

# Using arbitration to help crew

Legal experts discuss the pros and cons of using an arbitration mechanism to tackle human rights issues for crew at sea

Gabriella Twining, SAS reporter

Certain flag states do not have the resources, or, in some cases, the will to help protect seafarers' human rights, according to legal experts. Instead they suggested that the maritime industry should resolve human rights at sea issues using arbitration; a way to resolve disputes between parties outside of court.

Speaking at a 9 July webinar, host David Hammond, CEO of Human Rights at Sea (HRAS), suggested that an international arbitration system, tailored for human rights at sea claims, is the best way to ensure that human rights apply to the same degree at sea as they do on land.

Currently, as per Article 94 of the United Nations Convention of the Law of the Sea, the onus is on flag state administrations to exercise their jurisdiction over vessels that fly their flag and ensure the crew on board are being treated within the confines of national and international laws, including labour conditions and training of crews.

Alexander Marcopoulos, lawyer at Shearman and Sterling, opined that certain flag states, including the largest ones, are not able or even willing to implement human rights law. "Most of the merchant ships that sail globally are flagged by states that do not have a navy," said Marcopoulos. "There is no way of policing compliance with international law."

Marcopoulos explained that this is why human rights abuses at sea are so prevalent. "Very few commercial vessels are registered to states that are actually capable of enforcing their laws, in fact some are flagged within landlocked states," he noted.

Professor Anna Petrig, chair of International Law and Public Law at the University of Basel in Switzerland, spoke of an enforcement gap for the implementation of human rights at sea. The emergence of 'flags of convenience' has meant shipowner picks their flag, and then the subsequent laws and courts of that flag's jurisdiction, as well as the working and living standards to which they can subject their crew, she explained.

"Many opt for, so-called, flags of convenience and low standards on labour and environmental law," said Petrig. "Liberia is second for most flagged vessels, in terms of rule of law it ranks at the bottom of the league table." Petrig said that according to the World Justice Project – Rule of Law Index, Liberia ranks 102 of 128 flag states analysed for regulatory enforcement.

The Liberia flag registry issued a comment for SAS in response to these allegations, stressing that it plays a leading role in the International Maritime Organization (IMO), it has a "worldwide recognition in the maritime


industry for regulatory compliance and enforcement" and sits at the top of the Paris and Tokyo MOU White Lists. "Liberia has laws which are codified, including the Maritime Law (Title 21 of the Liberian Code of Laws, Revised), which governs vessels flying the flag of Liberia. Also, Liberia has ratified the international Maritime Labour Convention (2006), which has formed part of the maritime law with penalties for vessel owners who fail to comply with any one of the titles of the Maritime Labour Convention, i.e., conditions of employment, health and welfare protection, minimum requirements for crew to work on a ship, payment ... and others. Nowhere in the global review was there mention of Liberian Maritime Law, and its decades of enforcement," the statement concluded.

The legal experts on the webinar agreed that arbitration is the correct approach to take to resolve human rights issues that persist in the maritime industry. This, Petrig explained, is because it is a judicial system without a set country and there would no longer be a need to rely on set country court systems, as some are more reliable than others.

"There is a need for flag administrations to take human rights more seriously and embed an arbitration concept in maritime law," said Eric Dawicki, president and CEO of the Commonwealth of Dominica Maritime Registry.

As one of the only small island registries that is not on the International Transport Workers Federation's flag of convenience list, Dawicki said it shows its commitment to standards and seafarer rights. He stressed that size and lack of a navy is not an excuse for lack of enforcement; Dawicki explained that Dominica works with other administrations to engage in law enforcement. The flag state can apprehend vessels at sea through bilateral agreements with the United States and help from the US Navy and US Coast Guard. It can also use the US treasury to enforce foreign asset control.

"Making sure that law enforcement can be promulgated, promoted and realised by a small flag state takes effort, resolve, and knowledge. It's unacceptable for a flag state to avoid our responsibilities," commented Dawicki. "There's only a small group of bad actors out there, most shipowners and operators are doing the right thing, but this new mechanism [arbitration] can promote even better compliance, and we fully support the idea of arbitration."

While arbitration can put human rights law into the hands of the victims, Hammond cautioned that it could "only work where there are state protections for the citizens and respect international law norms". "At present these fundamental principles are not being adequately respected, complied with, or enforced at sea," he pointed out. 



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Crew wave happily on board a vessel