

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ



ΤΜΗΜΑ ΝΑΥΤΙΛΙΑΚΩΝ ΣΠΟΥΔΩΝ

ΠΡΟΓΡΑΜΜΑ ΜΕΤΑΠΤΥΧΙΑΚΩΝ ΣΠΟΥΔΩΝ
στην ΝΑΥΤΙΛΙΑΚΗ ΔΙΟΙΚΗΤΙΚΗ

SEAFARERS FACED WITH PIRACY & ARMED ROBBERY

Ταταράκη Χρυσάνθη

MND 19056

Διπλωματική Εργασία

που υποβλήθηκε στο Τμήμα Ναυτιλιακών Σπουδών του Πανεπιστημίου Πειραιώς ως μέρος των απαιτήσεων για την απόκτηση του Μεταπτυχιακού Διπλώματος Ειδίκευσης στην Ναυτιλιακή Διοικητική

Πειραιάς
Οκτώβριος 2020

«Το άτομο το οποίο εκπονεί την Διπλωματική Εργασία φέρει ολόκληρη την ευθύνη προσδιορισμού της δίκαιης χρήσης του υλικού, η οποία ορίζεται στην βάση των εξής παραγόντων: του σκοπού και χαρακτήρα της χρήσης (εμπορικός, μη κερδοσκοπικός ή εκπαιδευτικός), της φύσης του υλικού, που χρησιμοποιεί (τμήμα του κειμένου, πίνακες, σχήματα, εικόνες ή χάρτες), του ποσοστού και της σημαντικότητας του τμήματος, που χρησιμοποιεί σε σχέση με το όλο κείμενο υπό copyright, και των πιθανών συνεπειών της χρήσης αυτής στην αγορά ή στη γενικότερη αξία του υπό copyright κειμένου».

«Η παρούσα Διπλωματική Εργασία εγκρίθηκε ομόφωνα από την Τριμελή Εξεταστική Επιτροπή που ορίστηκε από τη ΓΣΕΣ του Τμήματος Ναυτιλιακών Σπουδών Πανεπιστημίου Πειραιώς σύμφωνα με τον Κανονισμό Λειτουργίας του Προγράμματος Μεταπτυχιακών Σπουδών στην Ναυτιλιακή Διοικητική.

Τα μέλη της Επιτροπής ήταν:

- Παντουβάκης Άγγελος (Επιβλέπων)
- Πολέμης Διονύσιος
- Λαγούδης Ιώαννης

Η έγκριση της Διπλωματικής Εργασίας από το Τμήμα Ναυτιλιακών Σπουδών του Πανεπιστημίου Πειραιώς δεν υποδηλώνει αποδοχή των γνώμων του συγγραφέα.»

CONTENTS

Abstract	7
Introduction	9
1.1 Definition of terms	10
1.2 Brief history and overview of Maritime Piracy.....	11
1.2.1 Piracy: An old-fashioned strategy	11
1.2.2 The modern day pirate.....	12
1.2.3 Method of attack.....	14
1.2.4 The modern day pirate: increasingly complex and dangerous	15
2. Maritime piracy and armed robbery against ships: A global phenomenon	16
2.1 Models of Piracy	18
2.1.1 Hijacking	18
2.1.2 Kidnapping for ransom (KFR)	19
2.1.3 Petty theft and robbery	19
2.1.4 Failed attacks	20
2.1.5 Suspicious approaches.....	20
3. Four regions of piracy	20
3.1 Action on Attack and/ or Boarding	21
3.1.2 Seafarer Preparation and training	21
3.1.3 When under attack.....	23
3.1.4 When attack is not successful.....	23
3.1.5 When captured and held hostage	23
3.1.6 Pirates	24
3.1.7 Seafarers	25
3.1.8 Company	26
3.1.9 When released	26
3.1.10 Practical needs of a seafarer upon release	27
3.1.11 Practical needs of seafarers upon arrival at a safe port.....	28
3.1.12 Practical needs of seafarers arriving in their own country	29

3.1.13 On-going care of seafarers after release	30
4. The Humanitarian Support of Seafarers' Families	30
4.1 Good Practice During the Pre-Crisis Period (i.e. preparation before an incident occurs)	31
4.2 Appointment of a Family Liaison Representative(s).....	31
4.3 Choice of the Family Liaison Representative.....	31
4.4 Developing an Action Plan for the Pre-Deployment Stage	32
4.5 Development of an Action Plan in the Event of an Attack.....	33
4.6 Role of the Family Liaison Representative at the Time of Release	36
5 Evolution of Seafarers' Rights	37
5.1 Piracy and Armed Robbery against Ships- International Legal Framework.....	39
5.2 Counter-Piracy Measures	42
5.3 Humanitarian Response to Piracy	44
5.4 Seafarers' Human and Labour Rights	46
5.4.1 Fundamental Human Rights	46
5.4.2 Labour Rights	47
5.5 Legal Framework of Relevant Seafarers' Rights	48
5.5.1 Right to Life	50
5.5.2 Freedom from Forced Labour	50
5.5.3 Right to Safe and Healthy Working Conditions	51
5.5.4 Right to Health and Medical Care	52
5.5.5 Right to Fair Remuneration	52
5.5.6 Right to Social Security and Welfare	53
5.5.7 Right to Repatriation	54
6 Repatriation - genesis and strengthening of labour laws	54
6.1 Evolution of the term repatriation for seafarers.....	54
6.2 Chronology of previous instruments	55
6.2.1 Repatriation of Seamen Convention, 1926 (No. 23)	55
6.2.2 Repatriation (Ship Masters and Apprentices) Recommendation, 1926 (No. 27)	56
6.2.3 Repatriation of Seafarers Convention (Revised), 1987 (No. 166).....	56
6.2.4 Repatriation of Seafarers Recommendation, 1987 (No. 174).....	56
6.3 Maritime Labour Convention, 2006 (MLC, 2006).....	56

6.3.1 Ship-owners liability for repatriation under MLC, 2006.....	57
7 Ship-owners Liability and Seafarers Rights	57
7.1 Surfacing legal Issues due to pirate attack.....	58
7.2 Opportunities and hurdles for seafarer	59
7.2.1 International guidelines for ship-owners	59
7.2.2 Deployment of armed guards	59
7.2.3 Vicarious liabilities.....	60
7.2.4 Causation	60
7.2.5 Assumption of risk	61
7.3 Securing release and repatriation.....	61
7.3.1 Irresponsible ship-owner and abandoned seafarers	62
7.3.2 Military response	62
7.3.3 Payment of ransom.....	63
Conclusion.....	63
Bibliography	66
APPENDICES	68
APPENDIX A	68
APPENDIX B - The Three R's	69
APPENDIX C - Maslow Hierarchy of Needs (adapted)	70
APPENDIX D - The Survivor Syndrome	71
APPENDIX E - Stockholm Syndrome	72
APPENDIX F - Crisis Management Techniques	73
APPENDIX G - Family Leaflet	74
APPENDIX H - Family Leaflet continued.....	75
APPENDIX I - Seafarers' nomination of Family Contact Person - Nomination of a Family Contact In Case Of Emergency	76
APPENDIX J – Letter templates	76
Template 1 - Letter to be used at time of notification of a piracy attack.....	77
Template 2 - Letter to be used at time of repatriation of a seafarer.....	81
APPENDIX K- 10 Things to Consider Before Your Ship Enters Piracy Prone Area.....	83
APPENDIX L- Piracy and the ISPS Code	86
APPENDIX M- Company Threat and Risk Assessment.....	89

Abstract

Maritime piracy and armed robbery against ship are the one of the contemporary challenges of the maritime industry. These two phenomena have a global impact on maritime trade and security. The possibility of a pirate attack is also a constant fear amongst seafarers and their families. Ships transiting at high risk areas are in peril of being hijacked and their crew abducted for ransom. From internal water to the high seas of the Gulf of Guinea, seafarers are vulnerable to such attacks.

The first part of the research paper analyzes the piracy and armed robbery against ships as a global phenomenon, the national legislation models of piracy and starts probe in case of seafarers being hijacked. In responding to the threat of piracy, or a seafarer becoming a victim of piracy and armed robbery, the seafarers play an important role. This research paper provides guidance on ways that seafarers can be supported by their families and their company itself. As far as the company is concerned, it cannot be emphasized enough how good preparation will help a company and, ultimately, seafarers during a crisis period. Hence, good practice guidance on how to help seafarers in such situations is equally important and companies are encouraged in this manner to help cope during the crisis.

Though there has been much discussion on policies of maritime piracy & armed robbery, we should not ignore the rights of the affected seafarers and their early release. In this respect, the second part of this dissertation focuses on the impact of piracy on seafarers' rights as a largely unexplored fragment of law. Emphasis is placed on evolution of right and security of their release. Although there is interplay of various factors in the issue, the discussion is limited to the role of the ship-owner and his contractual agreement with the seafarer. In this regard, the Maritime Labour Convention (MLC 2006) has laid down guidelines stressing the role of ship-owners in repatriating their seafaring crew.

Keywords: Maritime piracy, armed robbery against ships, legal framework, seafarer's rights, ship-owner, release.

Περίληψη

Η θαλάσσια πειρατεία και ένοπλη ληστεία ενάντια στα εμπορικά πλοία αποτελούν μία από τις σύγχρονες προκλήσεις της ναυτιλιακής βιομηχανίας. Αυτά τα δύο φαινόμενα έχουν παγκόσμιο αντίκτυπο στο ναυτιλιακό εμπόριο και στα μέτρα αντιμετώπισης και ασφάλειας. Η πιθανότητα επίθεσης πειρατείας είναι επίσης μία συνεχή ανησυχία των ναυτικών και των οικογενειών τους. Τα πλοία τα οποία διέρχονται σε περιοχές υψηλού κινδύνου έχουν μεγάλες πιθανότητες επίθεσης πειρατείας και ένοπλης ληστείας με αποτέλεσμα την απαγωγή του πληρώματος για λύτρα. Η ναυσιπλοΐα σε αυτές τις επικίνδυνες περιοχές μέχρι και τον Κόλπο της Γουινέας καθιστά τους ναυτικούς ευάλωτους σε τέτοιου είδους επιθέσεις.

Το πρώτο μέρος της συγκεκριμένης διατριβής αναλύει την θαλάσσια πειρατεία και ένοπλη ληστεία ως παγκόσμιο φαινόμενο, τα εθνικά πρότυπα πειρατείας και ερευνά το φαινόμενο εις βάθος. Η ανασφάλεια που δημιουργείται από την απειλή της πειρατείας αναδεικνύει για ακόμη μία φορά πόσο σημαντικός είναι ο ρόλος του ναυτικού. Η συγκεκριμένη διπλωματική παρέχει μια καθοδήγηση στον τρόπο με τον οποίο οι ναυτικοί μπορούν να υποστηριχτούν από τις οικογένειες τους και από την ίδια την εταιρεία.

Όσον αφορά την εταιρεία, πρέπει να τονιστεί πως μια καλή προετοιμασία μπορεί να συμβάλλει θετικά στην ίδια και συνεπώς και στον ναυτικό κατά τη διάρκεια μιας επίθεσης. Επομένως η σωστή καθοδήγηση για την υποστήριξη των ναυτικών είναι ύψιστης σημασίας καθώς και οι εταιρείες με αυτόν τον τρόπο μπορούν καλύτερα να αντιμετωπίσουν κάθε είδους επίθεσης.

Επιπλέον δεν θα πρέπει να παραλειφθούν τα δικαιώματα των ναυτικών, η εξέλιξη αυτών και η περίπτωση του επαναπατρισμού. Για αυτό το λόγο το δεύτερο μέρος της συγκεκριμένης διατριβής αναφέρεται στον αντίκτυπο που έχει η πειρατεία και η ένοπλη ληστεία στα δικαιώματα των ναυτικών ως ένα ανεξερεύνητο τμήμα του νόμου. Ιδιαίτερη έμφαση δίνεται στην εξέλιξη και πορεία των δικαιωμάτων και στην εξασφάλιση του επαναπατρισμού. Αν και υπάρχει αλληλεπίδραση πολλών παραγόντων στο συγκεκριμένο θέμα, η διερεύνηση περιορίζεται στον ρόλο του πλοιοκτήτη και στην συμφωνία που έχει αναπτύξει με τον ίδιο τον ναυτικό. Εδώ αξίζει να σημειώσουμε πως ο MLC (Maritime Labour Convention) έχει σχεδιάσει έναν οδηγό τονίζοντας τον ρόλο του πλοιοκτήτη σχετικά με τον επαναπατρισμό του ναυτικού.

Λέξεις κλειδιά: Θαλάσσια πειρατεία, ένοπλη ληστεία, νομικό πλαίσιο, δικαιώματα των ναυτικών, πλοιοκτήτης, επαναπατρισμός.

Introduction

Piracy and armed robbery are two of the foremost threats facing the international shipping community today, be it off Somalia, in the Western Indian Ocean, the Gulf of Guinea, the South China Sea or elsewhere.

Despite numerous diplomatic, military and other initiatives by many governments and governmental agencies, particularly in the Indian Ocean, and the protective measures and other actions adopted by ship-owners, ship-managers and their representatives, ships are regularly attacked and seafarers put at risk as they go about their legitimate business in international waters.

While acknowledging the actions of governments, the United Nations and the International Maritime Organization, the shipping industry has recognized that more needs to be done to support seafarers and their families. In recent years nearly 5000 seafarers have been hijacked and detained for months often in appalling conditions, while thousands of others have been the victims of a pirate attack. Every day of the year more than 100,000 seafarers experience anxiety while sailing in, or towards, piracy infested waters. Their families share these worries, often with a feeling of helplessness. Seafarers, obviously, play a pivotal role in any piracy incident and the appropriate preparations are integral to their well-being, as well as ultimately to that of their families, and to the overall outcome of the incident.

Being held hostage during piracy and armed robbery is one of the worst nightmares for a seafarer. Release and repatriation of seafarers is one of the main issues in a hostage crisis and there are no standard responses. Though much has been said of policies related to combating piracy attacks and saving the ship from attempts of piracy, the human element is often neglected during policy planning. The release and repatriation of seafarers has been ignored.

World trade is depended on the professional acumen of the seafarer. Seafarers are responsible for the cargo carried onboard a ship; however, they live in fear and insecurity because of the conditions of their work. Ships cannot avoid operating in high-risk areas. The situation becomes worse if the ship-owner has not insured the ship and the seafarer falls in the hands of kidnapers/ pirates. In the event of a hijack and hostage-taking and subsequent rescue, need for repatriation of the seafarers remains unaddressed. The seafarer is left to the mercy of the P&I clubs and insurance agencies. Cases of hijacking of ships and kidnapping of seafarers require more attention from the shipping industry and its stakeholders who have been largely silent on the issue.

There is an urgent need to strengthen the rights of seafarers and securing their safe release in the case of hijacking and kidnapping due to piracy and armed robbery.

1.1 Definition of terms

The word “*pirate*” has its root from the Latin word “*pīrāta*” where the notion of ‘*sea robber*’ originated and from the Greek word “*peirātés*” which means ‘attacker’ or ‘marauder’ as a noun originating from the verb “*peiran*” signifying ‘attempt’ or ‘attack’. Therefore, a pirate is etymologically a person who undertakes an attempt of attack or an actual attack on someone. From its origin, the notion of attempt and actually perpetrating the act has been already embedded into the notion of pirate. The definition of the word “Piracy”, which is the acts committed by pirates, has evolved throughout the history depending on the occurrence of the act itself and the modus operandi of the perpetrator as well as the era. If for a long time the notion of piracy has only been related to the sea transportation and maritime activities, the usage of this word has extended to the air transportation sector, to the domain of intellectual property and other fields such as broadcasting. Indeed, nowadays, we talk a lot about air piracy, software piracy, pirate radios and televisions, etc. Hence, the word ‘piracy’ is generally used to refer to illegal acts and unauthorized activity. Nevertheless, despite today’s random use of the word “piracy” in various fields, it has retained its original reference to the maritime arena depicting acts of hostility, depredation, robbery, or violence perpetrated at sea against a ship, property carried on-board, or persons travelling with the ship either they are crew member or passenger. With the codification of customary international law of piracy through the 1958 Convention on the High Seas (CHS) and the 1982 United Nations Conventions on the Law of the Sea known as the Law of the Sea Convention (LOSC), an internationally recognized definition of maritime piracy was introduced. Later on, following the awareness of the issues related to the definition of maritime piracy to be defined as a crime on the high seas or outside the jurisdiction of any State, it was necessary to find another notion to describe similar acts but that are perpetrated within the territorial sea, archipelagic and internal waters or simply within the jurisdiction of a State. It was then that the International Maritime Organization (IMO) initiated the usage of the notion defined as “armed robbery against ships” through its resolutions related to maritime piracy.

For the purpose of this research paper, *maritime piracy* is defined as stated in the LOSC in its article 101 and consisting of the following acts:

- (a) any illegal acts of violence or detention, or any acts of depredation , committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

- i. on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - ii. against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Armed robbery against ships or *Armed robbery at sea* is defined as provided in the IMO resolution A.1025 (26) related to the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships and covers the following acts:

- (a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and direct against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;
- (b) any act or inciting or of intentionally facilitating an act described above.

1.2 Brief history and overview of Maritime Piracy

1.2.1 Piracy: An old-fashioned strategy

Piracy has been a part of societal concern long before colonial times. Contrary to popular belief, the first noted act of piracy came even before the infamous Vikings. The Sea People were the first documented pirates of the 13th century, BC, who raided the Mediterranean and Aegean Seas. Scandinavian bandits later arrived during the Viking Age through the Early Middle Ages. The Scandinavians, or Vikings, were famous for striking fear into the hearts of sea travelers near Western Europe and Northern Africa. Because there was no majority rule in this area and villages suffered from political turmoil, this offered a breeding ground for these particular brigands to thrive. If the Vikings were not occupied terrorizing towns and cities, they were capturing European ships which were out to sea. They would loot them for all their valuables before capturing the ship and/ or killing the crew. Piracy truly began when commerce expanded across large bodies of water. Although sea trade began many years ago, it has evolved with development of new technology.

Although sea piracy has adapted through technological means, the principles remain the same. Somalia pirates evolved from hijacking fishing vessels and stealing their catch, to quickly realizing there was a very lucrative future in targeting much larger commercial vessels. They were able to successfully conduct these

operations with the use of more sophisticated weapons and transportation as the basis of their adaptation to current trends.

1.2.2 The modern day pirate

It is now common for modern day pirates to be highly trained fighters. They utilize Rocket Propelled Grenades (RPGs), antitank missiles, automatic machine guns, hand grenades, global positioning systems (GPS), and satellite phones while at the same time utilizing a more modern and faster modes of transportation. Use of radar has also increased the range off shore which pirates can now reach. This increased range has allowed the pirates a chance to capture the larger commercial ships, but has also enhanced the burden on ships, crew, and the owners of these ships or companies. With the capture of larger ships, businesses are more willing to pay the ransom for which the pirates are demanding. Unfortunately for companies, it is usually cheaper in the long run for them to pay out any ransoms than it is for them to lose their cargo along with their ship and crewmembers. To illustrate this phenomenon, consider the case of the Saudi supertanker, the *Sirius Star*, and her crew when they experienced such a situation on 15 November 2008. The supertanker and crew were captured by Somalia pirates more than 450 nautical miles off the coast of Kenya. The ship had an estimated value of over \$150 million dollars. The value of the oil on board the vessel was valued at around \$100 million dollars. The Somalia pirates demanded a ransom of \$3 million dollars, which was parachuted on board after more than two months of negotiations.

By attacking larger ships, pirates were able to increase their ransom demands, and ultimately receive what they asked for. This is a perfect example of how piracy impacts the economy globally. Companies do not just hand over large amounts of cash and go on about their business. In reality, companies can expect to pay well into six figures for consultants, legal expenses, and cost of delivery of the ransom according to Clive Stoddart, head of the kidnap and ransom team at Lloyd's broker Aon. To ensure coverage, Stoddart advises ship owners to review their insurance coverage if vessels are transiting the Gulf of Aden or parts of the Indian Ocean, thus securing an adequate policy to cover them in the case they are attacked by pirates. The capture and release of the *Sirius Star* was a high profile attack with minimal damage. Unfortunately, other high profile attacks not only caused damage to ships and cargo, but also involved kidnapping of crews, and in cases when companies were forced to pay ransoms, they not only encouraged more kidnappings and attacks, but eventually funded weaponry and artillery to be used in future attacks.

In one particular pirate attack, the ransom was tracked through Kenya and Ethiopia in forms of real estate. These investments were suspected of being used to house pirates, convicts, rebels, dirty money, weapons, etc.

