



# THE SEAFARERS' RIGHTS AS REFLECTED IN THE INTERNATIONAL LAW: AN OVERVIEW

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**Abstract--** The rights of seafarers, who frequently risk their lives to enhance the flow of the world economy across the sea, are one important topic that must be addressed when regulating maritime law. Further, the fact that they are considered key workers in the modern day also tells us how important it is to pay attention to their status, lifestyle, and health status. In this context, even sometimes, it would be risky to ignore their condition, as it could jeopardize the safety and security of marine navigation. Today, international organizations work to monitor maritime events and, with the cooperation of states, provide the best provisions to support seafarers and improve their qualifications. They provided several conventions, including UNCLOS, MLC, STCW, SOLAS, and SAR. Then, Seafarers' rights, safety, and security are protected by these international instruments. This study examined seafarers' rights, governments' obligations under international law regarding seafarers, and states' overall actions in order to identify potential gaps in international laws and provide suggestions for improvement.

**Keyword:** *Seafarer, Human rights, states, Safety, Protection*

## INTRODUCTION

It is everyone's right to enjoy just and favorable conditions of work, which ensure fair wages, equal treatment of men and women, rest and leisure, among others, along with safe and healthy working conditions. These terms are reflected in the "International Covenant on Economic, Social and Cultural Rights". In this context, seafarers are not an exception, particularly with the potential to turn maritime casualties caused by a safety violation into security issues and environmental disasters, complicating the situation at sea and causing new conflicts. Nevertheless, the development of international standards for supporting mariners began in the 20th century and since then has continued.

The rights of seafarers at sea cover a broad range and are recognized by various international instruments. These rights include assisting those in distress, the right to repatriation, the right to receive medical assistance as necessary, shore leave, a fair wage, decent living conditions, and the safety of life. Even some of them are imposed by international customary rules and ethical duties, such as rendering assistance in a distressed situation or providing medical care to both flag and coastal states. In this respect, this research examines their duties and roles in implementing regulations.

## HISTORY OF PROTECTION OF SEAFARERS' RIGHTS

The topic of protecting seafarers and minimizing risks associated with maritime trade is not new and has not been highlighted just in the modern period. If you study maritime history, you'll discover that helping out distressed ships at sea has been an ethical practice since the beginning. Additionally, Achaemenid and Sasanian monarchs commanded their navy to suppress pirates in the Indian Oceans, and their navy was permanently tasked with establishing security for merchant shipping and protecting seafarers against pirates. Or a seafarer's right to get wage has existed since the beginning of time, as evidenced by the Hammurabi Code, which dates back to 1750 BC.

## SEAFARERS' RIGHTS UNDER THE UNITED NATIONS CONVENTION ON LAW OF SEA

The UNCLOS is known as the major international treaty on sea domain, has created a framework of laws for ruling over the seas. A large portion of these rules has also been accepted as international customary rules, particularly those pertaining to environmental protection, shipping freedom, innocent



passage, sovereignty over exclusive economic zones, and state rights and obligations to safeguard safe shipping and protection of their own vital interests.

In this context, there are various regulations connected to seafarers' rights and related to their safety, security, freedom and so on. Although, maybe not explained a very broad area, that generally is significant. Particularly with focused on old international customary rules, for example rendering assistance to distressed people at sea which is imposed on both flag and coastal states. Moreover, it imposed a duty on flag states to take appropriate measures to make sure the registered vessels followed accepted standards for the safety of vessels, its crew or the employed personnel are qualified under international standards, further their training with labour conditions are comply with those minimum international instruments.

