Practical application, legislative development, and international policy influence of human rights at sea

EUROPEAN AND INTERNATIONAL HUMAN RIGHTS AT SEA (EHRAS) COURSE
UNIVERSITY OF MILANO-BICOCCA EU ERASMUS+ JEAN MONNET SCHEME

DAVID HAMMOND
CHIEF EXECUTIVE OFFICER
We work to end the abuse of human rights at sea.

30 million people are at sea, right now
45% of women working at sea reported sexual harassment
32,000 fishers lose their life at work, every year
Intersection of Civil Society and Academia

Civil Society – Our Role:

• To provide practical research, advocacy, investigations and lobbying for change
• To intersect work with current theory and theoretical development
• To provide sources of credible evidence supporting legal and policy change
• To provide objective and positive challenge to current thinking
• To collaborate whilst maintaining strict independence
• To provide a balanced watchdog role within society
• To demonstrate mea culpa when wrong
• To act with transparency, clarity and accountability
Mission

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.
Vision

To end human rights abuse at sea
Aspiration

Global development and adoption of the ‘human rights at sea’ concept and narrative

- A lex specialis

&

The application of international human rights law at sea
Extent of our work
International Scope Year Seven
What we cover

Access to Justice
- Human Rights at Sea Arbitration Project
- Fisheries Observer Project
- Ukraine: Seafarers caught in conflict Project

Law Reform and Policy
- The Geneva Declaration on Human Rights at Sea
- Maritime Levy Campaign

Slavery at Sea
Children at Sea
Equality at Sea
Wide-ranging for research, advocacy & investigations
Where does Human Rights at Sea fit?

- Labour Law
- Maritime Law
- Human Rights Law
- Human Rights AT SEA
- Refugee Law
- Law of the Sea

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SECTION 2. COMPULSORY PROCEDURES ENTAILING BINDING DECISIONS

Article 293 Applicable law

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.

2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case ex aequo et bono, if the parties so agree. ["according to the right and good" or "from equity and conscience"]

Link: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
GENERAL PROVISIONS

Article 311 Relation to other conventions and international agreements

1. This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.
2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
Our Successes: Geneva Declaration on Human Rights at Sea

"As a city very connected to human rights, Geneva is proud to support the Geneva Declaration on Human Rights at Sea. This international declaration is important for the protection of people in international waters. I am happy to witness the realisation of a concept born in Geneva three years ago and to have been the first to receive this document"

Mayor of Geneva Frédérique Perler
1 March 2022
Geneva Declaration on Human Rights at Sea

“Culture of compliance”

The aim of the Geneva Declaration on Human Rights at Sea 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.
The Four Fundamental Principles

1. Human rights are universal; they apply at sea, as they do on land.
2. All persons at sea, without any distinction, are entitled to their human rights.
3. There are no maritime specific reasons for denying human rights at sea.
4. All human rights established under both treaty and customary international law must be respected at sea.
Applicable International & Regional Instruments

- **Universal Declaration of Human Rights** (UDHR) (UNGA Res 217, adopted 10 Dec 1948)

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
- American Convention on Human Rights (San Jose Pact)
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol)
- African Charter on Human and Peoples’ Rights (Banjul Charter)
- Arab Charter on Human Rights (ACHR)
- Association of Southeast Asian Nations Human Rights Declaration (ASEAN Declaration)
21 Applicable Human Rights