These investments ultimately support the pirates in their criminal endeavors. It was not until the Somalia civil war when Somalia rebels became a part of the piracy action, although they were earlier examples of piracy in Africa, such as that carried out by Nigerians in the 1970s and 1980s. After battling in the civil war, the Harti and Tanade clans broke away from the country and formed their own self-governed state in the northeastern portion of the country and called it Puntland. Puntland is the main base for these pirates. Currently there are approximately five gangs in this area. Each pirate group comprises of a total of at least 1,000 men ranging in age from 20–35 years of age.

Since the formation of Puntland, Somalia's coast has progressively climbed the chart as one of the most dangerous sea-lanes in the world in terms of maritime piracy.

The popularity and extreme success of piracy off the coast of Africa can be credited to three sources. These three reasons are “poverty, the treaties governing maritime transport, and the absence of good governance or presences of failed states.” Some African countries have struggled to create not only an independent political structure, but an economic system to support it. Africans in coastal states that were vulnerable to the vagaries of the world economy and highly dependent on commodity export prices also frequently lacked reliable access to educational and economic opportunities. Thus, “illiteracy, a low standard of living, high rates of dependency, lack of opportunities for educational advancement, and a dependent economy contributed to the fostering of an overwhelming level of poverty in several African countries”, which continue to affect the region to this present day. When conditions became particularly tenuous, citizens of African coastal countries turned to the sea to find a new way to survive.

Trade, both imports and exports and trade transported via coastal maritime routes, was a major source of revenue for most of these countries. As maritime trade picked up, some individuals, particularly where the rule of law was weak, realized that a valuable opportunity they presented itself. Raiding and looting of visiting and transiting ships or hijacking and then selling these newly acquired commodities for a profit became a way of life for some.

1.2.3 Method of attack

Four main methods of pirate attack on commercial shipping have been observed. These four types include robbery of a vessel at sea, hijacking of vessels, kidnapping for ransom and attacks on vessels berthed in harbors or at anchor.

With more than 3,600 acts of international piracy and armed robbery at sea between 1998 and 2008, it is important to observe exactly how the acts were carried out as well as what the end results were (successful/unsuccessful). This is vital information because it provides specific details involving what types of people were involved in the piracy, as well as what their ultimate goals were. For example, in 1997 the Asian Financial Crisis led many civilians to explore alternative options to supplement lost income, including turning to piracy.

Fortunately, citizens did not change careers to piracy. These individuals were desperate to make ends meet and their pirate behaviors lasted for a short period of time. In turn, during the late 1990's and early into the new millennium, there was increased speculation that terrorists and pirates could begin to collaborate their efforts. In fact, when al-Qaida launched its attack on the twin towers, they were noted as “demonstrating that ordinary means of transportation could be utilized to carry out large scale attacks on economically important targets”.

Moreover, piracy became so successful because it was not only common practice, but also common knowledge, that commercial vessels traveled unarmed as well as traveling with a small efficient crew. This small crew allowed the cost to transport the merchandise from port to port to remain relatively low. Amateur pirates were aware of this information and used it to their advantage. Commercial vessels became easy targets with an endless supply of income.

Finally, in terms of maritime piracy, African government officials did very little to combat piracy. The corruption of the African governments, along with these agencies ignoring the cry for help from the owners of the commercial vessels under attack, and the reality that governments have assigned this problem a low priority status has only fueled the frequency of attacks. When the pirates realized the corrupted governments were ignoring the crews cry for help, in a way they became more confident and not only increased the frequency of their attacks, but also increased the level of violence in their weapons they utilized.

1.2.4 The modern day pirate: increasingly complex and dangerous

Modern day pirates have steadily evolved. Through the acquisition of advanced weaponry and technology, they have been able to attack larger sea-going vessels (whose values are estimated to be around several million dollars), and attack farther off the coast of Somalia, as noted in the *Sirius Star* example previously mentioned. With these advancements, maritime piracy only expanded.

While maritime piracy is steadily expanding, three distinct pirate groups have been found in Somalia. These groups are “the Northern gang, based in Eyl; the Central gang, based in Hobyo; and the Southern gang, based in Harardera.”

Interestingly, these groups originally relied on the fishing industry to make a living. “Reports suggest that illegal fishing and dumping have disrupted Somalia’s coastal economy.” Due to this disruption, the Somalia pirates feel justified in their career changes to piracy. United Nations (U.N.) Special Representative to Somalia Ahmedou Ould-Abdallah, states that “poverty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources due to drought and illegal fishing and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia.”¹

While maritime pirates parallel these charges, there are some differences. In fact, “one of the unique characteristics of Somali piracy has been the taking of hostages for ransom.”²

Unlike pirate attacks in Strait of Malacca or Nigeria, where ships are boarded either to take the vessel or its contents, pirates off the Horn of Africa (HOA) routinely take the target vessel’s crew hostage in return for ransom payments.” One of the main reasons for this distinction in the type of attacks committed in these different regions is mainly a result of where the pirates operate from. These particular pirates have a “sanctuary on land in Somalia and in its territorial waters from which they can launch pirate attacks and conduct ransom negotiations.”

Having this sanctuary is a key advantage that the Somalia pirates have in comparison to other piracy groups.

¹ International Expert Group on Piracy off the Somali Coast, Final Report: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould- Abdallah, November 10-12, 2008, Nairobi, Kenya.

² Congressional Research Service, “Piracy off the Horn of Africa,” 28 September 2009, 10.

Other maritime pirates do not have similar, large safe havens in which they bring their hostages back in order to demand a ransom. Most pirates operate directly from their vessels, which presents a problem when trying to negotiate for ransoms. Unfortunately for these pirates, there are not many places to hide, nor do they have the accommodations to use as leverage in their negotiations with the hostages' host countries. Due to the sanctuary the Somali's have, "this has presented maritime security forces with significant challenges to traditional engagement strategies and tactics."³

Somalia, although still developing, is an internationally recognized country. This means that in order to conduct any type of operation to rescue hostages, governments agencies would have to coordinate with the Somalia government. This would be a difficult task to accomplish given the fact that the government in Somalia is highly corrupted. The Somali government, following a checkered history of failed attempts at central government, finally collapsed in the early 1990s. There have been several attempts, since the mid 1990s, by a number of countries to put forth an effort to try and establish a legitimate government in Somalia. Some of these international efforts to rebuild and restructure Somalia "have included two United Nations sponsored peacekeeping missions, UNOSOM I (United Nations Operation in Somalia) and UNOSOM II, that were abandoned in the mid- 1990s."

Aparar reports that, "Currently, the African Union is conducting a UN sanctioned stability mission in Somalia (AMISOM)."

The intent of AMISOM is to try and stabilize the security situation, including the take over from Ethiopian Forces, and to create a safe and secure environment in preparation for the transition to the UN" through a peaceful support operation.

By establishing and maintaining a secure government, tribes can hope to slowly, but surely push out piracy in this region.

2. Maritime piracy and armed robbery against ships: A global phenomenon

As previously stated, maritime piracy and armed robbery against ships have been present around the world since ancient time. It has flourished mainly in regions where social and economic problems, lack or weakness of land and maritime law enforcement and political turmoil occur and subsist. Their occurrence or manifestation varies somewhat from one region to another. Once the level of the threat in one region for

³ "Piracy off the Horn of Africa," Congressional Research Service, 28 September 2009, 10.

a particular type of maritime piracy and armed robbery against ships is reduced at an acceptable level, other outbreaks occur in other areas presenting the symptomatic criteria that enable the crime to thrive.

Twenty first century prone areas of maritime piracy and armed robbery against ships are identified to be in 10 different regions of the world namely (1) East Africa, (2) Indian Ocean, (3) West Africa, (4) Arabian Sea, (5) Malacca Strait, (6) South China Sea, (7) Latin America and the Caribbean, (8) Mediterranean Sea, (9) North Atlantic, and (10) regions that are classified “Others” where the occurrence of the two crimes are at a very low rate or even rare. Surprisingly, even the supposed to be the most secure maritime space in the world can be affected by maritime piracy and armed robbery against ships as demonstrated by the ‘M/V Arctic Sea’ case that took place in the Baltic Sea in 2009. From the identified prone areas, it appears that acts of maritime piracy and armed robbery against ships happen in different parts of the globe and that tends to attribute them as a worldwide phenomenon. Between 1984 to 2011, it was reported 6,260 attempted and actual attacks worldwide. As of 2011 alone, there were 544 occurred and attempted attacks which was of 55 increase (11.3%) compared to the 2010 statistics.

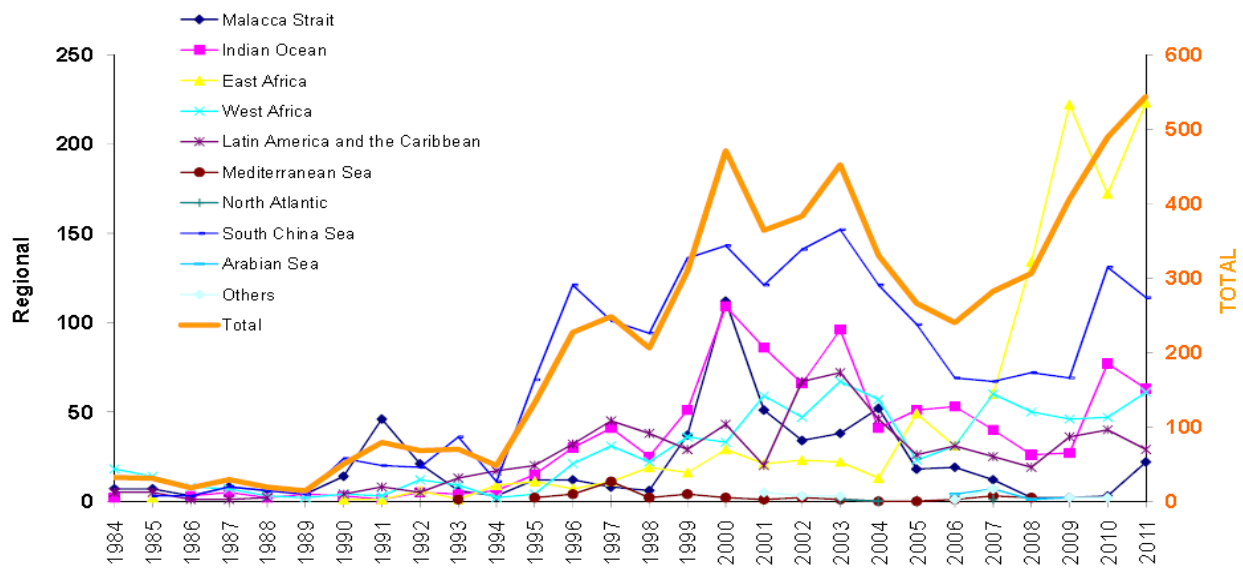


Fig.1 Worldwide yearly statistics of maritime piracy and armed robbery against ships incidents since 1984 (Source: IMO 2011 annual report, Annex 4)

Maritime piracy and armed robbery against ships differ in intensity, *modus operandi*, targets and motives in each prone region. In some case, ships are boarded with the minimum force for cash and valuables from the ships safe (Asian case). In some instances, they are attacked with more violent actions for the purpose

of stealing the cargo (West African case is an example) and/or the ship itself (as realized in the “M/V Alondra Rainbow case”). The last category is the kidnapping for ransom by taking the crew, the ship and the cargo hostage. (the Somalia case).

2.1 Models of Piracy

In most areas the location of attacks extends from internal waters to the high seas. Article 101 of UNCLOS provides the definition of piracy and treats it as an offence of the high seas (UNCLOS, 1982). It is further developed by the resolution of International Maritime Organization (IMO), which delineate such attacks in the territorial waters as ‘armed robbery’ (IMO Resolution A.1025 (26), (2010)). The clauses of insurance cover both the armed robbery and piracy. Such attacks are described as pirate attacks in the ongoing chapters. When a ship operates in an area which is prone to pirate attacks, incidents may occur according to various patterns or models as described in the following sections. Each has distinct characteristics (Lydelle Joubert, 2019)

2.1.1 Hijacking

In the Gulf of Guinea, the most common prey to attackers is ships carrying petroleum. Hijacking of vessels is considered to be one of the more complex models of piracy. It requires cooperation and coordinated efforts from a variety of ‘stakeholders’ who have vested interest in the cargo of the hijacked vessel. The hijackers direct the crew to take the ship to a designated place. Three different situations arise out of such hijacking.

- (a) First, they will transfer the cargo to some ship or land-based storage facility (ONuOHA, 2012). The attackers usually have direct contact with the agents in the black market to whom they sell the cargo.
- (b) Second, the vessel may not be having cargo and the hijackers capture the crew for ransom.
- (c) The third is a combination of the first two possibilities. In such a scenario, the vessel is hijacked and the crew is taken hostage on the hijacked vessels. This is a high-risk model for both crew and the hostages as they are vulnerable when onboard a hijacked vessel. They can be tracked and intercepted by the Navy of the coastal state or other law enforcing agencies, which may result in apprehension of the attackers. The life of the crew is also at stake when such operations take place as the pirates can harm them or may use them as a human shield. Hijacking involves the seizure of a vessel, crew and its cargo. It may lead to the Actual Total Loss¹ (ATL) or Constructive Total Loss² (CTL) (Gauci, Gotthard Mark, 2019).

2.1.2 Kidnapping for ransom (KFR)

In this scenario, the attackers board the vessel with intent to kidnap the crew. Kidnapping in the Gulf of Guinea differs from piracy in Somalia. In Somalia, the crew would be taken hostage with the ship and were kept onboard the vessel till the time negotiations take place (Onuoha, 2013). In Somalia, attempts at kidnapping require huge investments and back support in terms of mother vessels to attack a merchant vessel at high seas, and then berthing the ship in Somalia where the crew would be kept captive for a long time, at times extending for years.

However, in the case of piracy in the Gulf of Guinea, the crew is kidnapped for ransom and then taken to land. They are frequently shifted from one place to another until the ransom demands are met. This may take time from one week to three months (Osinowo, 2015). Interviews of pirate gangs by Prof Bertrand Monnet in the Niger Delta reveal that there are about 10 pirate groups that are operating in Nigeria, making it a global hotspot for the kidnapping of the crew (The Maritime Executive, 2019). The attackers kidnap the Master and Chief Engineers as it is easy for them to bargain for a good amount for their release (ICS, 2018). The kidnapers kidnap seafarers of foreign nationalities so they can get a higher amount of ransom. They avoid kidnapping local crew. The focus is on a high-value transaction for the ransom payment. The Niger Delta is most vulnerable to incidents of 'kidnapping for ransom' attacks. It targets vessels with expatriate crew because of their potentially high ransom value. Often, they use mother ships to support small boats for carrying out fast and furious attacks on a vessel. With the help of mother ships, the small boats can operate up to 150 nautical miles from shore. They fire on a vessel before boarding it to create an atmosphere of fear and make it easy for them to board.

The attackers usually kidnap two to eight crew members. Senior officers onboard like Master and Chief engineers are the first choice of the kidnapers. The kidnap victims are taken to shore in the Niger Delta. As kidnapping is motivated by ransom, the demand is for ransom payment in exchange of seafarers (MARAD US, 2019)

2.1.3 Petty theft and robbery

An attack is termed as a robbery or petty theft when an armed attack takes place onboard a vessel with intent to steal stores or the belongings of the crew. Such attempts are petty thefts, usually for low-value items and in most cases; they go unreported by the ship and shipping companies. It can happen while the

vessel is underway or at an anchorage. In the Gulf of Guinea, failed attempts of hijacking or kidnapping may lead to a situation of armed robbery. Ships, when at anchor or steaming at slow speed while operating close to harbor area, are more prone to such attacks. The risk to the life of crew is less but mistakes by crew members may lead to harmful situations as the attackers are generally armed with firearms and have hostile intentions in the Gulf of Guinea³ (Ghosh, 2013; Hasan & Hassan, 2016).

2.1.4 Failed attacks

Attacks by pirates or armed robbers are not always successful. Attacks can be defended by proactive and trained responses by the crew, naval intervention or by the security measures like embarkation of armed guards (Osinowo, 2015).

2.1.5 Suspicious approaches

Suspicious approaches include close-quarter situations wherein it is believed by the crew that there was a possibility of attack. They may say this on the basis of previous knowledge or the gestures of the approaching vessels, display of arms or equipment like ladders which can be used for attacking and boarding a vessel (Oyewole, 2016).

Such a situation does not affect the safety of the vessel but can impact the morale of the crew.

3. Four regions of piracy

Piracy is prevalent mainly in four geographical regions (Gaibulloev & Sandler, 2016):

- (i) South Asia
- (ii) America Atlantic and the Caribbean
- (iii) Horn of Africa, Somalia
- (iv) Gulf of Guinea

Since 2010, there have been 3,891 incidents of piracy and armed robbery at sea. Fifteen percent of piracy attacks have led to hijacking or kidnapping (ONI Piracy and Maritime Crime, 2019). In 2018, the number of such attacks went up to 210 as compared to 180 attacks in the previous year. 141 crew members were held hostage and 83 were kidnapped for ransom (James Gosling, 2019).

Attacks on ships are classified into four broad categories by the International Chamber of Shipping (ICS), London. Hijacking represents the situation wherein the perpetrators take over control of the ship. If

attackers can access the ship, it is termed as boarding. The use of firearms falls in the category of fired-upon. Unsuccessful attempts at boarding are termed as attempted boarding or suspicious approach. The figure below areas susceptible to piracy and the attacks on shipping in the year 2019 (ICC-CCS, 2019).

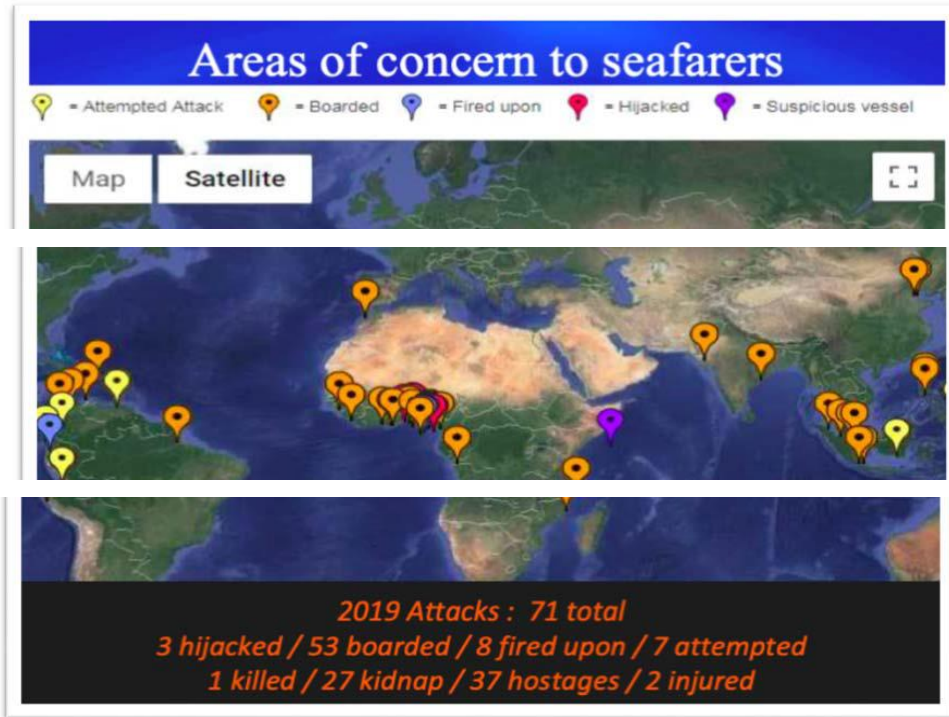


Figure 1: Piracy Map of the world 03 Jun 2019 (ICC-CCS, 2019)

3.1 Action on Attack and/ or Boarding

3.1.2 Seafarer Preparation and training

Given the variety of types of attacks by pirates and armed robbers it is important to realize that the nature of an attack itself will have a significant impact on a seafarer. Each situation is unique to the individual involved and can be traumatic even if the attack was not successful.

Pre-incident preparation is paramount and so training should include psychological and physical aspects. When planning the training, the Company should take into account:

- An increase in the number of attacks has meant increased awareness of the risk of such incidents amongst seafarers.
- Seafarers sailing in piracy risk areas are apprehensive due to fear of what might happen.

- Seafarers have concerns for their families should anything happen.
- The increasing geographical size and scope of risk areas presents new challenges.
- Acute awareness of a possible danger makes the crew more vigilant but may also make them reluctant to sail in such waters.
- The fear of captivity, in terms of physical conditions and duration, may provoke anxiety from initial awareness of an impending attack.
- Theft of personal items is deeply resented by crew members. Such acts heighten personal vulnerability in the midst of larger organizational issues over which they have little control.
- Many seafarers consider they are ‘worthless’ as individuals and ‘pawns’ in the bigger ransom negotiations. Such thoughts provoke feelings of helplessness.

