

INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES  
[ISSN 2581-5369]

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Volume 8 | Issue 5  
2025

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# Caught in Deep Waters: Criminal Liability of Seafarers and the Evolving Legal Framework Against Piracy Post-2020

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## ABSTRACT

*The global maritime industry, while serving as the backbone of international commerce, inherently exposes seafarers to significant hazards, including marine casualties and the persistent threat of piracy and armed robbery. Marine casualty investigations are fundamental to enhancing maritime safety and ensuring accountability within the global shipping industry.*

*Piracy targeting commercial ships continues to be a major concern for global maritime trade, as crew members remain vulnerable to abduction and ransom demands. Although the primary goal of maritime law has long been to safeguard life and security at sea, the growing complexity and layered nature of legal frameworks frequently obstruct their practical implementation and enforcement.*

*This paper explores the multifaceted landscape of criminal liability for seafarers within this dynamic environment, particularly in the context of evolving threats such as piracy and armed robbery, which have seen a continuous rise in incidents and crew kidnappings.*

*It critically assesses how existing legal frameworks, including the UNCLOS and the Convention on Maritime Labour, 2006 (MLC 2006), attempt to provide protection, while highlighting the pervasive challenges seafarers face, often finding themselves criminalized despite being victims. The analysis extends to the limitations of current multilateral instruments and soft law in offering comprehensive safeguards, especially concerning wage protection and due process for seafarers held hostage. Ultimately, the paper argues that systemic reforms, including robust financial guarantees and enhanced legal aid, are imperative to ensure timely, equitable, and accessible justice for seafarers, fostering a more seafarer-centric approach to maritime governance.*

**Keywords:** International Law, Maritime Law, Piracy, Seafarers, UNCLOS.

## I. INTRODUCTION

The UNCLOS ratified in 1982, an inclusive global treaty legalizes all facets of ocean space.<sup>2</sup> It

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<sup>2</sup> Michael Sevel, *Maritime Rule of Law: Some Preliminaries*, 15 HAGUE J. ON THE RULE OF L. 385 (2023).

lays down a comprehensive legal structure governing the world's seas and oceans, promoting peaceful maritime activity, equitable sharing of oceanic resources, open international navigation, and the conservation of the marine ecology. UNCLOS outlines specific provisions for addressing piracy under global law, predominantly through Articles 100 to 107 and Article 110.<sup>3</sup>

UNCLOS also provides rules for marine pollution, establishing that violations can be punished by criminal sanctions by individual nation-states.<sup>4</sup> It dictates detailed regulations on criminal jurisdiction to identify the competent State for trial and the applicable criminal law.<sup>5</sup> Notably, UNCLOS introduces a universal jurisdiction for the port state as an exception to the principle of territoriality and flag state jurisdiction, particularly concerning ship-source pollution.<sup>6</sup> This universal jurisdiction is like mechanisms provided for *crimina iuris gentium* (crimes against the law of nations).<sup>7</sup>

A ship flying a state's flag is regarded, by *fictio iuris*, as the "territory" of that state, meaning the flag state's law applies to conduct aboard, regardless of the ship's location.<sup>8</sup> This concept, while criticized as a "dangerous legal fiction," remains a useful heuristic for understanding how maritime rule of law is possible, though distinctively complex.<sup>9</sup>

The declaration of jurisdiction by granting a flag requires a bundle of rights and duties for the State.<sup>10</sup> These include:

- Maintaining an official log of ships registered under its national flag.
- Overseeing maritime safety through regular inspections of vessel upkeep and onboard equipment, along with verifying the qualifications and regulatory compliance of captains, officers, and seafarers.
- Initiating inquiries when maritime incidents or accidents occur.
- Mandating that ship commanders carry out rescue operations when individuals are in distress at sea.
- Enforcing measures to prohibit and eliminate the transport of enslaved persons.

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<sup>3</sup> Li Zhang et al., *supra* note 2, at 1618

<sup>4</sup> Cecilia Valbonesi, *supra* note 8, at 110

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Stefania Rossi, *supra* note 7, at 75; Michael Sevel, *supra* note 6, at 385

<sup>9</sup> Michael Sevel, *supra* note 6, at 385

<sup>10</sup> Rosa Palavera ed., Urbino Univ. Press 2024.

- Participating in efforts to combat piracy and illicit drug movement across maritime routes.
- Enforcing its domestic maritime laws on its citizens and flagged vessels, while also contributing to the protection of marine biodiversity in international waters.