- Right to life (Art.3 UDHR; Article 6, ICCPR)
- Right not to be tortured (Art.5 UDHR; Art.7, ICCPR; Article 6, CRC)
- Right to non-refoulement (Art.33 Refugee Convention)
- Right not to be enslaved (Art.4 UDHR; Art.8 ICCPR)
- Right to an effective remedy (Art.8 UDHR; Art.2 ICCPR)
- Right to liberty (Art.3 UDHR; Art.9 ICCPR)
- Right not to be arbitrarily arrested and detained (Art.9 UDHR; Art.9 ICCPR)
- Right to privacy (Art.12 UDHR; Art 17 ICCPR; Art.16 CRC)
- Right to freedom of expression (Art.19 UDHR: Art.19 ICCPR; Art.13 CRC)
- Right to freedom of religion (Art.18 UDHR; Art.18 ICCPR; Art.14 CRC)
- Right to seek asylum (Art.14 UDHR)
- Right to freedom of association (Art.20 UDHR; Art.22 ICCPR; Art.15 CRC)
- Right to form and join a trade union (Art.23 UDHR; Art.22 ICCPR; Art.8 ICESCR)
- Right to family life (Art.16 UDHR; Art.23 ICCPR; Art.10 ICESCR)
- Rights of the child (Art.24 ICCPR; CRC)
- Right to fair remuneration and equal pay (Art.23 UDHR; Art.7 ICESCR)
- Right to safe and healthy working conditions (Art.23 UDHR; Art.7 ICESCR; Art.32 CRC)
- Right to rest, leisure and paid holiday (Art.24 UDHR; Art.7 ICESCR; Art.31 CRC)
- Right to social security (Art.22 UDHR; Art.9 ICESCR, Art.26 CRC)
- Right to education (Art.26 UDHR; Art.13 ICESCR; Art.28 CRC)
- Right to property (Art.17 UDHR)
Our Successes: Primary legislation development New Zealand

1 July 2021

“insert: (c) the facilitation of, or support for, seafarer welfare services.”

The Regulatory Systems (Transport) Amendment Act 2021 (30 March 2021) comes into force with the key amendment to Section 191 amended (Maritime levies) which crucially states “After section 191(2)(b), insert: (c) the facilitation of, or support for, seafarer welfare services.” This updates Part 14 General provisions relating to shipping.
Our Successes: Primary legislation development New Zealand

RECOMMENDATIONS

1. Review shore-based seafarers’ welfare funding mechanism
2. Draft proposed amendments to national legislation – Maritime Transport Act 1994
3. Introduce an updated compulsory port levy system
4. In alternative, ring-fence and allocate part of the current maritime levy
5. New Zealand Welfare Board raise a formal complaint with the ILO for non-compliance with the MLC should the NZ Government fail to act.
Impact of seafarers’ welfare maritime levy now evident in New Zealand, says Transport Minister

31 Mar 22

Law Reform and Policy
Will Australia Kick-The-Can on Sustainable Funding for Seafarer Welfare?

4 May 2022

Opinion

The incoming Australian Government’s opportunity to assure long-term seafarer welfare funding and sustainability with minimal legislative amendment must not be derailed, side-stepped, nor the proverbial can kicked-down-the-road through paralysis of internal decision-making.
Our Successes: First UK Parliament debate 22 June 2021

House of Lords
Tuesday 22 June 2021 Meeting started at 12.05pm

AGENDA

Note: Latency in the video stream means index items will appear first.

12:28:15 Baroness Vere of Norbiton, Parliamentary Under-Secretary (Department for Transport) (Conservative)

12:28:09 Oral question 3: Protecting human rights at sea

12:27:32 Lord Wolfson of Tredegar, The Parliamentary Under-Secretary of State for Justice (Conservative)

12:26:54 Lord Hastings of Scarisbrick (Crossbench)

12:26:32 Lord Wolfson of Tredegar, The Parliamentary Under-Secretary of State for Justice (Conservative)

12:26:07 Lord Falconer of Thoroton (Labour)
Our Successes: House of Lords UNCLOS 1982 Inquiry

“International Relations and Defence Committee

“If provisions of UNCLOS are not supplemented, or further developed it would no longer be fit for purpose in the 21st century.”