Some things that help reassure seafarers and could be included in the training are:

- Knowledge of the Company’s compliance with the latest version of the Best Management Practices.
- Knowledge of a pre-planned use of convoys with associated security resources and familiarity with the protective measures adopted by the ship, including muster points and “secure” areas such as a citadel, decreases the feeling of physical vulnerability and helplessness.
- Knowledge of pre-planned methods of communication with the Company or nearby security sources to indicate they are under attack is considered by seafarers to be of the utmost importance.
- Knowledge of a Company plan to communicate with and provide family support if required.
- Knowledge of the commitment from the Company that wages/remittances will continue to be paid in accordance with the seafarer’s contract.
- Knowledge of resistance measures such as spirituality, optimism, the ability to remain calm and emotional self-control may influence an outcome.
- Emphasis on enhanced leadership skills is important. It is important to maintain a hierarchy of command, with this hierarchy being made known to all crew members. If the appointed leader is injured or restrained from acting by the pirates then leadership skills are equally necessary for those who substitute for the leader. Leadership and team cohesiveness before and during an attack remain key during a hostage experience.

3.1.3 When under attack

Compliance with the pirates' demands when their natural instincts are to defend themselves may cause some seafarers psychological conflict. Previous experiences of some seafarers may influence the intensity of such reactions. The Company should emphasize that once the pirates are on board a vessel seafarers in general must comply with the pirates' instructions. The Company should also bear in mind:

“The need to survive” is the initial basic instinct alongside a readiness to fight for personal safety and freedom.

Seafarers may feel initial reactions including:

- Shock.
- Fear.
- Anger, focused initially towards the Pirates for attempting an attack, but then towards their employer if they feel they have not prepared them or their ship for the possibility of such an attack.
- Sense of unreality.
- Sense of immediate physical vulnerability.
- These are well recognized ‘normal’ reactions to such incidents.
- Seafarers may have a loss of trust in members of management on board and ashore.

3.1.4 When attack is not successful

Seafarers should not be prevented from having a conversation about their experiences after a successful defense of a ship. A review of what happened should be conducted by the Master. Consideration should be given to organizing an appropriate event or activity for the crew after it is outside the danger zone.

3.1.5 When captured and held hostage

Seafarers' hostage experiences have varied greatly and therefore not all situations can be addressed. In some instances pirates have stated that they were not there to harm or kill those captured but to gain a ransom from the companies or Governments. In isolated cases torture or punishment has been used. Pirate behavior varies but generally if seafarers comply with the pirates they tend to be treated better. All situations differ but there appear to be some common themes.

If attackers take control of the ship, violence or the threat of violence is often used to subdue the crew. The chance of injury or harm is reduced if the crew is compliant and cooperative and the following considered:

- ❖ **STOP ALL MOVEMENT WHEN THE ATTACKERS HAVE TAKEN CONTROL AND TRY TO REMAIN CALM.**
- ❖ Offer no resistance once the attackers reach the bridge and the crew has not moved to a citadel. The attackers will be aggressive, highly agitated and possibly under the influence of drugs or alcohol. When directed, all movement should be calm, slow, and very deliberate. Crew members should keep their hands visible at all times and comply fully. This will greatly reduce the risk of violence.
- ❖ Leave any CCTV or audio recording devices running.
- ❖ Do not take photographs.
- ❖ DO NOT attempt to confront the attackers.
- ❖ DO NOT make movements which could be interpreted as being aggressive.
- ❖ DO exactly what they ask and comply with their instruction

3.1.6 Pirates

Leadership patterns amongst pirates may affect the treatment seafarers receive. Tactics used include ‘Good Guy/Bad Guy’ pirate leader and changing guards regularly to prevent bonds with seafarers being formed.

The level to which basic needs are withheld or manipulated, to ensure seafarers’ compliance, dominates the early stages. This has a major impact on the seafarers’ ability to adjust and cope with early captivity. Seafarers may be led to believe that the company considers their survival or release as unimportant.

Pirates may demote a Master and elect another leader. This loss of control and security and crew manipulation by the pirates is to affect the hierarchy of command.

There may be mock executions or fabricated reports of the death of a leader or colleague to ensure seafarers’ compliance and the use of ransom negotiation tactics. This may add to distress.

Pirates may often manipulate or attempt to destroy peer support by dividing crew members and segregating actual or natural leaders. This will allow for manipulation of information especially associated with ransom negotiations.

Communication between hostages and family members may be used to manipulate a negotiation. Pirates may cut calls short or fire gun shots in the background causing obvious distress and concern for family members.

Pirates' behavior and attitudes towards their captives may fluctuate due to drugs and alcohol. This may contribute to the level of stress experienced by the seafarer. The pirates may also encourage seafarers to participate in using drugs.

Pirates use violence and may use sticks or gun butts.

In isolated cases physical punishment and torture have been used.

Pirates may use the negotiations to manipulate the psychological wellbeing of seafarers and make false reports of the negotiations' progress which may initially inspire hope only to be dashed and add to the feeling of despair.

3.1.7 Seafarers

In some instances seafarers may be allowed to move around the ship whilst held captive and permitted to fish for food to supplement their diet. However, they have to remain vigilant and aware that such privileges can disappear quickly if behavior is perceived to threaten the pirates' success.

Seafarers may be held hostage on their own vessels, other vessels previously captured by the pirates or, more recently, on some occasions, onshore. Captivity onshore may mean they are moved between locations to avoid detection by other gangs of pirates and/or to prevent escape or rescue.

Crews are sometimes kept together in small areas of a ship for long periods under constant armed guard. They may be kept together or physically separated to avoid communication and supportive bonding (which could result in a planned escape or group action against the pirates).

Seafarers will experience a general lack of usual hygiene practices if captivity is prolonged. For example soap, toothpaste and other toiletries may have either been stolen or run out and toilet and domestic water supply is likely to have been interrupted.

Seafarers may suffer illness due to a lack of, or deprivation of:

- Access to prescribed medication for established medical conditions.
- Immunization or prophylactic medication appropriate for protection against prevalent diseases in the geographical areas where held captive or where repatriation following release takes place.
- Seafarers may experience the fear or reality of:
 - Mental and physical torture.
 - Multiple forms of degrading treatment.
 - Food deprivation and dehydration.
- Seafarers' anxiety may be raised by fear of potential further attacks.

- Seafarers will be concerned about how their families are coping and will worry about the financial and other implications for them.
- If the Master or others in leadership roles are separated from the crew this can affect crew morale.
- The ship's hierarchy is sometimes rejected by some sections of a crew and can lead to uncoordinated actions and events which may compromise survival or rescue and weaken general morale.
- Seafarers may try to befriend the pirates to gain personal privileges.
- Seafarers should understand the importance of compliant behavior as a survival technique and support each other and be aware that when separated it is harder to maintain this.
- The crew should be constantly vigilant and on guard. This can be a source of stress for many hostages.
- Seafarers will share reactions at moments of elation on hopes of release, and collective despair when such hopes are dashed. This constitutes the 'ups and downs' of emotional survival, and can build a unique bonding process forming part of the recovery process on release.

3.1.8 Company

The Company should have an increased awareness:

- Of physical needs to be met if a ship is taken and held for a lengthy period. This requires careful management of stores including food and water.
- That delay in the negotiation proceedings can have a detrimental impact on captivity conditions.
- That they may need to provide prescribed medication for established medical conditions.
- That communications made with pirates may be overheard by the seafarers.

Peer support within a group of seafarers can be a key factor, exercised through a shared perspective and constant sensitivity to each other's individual current moods, cultures and beliefs.

3.1.9 When released

Many issues already mentioned above remain valid upon release. There should be a well pre-prepared plan of release.

The Company representatives ashore should be aware that:

- Seafarers may have to endure increased risks when a ransom is delivered.
- They need to advise seafarers through the pirates and negotiators how the payment will be made e.g. by a drop of money from a light aircraft onto or near to the captive vessel.

- The pirates may disagree amongst themselves about the division of the ransom. Fights can occur and guns may be used which may result in an even more dangerous situation.

There are a variety of circumstances to be considered once the vessel and seafarers are released. Such factors include:

- vessel/ seafarer location.
- relocation of the vessel.
- personal and organizational preparedness.
- length of captivity.
- nature and severity of physical and psychological treatment.
- intensity of maltreatment.
- level of isolation/ bonding/ divisions within the crew.
- availability of family communications.
- level and style of leadership exercised.

Special attention should be given to the effect on seafarers if colleagues have been killed or are missing.

The full psychological impact of such actions may only be fully realized after a seafarer has reached home or through the passage of time.

Several released seafarers have reported loss of self-esteem; self-worth and an inability to discuss incidents with anyone other than their fellow hostages with shared experience of the circumstances⁴

3.1.10 Practical needs of a seafarer upon release

Below are some practical actions that should be taken once seafarers are released:

- The Master/replacement should take command of the vessel.
- The seafarers need to resume their normal onboard routines and duties.
- Seafarers should have direct communication with family members as soon as possible. Recognizing that all crew members will wish to make early contact, the initial calls may, of necessity, be restricted to a short duration of approximately 3 minutes. Seafarers should be encouraged not to talk about the piracy incident but about themselves and their families.

The Company should consider:

⁴ see Survivor Syndrome in Appendix D.

- Sending a message to all seafarers acknowledging the ordeals that they have experienced and confirming the Company's continuing support.
- Providing fresh drinking water.
- Providing food supplies, recognizing that the seafarers may have lived on simple foods and a quick switch to rich foods may cause illness.
- Providing the ship with disinfectants, cleaning materials and toiletries as soon as possible after the release.
- Sending appropriate medication and supplies to replenish the ship's medical chest whilst also recognizing the needs of individuals and the location of the incident.
- Providing clothing especially footwear (including safety shoes), socks, underwear, boiler suits, and casual clothes for the seafarers.

As soon as possible a General Practitioner/Doctor should examine crew members and where appropriate prescribe immediate medication and vitamins. Psychological first aid techniques from suitably trained responders may be beneficial but counseling or other forms of psychological intervention techniques are not considered appropriate at this time. Listening and observation skills are more appropriate, with the ability to provide basic humanitarian support as appropriate ⁵

Medics sent on board should preferably communicate in the appropriate mother tongue of the affected seafarers.

3.1.11 Practical needs of seafarers upon arrival at a safe port

Practical actions suggested once seafarers arrive at a safe port:

- Where a Company has personnel trained to provide practical and emotional support to released hostages it should be made available. Some hostages will want to discuss their experiences while others will prefer not to. Both reactions are normal and should be respected.
- Hospital, medical and dental treatment should be available as appropriate. In the unfortunate circumstance of a death mortuary staff should also be sent.
- Seafarers should be advised that operational debriefs of a forensic nature for criminal investigations may be required and made aware that such procedures may reawaken bad memories.

⁵ see Appendix F

- The Company should explain repatriation and payment arrangements. Seafarers may have been deprived of control over their own destiny and lack trust in anyone. The ability to make appropriate choices can be impaired. Take time to fully explain the reason for actions required.
- A hairdresser and/or barber, or (strong) safety razors should be sent to the ship.
- Hotel accommodation off the ship should be utilized as soon as possible.
- Further communication with families should be made available.
- Clothing for travelling home should be provided, taking into account the weather upon arrival in the home countries.
- Briefing on Company actions and support provided pre- and post-release.
- Update on world events and news during captivity.

3.1.12 Practical needs of seafarers arriving in their own country

Where there are a group of hostages, they should stay together as much as possible in the initial post release days. Peer support which may have been of paramount importance during captivity will still be required to cope with changes faced in their newly acquired freedom.

Maintaining the group for two to three days allows initial medical checks to be conducted. Use of recognized early interventions such as psychological first aid, psychological debriefing/defusing techniques may be indicated, but not always in the early post release days⁶

A safe and secure initial post-release environment should be provided. Some companies fly key family members to the site of repatriation (usually in their home country) and allow time for them to be together before the journey home.

In considering relevant actions in each situation there are several practical actions suggested once the seafarers arrive back in their own country:

- Assistance given to arrive freely through immigration and customs with ease and without delay.
- Full medical examination.
- Introduction to support personnel.
- Company update on payments.
- Dignified and private re-union with family members.

Where possible seafarers should be given an opportunity to talk freely or use available support resources, such as Welfare Workers, representatives of faith-based organizations or Union representatives, who can

⁶ see ‘Use of Crisis Intervention Techniques’ – Appendix F

assist in completing important legal papers related to compensation, and other benefits. Independent advice can be helpful.

For multinational crews, returning home to different countries, thought should be given as to how best to maintain the peer support network. There should be parity of on-going practical and psychological support of a consistent quality irrespective of seafarer nationality. Where possible facilitation of a virtual network is encouraged.

3.1.13 On-going care of seafarers after release

Psychological reactions to traumatic experiences can occur within days, weeks or months of an incident. The probability exists for re-stimulation of reactions when sensory reminders such as similar smells and sounds occur. Some psychological reaction is normal. Problems during recovery will resolve over time given appropriate support from family, colleagues, the Company and other support organizations. Access to additional competent support may be necessary.

A small minority may develop post-traumatic psychological reactions requiring treatment including Post Traumatic Stress Disorder, depression, anxiety disorders or substance misuse problems requiring professional assessment and treatment from a Psychologist, Psychiatrist or other mental health professional.⁷

Increased stress for released hostages and family members may be reported when seafarers return to work and when travelling into pirate risk areas. Seafarers may avoid seeking help for fear of their future employment.

4. The Humanitarian Support of Seafarers' Families

In responding to the threat of piracy, or a seafarer becoming a victim of piracy and armed robbery, it is clear that the seafarers' families play an important role. Analysis below provides guidance on ways that family members could be supported.

The guide may be more applicable to the needs of some companies than others and we are aware that many companies already have such plans in place and therefore may choose to use this analysis as a checklist for current practice.

⁷ see Appendix F.

4.1 Good Practice During the Pre-Crisis Period (i.e. preparation before an incident occurs)

It cannot be emphasized enough how good preparation will help a Company, and ultimately seafarers and their families, in situations of piracy attack. Below analysis suggests practices and procedures which may assist companies in handling the situation, including for example a large amount of calls from various family members, and other ways in which families can be supported.

4.2 Appointment of a Family Liaison Representative(s)

Companies are encouraged to establish a Family Liaison Team with, ideally, at least two Family Liaison Representatives. These can either be existing staff within the Company who have contact with seafarers' families or outside consultants brought in once an event occurs. Companies may also choose to have teams appropriate to the nationalities of crews. Companies should be aware that staff carrying out this role may benefit from professional support and training.

4.3 Choice of the Family Liaison Representative

Suggested essential criteria for the appointed Family Liaison Representative:

- Based at Company offices or elsewhere with good access to a variety of communications tools with 24-hour accessibility.
- Well established within the Company system and respected for their integrity in their dealings with all parties including seafarers.
- Appreciates the sensitivity required to deal with the issues involved.
- Sensitive to, and has an understanding of, the local culture and language of the families involved.
- Being accessible 24 hours a day, 7 days a week to family members during the period of identified need which may need to be sustained for many months.
- Able to access legal advice and discuss this on behalf of the Company.
- Appreciates the need for confidentiality whilst respecting the legal, financial and ethical boundaries which must be maintained between the Company and family members if trust is to be developed and unrealistic expectations are to be minimized.

Suggested desirable criteria for the appointed Family Liaison Representative:

- Willingness to enhance their existing skills and seek further training associated with their tasks as a Family Liaison Representative. The training should include understanding normal reactions to crisis situations, being able to communicate with those who are traumatized and dealing with situations when giving bad news.
- Willingness to assist the family in dealing with the media.
- Recognizes the importance of seeking out and maintaining links with other local, regional, and international resources including professional support.

4.4 Developing an Action Plan for the Pre-Deployment Stage

Communicate that a plan exists for family support to seafarers and family members at the time of a piracy attack. This can be at the pre-deployment briefing or by issuing information to anybody potentially affected by way of an appropriate leaflet⁸

- Dependent on whether legislation of the Flag State and Country of Nationality of the seafarer allows it, ask each seafarer to identify a person they wish the Company to contact in such circumstances who will be the family contact. The seafarer may choose not to use their legal Next of Kin (NoK) and if flag state / country of nationality laws allow should be afforded the opportunity to have their preferred point of contact recorded separately because of any unique family circumstances e.g. family illness or perceived emotional impact on the NoK. In these circumstances it may be appropriate to vary from the usual legal requirement to deal with the NoK if the seafarer has formally agreed to this. A form for the seafarer to complete prior to departure is provided⁹ Seafarers could also be advised at the initial briefing that they can amend this form and provide a new one to the Family Liaison Representative at a later date should their circumstances change. The Company should be aware that in exceptional circumstances the seafarer may not wish any family member to be notified.
- Communicate the Family Liaison Team plans within the Company.
- Establish a protocol for notifying the Family Liaison Team to develop links with the family when an incident arises.
- Notify the Family Liaison Representative of the management personnel and structures involved in response to such an incident and ensure that a regularly updated contact list is readily accessible.

⁸ see Appendix G

⁹ see Appendix I

- Establish links with local sources of support identifying the Family Liaison Representative and available contact points. Ask these sources to complete a form to be held by the Company for future use
- Check the contact lists regularly (typically every six months) to ensure that the information is still correct.
- Prepare the protocol for how to handle the situation in the first instance and an outline script for the first and subsequent phone calls and/or visits to the Family Contact. This should outline:
 - How to determine the most appropriate means to inform the Family Contact quickly recognizing the need to be understood, given language considerations.
 - The resources available locally to help communicate the message and for ongoing support.
 - The available and verified information.
 - The activities started between the Company and relevant authorities.
 - The role of the Family Liaison Representative and contact information.
 - The follow-up calls.
 - How to deal with any media interest.
 - The boundaries of confidentiality.
 - How to handle calls from pirates (See Appendix 6)
 - Encourage the Family Contact to get in touch with the Family Liaison Representative for information if they hear rumors or are contacted by the media.
 - Raise awareness amongst families of online stories and videos which may be designed to increase concern.

Prepare a complete file of all the above data either in hardcopy or stored electronically to be easily accessed at a time of crisis. This should contain copies of any agreed protocols and a simple record sheet for contacts and phone calls made by the Family Liaison Representative.

4.5 Development of an Action Plan in the Event of an Attack

In the event of an attack the above preparations should make the next steps easier.

- Activate the Family Liaison Representative Service to the family as soon as possible.
- Make every effort to be the first to inform the family of the attack before they hear from another source.
- Make contact by telephone and/or in person where appropriate. Where the family does not have access to a telephone, contact should be made with a local support agency, such as an appropriately trained representative of a welfare association, a faith-based organization or union official, who may transport the

Family Contact to a telephone or carry an initial message to the family until the Company can make contact.

- Be clear about what the Family Liaison Representative or delegated representative can or cannot say – use the prepared script for initial contact to ensure essential facts are given as appropriate.
- Ensure that the Family Liaison Representative clearly identifies him/ herself.
- Establish that the right person is being spoken to by asking a few questions. This is particularly necessary in cultures where first names are often passed down through different generations of a family. Some questions to ask may be; Can you please advise me how you know (x)?, Is there anybody else in your family who has the same name as you such as your father or grandfather etc....?
- If the nominated Family Contact is not available ask when/where they can be contacted. Only leave a message that you are trying to contact them, do not disclose the reason for the call and/or visit. Make further contact at the time suggested.
- Keep the first contact very factual and concise. Promise to speak to the Family Contact again within a short period (typically an hour) to allow them to absorb the news and support them in their initial reaction.
- Recognize that they may be shocked and unable to absorb the news. Suggest that they might like to write down questions to prepare for your next contact.
- The Family Liaison Representative should:
 - Make the promised phone call at the time agreed. This is important to demonstrate promises will be honored and to establish trust.
 - Allow the Family Contact time for preparation of questions.
 - Encourage questions and try to answer these as openly and honestly as the incident permits. Any questions that are impossible to answer should be identified as such and an appropriate response given.
- Write down any queries or anxieties expressed by the Family Contact.
- Listen with empathy.
- Thoroughly note what was discussed during the call/visit
- It is advisable to have more than one designated Family Liaison Representative involved with each case. This means that if one Representative is unavailable when the Family Contact calls, the second Representative can take the call, advise the family and deal with any problems. The second Family Liaison Representative should be identified to the Family Contact from the start and be kept fully apprised of the

case. This will promote continuity of care and contribute to the family feeling that they are respected at a time of great anxiety, thereby helping them to cope. A Family Contact may get very angry if they speak with a different person every time they contact the Company so it is important to ensure continuity of appointed contacts. Both Family Liaison Representatives should keep accurate records of all calls and update each other to ensure that both are fully aware of the latest discussions with the family.