These challenges highlight a systemic issue where seafarers, who are often victims of circumstances beyond their control, bear the brunt of criminal liability due to ambiguities in law, weak enforcement, and practices that disregard their fundamental rights.<sup>11</sup>

**Multilateral and Soft Law Developments** In response to the identified issues, international bodies, particularly the IMO and ILO, have pursued various mitigation strategies and regulatory instruments.<sup>12</sup> The Maritime Labour Convention (MLC) 2006, adopted by the ILO, is a significant achievement, officially entering into force on 20 August 2013.<sup>13</sup> It is often referred to as a "living instrument" due to its updates.<sup>14</sup> The MLC 2006 sets global minimum standards for seafarers' working and living conditions, including provisions on employment agreements, wages, medical care, and health and safety protection.<sup>15</sup>

## II. KEY DEVELOPMENTS AND THEIR LIMITATIONS

**MLC 2006 and its 2018 Amendments on Piracy:** A major area of reform is addressing seafarers' wages when held hostage by pirates.<sup>16</sup> Prior to 2018, there was ambiguity under domestic laws and international conventions regarding seafarers' wage rights during captivity.<sup>17</sup> The 2018 amendments to the MLC 2006, explicitly stipulate that Seafarer Employment Agreements (SEAs) must endure to have a result while seafarers are held captive due to piracy or armed robbery, regardless of contract expiry or termination notices.<sup>18</sup> Shipowners have a duty to maintain payment of wages and all related entitlements for the full duration that a seafarer is held captive, continuing until either the individual is safely released or, in the unfortunate event, passes away.<sup>19</sup> This represents a significant advancement, as previous interpretations often favoured termination of SEAs if seafarers could not perform their duties due to restricted freedom.<sup>20</sup>

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<sup>11</sup> Pranjal P Nayar et al., *supra* note 1, at 382; R. Chander, *supra* note 10, at 45.

<sup>12</sup> ILO, *Seafarers to Continue Receiving Wages if Held by Pirates* (2018).

<sup>13</sup> Neha Garg et al., *supra* note 3, at 1610.

<sup>14</sup> Li Zhang et al., *supra* note 2, at 1608

<sup>15</sup> Neha Garg et al., *supra* note 3, at 1610

<sup>16</sup> Li Zhang et al., *supra* note 2, at 1613

<sup>17</sup> *Id.*

<sup>18</sup> ILO, *supra* note 16; Li Zhang et al., *supra* note 2, at 1613

<sup>19</sup> Li Zhang et al., *supra* note 2, at 1612

<sup>20</sup> Li Zhang et al., *supra* note 2, at 1613

**Limitations:**

Despite these advances, the 2018 amendments lack provisions for compulsory financial guarantees or enforcement mechanisms to ensure payment.<sup>21</sup> Although the right to payment exists in principle, seafarers may find it nearly impossible to access these dues if shipowners delay, deny, or are financially incapable of fulfilling their obligations.<sup>22</sup>

**(A) Insurance Mechanisms:**

**General Average Insurance:** While in theory, seafarers' wages during hostage situations could be considered as "substituted expenditures of general average" (expenses incurred to save a common maritime venture from peril), this is uncertain.<sup>23</sup> This position was upheld by the UK Supreme Court in the 2017 *Longchamp* decision, where it ruled that operational costs—such as crew wages incurred during ransom negotiations—could be treated as substituted expenses under the principle of general average.<sup>24</sup> However, general average insurance is commercial, not compulsory, and seafarers usually cannot directly claim against insurers.<sup>25</sup>

**Other Insurances (e.g., P&I, Social Insurance):** These typically cover injury, illness, or death, but generally do not cover pure wage loss of seafarers held hostage without injury.<sup>26</sup>

- **Liability of Recruitment Agencies:** Some legal analyses propose joint and several liability for crewing recruitment agencies with shipowners for captive seafarers' wages, as seen in the Philippines. While beneficial for protection, this also faces challenges if both parties refuse or cannot pay.

- **Financial Guarantees (2014 MLC Amendments):** The 2014 MLC amendments (in force 2017) introduced a requirement for compulsory financial guarantees for shipowners to cover seafarer abandonment and claims for death or long-term disability. However, it's debatable if a hostage situation constitutes "abandonment," and these guarantees typically cover wages for "no more than 4 months," often insufficient for prolonged captivities. They also don't cover pure wage loss.