Inquiry finds international sea law ‘unfit for purpose’ without reform

House of Lords committee flags issues ranging from human rights and fishing to regulation of armed guards, but stopped short of calling for a major overhaul

04 Mar 2022 | NEWS

60 references to ‘human rights at sea’ and the NGO ‘Human Rights at Sea’
Chapter 5: Human rights and labour protections at sea

The application of international human rights law at sea

Specific challenges in the 21st century

Migration by sea

Forced labour and excessive work conditions

Physical and sexual crimes at sea

Possible solutions
192. We urge the Government to acknowledge that human rights at sea include a wide range of rights, and not just those pertaining to labour conditions, important though these are. In its response to us, we ask that the Government sets out what it considers its obligations to be concerning human rights at sea, including with reference to human trafficking and modern slavery.

228. In 2019, Human Rights at Sea itself developed a soft-law instrument, the Geneva Declaration on Human Rights at Sea, which recalls existing legal obligations and provides guidance for coastal, flag and other states on how to protect, respect and ensure human rights at sea” and “can supplement UNCLOS and fill in the human rights at sea gap, without opening the Convention to re-negotiation.” They urged the UK Government to endorse the framework and become a “global leader” in championing it.

REPORT LINK: https://committees.parliament.uk/publications/9005/documents/159002/default/
Una breve pausa
Focus: Addressing cadet abuse at sea

HRAS: The days of ‘out of sight and out of mind’, of ‘what happens at sea, stays at sea’, of ‘this is how it was done in my day’ are gone. There must be a zero tolerance of physical and mental abuse towards cadets, while perpetrators must be held to account without the incidents being hidden behind corporate veils for fear of reputation and brand damage.

The Company have stated at all times during their ongoing engagement with HRAS that they do not tolerate such behaviour; that they wish to be transparent on the case in point, and that they are addressing the matter internally and according to company protocol - recognising that the protocol designed to manage such instances is itself now subject to review.
Focus: Gender equality and sexual abuse at sea

“Even more crushing is that, often, these instances go unreported as the women fear having their training and/or their careers cut short, or worse, not being believed. This can lead to a real decline in performance on board, including an individual’s safety and a long-term impact on their well-being.”

“Fear was the main reason the bullying was not reported in numerous instances – fear of not being believed, fear of accusation of overreacting or lying which could mean reluctance to rehire or loss of sea-time opportunity as a cadet.”

Culture of fear at Merchant Marine Academy silences students who say they were sexually harassed and assaulted

By Blake Ellis and Melanie Hicken, CNN

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Fieldwork: Ukraine War Crimes & Human Rights – March 2022
The IMO Maritime Safety Committee (MSC 105), adopted Resolution MSC.495(105): Actions to facilitate the urgent evacuation of seafarers from the war zone area in and around the Black Sea and the Sea of Azov as a result of the Russian Federation aggression against Ukraine.

2. underscored the paramount importance of preserving the safety and welfare of seafarers and urged Member States and observer organizations to provide maximum assistance to seafarers caught up in the conflict,

7. condemned any form of harassment of seafarers due to their nationality and underlined that seafarers affected by the conflict should be allowed free access to communications with their families,

Link: https://www.imo.org/en/MediaCentre/PressBriefings/pages/MSCResolutionActionsForSeafarerEvacuation-.aspx
Impact: 2021 (Year Seven)

51 countries where we have influenced a change in law and policy

107 publications written about human rights at sea

10,920 hours dedicated in 2021 to ending human rights abuses at sea
COVID-19 Pandemic
At the start of the 2020 pandemic the International Chamber of Shipping estimated that there were over 400,000 seafarers trapped working onboard vessels worldwide.
“It is a humanitarian issue [...] It is a safety issue [...] It is also an economic issue which could slow or stop trade and hinder economic recovery. Governments must act now.”

Guy Ryder, ILO Director-General

More calls for Governments to recognize seafarers as keyworkers amidst humanitarian crisis

News: UN agencies urge member states to resolve the humanitarian crew change crisis

18 September 2020
UN agencies and programmes involved in the maritime sector, human rights, trade, travel and transportation have called on all UN Member States, through a joint statement, to take urgent action to resolve the humanitarian crew change crisis faced by the world’s seafarers.