- Recognize that affected families may well be communicating with each other and consider the value of facilitating such communications.
- Affected families have reported that they have found it important to meet with senior Company representatives.

This can also be beneficial to the Company by helping to establish trust between the parties involved.

- Regular contact with the Family Contact should be established and maintained throughout. At the beginning of the incident daily contact may be essential. If there is a prolonged period of captivity then appropriately agreed and timed contact periods should be established. Research suggests continuity of contact is the best way to control rumor and relieve additional stress. Family members involved in past incidents have advised that notification of no progress is easier to accept when explanations are given.
- Regular contact is valued even if a message is not positive. Many companies fail to contact family members because they feel a sense of failure if they have no good news to report. However, families state that lack of contact produces a fear that needs have been forgotten and an increased perception of isolation can increase family stress which regular contact can reduce.
- The Company may become the focus of increased anger from both the family and the seafarer, if the seafarer is unable to make contact with home. The pirates may be giving the seafarers, and possibly their families, the impression that the Company does not care about them and anger initially directed towards the pirates can easily be transferred to the Company or their Representative. The Family Liaison Representative needs to be made aware of this and realize that any anger expressed may not be personal. Absorbing the anger, whilst maintaining the planned link and protocol of contacts, can help address this. Both the Company and the family should report positive progress as soon as possible.
- The Family Liaison Representative may be able to support the family with anxieties at home over illness or when other distressing incidents occur.

- Family members should be reminded to include children, if age appropriate, in information given about the situation that is occurring.
- If contact is made directly with the seafarer during captivity, the Family Liaison Representative may be able to advise the family about whether or not to inform the seafarer of any problems, bearing in mind this will add to the seafarers' anxiety at a time when they can do little to change events or provide support.
- Behavioral problems with children could be discussed with the Family Liaison Representative. Often a sympathetic ear can help as can access specialist help for the family if appropriate.
- The Family Liaison Representative may be aware of progress in negotiations but unable to inform the family. Building up hope, which may be dashed if negotiations break down, can destroy any trust developed. The family needs reassurance that negotiations are continuing but great care should be taken to only give information verified by the Company.
- The family may hear rumors about the incident and ask the Family Liaison Representative for verification of their authenticity. The Company must be made aware of such rumors. Consistent information should be given by the Company and Family Liaison Representative at all times.
- The media may try to use the family to test out any rumors that are circulating. This could negatively affect the negotiation process if mixed messages come from the Company and family in the press.

4.6 Role of the Family Liaison Representative at the Time of Release

- When an incident is resolved, the Family Liaison Representative should ensure that the family contact is notified before the media. Even if news is limited it should be given with the promise that further contact will be made when more is known about release and repatriation.
- Every effort should be made to allow a released seafarer to phone their family as soon as possible. Families should be advised that further contact will be made by them, or the Company, when more arrangements are established as to where, when and how repatriation will take place.
- The Family Liaison Representative should be fully involved as the link with the family throughout this period. Trust gained in the 'difficult times' will be important when the release takes place.
- The Family Liaison Representative should endeavor to discuss with the Family Contact how to handle the actual homecoming and the possible psychological reactions of the released seafarer.
- Family members should be reminded to include children, if age appropriate, in preparations for the homecoming and at the actual time of reunion.

- The Family Liaison Representative should be available for continued contact but respect the family's need for space to reconnect with each other.
- The Family Liaison Representative should discuss with Company senior management any potential on-going support in the way of financial, medical, and legal advice. They should also discuss if their role as Family Liaison Representative will be continued and if so for how long.
- The Family Liaison Representative can provide a valuable link to the family with the arrangements for a medical examination and other support.
- If agreed with Company senior management, it would be good practice for the Family Liaison Representative to contact the family shortly after the seafarer returns home. They should offer to meet with those involved to assess current and anticipated future needs.

5 Evolution of Seafarers' Rights

Shipboard conditions for seafarers were harsh in ancient times. There was no legal protection for seafarers through State intervention up until 19th century. Ancient maritime codes were mainly dealing with the commercial side of the maritime industry, such as the rights and obligations of cargo owners and carriers. The main shipboard customs and regulations related to seafarers were consisted of traditional unwritten customs, which deemed applicable on board a ship on the high seas. These customs would become part of the customary law in cases where one brings another to Court based on a particular custom.

Apart from customs, seafarers had a common crew culture through which collaboration existed, for instance, when dealing with hazards at sea such as early piracy. While the powers of the Master were relatively wider in terms of good order on board a ship, particularly within 18th and 19th centuries, seafarers used to have informal networks to differ 'good and bad' ships prior to their employment at sea.

Furthermore, seafarers could mutiny as a weapon against unjust conditions of shipboard and employment, which is similar to labour strikes of today.

In the 19th century, States began to show a relatively larger interest in international maritime trade in order to improve their economies. Great Britain, for instance, used to carry half of the world trade back in that century. Thus, the British Parliament enacted the British Merchant Shipping Act in 1850, with the aim of improving shipboard standards for masters and seafarers. Attempts towards protection of

seafarers at the national level continued with the establishment of the Mission to Seamen in 1856 and many other initiatives.

Meanwhile at the international level, labour rights in general gained recognition through the inception of ILO in 1919. As of today, ILO still holds the major significance with its scope of universally regulating the working and employment conditions of seafarers. Starting from 1920, ILO has been promoting seafarer rights by adopting Conventions and Recommendations specifically related to maritime labour. Although its overall efficiency is questionable, it appears that ILO's inception commenced a new era for the protection of seafarers' rights in the global context.

On the other hand, fundamental rights of humans began to develop as early as in 13th century, with the earliest exemplary instrument, known as the Magna Carta. Other examples of early human rights instruments include the English Bill of Rights, 1689, the Declaration of the Rights of Man and of the Citizen, 1789, followed by the French Revolution, the American Declaration of Independence, 1776, and other national constitutions.¹⁰

Despite all the national efforts to promote fundamental human rights, these rights have arguably gained first international recognition in the 20th century. It is noteworthy that, allegedly, the labour rights gained international recognition before the fundamental human rights.

Following the end of World War II, in 1945, the United Nations was established by the signing of the UN Charter on 26th June, which finally brought fundamental human rights into the picture at an international level. The Charter has provisions specifically related to the protection of human rights, and all members of the UN agreed upon taking necessary measures for the State protection. In 1946, the UN Commission on Human Rights (UNCHR) was established. UNCHR was replaced by the United Nations Human Rights Council (UNHRC) in 2006. The Universal Declaration of Human Rights (UDHR) was initially prepared by the UNCHR before adopted by the UN General Assembly in 1948.⁵⁷ In the same year, IMO was established to deal with the maritime industry at an international level.

However, IMO does not "create" rights; it mainly governs the international maritime field through regulatory laws. IMO Conventions impose obligations on States and other relevant actors of the field, and through this approach, they create certain benefits for seafarers. In other words, IMO promotes for

¹⁰ For instance, the Mexican Constitution of 1917, the Constitution of the Soviet Union of 1918, and the German Constitution of 1919.

the protection of seafarers rights incidental to their main aim, which are promoting safety and security in shipping and preserving the marine environment.

Since 1950s, regional recognition of human rights has gained significant attention around the same decade, while UN has adopted a number of human rights conventions at the international level. Today there are three main regional human rights conventions applicable within three continents. The European Convention on Human Rights (ECHR) is adopted in 1950. In Europe, there is also another instrument named the European Social Charter (ESC), which is adopted in 1961. The inter-American human rights system is governed by the American Convention on Human Rights (ACHR), adopted in 1969. The African Charter on Human and Peoples' Rights (AC) is adopted in 1981, in order to promote the protection of human rights in Africa.

5.1 Piracy and Armed Robbery against Ships- International Legal Framework

Criminalization of the piratical acts has brought the necessity of defining piracy in proper terms in order to determine and clarify the scope of this *sui generis* criminal offence. Since its scope may affect a seafarer's possibility of obtaining redress after a piratical act, drawing the borderlines of this offence is significant for the purposes of this study. It is evident from history that numerous groups have defined piracy in a distinct manner, often contradicting with each other, and this diversity added another difficulty towards its application and enforcement.

Hence, this part initially focuses on the definitional dilemma of the offence of piracy at an international level, and then briefly attempts to shed some light over the legal basis behind the current counter-piracy activities today. UNCLOS provides us with the starting point since the generally accepted definition and scope of 'piracy' is developed through the UNCLOS regime today. Article 101 reads as follows:

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Thus, the main elements of the UNCLOS definition consists of an illegal act of violence motivated by private gain, to be directed against another vessel or the persons and property on board, and to be committed by persons on board a private ship on the high seas or outside the jurisdiction of any State. Due to its limited scope of jurisdiction, this definition has been subject to harsh criticisms particularly after the infamous *Achille Lauro* incident. It was considered a “highly restrictive and narrow formula,” due to three main reasons:

1. Article 101 only applied to offences committed on the high seas or in *terra nullius*.

Offences committed inside the jurisdiction of any State are excluded from the scope of this provision

2. The intention is required to be for private ends, meaning that it will not be applicable for piratical acts unless it is a mere extortion. In other words, UNCLOS definition excludes acts of war or terrorism, where the motive is political.

3. Article 101 requires two ships to be involved in the incident. Therefore, illegal acts of violence committed by passengers or crew on board are not described as piracy under UNCLOS.

The *Achille Lauro* incident in 1985 undoubtedly was a wake-up call for the international community.

Consequently, IMO¹¹ first adopted a resolution recommending States to implement measures ‘to prevent unlawful acts against passengers and crews on board ships.’

Similar instruments in the aviation industry existed years before this incident, but there was no convention relating to maritime terrorism.

Later, the SUA Convention was adopted in 1988, aiming to ensure that States take appropriate action against persons committing similar offences on board ships. The focus of this convention was to provide an international legal framework for terrorism; however, it can also be applied to incidents involving piracy and armed robbery against ships.⁸⁰ It is also noteworthy that IMO has not used the word ‘security’ in this Convention, but it can be regarded as a principal instrument of ‘maritime security’. Furthermore, the word

¹¹ IMO is a specialized agency of the UN, which was established in 1948. IMO mainly deals with safety and security of international shipping among other things. In this regard, IMO generates international treaty instruments in order to set standards in the shipping industry. However, IMO resolutions are soft-law instrument.

‘piracy’ does not exist in the SUA Convention, but it includes a number of offences that are sufficient to be considered as piracy, being part of ‘maritime violence’. According to the SUA Convention, the motive and venue of the offence are irrelevant. Moreover, unlike the UNCLOS definition, Article 3 of the SUA Convention covers attempted offences. Thus, SUA offences have a wider scope than the UNCLOS regime. IMO further developed another term, ‘armed robbery against ships’, for piratical offences other than those defined under UNCLOS. IMO has initially described this term in its draft code of practice for the investigation of crimes of piracy and armed robbery against ships introduced in the beginning of 2000s.¹² The latest IMO definition of ‘armed robbery’ is provided under its Resolution A.1025(26):

2.2. “Armed robbery against ships” means any of the following acts:

- .1 any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea;
- .2 any act of inciting or of intentionally facilitating an act described above.

The commission of this act requires the motive of private gain under the IMO’s definition. However, SUA Convention seems to have filled the loophole in this regard. It is evident from the wording that IMO’s definition aims to compensate for the exclusive character of the UNCLOS regime related to jurisdiction. However, the scope of ‘armed robbery’ still does not cover acts that take place within a State’s contiguous zone and exclusive economic zone, which needs further clarification.

IMB, on the other hand, defined piracy as “an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act.” While this definition does not include the requirement of the motivation of private ends, it does not remove the obstacle of two ships requirement.

Nevertheless, IMB has abandoned its definition in favor of the UNCLOS and IMO definitions, which was just as well since the original IMB definition had no legal standing in international law.

In summary, two distinct international regimes, namely UNCLOS and SUA Convention, define and criminalize piratical acts.

¹² IMO, Resolution A.922 (22), ‘Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships’, 29 November 2001. The term first appeared in IMO, MSC/Circ.984, ‘Draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships’, 20 December 2000.

Each regime is applicable on different incidents depending on the motive and venue of the crime. Each State implements the relevant legal framework in a different way, which leads to more complexities. Moreover, various international organizations or institutions have adopted other terms and definitions in order to cover certain loopholes. These efforts remain as soft-law unless States implement such offences into their domestic criminal law system.

This patchwork quilt caused numerous difficulties in application and enforcement, leading to complex and inefficient mechanisms for crimes of piracy and armed robbery against ships.

Subsequently, in 2001, CMI adopted a Model National Law on Acts of Piracy or Maritime Violence, with the aim of reaching uniformity in municipal laws of States, which arguably settles the dilemma of two distinct terms. Its primary objective is 'to ensure that no act of piracy or maritime violence falls outside the jurisdiction of affected states to prosecute and punish these crimes or, alternatively, to extradite for prosecution in another state. The Model National Law deals with the offence of piracy and armed robbery together with offences described under the SUA Convention, among other things, and stands as a single document including all types of maritime violence. Introducing the offence of 'maritime violence' ceased the limited application of both UNCLOS and SUA Convention. However, the Model National Law does not seem to have gained widespread acceptance in terms of national implementation. Nevertheless, it is hoped that this instrument will be given effect through international law and municipal laws of States in order to reach uniformity in application.

5.2 Counter-Piracy Measures

In response to the Somali piracy, there are a number of security measures taken by the international community. Before illustrating these security measures, it is noteworthy to mention the possible implications of the current legal framework provided under international law. UNCLOS, for instance, imposes a number of responsibilities over States. Article 98(2) obliges flag States to ensure that its ships fulfill the international safety standards, whereas Article 100 obliges all States to co-operate fully for the suppression of piracy in the relevant areas of jurisdiction stipulated under Article 101. Along with debates related to international responsibility of States, jurisdictional issues and enforcement powers have been subjected to numerous legal discussions regarding the suppression of piracy. Nevertheless, in the light of these obligations, certain international enforcement powers are bestowed on States in order to suppress piracy by all possible means. For instance, Article 110(1) (a) of UNCLOS98 conveys the right of warships boarding on a foreign ship when they have reasonable grounds to suspect that the ship is engaged in piracy.

Most importantly, States are allowed to seize a pirate ship and arrest pirates under Article 105 of UNCLOS, which reads as follows:

“On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to ships, aircraft or property, subject to the rights of third parties acting in good faith.”

Bearing in mind the limited application of the UNCLOS regime, these enforcement powers are extended through two UN Security Council Resolutions that are adopted. Thus, States are allowed to enter into the Somali territory and actively take part in the suppression of piracy and armed robbery at sea off the coast of Somalia ‘by deploying naval vessels and military aircraft, and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy [...]’. Subsequent to a conference held in 2008, IMO has adopted a Code of Conduct relating to the suppression of piracy activities in the Western Indian Ocean and the Gulf of Aden. Accordingly, the participant States reached a consensus with regard to co-operation towards sharing and reporting of relevant information, interdiction of the suspicious vessels or aircrafts, and apprehension and prosecution pirates. In addition, the participant States agreed to co-operate towards ‘facilitating proper care, treatment and repatriation for seafarers, fishermen, other shipboard personnel and passengers subject to piracy or armed robbery against ships, particularly those who have been subjected to violence.’ However, the main deficiency of this instrument seems to be that it remains as soft law, thus, it is not a legally binding instrument.

Currently, there are three main multinational task forces operating for the suppression of piracy:

1. United States- coordinated Combined Task Force 151 (CTF-151)
2. NATO’s ‘Operation Ocean Shield’, and
3. The European Union Naval Force (EU NAVFOR ‘Operation Atalanta’).

Furthermore, many States contribute to the suppression activities either under the umbrella of the UN or through independent naval deployments. Parallel to the recent co-operation of States, pinpointed above, MSCHOA has introduced the Internationally Recommended Transit Corridor (IRTC) in February 2009, for vessels transiting through the Gulf of Aden. These activities are, *ab initio*, in conformity with the international enforcement powers of States.

The latest version of Best Management Practices (BMP) represents another exemplary effort of the international community.¹³

BMP4 provides suggestions for ship operators and masters of ships transiting through the ‘high risk area’, which is encompassed under Section 2. *Inter alia*, Section 8 of BMP4 suggests a number of security measures including ‘armed private maritime security contractors.’ Parallel to this suggestion, known as ‘the use of privately contracted armed security personnel’ (PCASP), IMO has adopted four circulars, including recommendations for flag States, port and coastal States, ship owners, ship operators and shipmasters. Lately, combining the military support of States with usage of Privately Contracted Armed Security Personnel (PCASP) and efforts shown in line with the Best Management Practices (BMP) seems to have reduced the number of successful attacks. IMB, in its latest annual report, called for attention to the currently unregulated regime of PCASP and stated that this issue needs to be adequately addressed. While IMO has produced some guidelines related to PCASP, there are no international hard-law instruments regulating the usage of PCASP onboard ships.

5.3 Humanitarian Response to Piracy

There are a number of initiatives set up in response to piracy for practical purposes. Such initiatives include global trade and workers unions, such as ITF and ICS/ISF¹⁴ as well as specific humanitarian activities, such as SOS (Save Our Seafarers) and Maritime Piracy Campaign¹⁵ and activities undertaken by Seafarers’ Rights International and Seamen’s Church Institute.¹⁶

¹³ BMP4 denotes the fourth iteration of the BMP series. BMP4 was produced in August 2011, by a number of well-known actors of the shipping industry, such as INTERTANKO, ICS, ITF, IMB and BIMCO.

¹⁴ Official Website of ITF: www.itfglobal.org; and ICS/ISF: www.marisec.org

¹⁵ Official Website for the SOS Campaign: www.saveourseafarers.com, in which supporters may send out letters to their chosen Head of Government in order to present their concerns over the issue. More than 30,000 letters have been sent to the respected governments within a year.

¹⁶ Official Website of the Seafarers’ Rights International: www.seafarersrights.org;
Official Website of the Seamen’s Church Institute: <http://www.seamenschurch.org/>.

ITF is a lobbying organization, which represents over 4.5 million workers, including 600,000 seafarers of 155 countries, and has an official status in a number of organizations, such as IMO and ILO. Within its official status, ITF has the mandate to provide information and have an education department developing training instruments and guidelines for seafarers among other things. ISF is the international employers' organization, whereas ICS is the chamber of national ship owners' associations for the global shipping industry. Save Our Seafarers was initiated in March 2011 with the purpose of raising awareness related to the human and economic cost of piracy incidents. Thirty organizations and a number of States are in support of this campaign.¹⁷

The campaign invites governments to prioritize a number of key elements, which are:

1. Reducing the effectiveness of the easily-identifiable mother ships.
2. Authorizing naval forces to hold pirates and deliver them for prosecution and punishment.
3. Fully criminalizing all acts of piracy and intent to commit piracy under national laws, in accordance with their mandatory duty to cooperate to suppress piracy under international conventions.
4. Authorizing naval forces to take action against pirates and their equipment ashore.
5. Increasing naval assets available in this area.
6. Providing greater protection and support for seafarers.
7. Tracing and criminalizing the organizers and financiers behind the criminal networks.

Seafarers' Rights International is launched on the World Maritime Day,¹⁸ in the year 2010, which was also designated by IMO as 'the Year of the Seafarer.' SRI operates hand in hand with ITF, and currently works in areas of research, education and training of selected issues. Seamen's Church Institute, on the other hand, is a charity organization, initially founded as early as in 1834 in North America. Among other things, SCI provides educational and legal services for seafarers.

¹⁷ These organizations include shipping and ship owners' associations and federations, P&I Insurance clubs, IMB, ITF, and ICS/ISF, along with worldwide support from the Philippines, South Africa, the Netherlands, the UAE, and a number of European countries.

¹⁸ World Maritime Day is celebrated by IMO every year. Each government may set the precise date, but is generally celebrated during the last week of September. In 2010, World Maritime Day was celebrated by IMO on 23rd September 2010.

5.4 Seafarers' Human and Labour Rights

Prior to a comprehensive analysis of the relevant legal framework, it is essential to identify the potentially affected fundamental human rights and labour rights corresponding to the main aim and objectives of the present study. Different types of piratical attacks with distinct purposes occur at sea.

