

Arbitration as a Means of Effective Remedy for Human Rights Abuses at Sea

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organized by Shearman & Sterling LLP and Human Rights at Sea

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Human rights at sea

State of affairs

substantive HR



progress

- example of France
- principle: high acceptance
- content of rights: fuzzy

implementation of HR



very weak

*“a failure of
implementation on a
scale that shames us all”
Mary Robinson*

Why is there an enforcement gap?

Impossibility to patrol, control, monitor the area

Earth is a watery place:
71% of surface



limited resources to
control whole area



alternative: subjecting
ships to flag state
control

Why is there an enforcement gap?

Flag state jurisdiction suffers from FOCs

free choice of flag



free choice of
„law and courts“



flags of convenience
are popular

example of LIBERIA

flag state importance

- at the top
- no 2 (gross tonnage)

Rule of Law index

- bottom of the league
- regulatory enforcement: 102/128

Why is there a need for a “private” justice system?

Domestic systems are not (always) working

domestic (public)
systems do not work



supplement them by
„private“ justice system



arbitration

arbitration as “a
judicial system
without a country”
Cronstedt, Eijsbouts,
Thompson 2017

Who are the potential users of the system?

Panoply of constellations

individual – business entity

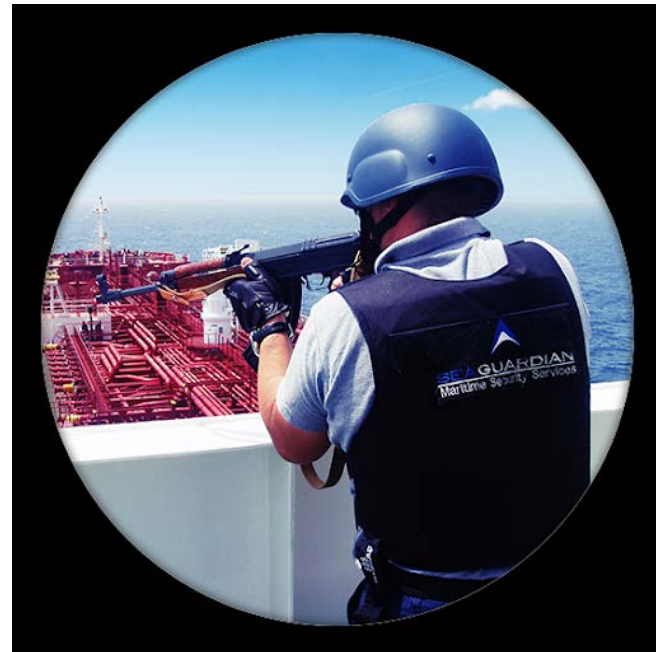
NGOs, unions, ... –
business entity



Who are the potential users of the system?

Panoply of constellations

business entity – business entity



Who are the potential users of the system?

Panoply of constellations

individual – state

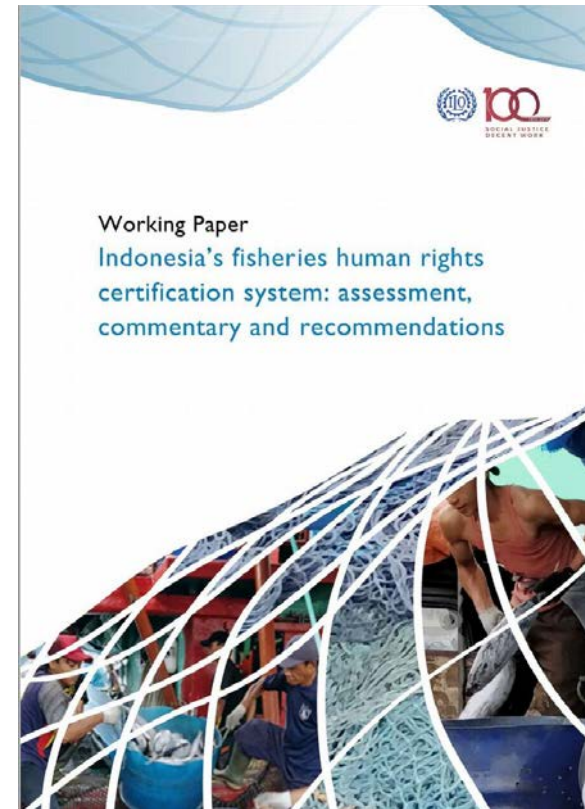
individual – IO



Who are the potential users of the system?

Panoply of constellations

(coastal) state – business entity



Who are the potential users of the system?

