providing expanded rationale for ratings and publicize data used to assign ratings. Human rights instruments ratification record and human rights compliance should be an important criterion when determining whether a flag state meets the standards required to qualify as a "White" flag state. We found that most maritime regulations looked at were to do with boat sizes, safety and environmental concerns (such as pollution levels) rather than human rights.

HAVING ADDRESSED THE PROBLEMS AND DEFICIENCIES OF THE THREE STATES UNDER SCRUTINY, SOME GENERAL RECOMMENDATIONS ARE DRAWN:

1. Flag States should consider ratifying the core UN human rights treaties, IMO and ILO Conventions which provide for safety, human and labour standards.
2. Specific monitoring mechanisms for ensuring the compliance of a flag State with its human rights obligations on board vessels should be put in place. In cases where the ship registries operate outside the flag State, the latter should be involved in the monitoring process.
3. Reporting mechanisms should be put in place that will allow persons on board vessels to complain of human rights abuses. In cases where these mechanisms are in place, they should become more accessible and user-friendly. Relevant information on how these can be accessed, the reporting procedure and remedies should become available online by each flag State.
4. Compliance with human rights on board vessels should also be considered for listing flag States under MOUs. In cases where MoUs do consider this in their rating process, it should be explained how human rights compliance is measured.

MAP SHOWING LOCATION OF THE 3 FLAG STATES





HUMAN RIGHTS AT SEA

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 **research, investigation** and **advocacy** 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 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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The Centre leads a portfolio of research, encompassing six themes:

Implementation | The African Human Rights System | Torture prevention and OPCAT | Mental Health | National human rights institutions Human Rights at Sea

HRIC works at the national level with governments, statutory and constitutional bodies, such as national human rights institutions and civil society organisations; and at the international level with regional bodies (such as the African Commission and Court on Human and Peoples Rights, the AU, the Council of Europe, and the Organisation for Security and Co-operation in Europe); and institutions under the UN, both treaty bodies, the Special Procedures and the Office of the United Nations High Commissioner for Human Rights.

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