Some of these attacks may be considered as 'maritime muggings', where the attacks merely involve petty thefts or sophisticated attacks including the phantom vessel phenomenon. The latest trend of Somali piracy involves hijacking and theft of the vessel and its cargo as well as its crew. In most cases, Somali pirates kidnap seafarers and demand ransom payments. IMB's annual reports on piracy reveal a number of rights, which have been severely violated under captivity, such as the right to life, the freedom from torture, cruel, inhuman or degrading treatment, the right to a legal remedy and access to justice, and the right to health and medical care. However, these are not the only affected rights and certainly not exclusive to the nature of this study. For instance, when a seafarer is taken as a hostage, other issues may arise during captivity. Most of these issues concern with seafarers' labour rights, such as the right to safe and healthy working conditions, the right to fair wages, and the right to social security and welfare.

In addition, other fundamental rights may need consideration in due regard, though they are not being primarily or necessarily violated in this context, such as forced labour, and the freedom from discrimination.

Most of these rights are at risk of violation throughout the whole context; prior to their captivity, during an attempt to commit the piratical attack, when pirates succeed in boarding, and when the ship is hijacked. The threat continues when the crewmembers are taken as hostages or being kidnapped, and in cases of captivity, after the seafarer's release.

5.4.1 Fundamental Human Rights

The 2011 annual piracy report of IMB reveals that the loss of life is relatively rare considering the frequency of the attacks, since the main reason behind taking seafarers under captivity include demands for ransom. Between 2007 and 2011, 42 seafarers are killed as a consequence of pirate attacks, whereas 42 seafarers went missing. However, there still is a risk of the loss of life not only during the attack, but also whilst the seafarers are in captivity mainly because seafarers are subjected to brutal living conditions that severely endanger their life. Loss of life may occur even during a rescue mission.

According to the observations of SOS (Save Our Seafarers Campaign) main causes of the deaths include “deliberate murder by pirates, suicide during the period of captivity, death from malnutrition and disease, death by drowning, or heart failure just after the hijacking.” There are two incidents, which are alleged to be the first reported loss of life under captivity of Somali pirates. Reportedly, the 2011 hijacking of *SV Quest* led to death of four seafarers, whereas the attempted hijacking of *MV Belluga Nomination* the same year resulted in death of two seafarers. Undeniably, many seafarers are exposed to assault, threats, personal injury and other types of violent treatment as a result of a particular piracy incident. The degree of Somali pirate violence has gradually increased over the years. In 2011, Mukundan, the director of IMB, has affirmed that “Crewmen are being physically tortured during captivity.” Although it seems that the human cost of Somali piracy upon seafarers are underreported, underrated and misunderstood; Hurlburt, in her leading study on the Human Cost of Somali Piracy, revealed some peculiar facts and figures and drew the curtains behind which numerous severe physical and psychological abuse occurs every day under captivity. For instance, under captivity, many seafarers are tortured or physically abused by deprivation of proper food and water as well as lack of access to medical care, and consistent beatings. Moreover, ‘death threats and mock executions’ deeply affect seafarers’ psychological health while in captivity. Although it may not seem relevant at first instance, reports have shown that some seafarers were being forced to attack other vessels when their vessel is hijacked and is used as a ‘mother ship’ for further pirate attacks. According to Hurlburt’s reports, 516 seafarers were used as human shields or forced to collaborate in further pirate attacks in 2010.

Last but not least, a seafarer may be exposed to greater human rights violations under captivity based on his nationality or religion. For instance, Somali pirates may become more violent and cruel towards a seafarer once they learn that he is from a Christian-oriented society.

5.4.2 Labour Rights

Seafarers being exposed to the threat of piracy on a daily basis results in insecure working conditions. Pirates open fire with RPGs or machine guns when they attack vessels. Any accident or disease is more likely to occur under such circumstances. For instance, master of the captured vessel *MV Iceberg 1*, stated that

“Diseases have appeared among crew members, some have hemorrhoids, one has lost his eyesight and another has serious stomach problems... The water we have is unclean and we have only one meal day, boiled rice, that’s it. The crew is suffering physically and mentally.”

After their release, the traumatizing effects of captivity will most likely continue and it may be necessary to provide further psychiatric or psychological care for the long-term post-traumatic distress. Symptoms may occur long after the incident.

Nevertheless, seafarers must receive immediate health and medical care after their release. It must be kept in mind that not only seafarers suffer from distress, but their families are also affected in the long run. Impacts of captivity may have traumatized effects over families of seafarers as well, which may require further psychological care of professionals.

Piracy incidents may result in unreasonable salary deductions or even non-payment of wages. For instance, subsequent to the *Charelle*'s release after six months, a seafarer reported that they received wages for five months only.

Allegedly, *Faina*'s owners have deducted \$200 from a number of seafarers, who have called their families under captivity. Such deductions or non-payments lead to violations of seafarers' labour rights, if not a breach of their employment contract. For protection against unemployment, Bockmann pointed out the concern over 're-employability' in her news report due to concerns over ability to work at sea after possible post-traumatic distress. The impact of piracy upon seafarers after release can be detrimental. The seafarer may become unable to work for months, a period that needs to be covered with an allowance while a seafarer is unemployed.

5.5 Legal Framework of Relevant Seafarers' Rights

Before reviewing the relevant legal framework, it is significant to mention the general characteristics of human rights law due to the close linkage between seafarers' rights and human rights in general. The notion of human rights today has three core characteristics. First, human rights are inherent in every person, so that they cannot be granted or purchased. Second, human rights are inalienable, and third, they are equally applicable on every person. Moreover, the main duties are imposed on States, and not individuals. There are two distinct kinds of effects derived from human rights. The 'vertical effect', that implies the state-individual relations, whereas the 'horizontal effect' implies the state intervention on individual-individual relations. Thus, States have negative obligations derived from the vertical effect of human rights, whereas the horizontal effect imposes positive obligations on States to take a further step to protect human rights.

Similar to other areas of international law, human rights at an international level derive from four distinct sources of law. These are international conventions, customs, general principles and subsidiary means for the determination of rules of law, including judicial decisions and scholarly work.

These rights are classified in distinct manners; however, it is generally accepted that human rights are indivisible, meaning that ‘no right is more important than any other. Another dilemma of human rights law relates to its universal application. This debate mainly derives from the widespread recognition and global application of the main sources of human rights by a majority of States, which leads to the perception that certain rights are part of *jus cogens*, a peremptory norm. For instance, UDHR is considered to be of *jus cogens* character since it was agreed upon by most States from all regions without any objection.

Today, international human rights are largely applicable in most regions and States. Europe, Africa and America have their own regional human rights regimes, and many States have implemented the international human rights into their constitution or municipal laws.

In the context of seafarers’ fundamental human rights, main international and regional human rights treaties will be relied upon, such as UDHR (1948), CCPR (1966), CESC (1966), ESC (1961), ECHR (1950), ACHR (1969), and AC (1981). Conventions covering rights of the maritime labour are mainly adopted by ILO; since its inception in 1919, ILO has adopted around forty conventions and thirty recommendations specifically related to the protection of seafarers’ rights.¹⁹

In 2006, ILO has codified many of its instruments adopted within a period of eighty years, to produce a single and coherent instrument and update the existing rules and standards stipulated under a large array of ILO instruments. This latest work of ILO is known as the Maritime Labour Convention, opened for signature in 2006. Article 10 of MLC 2006 listed 37 ILO conventions that have been revised under the umbrella of this new regime. Although MLC 2006 is not in force yet, it is expected to enter into force in few years.

The legal instruments mentioned above, and more, will be examined in line with the identified seafarers’ rights. Vulnerability of seafarers, both as human beings and labour force, is a common perception derived from the fact that they are both migrant workers and are employed on board ships transiting through international waters. Thus, it is very significant to acknowledge the vulnerable nature of seafaring business as well as to address the issue of effective application of the relevant law.

¹⁹ Fitzpatrick and Anderson (n 50) 39.

It is assumed that States are obliged to protect inherent rights of seafarers, and to provide adequate safeguards to protect life on board vessels flying its flag. Such obligation derives from the territorial principle where the offence wholly or partially occurs within the territory of the flag State. The same principle extends to coastal and port States if the crime is committed either within the internal archipelagic or territorial waters of a coastal State, or within the port of a State.²⁰

5.5.1 Right to Life

The right to life is declared under Article 3 of the UDHR, which might be regarded as the foundation for all other international, regional and national legal instruments referring to its protection. Article 3 states that “Everyone has the right to life, liberty and security of person.” Article 6(1) of the CCPR takes this statement further:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

All other regional human rights instruments declare and regulate the right to life with similar wording. Many national jurisdictions include this fundamental human right as part of their constitution. It is noteworthy that the UN Human Rights Committee, as part of the obligation of States, points out the obligation ‘to protect the lives of workers and trades union officials from injury or death inflicted by any individual, whether acting in a public or private capacity.’

This statement stressed the horizontal effect of this right, which indicates the positive obligation of States. This is directly related to the present violations occurred as part of the Somali piracy. Moreover, this extension links the right to life with a seafarer’s right to have safe and healthy working conditions.

5.5.2 Freedom from Forced Labour

International law prohibits forced labour and slavery under Article 4 of UDHR and Article 8 of CCPR, which states that no one shall be held in slavery or servitude; slavery and the slave trade in all their forms shall be prohibited. In addition, Article 8(3) of CCPR prohibits forced or compulsory labour subject to certain exceptions. Similar prohibitions exist at a regional level.

These exceptions, nonetheless, are not applicable to the cases where Somali pirates force seafarers to conduct further piracy operations and use them as ‘human shields’. For further discussions, it is important

²⁰ Fitzpatrick and Anderson (n 50) 54.

to note that Article 4(2) of the CCPR emphasized on the non derogable nature of this right. There are a number of specific human rights instruments prohibiting slavery, such as the Slavery Convention of 1926, as amended in 1953, and the Supplementary Convention on the Abolition of Slavery of 1956. The generally accepted definition of slavery can be found in these conventions.

ILO, on the other hand, evoked the right of persons to be free from forced labour. The only internationally recognized definition of ‘forced labour’ is stipulated under ILO instruments. Hence, Article 2(2) of ILO C29 defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Signatories to C29, for instance, undertake to suppress forced labour in all its forms,²¹ and apply the Convention to the places under her jurisdiction.²²

ILO C105 is adopted in 1957, which has updated and modernized the provisions of C29. In C105, Article 1 includes a paragraph specifying the method of mobilizing and using labour with an aim of economic development being subjected to suppression by Signatories.

This particular provision articulates the dangers faced by seafarers under captivity today, where they are used as ‘human shields’ or forced to aid and abet in further attacks. Article III(b) of MLC 2006 also provides that signatory States shall have the law and regulations in respect of ‘the elimination of all forms of forced or compulsory labour.’

5.5.3 Right to Safe and Healthy Working Conditions

Primarily, the right to safe and healthy working conditions is guaranteed under ILO instruments since this right is peculiar to the labour force. Article 7 of CESCR and Article 3 of ESC also recognizes the right to just, favorable, safety and health conditions of work, related to the minimization of occupational hazards in particular. Moreover, IMO has also adopted a number of instruments regarding safety conditions on board ships.

A distinction needs to be drawn between ‘safety’ and ‘security’ in order to properly delimit the relevant protection schemes for seafarers. Maritime safety is described as ‘those measures employed by owners, operators, and administrators of vessels, port facilities, offshore installations, and other marine

²¹ Article 1 of ILO Convention C029: Forced Labour Convention (14th Conference Session Geneva 28 June 1930).

²² Article 26(1) of ILO Convention C029: Forced Labour Convention (14th Conference Session Geneva 28 June 1930).

organizations or establishments to prevent or minimize the occurrence of mishaps or incidents at sea that may be caused by substandard ships, unqualified crew, or operator error.’ However, maritime security provides measures to ‘protect against seizure, sabotage, piracy, pilferage, annoyance, or surprise.’ Thus, it is highly debatable whether the above-mentioned provisions are applicable on piracy activities since most of these instruments regulate the ‘safety dimension’ of labour force, and not security. Article IV (1) of MLC 2006, for instance, states that “Every seafarer has the right to a safe and secure workplace.” However, Regulation 4.3 on health and safety protection and accident prevention only deals with occupational safety and health. On the other hand, the word ‘secure’ appears regarding the threshold for manning standards, where States are obliged to ensure the safety and security of the ship and its personnel, under all operating conditions. Nevertheless, Article IV(1) seems to refer back to the ISM and ISPS Codes of SOLAS; the former dealing with safety, the latter dealing with security

5.5.4 Right to Health and Medical Care

The right to health and medical care is guaranteed under Article 25 of UDHR, Article 12 of CESCR, Article 24 of CRC, Article 11 of ESC, Article 12 of CEDAW, and Article 10 of the San Salvador Protocol to ACHR. Moreover, ILO has adopted more specific treaty instruments in this regard. It is worth mentioning that the right to health and medical care links to safe and healthy working conditions, health care freedom and access to a health care system.²³

Under ILO C55, the obligation to cover medical care and maintenance of a seafarer, inflicted during active service, vests in the ship owner. Moreover, Article IV(4) of MLC 2006 recognizes every seafarer’s right to health protection, medical care, welfare measures and other forms of social protection. This right is extended within the convention under Regulation 4, which is consisted of a comprehensive set of regulations and a protection scheme for these rights.

5.5.5 Right to Fair Remuneration

The right to fair remuneration is protected under Article 23 of UDHR, Article 7(a) of CESCR, and Article 4 of ESC, but the key instruments in this regard are adopted under the auspices of ILO. Regulation 2.2 of MLC, 2006, also regulates the standards of wages and provides further guidelines to

²³ Fitzpatrick and Anderson (n 50) 74

ensure that seafarers are remunerated for their services on board. Since non-payment of or deductions from wages under captivity often occurs in relation to the affected rights in cases of piracy, this issue will be examined in the light of current legal framework. *Inter alia*, C55 imposes an obligation on ship owners to pay full remuneration when a seafarer remains on board a vessel. Latest initiatives at the national level are moving forward towards a proper wages scheme for seafarers to receive extra remuneration during their captivity. Philippine Overseas Employment Administration have passed a resolution in 2008, declaring Gulf of Aden as the ‘high risk zone’, stated that seafarers shall receive double the amount of their basic wage, overtime pay and leave pay both while transiting through Gulf of Aden and under captivity. However, there seems to be no counterpart at the international level.

5.5.6 Right to Social Security and Welfare

The right to social security and welfare is guaranteed under both general human rights conventions and ILO conventions. Article 25(1) of UDHR declares the right to a standard of living adequate for the health and wellbeing of himself and of his family, including ‘necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’ Article 9 of CESCR affirms the right of persons to social security, including social insurance.

At the regional level, Article 12(1) puts an obligation on Member States to establish or maintain a system of social security.¹⁷⁹ Neither ECHR nor has the African Charter adopted a specific provision related to the right to social security and welfare.

ILO, on the other hand, has adopted a number of conventions and recommendations regarding this particular right.¹⁸⁰ ILO’s latest production, MLC 2006, also includes a number of regulations. Article IV on seafarers’ employment and social rights, to begin with, stated that “Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.” This right is extended within the convention under Regulation 4.5, aiming to ensure that ‘measures are taken with a view to providing seafarers with access to social security protection.’ The extent of this protection is emerged under Standard A4.5(1) as “medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors’ benefit, complementing the protection provided for under Regulations 4.1, on medical care, and 4.2, on ship owners’ liability, and under other titles of this Convention.”

The obligation to establish a comprehensive social security system is imposed on all Member States in favor of ‘all seafarers ordinarily resident in its territory.’²⁴

It is clear from the wording that this right mainly refers to a positive obligation to be fulfilled by the crew supplying countries. Hence, it is important for the major crew-supplying countries to ratify this Convention and implement its provisions in order to improve the minimum standards for seafarers.

5.5.7 Right to Repatriation

The right to repatriation of a seafarer is guaranteed under a number of ILO conventions. In this regard, the duty of repatriation vests initially on the ship owner.²⁵

If the ship owner cannot be reached, flag State has the responsibility to repatriate a seafarer. If these duties cannot be enforced, port State or the crew supplying country has concurrent liabilities for repatriation. MLC 2006, also regulates the minimum standards relating to the repatriation of seafarers. Regulation 2.5(1) states that “Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code. Such circumstances are prescribed in Standard A2.5, which provides for the similar rules stipulated under ILO C166. The only exception to the ‘no-cost borne by the seafarer’ is provided under Standard A2.5(3), which reads “[...] except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer’s employment obligations.” The wording of this provision necessitates for proper national implementation, since each municipal law may have different rules regarding the required burden of proof.

6 Repatriation - genesis and strengthening of labour laws

6.1 Evolution of the term repatriation for seafarers

“Repatriation refers to the act of a person returning to his or her country of origin or nationality, either voluntarily or through deportation by a government” (Gorman, 2019).

We find this definition of repatriation applied to asylum seekers. It can also be used in the context of repatriation of seafarers. Repatriation requires the seafarer to return to his/ her own country on

²⁴ Standard A4.5(3) of MLC 2006.

²⁵ ILO Convention C166: Repatriation of Seafarers Convention (Revised) (74th Conference Session Geneva 9 October 1987), Articles 4.4 and 4.5

completion of the contract. When the issue of repatriation is viewed as a labour right of the seafarers, we find that it is deeply rooted in various labour conventions, beginning with the Repatriation of the Seaman Convention (No.23), 1926 (ILO, 1926). Repatriation is an evolving issue. It was included in the MLC 2006 as Regulation 2.5. To strengthen the labour rights of seafarers in case of piracy and armed robbery, there is a need to strengthen the regulations.

6.2 Chronology of previous instruments

Whenever a seafarer leaves his or her home country on a voyage, the provision for his return is mentioned in the contract. The contract mentions the place of return of the seafarer, which can be his/her home country or an agreed-upon destination. This process is called repatriation (Lefkowitz, Slade, & Redlich, 2015). The provisions for repatriation have been evolving since 1926. Today, there are about 1.6 million seafarers in the shipping industry. Given these numbers, repatriation is a vital aspect of the seafarers' employment agreement. The rules for repatriation which can secure his safe return to his/her home country or the agreed place of return are essential for keeping up the morale of the seafarer (BIMCO, 2016). Various instruments of the International Labour Organization discussed in chronological order here.

6.2.1 Repatriation of Seamen Convention, 1926 (No. 23)

The 1926 convention was the first by the International Labour Organization (ILO) which regulated the right of seafarers to repatriation. It applies to seagoing vessels with the exception of warships, leisure yachts, fishing vessels, and vessels of Gross Registered Tonnage (GRT) below 100 tons (ILO, 1926). The convention also excluded training vessels. The convention affirmed that seamen must be repatriated to their own country during and on expiry of the terms of engagement. The cost of repatriation would be paid as per the National Legislation, but not from the account of a seafarer. The seafarer was exempted from paying if he has been left behind due to an injury which he has suffered as a service to the ship. In the situation of shipwreck and illness (except because of his willful act or the cause for which he cannot be made liable), the seaman is exempted from paying the cost of his repatriation. The convention made the flag state responsible for repatriation irrespective of the nationality of seafarers when conditions warrant advance payment of the expenses.

6.2.2 Repatriation (Ship Masters and Apprentices) Recommendation, 1926 (No. 27)

This convention provides the right of repatriation to the masters and Apprentices as per the terms of condition of repatriation of seaman convention, 1926 (ILO, 1926).

6.2.3 Repatriation of Seafarers Convention (Revised), 1987 (No. 166)

This convention resulted in improvements in the term repatriation of seafarers. The limitations of the type of vessels were tried to be overcome by making it applicable to all vessels engaged in commercial navigation. Fishing vessels were also included in the scope of repatriation. The convention widened the scope of the definition of seafarer as “*any person employed, in any capacity, onboard a seagoing vessel*”. It also clarified the circumstances in which seafarers can exercise their right to repatriation and the place of repatriation. With this convention, the ship-owners were made responsible for arranging the repatriation of the seafarer and prohibited seafarers from their repatriation in advance. But an exception was made in the case of ‘serious default by the seafarer (ILO, 1987).

6.2.4 Repatriation of Seafarers Recommendation, 1987 (No. 174)

The 1987 recommendation aimed at providing a solution to a situation where the ship-owner and flag states fail to fulfill their obligation of repatriating a seafarer. According to the Recommendation, the state from where the seafarer is required to be repatriated or the State of the nationality of a seafarer is responsible for arranging the repatriation of the seafarer. The cost can be later recovered from the flag State by the State which arranges the repatriation (Christodoulou-Varotsi & Pentsov, 2007).

6.3 Maritime Labour Convention, 2006 (MLC, 2006)

The Maritime Labour Convention, 2006, aims at providing decent working conditions and ensuring a fair framework for the ship-owners who are operating their ships under the flag states that have ratified MLC, 2006 (Adăscăliței, 2014). We have addressed the repatriation of seafarers through various instruments, as discussed in section 3.1.1. All the instruments discussed here could achieve the purpose of repatriation only to a limited extent. The ILO revised them in the form of the Maritime Labour Convention (MLC), 2006. The MLC (2006) is one of the key conventions in the maritime field that addresses the issues related to the human element (Wu & Jeng, 2012). Its adoption has proved

significant for improving the rights and welfare of seafarers in the maritime industry (Zhang & Zhao, 2015).