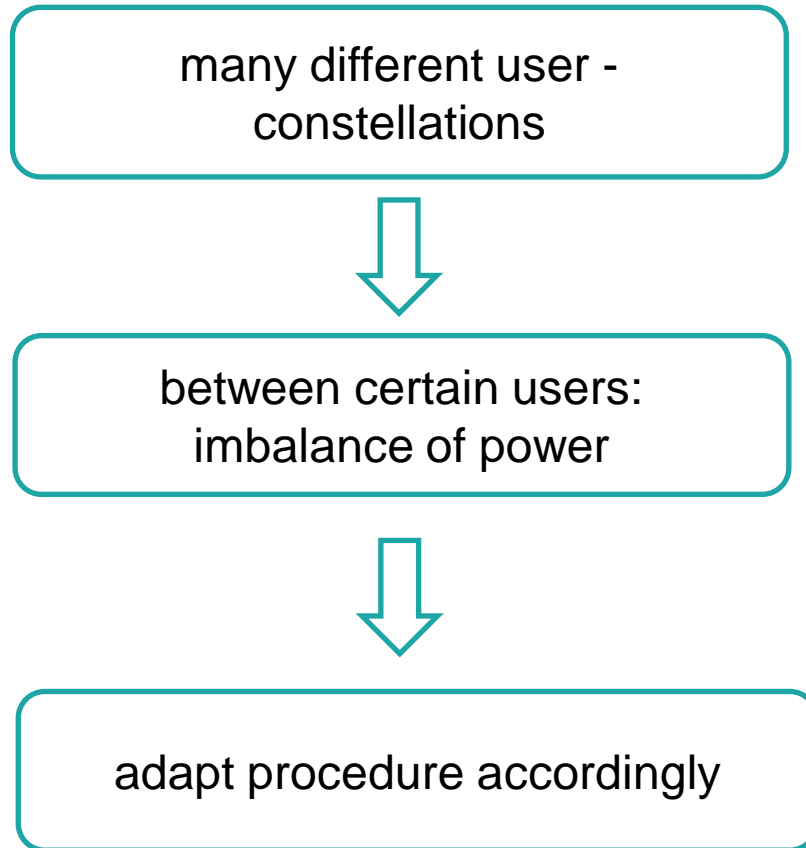
Panoply of constellations

(flag) state – (coastal) state



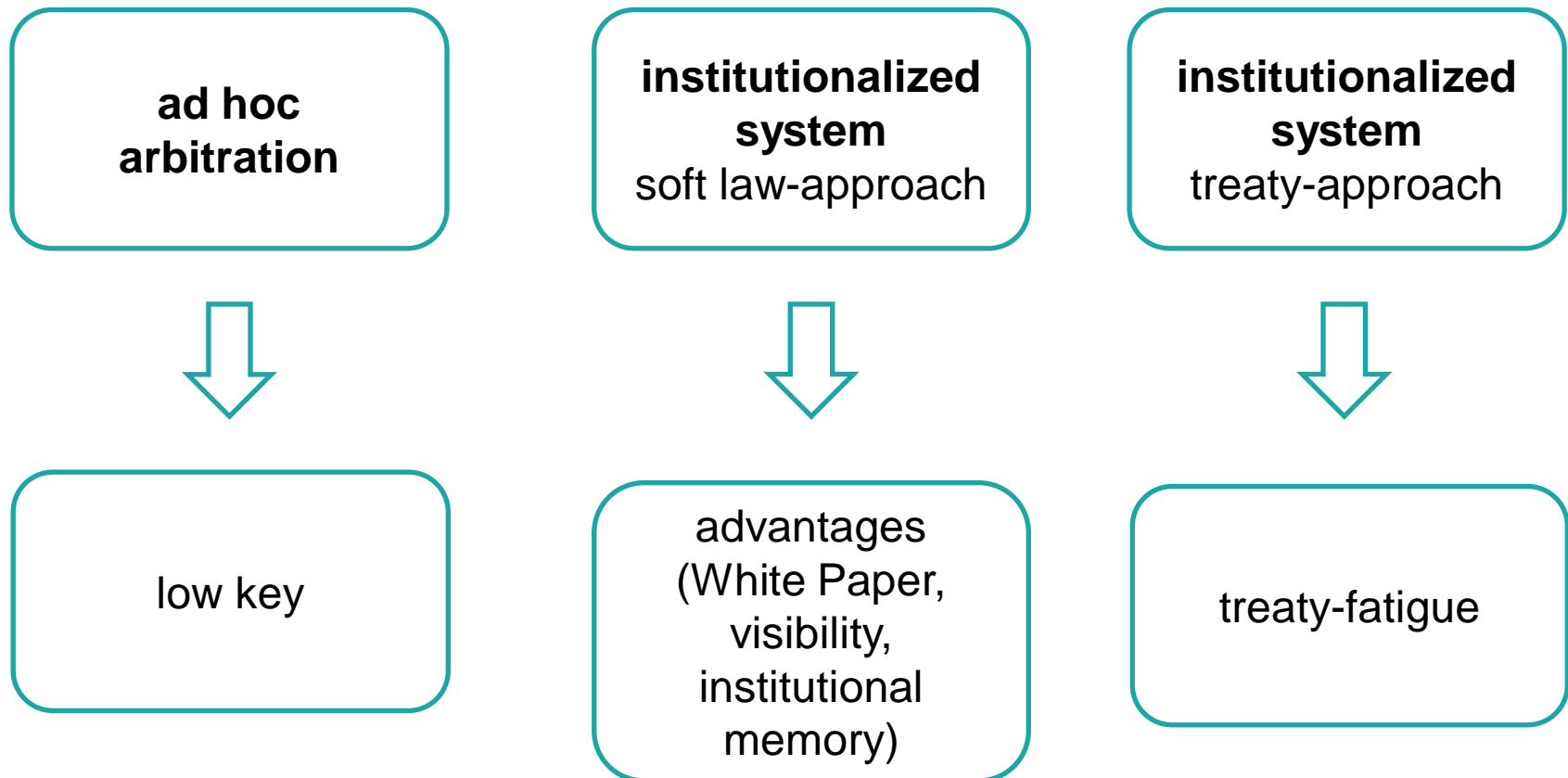
What procedure to arbitrate HR abuses at sea?