Calling it a humanitarian crisis, the Joint Statement issued by IMO, ILO and ITF amongst other UN agencies calls on all Governments to immediately recognize seafarers as “key workers”, and to take swift and effective action to eliminate obstacles for crew changes and ensuring maritime safety and facilitation of economic recovery from the COVID-19 pandemic.
General risks of Modern Slavery faced by seafarers

- Abandonment: ILO Database (Est 2004)
- Wages withheld: Consequences of indentured servitude & debt bondage
- Seaman’s Record Books withheld: Failure to gain new employment
- Vindictive behavior by owners, manning agents and flag States
Four years at sea, now just metres from shore: 'living hell' of stranded UAE ship

Five seafarers are stuck in limbo on a beached tanker after a long, terrifying ordeal of abandonment.

Seafarer Commits Suicide Aboard Asphalt Tanker off UAE

Sea Princess (file image courtesy Global Tankers Pvt)

BY THE MARITIME EXECUTIVE 01-31-2021 03:35:00
Seafarer Well-being issues: Inter-related & wide-ranging

Everything we publicly report on has a direct impact both on and within the maritime and fishing industries, UN agencies, state bodies responsible for legislation and policy, corporate policy and remediation activities.
Business and Human Rights

- A positive step for maritime business
- Highlights our business and human rights early development work
- Basic & workable steps
- Has UN attention
- Is voluntary
- BUT – enforcement and effective remedy?
- Ignored by those who do not care and those who are not held to account
- BUT – Mandatory Human Rights and Environmental Due Diligence legislation is coming (EU)
Existing international due diligence instruments have failed to provide victims of human rights and environmental adverse impacts with access to justice and remedies because of their non-judicial and voluntary nature.

“This Directive aims to prevent and mitigate potential or actual adverse impacts on human rights, the environment and good governance in the value chain, as well as at ensuring that undertakings can be held accountable for such impacts, and that anyone who has suffered harm in this regard can effectively exercise the right to a fair trial before a court and the right to obtain remedies in accordance with national law.”
Fishers and observers are both a critical vulnerability & a business enabler
State Accountability: Kiribati - Some Realities

INDEPENDENT CASE REVIEW INTO THE INVESTIGATION OF THE DEATH OF KIRIBATI FISHERIES OBSERVER ERITARA AATI KAIERUA

INCLUDING
- Family Impact Statement
- Independent Counsel Legal Letter
- Outstanding Investigation Questions
- Human Rights at Sea Recommendations
- Infographic of Timeline of Events

19th MAY 2021

Link: https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_Eritara_Aati_Kaierua_Kiribati_Independent_Case_Review_19_May_21_SP%20%281%29_0.pdf
Warning

Potentially upsetting image
State Accountability: Kiribati - Some Realities

“I sobbed so severely thinking and imagining the pain he went through, how he had struggled to fight for his life, and what could have been the last thoughts on his mind before he lost his life. I felt sorry for him so badly knowing he was alone and had no means to call for help.”

Takarara Aati Kaierua

FAILURES

- Lack of transparency and disclosure
- 26 outstanding questions
- Impunity, lack of accountability and lack of enforcement of effective remedy
- Case is ongoing
Victim-led Remedy: Alternative enforcement mechanisms

- Q. Can arbitration be a human rights remedy and is there a need?
- Early-stage project for an ad-hoc HRAS Arbitration Tribunal
- A blueprint for global application?
- **Must be victim-centered & victim-led**

- Q. What substantive protections would the tribunal have jurisdiction over?
- Q. Are arbitration agreements in contracts of employment binding?
- Q. What extent can third-parties prosecute claims on behalf of victims?
- Q. Shortcomings in existing business and human rights arbitration frameworks?
Victim-Oriented Process for Addressing Human Rights Abuses at Sea

**Human Rights Abuse**
- Victim raises complaint to Human Rights at Sea (HRAS)
- (could also be raised directly or through Third Party)

**Decision Point**
- **Civil Claims** (against State or Company)
  - **State / Company Agreement to Arbitrate** (fork-in-the-road)
  - **Victim makes choice** (court or arbitration)

**Civil Action in Court**
- **HRAS referral to local authorities**

**Civil Complaint**

**Criminal Complaint**

**Parallel process of review and advice**. Victim's complaint independently reviewed to determine available courses of action and resources to assist victim; advice (and assistance, if possible) provided to victim on this basis.