6.3.1 Ship-owners liability for repatriation under MLC, 2006

The ship-owner is liable for the safety of his/ her crew. Title 4 of the MLC,2006 deals with health protection, medical care, welfare, and social security protection. Regulation 4.2 under this title provides provisions for the ship-owners liability. This regulation is based on the revision of the Sickness Insurance (Sea) Convention, 1936 (No. 56).

The convention (No. 56) provides financial security in the form of independent and compulsory insurance or through an independent provider linked to the crew supplying state (Piñeiro, 2015). But compulsory insurance was undermined in the MLC (2006) because it was brought under the Guidelines which are non-compulsory in nature instead of making it as Standard in the convention.

Standard A4.2 (a) makes the ship-owner liable for the injury and sickness of seafarers from the date of commencement of duty until repatriation. Standard A4.2 (b) is mainly concerned with financial security. It provides assured compensation for occupational injury, illness or hazards which lead to death or long-term disability. These conditions are decided as per the SEA. Therefore, national laws and CBAs play an important role in ensuring financial security to the seafarer through the provisions of this convention.

7 Ship-owners Liability and Seafarers Rights

Pirate attacks pose a potent threat to ship-owners in fulfilling their liability as a duty of care for their employees. It is the ship-owner who is primarily responsible for the repatriation of the seafarer and thus, he plays a vital role in obtaining his/her release from the attackers and repatriate him/her safely to the home country. This chapter discusses the ship-owners ‘duty of care’ and the need for strengthening the rights of seafarers in case of hijacking and kidnapping by the attackers.

Seafarers have the right to a safe and secure working environment, decent living and working conditions, contractual fairness with the employer, medical care, financial and social security (ITF, 2011). It is the duty of shipping companies to provide safe and decent working conditions to the seafarers. The steps that must be taken before and after an incident are specified in the guidelines to ship-owners and normative framework laid down by IMO (Khanna, 2019). The present chapter mainly

discusses preventive measures as a duty of care and actions taken by the ship-owner to secure the release of the seafarer after the incident. It aims to strengthen the right of a seafarer and assist him in proceeding with contractual claims of occupational illness (physical or mental) resulting from piracy and armed robbery.

The Collective Bargaining Agreements (CBAs), Seafarers' Employment Agreements (SEAs) and private international law provide a basis for seeking a legal remedy for a seafarer (Moira L. McConnell, Dominick Devlin, & Cleopatra Doumbia-Henry, 2017). The analysis is based on labour laws, international laws for the safety of seafarers, best management practices and the various guidelines issued by IMO that deal with the duties of a ship-owner. It tries to establish a basis for seafarers to claim legal remedy in the event of kidnapping or hijacking if the ship-owner fails to fulfill his duty of care obligations by neglecting preventive measures. The various options available are discussed in the sections that follow.

7.1 Surfacing legal Issues due to pirate attack

As described in the Introduction chapter, pirate attacks invariably results in mistreatment and torture of seafarers. Besides injuries, the victims also suffer from mental stress, Post-Traumatic Stress Disorder (PTSD) and sometimes, even death seafarer (Abila & Tang, 2014). Several legal issues under private international law arise from the plight of the seafarers. Therefore, it is imperative that their rights are strengthened by providing appropriate legal remedies against negligence in ensuring the duty of care by the ship-owner. The central question in this regard is,

Is the ship-owner liable for the negligence of the duty of care under private international law and up to what extent?

The ship-owner owes a duty of care for seafarers if it has been mutually agreed upon, as mentioned in the seafarers' employment agreement (SEA) between the ship-owner and the seafarer. If the ship is going on a voyage in piracy-prone waters or a High- Risk Area (HRA), the ship-owner informs the seafarer that the ship will be travelling through waters in which the risk of violent attacks is high. It is the ship-owners responsibility to take preventive measures like training the crew, providing additional security through armed guards, reporting to the coastal surveillance network while transiting through their area of responsibility, and activate other mechanisms to deter an attack.

Legal issues surface when a ship is attacked by pirates and the seafarers are kidnapped.

The question that arises in this situation is whether the ship-owner had taken appropriate steps as his duty of care. To address this, it is necessary to divide the post incident situation into two broad issues: whether adequate preventive measures were taken to deter the attack and second, the arrangement a ship-owner must make to secure the release of his employees and repatriate them. These are discussed in the sections that follow. They show how a seafarer can claim legal remedy under case law and private international law if a ship-owner has not taken appropriate preventive measures.

7.2 Opportunities and hurdles for seafarer

A seafarer can claim legal remedies if he can prove that the ship-owner had not taken preventive measures because of which the ship fell victim to piracy or armed robbery. Some important points that must be considered while pursuing the matter are:

7.2.1 International guidelines for ship-owners

Seafarer can also claim remedy if the ship-owner does not perform his duty of care as per standard international guidelines. The list of guidelines for the ship-owner is placed in Appendix-4A. The seafarer can claim a remedy for the breach of the duty of care if the ship-owner has not followed these guidelines. The ship-owner may argue that he is unaware of such procedures that must be followed as preventive measures. He may argue in defense that because of the prevailing circumstances, it was not feasible to follow the advisories (the guidelines referred to are also advisories). The argument in support of compensation for the seafarer will be on firm ground if it can be established that there exists a mutual agreement between the ship-owner and seafarer. However, to strengthen his claim, the seafarer must prove that these guidelines follow standard customs and are widely accepted.

7.2.2 Deployment of armed guards

Deploying armed guards onboard is one of the preventive steps to protect a ship and her crew from pirate attacks. However, the situation is different in the Gulf of Guinea. Nigeria, which is a hub for pirate attacks in the Gulf of Guinea, prohibits the use of Armed Guards (Firearms Act, Laws of the Federal Republic of Nigeria, 1990). The State law says that “*armed guards of any kind, hired contractors, police or military forces, are not allowed on merchant vessels in Nigerian waters. In particular, no private security company has the right to place armed guards on board merchant vessels*” (Wilson, B. & Jacobson, 2019).

It gives an opportunity to the ship-owner to plead in his defense that due to the regulations of the port state, armed guards could not be provided as a preventive measure. The seafarer can claim that the port state must provide security patrol through their navy. The Nigerian Navy Operations Directorate, in a press release, clarified that *“as an alternative to embarked PMSCs, the Nigerian Navy supports contracted maritime security services through a network of 20 licensed escort vessel operators. These hired patrol vessels are manned and commanded by Nigerian Navy personnel, with assistance from civilian seafarers”* (The Maritime Executive, 2017). Therefore, if the ship-owners cannot provide security as advised by the port state in this case and the ship is attacked, the seafarer can claim for breach of the duty of care by ship-owner (INTERTANKO, 2015).

7.2.3 Vicarious liabilities

A seafarer can claim vicarious liabilities from the ship-owner even if he/ she has delegated a few of his duties to the master of a vessel under the doctrine of vicarious liabilities. As per this doctrine, the ship-owner is liable for the actions of his employees even if the authority for certain operations is delegated. It is further strengthened by the example of judgment in the case of MV ‘The Maersk Alabama’ which was hijacked by Somali pirates in the Gulf of Aden. In this incident, the Master of the vessel took a shorter route instead of a safe route which is 600 nautical miles from the shore as he found it to be expensive and time consuming. The crew filed a lawsuit against Maersk Line, Ltd. for alleged breach of duty of care. They also alleged that the Master wrongfully transited through a pirate-infested track and because of his wrongdoing, Maersk Line, Ltd. should be held liable under the doctrine of vicarious liability. In its judgment, the court said, *“considering that the employer's duty of care is generally considered non-delegable and that the doctrine of vicarious liability would hold the ship-owner liable for the master's actions, Maersk Line, Ltd. is liable for the action of the Master”* (Cabrera Dayan, 2017). Using this judgment as a precedent, the seafarer may use the doctrine of vicarious liability as a tool to claim legal remedy and strengthen his/her case against the ship-owner.

7.2.4 Causation

It is one of the main hurdles to file a case of negligence of duty of care by the ship-owner (Liss & Sharman, 2015). If seafarer wants to find a legal remedy, he must prove causation. The seafarer must make convincing remarks to prove that the ship-owner had breached the duty of care which resulted in

a pirate attack on the vessel (Rose, 2013). If the ship-owner had met his obligations as described in the figure 6 above, causation is difficult to prove.

7.2.5 Assumption of risk

If the ship-owner claims assumption of risk as a defense against the claim of a seafarer who had suffered in a pirate attack, it becomes another legal hurdle for the seafarer in claiming negligence of duty of care. As per the assumption of risk clause, if the ship-owner is able to prove that the seafarer was well aware that the ship was at risk of pirate attack which can result in injuries but still volunteers to sail, in such situations.

The SEA in the mutually agreed contract between seafarer and ship-owner will bar the seafarer from applying for any remedy for his injuries. The seafarer will have a weak defense if the terms of the contract clearly mention the nature of voyage and potential threats. It gets further weakened if the contract, which the seafarer has accepted, specifies the monetary compensation and treatment for personal injuries.

It is, therefore, clear that the ship-owner is responsible for providing duty of care to his employees. A seafarer can claim a legal remedy for negligence in ensuring preventive measures that lead to a pirate attack.

On his part, there are a few actions that a ship-owner must take after a pirate attack which resulted in hijack of the ship and/or kidnapping of the crew. First, he must take steps to ensure the release and repatriation of the seafarers. Here, the contractual agreement between the seafarer and ship-owner can help in initiating assertive action. The clear indication of the process of release and repatriation will make it easy for the seafarer to claim compensation. A few options available to the ship-owner after kidnapping or hijacking are discussed in the following paragraphs.

7.3 Securing release and repatriation

It is essential to find the best way to seek early release of the kidnapped crew. There are various perspectives that need to be understood.

7.3.1 Irresponsible ship-owner and abandoned seafarers

The most irresponsible action is the ship-owners refusal to pay or negotiate release. It is the cheapest but also the riskiest as there a high chance of loss of ship, cargo and crew. The case MV Albedo exemplifies the consequences of exercising this option. Twenty-three crew of MV Albedo were captured in November 2010. The Iranian owners of this Malaysian-flagged vessel, which was hijacked by Somali pirates, refused to pay the demanded ransom of \$8 million. It was found that the vessel was operating without adequate insurance (Freeman Colin & Pflanz Mike, 2014). As no attempt was made by the ship owners to get the seafarers released, the hijacking proved to be a deadly ordeal for the crew. *“Early on in the hijacking, one crewman was shot dead by the pirates in an apparent fit of anger after negotiations with the ship's owners broke down. Then, the vessel sank in a storm, resulting in five of the crew drowning along with five of the pirates as they abandoned ship4”* (Weldemichael, 2019).

7.3.2 Military response

Military action can be considered if the port state has a strong military which is trained for handling incidents like kidnapping. A Memorandum of Understanding (MoU) can be entered into with other countries that have a vested interest in the maritime safety of the area so that joint operations can be planned and executed. The coastal state where the kidnapped crew was taken plays an important role in the case of armed robbery. The modus operandi of the pirates is always changing and hence, the operational philosophy of military action must also adapt itself to the changes. The main hurdles include allowing the military of other nations to play an active role because they may pose a challenge to the sovereignty of the port state. Military operations can be a potent deterrent to miscreants and may result in success, such as one of the Naval operation by the Spanish navy. *“A joint Spanish and Equatorial Guinea naval operation has rescued 20 crew members on a merchant ship from a hijacking by pirates in the Gulf of Guinea”* (Hellenic Shipping News, 2019). However, if circumstances go against the operation, it can also prove disastrous for the innocent seafarers (World Maritime News, 2017). Military operations can be deterrent, but they will yield better results only at the preventive stage. They are detrimental to the safety of crew, cargo and the vessel. Reimbursement of damages caused due to such operation which may lead to the actual or constructive total loss of the vessel and cargo will be difficult to claim by the ship-owner. Overall, it appears that the shipping industry has no appetite for such risky solution (Murphy, 2011).

7.3.3 Payment of ransom

The safest solution, considering the circumstances, is to negotiate and pay a ransom to get the crew, cargo and vessel released (in the Gulf of Guinea, the chances of getting the cargo back is difficult if it is petroleum products). There is a high chance of securing the safe release of the seafarers if the way for paying the ransom can be settled if there is reasonable assurance in this regard. The ship-owners will also be willing to pay a ransom if some alternatives can be found to share the financial burden (Gold, 2016).

In view of the discussion above, we can make out that the payment of ransom is one of the best ways to secure release of a hijacked vessel and abducted crew.

Conclusion

Piracy is one of the worst nightmares a seafarer or his family goes through. This dissertation focused on confronting piracy attacks & armed robbery analyzing in parallel the rights of seafarers and mentioning the importance of securing their release and repatriation after such an attack.

Nowadays, there are many regions which are a hotspot for piracy & armed robbery. A study of the models of piracy prevailing in most regions showed that attacks are often violent and detrimental to the safety and wellbeing of ships and their crews, as well as undermining the health of the shipping industry. At the same time, it needs to be acknowledged the importance of preparation before an incident occurs as well as the humanitarian support of seafarer's families. Moreover, it should be mentioned that there are multiple stakeholders in the issue who can play an important role in strengthening the rights of seafarers. However, this study has limited its scope to discussing the obligations of the ship-owners.

For understanding the prevailing models of piracy we gave special attention to cases of kidnapping and hijacking since they cause the most harm and endanger the seafarers. The treatment of the crew and his rights after the incidents were discussed in order to find a remedy for a seafarer who has gone through such attack for the cases wherein, ship-owner has not fulfilled his duty of care and not taken appropriate preventive actions.

As our aim was to support seafarers and strengthen his rights so we have started with the various instruments of the International Labour Organization (ILO) which deals with the process of repatriation of seafarers. It takes us to the seafarer's bill of right, the Maritime Labor Convention, MLC, 2006. We

have studied the clauses of the repatriation from the perspective of MLC. The amendments of 2014 and 2018 which deals with the situation of abandonment and piracy respectively show the acuteness of problem repatriation of seafarers. The responsibility of the ship-owner in securing the repatriation has brought out the importance of contractual agreements in strengthening the rights of seafarers after a pirate attack.

Now, the question arises about the extent of the liability of ship-owners in a case of the release and repatriation of seafarers. The discussion moves in the direction of the liability of ship-owner as the duty of care. When a seafarer goes through a pirate attack, he can find a legal remedy under the 'tort of negligence' for ship-owners liability as the 'duty of care'. We have discussed it with the help of various opportunities and hurdles faced by seafarers in claiming a legal remedy as a duty of care by the ship-owner. We have discussed it with the issues and concepts of deployment of armed guards, vicarious liability, causation, assumption of risk and international guidelines for ship-owners to prevent the pirate attacks.

We also discuss the difficulties faced by the ship-owners to achieve a balanced study about a legal remedy for seafarers after a pirate incident. We find that after the incident of piracy, a ship-owner has liability under the duty of care. He is supposed to fulfill it by taking preventive actions and if he does not perform it, then the affected seafarer can find a legal remedy in tort of negligence. A ship-owner is expected to repatriate the seafarer if held captive due to the pirate attack. Further, insurers also expect that the ship-owner should provide minimum safeguards or take reasonable precautions to avert pirate attacks. In case of an attack, the Insurer can reject claims if he feels that the ship sailed in dangerous water without proper risk preparedness.

In cases of kidnapping and hijacking, we can only do repatriation if the seafarer is first released by the pirates. We have discussed various options for the release of seafarers with the help of policies of states and case laws. We have discussed responses in the previous incidents to reach an optimum solution and finally we opine that the payment of ransom is the most viable way to secure the release of a seafarer keeping in view seafarers' safety.

Future research

Strengthening the rights of seafarers in cases of piracy and armed robbery is a collective responsibility of the stakeholders like flag state, port state, the state of nationality of labor supplying state. This dissertation mentions the role of the ship-owner and contractual liabilities between ship-owner and

seafarer. We can find the optimum solution to the problem of strengthening the rights of seafarers and securing their release when the roles of other stakeholders will also be studied. This gives birth to the new research on this topic with a focus on the role of flag state and state of nationality of a seafarer.

Bibliography

- ❖ Ayto J., *Word origins : the hidden histories of English words from A to Z*, London: A&C Black Publishers Ltd, 2005, at p.379
- ❖ Bruce A. Apgar, Jr, “Countering 21st century piracy in the Horn of Africa,” Strategy Research Project, 18 February 2010, 4
- ❖ Christopher P. Cavas, “To Fight Pirates, Follow the Money: U.S. Admiral,” Defense News, (Accessed May 10, 2010).
- ❖ Catherine Zara Raymond, “Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?” *Naval War College Review* Vol. 62 No. 3(Summer 2009): 31.
- ❖ Catherine Zara Raymond, “Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?” *Naval War College Review* Vol. 62 No. 3 (Summer 2009): 31.
- ❖ Catherine Zara Raymond, “Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?” *Naval War College Review* Vol. 62 No. 3 (Summer 2009): 31.
- ❖ Catherine Zara Raymond, “Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?” *Naval War College Review* Vol. 62 No. 3 (Summer 2009): 31.
- ❖ Cheryl A. Fury, ‘Labor Conditions for Seafarers’ in John
- ❖ Deirdre Fitzpatrick and Michael Anderson (eds), *Seafarers’ Rights* (Oxford University Press, 2005) 3-14.
- ❖ Deirdre Fitzpatrick and Michael Anderson (eds), *Seafarers’ Rights* (Oxford University Press, 2005) 3-14.
- ❖ .Edberhard Zangger, “Who Were The Sea People?,”<http://www.saudiaramcoworld.com/issue/199503/who.were.the.sea.people..htm> (May/June 1995, Vol. 46, No. 3) Accessed September 4, 2010.)
- ❖ Fitzpatrick and Anderson (n 50) 9-10. B. Hattendorf (ed), *The Oxford Encyclopedia of Maritime History, Volume 2* (Oxford University Press 2007) 313.
- ❖ Fitzpatrick and Anderson (n 50) 15-16.
- ❖ Fitzpatrick and Anderson (n 50) 48.
- ❖ Jayant Abhyankar, ‘Piracy and Maritime Violence: A Global Update’ in Proshanto K Mukherjee and others (eds), *Maritime Violence and Other Security Issues at Sea* (WMU Publications 2002) 24.