As mentioned earlier, since ancient times, governments such as the king of Persia attempted to suppress pirates and create a safe and secure trade for seafarers; this essential known traditional duty of states is repeated under UNCLOS too. In terms of rights, we can mention the freedom of high seas navigation and enjoying the innocent passage of ships from another state's territorial sea. This convention requested all parties for prompt release of the crew in case of arrest ships upon the posting of a reasonable bond or other financial assurance; the application to international tribunals for release may be made only on behalf of flag states and that is a responsibility of flag states for supporting the registered ship's crew. Exactly as *M/T Saiga case*, the 1st case law in international tribunal law of the sea (ITLOS). However, the coastal state, after arrest or detention ships, shall promptly inform its flag state.

Consequently, this convention has tried to protect seafarers' rights in various ways, although unfortunately, we can see some political approaches of states against the basic known international principal rules for freedom navigation with prejudiced measures against freedom shipping occurred. For instance, A national Iranian oil tanker (NITC) was threatened by the United States in 2020 when it transported fuel to Venezuela; therefore, I attempted to ask Iranian officers about their difficulties during the voyage. In their interview with Yaser Asna Ashary and Omid Jaymand, the two second officers on *MT Fortune* shared their experiences during the covid epidemic, as well as their worries about President Donald Trump's repeated threats to arrest them. They also acknowledged the worries of their relatives. In fact, this kind of stress at work is unfair for people, especially when it occurs in remote workplaces. Remarkably, the right to live without fear under the Universal Declaration of Human Rights or the right to safe, healthy, just, and favorable working conditions are inherent human rights, as affirmed by the International Covenant on Economic, Social, and Cultural Rights 1966.

### ATTEMPTS TO PROTECT SEAFARERS' RIGHTS UNDER OTHER INITIATIVES

When we are concentrating on human inherent rights, we may encounter different issues like life, dignity, and so on. Nevertheless, because seafarers—also known as keyworkers—are away from land and human contact, they require more awareness, notification, protection and collaboration for the defense of their rights. For instance, many of them are unaware of their rights to enjoy proper and sufficient food, rest time, etc. While working as a deck officer, I encountered a master who rationed out poor-quality meals and made the crew work outside of regular working hours without holiday.

In this regard, the international community has attempted to protect seafarers' rights since the last century. The International Transport Workers' Federation (ITF), Apostleship of the Sea, International Lifeboat Federation (ILF), and the Comité Maritime International (CMI) are just a few of the non-governmental parties or organisations that have begun to raise awareness about various rights, such as the protection of life, wages, improving safety and standards, and providing facilities in ports for the enjoyment and relaxation of seafarers. Furthermore, exclude of these marine Ngo's attempts during the last century, many other supportive regulations and standards to support all labours or seafarers separately emerged by international conventions, such as the Forced Labour Convention, 1930, the



Freedom of Association and Protection of the Right to Organize Convention, 1948, the Equal Remuneration Convention, 1951, the Abolition of Forced Labour Convention, 1957, the Minimum Age Convention, 1973, the Worst Forms of Child Labour Convention, 1999, Minimum Age (Sea) Convention, 1920, Medical Examination of Young Persons (Sea) Convention, 1921, Repatriation of Seamen Convention, 1926, Holidays with Pay (Sea) Convention, 1936, Hours of Work and Manning (Sea) Convention, 1936 and other.

Despite this, the two international organizations of maritime and labour felt the need for a comprehensive convention due to the importance of the issue. This led to collaboration between the International Labor Organization and the International Maritime Organization codifying Maritime Labor Convention, 2006 (MLC)

### THE RELEVANCE OF THE MLC IN DEFENDING SEAFARERS' RIGHTS

In February 2006, the ILO Global Labour Conference adopted the MLC, a comprehensive international employment convention. Before this convention protection of seafarer's rights wasn't under a unified framework. On the other hand, following the MLC adoption, considered it as the fourth pillar of the international regulatory regime for quality shipping alongside safety of life at sea (SOLAS), training of seafarers (STCW) and marine pollution prevention (MARPOL). Based on all ILO conventions and guidelines which established between 1920 and 1996, this document has built a thorough global maritime labour standards. In this context, by unifying and dividing it into two mandatory and non-mandatory parts, it tries to create suitable conditions for seafarers and establishes regulations for States, ship owners, and operators for the payment of wages, leaves, repatriation, and medical care for seafarers.