Dependent on users



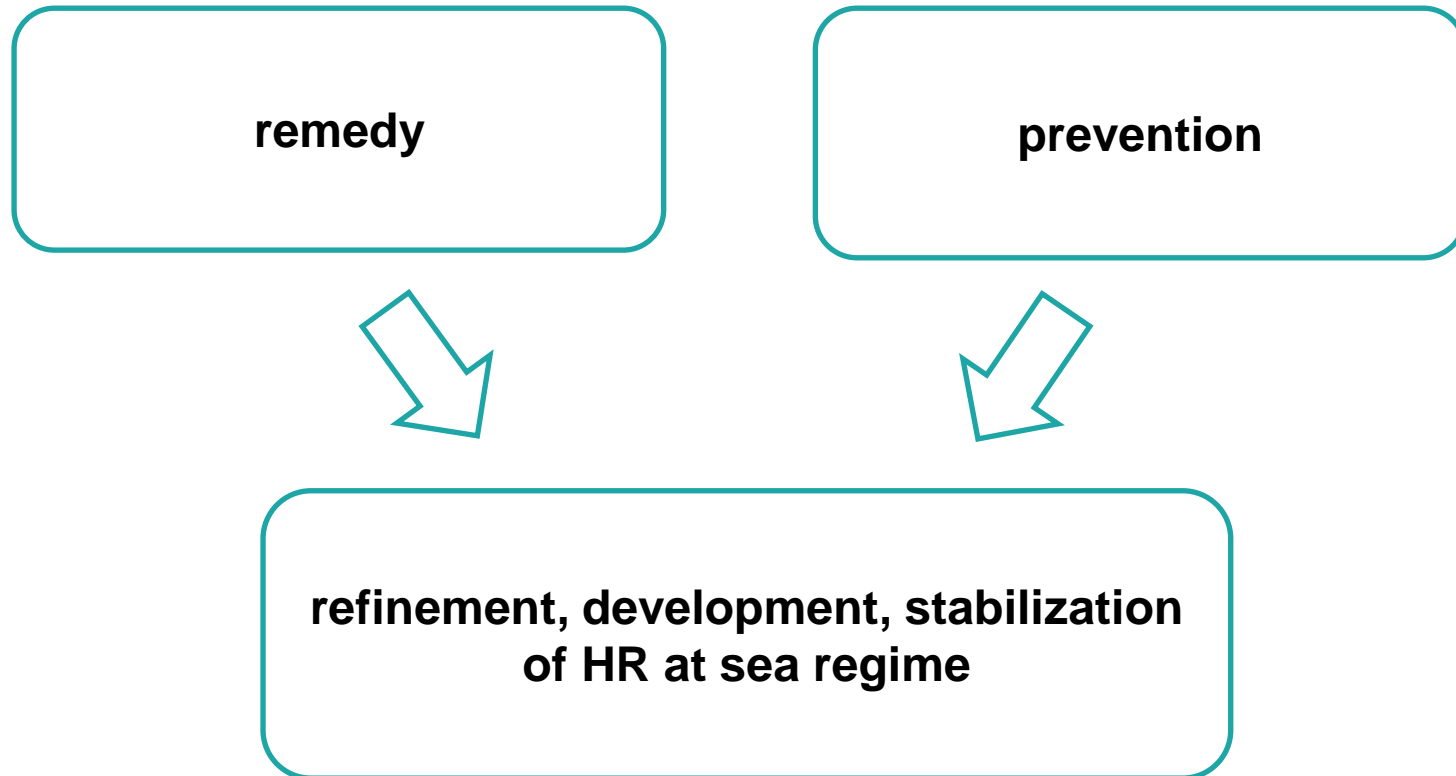
What approach for human rights at sea-arbitration?

Institutionalized system: more benefits



Arbitration as an effective means of remedy

Benefits for victims – and beyond!



Arbitration as an effective means of remedy

Strengthening the Rule of Law at sea

«[The] history of the rule of law is a tale of kings and judges, of revolutions and bills of rights.»

Chesterman, An International Rule of Law? AJIL (2008)

- It is a tale playing on dry land...
- Concept suffers from sea-blindness
- But applies in maritime context
- Arbitration as a step towards a stronger Rule of Law at Sea!



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Thank you
for your attention!

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