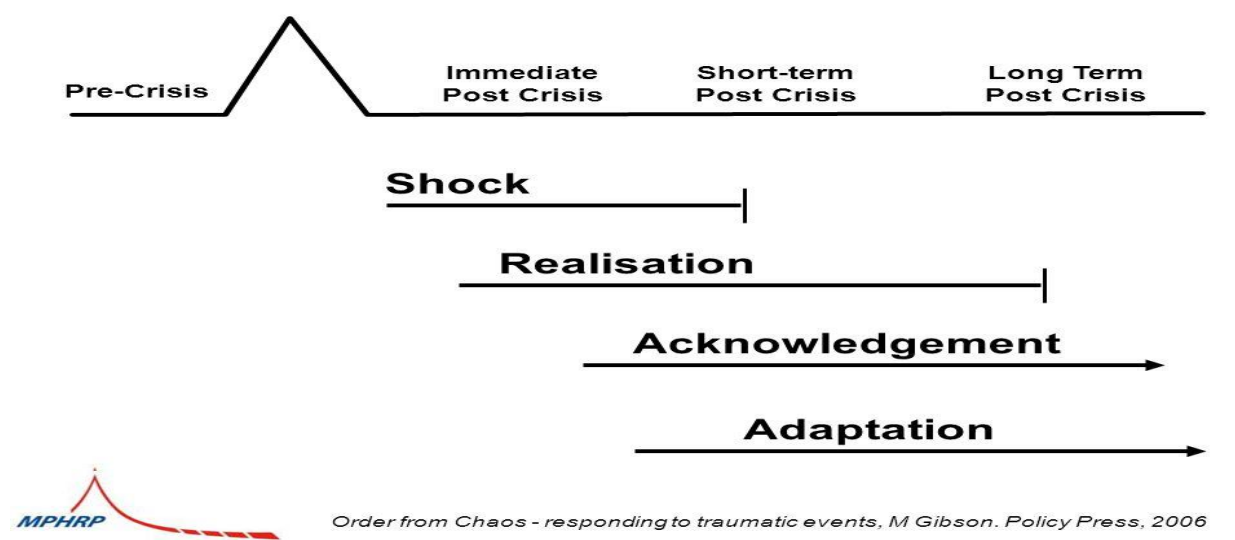
- ❖ John Liljedahl, ‘Transnational and International Crimes: Jurisdictional Issues’ in Proshanto K. Mukherjee and others (eds), *Maritime Violence and Other Security Issues at Sea* (WMU Publications 2002) 124-125.
- ❖ Ndumbe J. Anyu and Samuel Moki, “Africa: The Piracy Hot Spot and Its Implications for Global Security,” *Mediterranean Quarterly*, (Summer 2009): 107.
- ❖ Ndumbe J. Anyu and Samuel Moki, “Africa: The Piracy Hot Spot and Its Implications for Global Security,” *Mediterranean Quarterly*, vol. 20 no. 3 (Summer 2009): 103.
- ❖ Ndumbe J. Anyu and Samuel Moki, “Africa: The Piracy Hot Spot and Its Implications for Global Security,” *Mediterranean Quarterly*, vol. 20 no. 3 (Summer 2009): 100.
- ❖ Max Mejia, ‘Maritime Gerrymandering: Dilemmas in Defining Piracy, Terrorism and other Acts of Maritime Violence’ [2003] 2:2 *Journal of International Commercial Law* 153.
- ❖ Michael Stuart Garfinkle, ‘Post-Piracy Care for Seafarers: Guidelines’ (2011) The Seamen’s Church Institute Working Paper Version 3.0.
- ❖ Xan Rice, Lee Glendinning, “Pirates anchor hijacked supertanker off Somalia coast,” *Guardian.co.uk*, (November 2008): 1.
- ❖ “Piracy off the Horn of Africa,” Congressional Research Service, 28 September 2009, 7.
- ❖ The United Nations Home Page, <http://www.un.org/en/peacekeeping/missions/past/unosom2.htm> (accessed December 20, 2009).
- ❖ AMISOM Mission Statement, <http://www.africaunion.org/root/AU/AUC/Departments/PSC/AMISOM/amisom.htm> (accessed August 2010).
- ❖ International Maritime Organization, *MSC.4/Circ.180, Reports on acts of piracy and armed robbery against ships, annual report-2011*, March 1, 2012, at annex 4.
- ❖ Walker, P., Mystery of the Arctic Sea: ship feared seized by pirates in European waters , *The Guardian*, August 11, 2009, at <http://www.guardian.co.uk/world/2009/aug/11/arctic-sea-missing-ship-pirates>
- ❖ International Maritime Organization, *MSC.4/Circ.180, Reports on acts of piracy and armed robbery against ships, annual report-2011*, March 1, 2012, at p.3.
- ❖ Article 15 of the Geneva Convention on the High Seas, 1958, is considered the predecessor of this provision.
- ❖ <http://www.gard.no/Content/8201/No%2007-08%20Maritime%20Security%20Anti%20Piracy%20Measures.pdf>
- ❖ <https://www.marineinsight.com/marine-piracy-marine/entering-piracy-zone/>
- ❖ <https://safety4sea.com/piracy-and-the-isps-code/>

❖ Pirates Resume Activity- and widen their net,

http://www.lloyds.com/News_Centre/Features_from_Lloyds/News_and_features_2009/Market_news/Pirates_resume_activity_and_widen_their_net.htm (November 2009).

APPENDICES

APPENDIX A - The continuum of reactions which may be experienced by people involved in traumatic incidents



This diagram defines how people may react during the traumatic incident associated with piracy incidents. It applies to both seafarers and their families.

Events during the pre-crisis period before an incident can directly influence reactions experienced by those involved during the incident and in the immediate aftermath. In piracy associated incidents there may be anticipatory fear of sailing in areas associated with such attacks. Shock reactions can bring feelings of unreality and disbelief that an incident has occurred. A person may experience confusion, inability to concentrate and powerlessness whilst confronting an abnormal situation.

Realization follows a sense of shock as the reality of the incident becomes clearer. Fear of the unknown, of injury or survival may produce feelings of helplessness to change the situation. Anger that the incident has actually happened can occur. Where an attack is repelled these feelings merge in to relief and acknowledgement that it is over and some of the stress will diminish although memories have to be dealt

with. Adaptation will include an increased awareness of what ‘could have happened’ which in turn may produce fear of such an occurrence happening again.

After prolonged captivity there will be periods of anger, hope, despair, feelings of helplessness, and potentially renewed shock reactions at differences in physical deprivation or inhumane treatment experienced. Although a family may not be aware of the conditions experienced by the hostages their reactions can mirror that of the hostages as they handle uncertainty and lack of information.

More information, or even lack of information, can lead family members to fully acknowledge the situation as they handle anxieties during the negotiation period.

Released seafarers and their families experience a period of adaptation to normality of family life after such experiences. Practical issues need to be discussed to enable both parties to return to normal patterns of life. Memories should be managed; and a seafarer may not wish to discuss these with their own family. Peers or trained responders may be able to assist in such matters. Such memories need to be cognitively processed to enable integration into experience so that they can be lived with and do not prevent the ability to work or function normally in their daily lives.

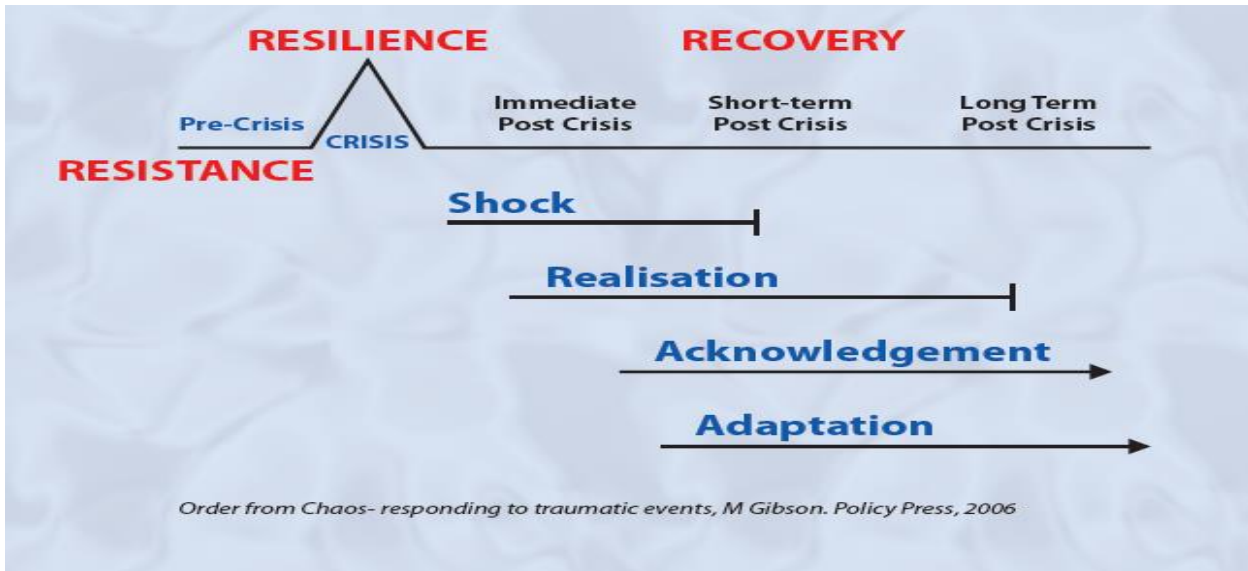
APPENDIX B - The Three R's

Resistance - the form of psychological/ behavioral *immunity* to the impact of distress

Resilience - the ability of an individual, a group, an organization or a population to *cope with and to rapidly and effectively rebound* from a traumatic incident

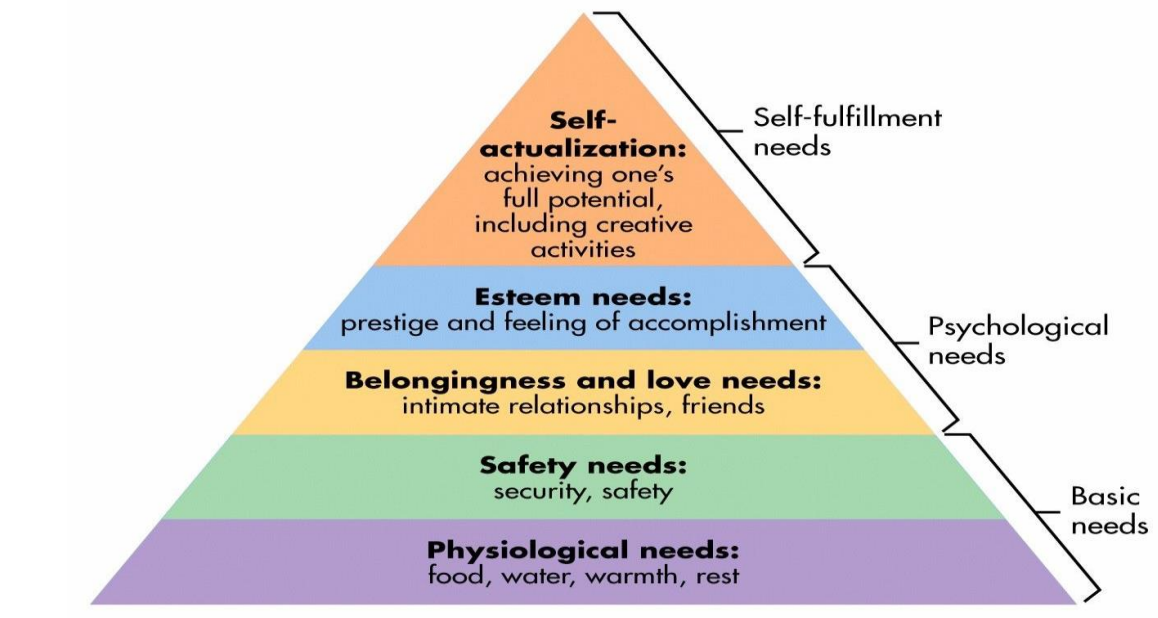
Recovery - the ability to *recover and adaptively function* in a post-traumatic situation

Use of the three R's of Resistance, Resilience and Recovery can help in thinking through the issues. It also identifies that in the pre-deployment stage some preparation, and the supply of relevant information, can help build resilience to traumatic stress, if required, during an incident. The ability to be more resilient to stresses during an incident can enhance ability to recover from an incident in the aftermath. The three R's are applicable to both seafarers and their family members. Identifying the three R's whilst defining the continuum of reactions helps integrate the two concepts.



APPENDIX C - Maslow Hierarchy of Needs (adapted)

Maslow's Hierarchy of Needs



Abraham Maslow, 1943 paper "A Theory of Human Motivation"

This diagram identifies the factors which motivate human beings and contribute to their sense of mental well-being. Maslow suggests that the most important issues form the base of this diagram. These are the

basic human needs necessary for survival and are of paramount importance throughout an attack, whilst in captivity and upon release. Practical needs predominate and must be met whenever possible.

The next level is that of Safety with the features of security, stability and freedom from fear. These features may be lacking for hostages and are areas which captors may use for torture when added to deprivation of the physiological features.

The further levels of the diagram indicate higher levels of motivation which could be described as quality motivators. These are desirable but not essential for basic survival. These features may form part of the deprivation experienced by hostages.

The pyramid can also apply to the needs of a seafarers' family but it is to be hoped that the lower levels will remain intact. However lack of validated communication and contact with loved ones will be a key feature which will impact on feelings of safety, insecurity, fear and a missing sense of belonging resulting from the prolonged absence of a loved one.

Methods of support provided to both Seafarers and their family members should aim to re-establish all the motivators identified in the Maslow Triangle.

APPENDIX D - The Survivor Syndrome

When the initial threat of death passes, there can be a sense of euphoria at survival and cheating death. Not all survivors feel this euphoria as they may carry a sense of guilt of survival when others may have died. This reaction may be hard to understand for those people, such as family members, not directly involved in the situation where deaths may have occurred. Survivor Syndrome phenomenon has occurred in relation to groups such as Holocaust survivors, returning Vietnam veterans and survivors from disasters.

If fatalities result from a piracy incident, survivors may experience death guilt. This can manifest itself in such questions as 'Why did I survive when x died?'. Survivors may have difficulty dealing with relatives of the deceased with whom they come into contact. Survivors conduct in-depth questioning of their own actions at the time. Could they have done more to save others? Survivors talk of their actions to try to rationalize any actions taken or not taken. Did the survivor's own rescue mean others were sacrificed?

Charles Figley in, *Stress disorders among Vietnam veterans* (1978) states these questions relate to a sense of organic social balance: 'That image of exchange of one life for another is perhaps the survivor's greatest psychological burden.' He also noted deep distrust by the survivor of anyone offering help. Survivors felt set apart from others by a sort of 'death taint'. Even where survivors recognized a need for help, they

rejected the offer in case it would be viewed as a sign of weakness, confirming in their own minds that others felt they were not worthy of survival. These thoughts may result in the survivors seeking help and reassurance from others involved. Self-help through contact with other seafarers involved in the same incident has the advantage that survivors do not have to explain their emotions when recalling the event. Listeners were there and experienced similar feelings. This support is particularly important to released hostages where there have been fatalities. The possibility of this syndrome indicates the benefit of keeping the crew together for a short period of time following release to give an opportunity to discuss such matters and gain peer support through mutual understanding within the group. Continued contact is not always possible due to the multi-national nature of crews and dispersal to different countries to travel home. An understanding of the impact of Survivor Syndrome by those involved in support to released hostages and family members may assist in the overall recovery of the seafarer involved.

APPENDIX E - Stockholm Syndrome

This syndrome was named following a bank raid in Stockholm which resulted in hostages being held captive. It was later reported that a hostage had sexual intercourse with one of the captors and later became engaged to be married to him. The syndrome defines situations where a hostage develops a positive attitude to the captor(s) to try to ensure their survival. Part of this process may mean that a hostage develops an understanding of and becomes a supporter of the cause prompting the incident resulting in their captivity. Greater understanding between captors and hostages can impact both by realizing the human effects. A hostage may try to gain more favorable treatment from a captor by speaking of his family who need him free and alive. Some reports have shown where a captor is influenced by the particular situation of his hostage especially if sharing similar sentiments as the hostage to his own family that the captor was more favorably disposed to his captive and the hostage received less inhuman treatment. A hostage may feel they can influence their captors in a situation where they feel helpless to affect actual negotiations for their release.

Such behavior can be seen as a survival technique. However such processes may result in other crew members becoming the focus for more inhuman treatment. This may build up resentment amongst fellow crew members which may be exploited by the captors to break up any peer support developed within the crew group. Predisposition to this behavior may result from previous experience.

Such situations may need to be discussed within the group following release and may influence the recovery process. Stockholm syndrome does not always arise in hostage situations but is more likely to

occur the longer the captivity and where there is the opportunity for more interaction between hostages and captors.

APPENDIX F - Crisis Management Techniques

Many crisis intervention technique models exist and it is important that those using them fully understand the method, the underlying theoretical basis for the technique and possible impact of such models on seafarers and their family members made emotionally vulnerable by an incident of piracy.

Specific needs of the seafarer or family member will dictate the type of intervention technique required. Techniques can range from active listening, information sharing and various methods of psychological first aid through to skilled professional treatment. Debriefing is often utilized following such incidents but should not be seen as a panacea for all situations. There are many types of debriefing including operational, forensic and psychological. Care must be taken to inform participants on the type of de-briefing being conducted. Practitioners using such techniques which address psychological reactions must be well trained in the appropriate model and adhere strictly to prescribed protocols.

Those assisting should be aware of the 'normal' reactions expected following such an incident. Such reactions may vary from understandable reactions to the experience to more complex symptoms which due to their complexity, duration and severity may require skilled psychiatric assessment and treatment. Needs identified will vary.

All those who help Seafarers and their family members in such circumstances must be aware of their own level of competence and limitations. Understanding of these issues should ensure a Seafarer has access to an appropriate level of help.

APPENDIX G - Family Leaflet

Back page A5 leaflet

Front cover A5 leaflet

Other useful numbers:

Contact numbers for support or information in the event of major crisis.

- www.mphrp.org
-
-
-
-
-



SeafarerHelp
...the lifeline for seafarers

FREEHELP | CONFIDENTIAL
MULTI-LINGUAL | 24/7

www.seafarerhelp.org

SMS +44 (0) 7624 818 405
Email help@seafarerhelp.org
UKIP info-seafarerhelp.org
Free phone +44 207 323 2737 (request call back)
Live Chat www.seafarerhelp.org

Find us on Facebook

Your local contact person is:

FAMILY SUPPORT

Relevant Company Logo

Contact Number: _____

APPENDIX H - Family Leaflet continued

Left centre page A5 leaflet

SOMEONE TO TALK TO

There are times when people experience a major crisis in their lives as a consequence of which they may become unusually stressed or anxious. This leaflet is to help anyone who is affected in this way and to explain about the support which is available.

If you have experienced a major crisis in your life, it is important to know that it is normal for people to have some reaction to severe stress.

The Family Liaison Representative is available to support you and your family members through this period if you wish to contact us.

Sometimes it helps to talk to someone outside the family who knows how to help in crisis situations. Your family doctor and representatives of faith-based organisations are also people who can help.

Please remember also that your children may benefit from some support.

Stress may result in a person being unable to wholly focus on other issues.

Remember **it is the situation which is abnormal not you.**

Right centre page A5 leaflet

YOU MAY EXPERIENCE:

Your emotions may be very mixed and very powerful at this time and you may experience:

- A sense of unreality that this situation is happening.
- Intense anxiety and prolonged stress as events unfold.
- Anger mixed with a feeling of helplessness at your inability to change the situation.
- A reawakening of other situations of stress which you have experienced in the past.
- A sense of being overwhelmed by your reactions, by the people around you or by the media.
- An inability to 'unwind' and relax. This may affect you during the day or night.
- A sense of being unique and isolated in your particular worry.
- Fear that if you seek help with these feelings now, or in the future, you will be labelled as not 'coping'. This is not true.

APPENDIX I - Seafarers’ nomination of Family Contact Person - Nomination of a Family Contact In Case Of Emergency

Please insert the name and contact details for your nominated person that the Company should contact in case of an emergency while you are at sea:

Name (first and last name):	
Address:	
Home telephone number:	
Work telephone number:	
Mobile /Cell number:	
Email address:	
Relationship to you, eg. wife, son, father, sister:	
Please advise us of any issues we should be aware of before contacting this person	
Please sign to confirm you would like the above named person to be your Family Contact	Signature:
	Date:

APPENDIX J – Letter templates

Below are two templates for letters which could be used in liaison work with a family involved in a piracy incident.

Template 1 is to be used at the time of notification of a piracy attack and when there is the possible holding of hostages.

Template 2 is to be used at the time of repatriation of a seafarer previously held hostage.

The contents of these documents may be adapted to match the particular situation. Companies are encouraged to try to personalize these by inserting the appropriate names of the seafarer, the family and the Family Liaison Representative.

The letters should be prepared as separate documents to enable them to be used at the appropriate time.

Template 1 - Letter to be used at time of notification of a piracy attack

Initial news of a piracy attack should be handled either by telephone call or by a personal visit. The following letter could then be sent:

PRINTED ON COMPANY LETTERHEAD

Dear *personal names*,

Insert a paragraph expressing the concerns of the CO of the Company and how much the Company regrets what has happened. Assure the family of the Company's support. Personalise this paragraph by including the seafarer's name.

Contact arrangements

Your Family Liaison Representative with the Company will be *insert name*. They can be contacted on *insert phone number* and at the following email address: *...@...*

If *insert name of Family Liaison Representative* is not available then please speak to *insert name of second Family Liaison Representative* who can be contacted on *insert phone number* or at *insert email address*.

Once you have identified the Family Liaison Representative refer to them by name in the rest of the letter and in any future correspondence e.g. you should telephone Sheila.

As has already been explained to you during the *phone call or visit (delete as appropriate)*, we will try to keep you informed whenever there is any verified news. In the initial stages of an incident contact from the pirates can be sporadic and limited. We are all at the beginning of what can be a prolonged process. It is not unusual in these situations for there to be periods of time when there is little news to be shared.

There will be times when the negotiations will appear to be progressing very slowly but this does not mean that negotiations are not continuing. We appreciate that this will be a very stressful time for you and your family so we will arrange a regular time to speak with you whether we have news or not.

It would help us if you nominate one family member, the Family Contact, who should be the point of contact for *the Family Liaison Representative*. The Family Contact can then pass the information on to other family members and friends which will allow the information to pass quickly. Please advise *the Family Liaison Representative* as to who this shall be.

Please do not believe rumours that you may hear from colleagues, other families, the

media or even the pirates themselves. However, please feel free to contact *the Family Liaison Representative* if anything you hear causes you additional distress. We will do our best to help you whenever we can.

