

## Shearman puts focus on human rights at sea

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Refugees on a boat near the island of Lesbos, Greece (Credit: Shutterstock/punghi)

Shearman & Sterling has partnered with a UK charity to propose the use of international arbitration to resolve disputes over human rights abuses at sea.

The charity, Human Rights at Sea, published a white paper on the proposal on 24 March, saying it aims to provide victims with “access to an effective remedy” and combat “impunity for the perpetrators of such abuses.”

The paper is co-authored by the charity’s CEO, **David Hammond**, and Shearman & Sterling partner and head of public international law and co-head of international arbitration **Yas Banifatemi**, together with Shearman counsel **Alex Marcopoulos** and senior associates **Elise Edson** and **Sandrina Antohi** in Paris.

The project is part of the charity’s efforts to develop more effective human rights protection for seafarers, fishers, migrants, refugees and other potential victims.

The charity said that fundamental maritime human rights principles are not being “adequately respected, complied with or enforced” and that there remains “significant

evidence of widespread and systematic human rights abuses at sea, including slavery, sex trafficking, sexual assault, abandonment, and deprivation of basic labour rights.”

That these issues have worsened “despite the existence of a well-established body of international human rights law is a clear indication that human rights issues at sea require special attention.” This is especially true of violations occurring in the high seas, said the charity, “where the policing and enforcement of human rights violations is all the more difficult.”

An arbitration-based mechanism for resolving human rights abuses could “significantly improve human rights protection in the maritime space.”

This would be through providing a neutral and visible forum for human rights issues to be resolved; an efficient procedure that is expedient and financially accessible to victims; a process that is highly specialised and tailored to the sensitivities of human rights issues as well as to the particularities of the maritime space; and finally through binding arbitral awards that would be enforceable internationally.

The mechanism would “address claims arising from existing and established international law and principles for the protection of human rights,” without requiring any new substantive protections.

At the core of this mechanism would be “a network of stakeholders active or directly interested in maritime commerce, including flag states, port and coastal states and businesses.”

A “critical mass of players” representing these interests will be invited to provide open offers of consent to arbitrate human rights disputes, and such offers could then be accepted by “any party alleging a human rights abuse by the offeror” through their filing of an arbitration claim.

The white paper contemplates that either an existing institution such as the Permanent Court of Arbitration or a dedicated new institution would administer cases. The institution would write a set of procedural rules tailored for human rights disputes – although this would not necessarily have to be done from scratch, with the Hague Rules on Business and Human Rights Arbitration, launched in December, providing a “promising starting point.”

The institution would also maintain a roster of specially qualified human rights arbitrators; and oversee the constitution of arbitral tribunals - including by resolving any challenges to the appointment of arbitrators.

The charity would play a close supporting role, including by helping educate victims to the availability of arbitration and reviewing potential complaints.

To foster sufficient awareness, involvement and feedback for the project from stakeholders and international organisations such as the United Nations, the mechanism will be launched in a series of steps.

Following feedback on the white paper and further study from Shearman and Human Rights at Sea, the concept will be “developed in subsequent stages, including through the

circulation of draft model offers of consent, draft model arbitration agreements and draft arbitration rules.”

Shearman and Human Rights at Sea tell GAR that their proposal is “built on the idea that a single international forum, which we hope will have the support of both governments and non-governmental organisations active in the maritime sphere, will be more visible to victims than any existing mechanism of redress.”

They say that one reason for the “current culture of impunity is that victims often do not know what avenues are available to them – or if they do, these options are neither realistic nor affordable.” They hope that many of the service providers in the proposed system would agree to work at least partly *pro bono*, and that public funding may be made available.

If any maritime human rights cases have been brought under existing mechanisms, they say the disputes have likely been kept confidential. “However, it seems that the vast majority of abuses are never brought to account.”

They say that transparency will be a cornerstone of their proposed system, serving as a “major deterrent effect.”

Banifatemi says the project is a “ground-breaking development, not only for the protection of human rights internationally, but also for the practice of international arbitration.”

“This is yet another example of the significant value that arbitration has, among other ways, in helping to bring justice and the rule of law to people and to spaces that may not otherwise have sufficient access to them.”

Hammond says the “innovative commercially focused concept to evolve arbitration” as a route to an effective remedy and enforcement against human rights abuses at sea is ready to go public after seven months of development.

There is precedent for arbitration of human rights disputes. Two disputes between labour unions and a global fashion brand under the Accord on Fire and Building Safety in Bangladesh went to arbitration at the Permanent Court of Arbitration in The Hague before being settled in 2017 and 2018. The accord was created in the wake of the collapse of a garment factory in Bangladesh, which killed 1,135 workers and injured 2,000 more.