**Registration of RFA* by Institution based on *prima facie* review of jurisdiction**
- Notification of Registration to Parties; starts clock for constitution of tribunal
- Arbitral tribunal constituted
  - First procedural hearing
    - (By telephone)
  - Written procedure
  - Oral procedure (Hearings)
    - (In person, or by video-conference or telephone)
  - Final Award
    - (Parties accept award as binding and to enforce obligations imposed by that Award as if it were a final judgment of a court in that State)

* RFA: Request for Arbitration

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Victim-led Remedy: State options in-force

UNCLOS 1982 SECTION 2.
COMPULSORY PROCEDURES ENTAILING BINDING DECISIONS
Article 287 Choice of procedure

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:
(a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
(b) The International Court of Justice;
(c) an arbitral tribunal constituted in accordance with Annex VII;
(d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.
Improving human rights at sea?

What do we need?

Long-term ownership - funding of the work - accurate narrative building
Fact checking
Transparency
Accountability
Effective enforcement & effective remedies
Objective challenges to existing legal instruments & policies

- But -

A comprehensive deterrent effect is lacking for preventing abuses at sea
Impunity from scrutiny and absence of prosecutions is rampant
CSR & ESG ‘gloss’ is abundant
Poor corporate knowledge = recycling of known issues
‘Kicking-the-can’ is actively used as an avoidance mechanism
Follow our work

Human Rights at Sea (HRAS)
A Global Catalyst for addressing human rights abuse at sea and delivering justice by policy and legislative change.
Non-profit Organizations · HAVANT, Hampshire · 3,660 followers

Nigel & 17 other connections work here · 18 employees

Linkedin: https://www.linkedin.com/company/human-rights-at-sea
Twitter: @hratsea
Facebook: https://www.facebook.com/humanrightsatsea
Useful links to get started

**Background.** For up-to-date information about our work: [https://www.humanrightsatsea.org/news](https://www.humanrightsatsea.org/news)

**Geneva Declaration:** [https://www.humanrightsatsea.org/GDHRAS](https://www.humanrightsatsea.org/GDHRAS)

**Arbitration project:** [https://hrasarb.com](https://hrasarb.com)

**Maritime Levy project:** [https://www.humanrightsatsea.org/Maritime-Levy-Campaign](https://www.humanrightsatsea.org/Maritime-Levy-Campaign)

**Fisheries Observer deaths:** Investigation report: [https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_Eritara_Aati_Kaierua_Kiribati_Independent_Case_Review_19_May_21_SP%20%20%281%29.pdf](https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_Eritara_Aati_Kaierua_Kiribati_Independent_Case_Review_19_May_21_SP%20%20%281%29.pdf)

**Stamping on Seafarers’ Rights during the COVID-19 Pandemic report:** [https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_Stamping-on-Seafarers-Rights_REPORT_10DEC21_SP_0.pdf](https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_Stamping-on-Seafarers-Rights_REPORT_10DEC21_SP_0.pdf)

**Stowaways Briefing Note:** Background, Drivers & Human Consequences report: [https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_Insight-Briefing-Note_Stowaways_APRIL_2021_SP_LOCKED.pdf](https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_Insight-Briefing-Note_Stowaways_APRIL_2021_SP_LOCKED.pdf)


**Podcast: Human Rights at Sea:** [https://open.spotify.com/episode/3UccyIsGgpkZSMIXK3uWK?si=yiB93ophSHKDrcl5CZwc4A&nd=1](https://open.spotify.com/episode/3UccyIsGgpkZSMIXK3uWK?si=yiB93ophSHKDrcl5CZwc4A&nd=1)


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