- **Other Soft Law:** Soft law instruments, such as the Intergovernmental Oceanographic Commission's "Tsunami watch operations" document, although devoid of direct binding force,

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<sup>21</sup> Li Zhang et al., *supra* note 2, at 1608

<sup>22</sup> *Id.*

<sup>23</sup> Neha Garg et al., *supra* note 3, at 1610; Li Zhang et al., *supra* note 2, at 1616

<sup>24</sup> Zhang, L., Guo, L., Zhang, X. and Zhang, P., 2021. Legal issues on wage protection of seafarers held hostage by pirates. *Maritime Technology and Research*, 3(3), pp.268-279.

<sup>25</sup> Rose, F., 2013. *Marine insurance: law and practice*. Informa Law from Routledge.

<sup>26</sup> Delos Santos, L.U., 2008. Law and policy perspectives of seafarers' claims.

influence and restrict the will and freedom of their addressees.<sup>27</sup> They can significantly impact the decision of criminal courts, for instance, by determining standards of diligence that can exclude culpable liability. This is particularly relevant in areas like tsunami risk management, where a complex regulatory framework emanates from international bodies. However, the effectiveness of soft law in addressing negligent liability for macro-events remains a subject of debate.<sup>28</sup>

Recommendations To address the persistent challenges and enhance the protection of seafarers, particularly concerning criminal liability and wage protection, the following recommendations are crucial:

- **Establish an Independent Marine Casualty Investigation Authority:** Creating an independent body, separate from regulatory authorities like the Directorate General of Shipping (DGS) in India (similar to the UK's MAIB), would enhance the credibility and impartiality of investigations. This would ensure investigations focus solely on safety and are free from potential conflicts of interest, a concern raised in historical reviews.
- **Mandate Statutory Timelines for Investigation Completion:** Introduce legally binding timelines for completing marine casualty investigations, especially for "very serious marine casualties". This would reduce delays and ensure reports are available promptly for both safety learning and potential legal proceedings, reinforcing current Standard Operating Procedures (SOPs) with statutory deadlines.
- **Strengthen Financial Security Requirements for Shipowners:** Fully implement and rigorously enforce directives mandating insurance bonds or other financial security forms for foreign-flagged vessels in Indian waters to cover potential wage defaults and repatriation costs, in accordance with MLC requirements. Similar stringent requirements should extend to Indian-flagged vessels to ensure comprehensive coverage.
- **Establish a Seafarer Welfare Fund for Emergency Assistance:** Create a dedicated fund, potentially financed through mandatory contributions from shipowners, government allocations, and international sources, to provide immediate financial and logistical assistance to seafarers in cases of abandonment, injury, or death, pending the resolution of their compensation claims. This would serve as a vital safety net.
- **Enhance Seafarer Awareness and Access to Legal Aid:** Launch comprehensive awareness

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<sup>27</sup> Aalbu, K., 2024. Out of sync: The making and remaking of data and regulations on greenhouse gases at the international maritime organization. *Science, Technology, & Human Values*, p.01622439241279622.

<sup>28</sup> Valbonesi, C., PROTECTING SEA ECOSYSTEM FROM TSUNAMI RISK AND FROM RISK OF MARINE POLLUTION IN THE INTERNATIONAL LEGAL FRAMEWORK. *PENAL SYSTEMS OF THE SEA*, p.89.

campaigns to educate seafarers about their rights under national and international laws and conventions, including procedures for reporting casualties, filing grievances, and seeking compensation. Establish easily accessible helplines and provide subsidized or free legal aid services through collaborations with maritime unions, NGOs, and government legal aid initiatives.

- Facilitate International Cooperation in Enforcement: Strengthen bilateral and multilateral agreements with major flag states and maritime nations to facilitate the recognition and enforcement of court and tribunal judgments related to seafarer compensation against foreign shipowners and vessels. Hence the system needs to offer a straightforward access for seafarers to claim their outstanding wages.

Ultimately, achieving a more just and efficient system for seafarers requires a multi-pronged approach that goes beyond mere legislative provisions. It demands the establishment of independent investigation authorities, statutory timelines, strengthened financial security, dedicated welfare funds, enhanced seafarer awareness, and robust international cooperation. These systemic reforms are vital not only for upholding India's commitment to seafarer welfare and rights but also for promoting accountability and continuous improvement in global maritime safety.

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