If the pirates themselves contact you directly please take a note of the phone number they are calling from and note what they say to you. Pass this information to *the Family Liaison Representative* as it will be very helpful to the company to know what is being said and may help in the negotiations.

You will undoubtedly think of many questions you need to ask us. Please write them down and when you next speak to *the Family Liaison Representative* they will try to answer these questions.

Based on the experiences of other families who have found themselves in a similar situation please bear in mind the following:

- After the initial news of an incident there can be a period when there is little news. This can be a time of great uncertainty and anxiety for both you and the Company.
- It is likely that after a period of time, which may be days or weeks, contact will be established between the pirates and the Company and negotiations will begin.
- The negotiation process can take many weeks or months. The Company appreciates that this is a stressful time for family members but will keep in touch on a pre-arranged regular basis.
- Negotiations usually result in a positive outcome, but this can take some time.
- We may not know much about the conditions the seafarers are being held in but remember, it is important for the pirates to look after their hostages during the negotiation period - their welfare will form part of the negotiation process.
- Please be reassured that *insert name of seafarer* was given training on the way to act in the event of an attack happening. This would have been done as a routine part of their pre-deployment briefing. This training will help the crew members to cope and to provide support to each other.
- *Insert name of seafarer* may be permitted to talk to you via telephone. This could help you to understand what is happening to *insert name of seafarer* but remember *insert name of seafarer* may not always be able to be truthful if the pirates are listening to the call.
- If you do get the chance to talk to *insert name of seafarer*, try to keep *his/her* morale

up as much as possible as *he/she* will be anxious about how you are coping. Try not to share problems at home but be positive about how you are coping and stress that everything is being done to get *insert name of seafarer* released.

- You may be contacted by the media. It is advisable that you refer all such calls to *the Family Liaison Representative* who will deal with them on your behalf.
- Everyone is working to get *insert name of seafarer* released as soon as possible. Contact *the Family Liaison Representative* if you hear rumours which distress you or receive calls which are difficult for you to cope with.
- You may hear rumours which will raise your hopes of a release. Wait until you hear verified news from us before you begin to celebrate. Dashed hope may be part of the 'game' the pirates will play to increase pressure on those negotiating.
- When *insert name of seafarer's* release has been secured we will inform you.

What can you do to help?

- Trust your Family Liaison Representative, *insert their name*.
- Tell key people in your family what has happened.
- Appoint someone as the Family Contact who will be the first point of contact for *the Family Liaison Representative*. If you don't wish to do this yourself appoint a family member whom you trust. The company will then only give news to this family member who will then pass messages onto you and other family members. This helps to stop too many people contacting you or outside agencies trying to get news on the situation.
- Maintain your daily routine as much as possible. Eat regular meals and maintain sleep patterns to preserve the health of both yourself and your family.
- Keep hope alive but maintain realistic expectations of when you will hear news.
- Try to involve any children or adolescents in any news received, as appropriate for their age. Even a very young child can sense your anxiety and will need your support to understand what is happening. They may even blame themselves for your anxiety. You may like the support of a teacher or other adult trusted by the child to assist in this regard.
- Encourage children or other family members to keep a scrapbook of family events or news. This can be shared with *insert name of seafarer* when they return home

so that they are brought up-to-date with family news. Young children may enjoy drawing a weekly picture of their activities to share.

- It might assist to keep a diary of people you have spoken to and a list of contacts made. This also can be shared with *insert name of seafarer* on their return.
- In the past some family members have thought that if they raise funds on behalf of the seafarers that these funds will help speed up their release. This is not the case so please discuss such issues with *the Family Liaison Representative* if you need any support with these matters.
- If you have any practical problems as a result of the situation please feel free to discuss these with *the Family Liaison Representative*, who will try to assist you or guide you to another suitable source of help.
- Make contact with any trusted friends or other source of support such as your faith community or union representative with whom you already have a good relationship.
- Further help and support is available from the Maritime Piracy Humanitarian Response Programme, a support programme established for this purpose, at the website www.mphrp.org

Template 2 - Letter to be used at time of repatriation of a seafarer

PRINTED ON COMPANY LETTERHEAD

Dear *personal names*,

Insert a paragraph confirming the release of the vessel and the obvious relief it is to the Company and express thanks to the family members for their support through this difficult time. Personalise this paragraph by including the seafarer's name.

In following paragraphs explain what will happen to the seafarers before they arrive home:

- that they are sailing to a safe port*
- assure the families that you will arrange for a short telephone contact from the crew members to the family as quickly as is possible*
- explain that arrangements for their repatriation will be shared with the family as soon as they are confirmed*
- give assurance again that the Family Liaison Representative is available for advice*

What you can do to prepare for the homecoming

- Make sure that the release of the ship is verified by the Company.
- Listen carefully to the arrangements which have been made for the repatriation of the seafarers. It may help to write them down.
- Efforts will be made to provide the seafarers with phones to try to contact you as soon as possible. The initial calls may be limited in time so that all crew members have a chance to call their families.
- The seafarers may not arrive home immediately. It may take 3-4 days to sail to a safe port and the seafarers will then need medical examinations. Time also has to be allowed for the authorities to take statements to gather evidence which may lead to the arrest of the pirates. But every effort will be made to get them home as soon as is feasible.
- Take advice from *the Family Liaison Representative* concerning where you should meet the returned seafarers and confirm if the news of their return is to be made public. Sometimes it is considered wise to wait until the seafarers have been reunited with the families before news is released to the media.

- We will advise you as to handling any media involvement.
- While we are sure that *insert name of seafarer* will be relieved to be home with you again, it is not unusual for a person released from a frightening experience to need some time to relax and to realise that 'it is over' and 'they are safe'.
- Do not be surprised if *insert name of seafarer* seems a little withdrawn from all the celebrations and needs some quiet time alone or just with close family. This time is necessary in order to adjust to the freedom and to think through experiences in captivity.
- The seafarers may choose to tell you all about their experiences but do not be surprised if they keep some things from you. This is not because they do not trust you but that they may have some memories which are painful for them and they do not want to add to your stress at this time.
- Please try to understand that *insert name of seafarer* does not love you less but may need time to get back to normal after *his/her* experiences. This can be especially difficult for children to understand and they may need special consideration by you during this time.
- Returning to normal life may take some time but if you feel it is a problem which needs some further support discuss it with *the Family Liaison Representative* who may be able to get additional support for you.
- Do not feel that if anyone needs additional support at this difficult time that this is evidence of mental illness. Given the extraordinary experience everyone has been through it is not unusual to have some extreme reactions. Getting appropriate help at the right time will make this transition period easier to cope with.
- Any medical problems should be dealt with so keep in touch with *the Family Liaison Representative* if you need any on-going advice.
- Every effort will be made to restore you and your family to your normal way of life and for *insert name of seafarer* to resume their work pattern following a period of rest and time to readjust.
- If you have any legal or financial problems, *the Family Liaison Representative* will be able to guide you towards sources of appropriate advice. You may also think of contacting your union official for their support with these issues.
- Additional confidential advice is available from www.mphrp.org

APPENDIX K- 10 Things to Consider Before Your Ship Enters Piracy Prone Area

While the number of piracy attacks along the coast of Somalia has decreased, there has been a substantial increase in piracy incidents along the coast of West Africa. As maritime organizations continue to bring in newer regulations and guidelines to protect ship from pirates, seafarers are also required to stay extremely cautious and vigilant when their ship enters a piracy sensitive area. Mentioned are then things seafarers must do before entering piracy affected zone/ high risk areas.

1. Keep Yourself Updated with the Latest Happenings of the High Risk Areas

Get all the latest available information on piracy sensitive areas your ship is about to enter. Collect all the useful information on [piracy activities from important maritime websites](#). Based on this information, carry out a thorough risk assessment of the vessel to assess the likelihood and consequences of piracy attacks. The ship's master is also required to prepare an Emergency Communication Plan to Include All Emergency Contact Numbers and prepared messages which should be ready at hand or permanently displayed near all external communication systems. All important warnings and information on high risk areas should be carefully reviewed.

2. Ship security Assessment and Plan: It is the duty of the company/ owner to review the SSA and SSP on a regular basis under the ISPS code. Company security Officer (CSO) must encourage ship personnel, especially Ship Security Officer (SSO) and master, to implement the SSP by exercising and briefing well ahead of ship passing high risk areas.

3. Take all Measures for Crew Safety

The safety of the ship's crew is of prime importance. Ensure all measures are taken to prevent illegal boarding and external access to the ship's accommodation area. The location of the muster station and citadel should be such that they are easily and quickly accessible by the ship's crew. Care should also be taken to ensure that the crew members are not trapped inside and are able to escape in other emergency situations like fire.

As pirates usually fire at the bridge first to stop the vessel, proper ballistic protection must be provided to the ship's crew on the bridge during piracy attack.

4. Check Ship's Freeboard

As usually seen, pirates try to board the ship using the lowest point above the waterline as it is easy for them to climb. On the basis of past experience, it is said that the ships having a minimum freeboard greater than 8 meters have better chances of escaping a piracy attempt. However, it is to note that a large freeboard would not be of any help if the ship has easy access points to climb the ship. Special protective measures must be provided to these access points.

5. Prepare to Keep Ship's Speed More Than 18 knots

Ship's speed is considered one of the most effective ways to prevent a pirate attack. According to sources, there have been no reports of ships having more than 18 knots getting high jacked. As it is difficult for pirates to board at high speeds, ships are recommended to proceed at full speed or at least 18 knots during their transit through high risk area.

Refer to important websites such as NATO shipping center to get the latest information regarding pirate attack speed capability.

Note: Usually a pirate attack is carried out using small crafts which are supported by bigger vessels, also known as mother ships. This tends to restrict their operations to moderate sea state. Sea state 3 and above is difficult to operate small crafts. So keep the sea condition in mind while preparing for the piracy zone.

6. Keep Non-Lethal Weapons Ready

Keep all the non-lethal weapons handy and ensure they are in proper working condition. Crew members must know how to operate non-lethal weapons during emergency situations. Learn about different anti-piracy weapons used on ships.

Note: Several countries have started allowing armed guards on board ships to keep pirates away.

7. Check Fire Pumps and Engines

Check all fire pumps are working properly as they will be required to run fire hoses during pirate attacks. Also ensure that the engines are working properly as the ship will be required to transit at full speed through the high risk zone.

8. Brief Crew and Conduct Drill

Before entering high risk zone the ship's crew should be properly briefed on the preparations taken and piracy drill should also be conducted. All personnel should know their duties and must be familiar with piracy alarms and necessary response for the same.

9. Secure Doors and Hatches

Doors and hatches providing access to bridge accommodation and machinery spaces should be properly secured to prevent pirates from them. If required additional means must taken to properly secure doors and hatches for additional protection.

Prior to entering high risk areas, procedures for controlling access to accommodation, machinery spaces and store rooms should be set out and practiced.

10. Controlled and Restricted Entry: As discussed in the above point, it is important to secure different entry points in the ship, as it will be practically not possible to shut all for few entry/ exit points are required for watch and other important ship operations to continue. It must be ensured that any emergency exit cannot be opened by outside and if pirates do gain access to the upper deck of a vessel they will be tenacious in their efforts to gain access to the accommodation section and in particular, the bridge.

11. Use Physical Barriers If Available

If possible use physical barriers such as razor wires and electrified fence along the periphery of the ship to prevent pirates from boarding. Also keep water cannons, ballast / fire pumps, and fire hoses ready. Use all kind of barriers that are available to prevent pirates from boarding the ship.

Also, check if all the alarms and deck lights are working properly or not.

12. Check Ship's AIS system, radar, and other important navigation equipment

Ensure that the ship's AIS system and other important navigation equipment are working properly. It is recommended to keep the ship's AIS system on while transiting the high risk zone. Ensure that the ship's radar system is working properly. Also, the ship security plan and ship security alert system (SSAS) should also be checked.

13. Keep Communication ON: Communication is an important aspect to tackle any emergency operation, especially in piracy related situations. It is important that all the crew members keep an active communication throughout:

- All personnel on duty to carry a radio.
- VHF channel 16 (8) on the bridge and in safe room.
- Identify the relevant contact information that should be available on the bridge. This could include: MTO Dubai Hotline, own company, MSC-HOA, CJTF-HOF, Rescue sources, other ships and naval ships nearby
- Test of all communication equipment

The above mentioned points are some of the most important things that should be checked before the ship enters piracy zone. However, the precautions to be taken should also include factors such as type of ship, route, weather conditions etc.

APPENDIX L- Piracy and the ISPS Code

Measures to deter and respond to piracy attacks are part of a company's management system

Measures to deter and respond to piracy attacks are, like any other security-related procedure or equipment, part of a company's management system. It is for the Company to decide what those measures should be based on an assessment of the risks to which its ships are exposed.

The Threat

As a result of recent events in the Indian Ocean and the Arabian Sea, piracy has become an increasingly controversial and politically sensitive topic. Ship operators, flag administrations, insurers and others are struggling to formulate their responses in the face of a rapidly evolving and increasing threat. Questions concerning the installation and use of citadels and the employment of armed guards are especially contentious.

All this is taking place within much wider, complex political and military contexts and, here too, policy-makers are finding it difficult to keep up with events. While debates continue about whether attempts to deal with underlying social and economic factors in adjacent countries should take precedence over the deployment of naval forces, the pirates are becoming much better organized, trained and funded. Last year's pirates are this year's investors in piracy and there is evidence that large-scale organized crime has

spotted an opportunity to expand and diversify. Poverty and idleness among young Somali men can no longer be regarded as the only causes.

The pirates are also becoming more ruthless and violent. At one time, it was fairly safe to assume that, once on board, they would wait until the ransom was paid and then leave without harming anyone. This is no longer the case and many operators are coming to the conclusion that the only sensible response is to make sure that the attackers cannot get onto the ship in the first place.

Lloyd's Register's Involvement

Lloyd's Register, both as a classification society and in its role as a recognized security organization, is being drawn into these controversies by shipping companies seeking information and advice on how to avoid or prepare for an attack and by other industry bodies that are attempting to develop coherent approaches of their own. The questions being raised often go beyond purely technical and operational concerns to include the possible insurance and legal implications of proposed courses of action.

There are circumstances in which Lloyd's Register can assist companies with their technical and regulatory queries but, before we do so, and before we make any public statements on such matters, we must understand the part that recognized security organizations play in enhancing maritime security and the limits that this places on what we can say and do. This, in turn, requires a brief explanation of the way in which the International Ship and Port Facility Security (ISPS) Code operates.

The ISPS Code

The first step in achieving compliance, and the one on which all else depends, is for the company to undertake a thorough ship security assessment. This is a security risk assessment that begins by identifying all the possible security threats that the ship may encounter. These will vary depending on the areas in which the ship is trading, the cargoes it carries, the flag it flies, the nationalities of the seafarers it employs, and so on. The vulnerability of the ship to those threats is evaluated and any existing security arrangements are reviewed, all of which enables the company to decide what further measures are required.

The output from this exercise forms the basis of the ship security plan. This addresses the threats and vulnerabilities identified by the assessment and contains the procedures and instructions necessary for the ship to operate at security levels one, two and three. Elements of the ship security plan include the protection of restricted areas and critical operations; control of access to the ship; the operation and maintenance of security equipment; the conduct of security drills and exercises; security patrols, and so on.

The ISPS Code makes it clear that the company is responsible for conducting, documenting, reviewing and accepting the ship security assessment. The resulting ship security plan, accompanied by the ship security assessment, must be submitted to the flag administration (or a recognized security organization) for approval.

Although the company may employ another organization to assist in carrying out the ship security assessment or drafting the ship security plan, it is essential, in accordance with well established management principles, that the company retain responsibility for the adequacy of the work, any technical or operational decisions that arise from the assessment and the content and effective implementation of the plan.

An organization that has assisted in the ship security assessment or in the development of the ship security plan is forbidden from undertaking the review and approval of the plan and the subsequent verification audits.

The Role of the Recognized Security Organization

Lloyd's Register's role as a recognized security organization is to review and approve a company's ship security plan and to audit its effective implementation on behalf of the flag state. To be able to do so, Lloyd's Register staff must have had no involvement in the conduct of the ship security assessment or the development of the plan. In other words, as a recognized security organization, Lloyd's Register should not participate in the detailed assessment of security risks and must not give specific advice on what operational measures should be introduced or what items of security equipment should be deployed. This applies to the installation of citadels and the employment of armed guards just as it does to any other operational procedure or item of security equipment. If the company has carried out a ship security assessment and, based on that assessment, it has decided that a citadel or armed guards have a part to play in its planned responses that is a matter for the company.

The recognized security organization's task is to ensure that the ship security plan arises genuinely from the ship security assessment; that any arrangements are in accordance with flag-state requirements; that adequate procedures are in place; that crewmembers understand what they have to do; that emergency responses have been exercised; that emergency communications have been established and tested, and so on. The company decides what responses are appropriate, based on the results of the ship security assessment, and the auditor verifies that they are being managed effectively.

However, none of this prevents Lloyd's Register from providing technical support to ship operators provided that it does not amount to specific advice on which measures to adopt or the expression of opinions concerning the usefulness and effectiveness of particular alternatives.

For example, once the company has chosen to install a citadel, it is perfectly proper for Lloyd's Register to provide technical support in relation to, for example, the structural aspects of the installation; its wiring, ventilation and control systems; potential conflicts with class and statutory requirements; how to avoid such conflicts and what exemptions may be needed.

Similarly, even while the company is considering its choices, general guidance may be given on the factors that should be taken into account when coming to a decision. Have they consulted any guidance that might have been published by the International Maritime Organization, the flag administration or other industry bodies (especially the best management practices contained in IMO Circular MSC.1/Circ.1337)? Are any of the options available to them subject to mandatory regulations?

When contemplating the employment of armed guards, for instance, companies need to bear in mind that their ships are subject to the flag-state's domestic laws relating to firearms. They need to consider the applicable IMO guidance (in particular MSC.1/Circ.1405); the secure storage of arms and ammunition; the establishment of rules concerning the deployment of the weapons; reporting and record-keeping requirements and the laws of the states at whose ports the ship is likely to call.

Lloyd's Register can play a valuable part in helping companies to deter and respond to attacks by pirates, provided that it is done in a way that is not incompatible with its role as a recognized security organization acting on behalf of flag administrations.

APPENDIX M- Company Threat and Risk Assessment

This appendix details the procedures that should be undertaken by the CSO and Master in cooperation to identify the appropriate Ship Protection Measures to be applied to a voyage through an area or areas of risk from piracy and armed robbery.

Threat Assessment

The threat assessment should include threats of piracy and armed robbery so that its output will inform the risk assessment.

A threat is formed of intent, opportunity and capability. Intent and capability cannot be mitigated by masters or CSOs. Therefore, mitigation against the opportunity for an attack is the focus of this guidance, risk assessments and any subsequent SPMs.

In the context of piracy and armed robbery, capability means that attackers have the physical means to conduct an attack, intent is demonstrated by continued attacks, and opportunity is what is mitigated by the company, ship and crew through application of the measures described in this guidance.

In addition to the information provided in this guidance, supplementary information about the characteristics of the threat, specific or new tactics, and regional background factors may be sought from Regional Reporting Centers and Organizations as listed in the sources detailed at the annexes, Shipping Association websites, commercial intelligence providers or local sources e.g. ships' agents.

Risk Assessment

Risk assessment is an integral part of voyage planning within a safety management system. All voyages require thorough advanced planning and risk assessment using all available information. The risk being evaluated should include likelihood of harm to the crew or ship from attack by pirates and armed robbers. The risk assessment must reflect the prevailing characteristics of the specific voyage, ship and operations and not just be a repetition of advice e.g. relating to different geographical regions and different pirate modus operandi. Detailed guidance on preparing risk assessments can be found from a variety of sources including the ISPS code.

Risk assessment considerations for the Company

Like the Ship Security Assessment described in the ISPS Code, the risk assessment for the risk of piracy and armed robbery should include, but may not be limited to, the following:

- The threat and potential areas of increased risk (who are the pirates or armed robbers, what do they want to achieve, how do they attack, how do they board, which weapons do they use etc.) Companies should use the sources listed at the annexes to do this.
- Background factors shaping the situation (likely visibility, sea-state, traffic patterns e.g. other commercial ships, local patterns of life including fishermen and, other local maritime crime).
- Co-operation with military or other security services where such missions exist.

- The ship's characteristics/vulnerabilities/inherent capabilities to withstand the threat (freeboard, speed, general arrangement etc.).
- The ship's and Company's procedures (drills, watch rosters, chain of command, decision making processes etc.).

The risk assessment should take into consideration any statutory requirements, in particular those of the flag and/or the coastal State.

A key output of any risk assessment process should identify whether additional mitigation measures are required to prevent attack.