In pursuance of this convention, all member state undertakes to implement laws in the manner specified by the provisions and to cooperate to ensure this Convention is effectively implemented and enforced. Further, even ships flying flags of non-member countries must adhere to standards, because they entered the ports of member countries and therefore fell under their jurisdiction.

Also, the elimination of all forms of forced or compulsory labour, effective abolition of child labour and elimination of discrimination in respect of employment and occupation are realized as fundamental rights of seafarers under this convention. Specifically, no ship may employ children as seafarers, any form of force against seafarers is forbidden, and the captain or officer in charge cannot force or require seafarers to perform abnormal or out-of-capacity duties.

As previously mentioned, this convention grants them a wide range of rights, and authorities are not free to choose whether or not to enforce the standards; For instance, meeting the minimum requirements to ensure that any accommodations for seafarers, either when they are working or living on board, or both, are safe and decent, these accommodations must adhere to the different standards for staying, including (a) the size of rooms and other accommodation spaces; (b) heating and ventilation; (c) noise and vibration and other ambient factors; (d) sanitary facilities; (e) lighting; and (f) hospital accommodation. This indicates that the shipowner must not provide a room without air conditioning in a tiny area with a large number of people. Additionally, cleanness is very significant, sleeping rooms shall be provided for men and women; sleeping rooms shall be of adequate size and equipped adequately so as to ensure reasonable comfort and to facilitate tidiness; all seafarers shall have convenient access on the ship to sanitary facilities meeting minimum standards of health and hygiene and reasonable standards of comfort, with separate sanitary facilities being provided for men and women.

Another issue is seafarers' employment; they shall make an agreement with the shipowner or other authorities; the Seafarers' employment agreements shall be agreed by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them before signing. The member states must ensure that seafarers working on ships flying their flag are paid monthly and/or in accordance with applicable agreements. In



this context, many companies may ask for money to allow cadets to join the fleet; instead of training, they will use them as ordinary seamen. As a result, these companies abuse cadets to reduce the costs of cleaning and maintaining ships. Although familiarity with deck cleaning and maintenance is very essential, paying for working as an ordinary seaman is not acceptable according to this convention and if employed as a cadet must use them as capacity and follow the standards of training under STCW.

In addition, seafarers have many other rights under various titles, including annual leave as well as shore leave. Additionally, justified absences from work are not considered annual leave or shore leave if they benefit their health and well-being and are compliant with their operational duties. Although in emergency cases, immediate medical care is always unavoidable and is a legal and ethical issue.

Another inherent right is repatriation, each member party shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances:

“(a) If a seafarer's employment agreement expires while abroad.;

(b) whenever the seafarers' employment contract terminated:

(i) by the shipowner; (for example in a laid-up case)

or

(ii) by the seafarer for justified reasons; and also

(c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances. Namely, the seafarers, even before termination of agreement because of logical issues such as medical problems and unfitness, may disembark; in this situation, the shipowner shall pay and arrange the repatriation of the seafarer.

If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:

(a) The competent authority of the member whose flag the ship flies shall arrange for the repatriation of the concerned seafarers; in the event that it does not do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the member;

(b) The Member whose flag the ship flies may seek repayment from the shipowner for expenditures associated with repatriating seafarers;

(c) In no event shall the seafarers be charged for the costs of repatriation, unless the seafarer has been determined to be seriously in breach of the seafarer's employment obligations in accordance with national laws, rules, other measures, or applicable collective bargaining agreements.”

One vital subject is safe manning level which has directly impact on safety at sea too. To ensure that seafarers work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship, each MLC member shall require that all ships that fly its flag have a sufficient number of seafarers on board to ensure that ships are operated safely, efficiently and with due regard to security. In accordance with the minimum safe manning document or an equivalent issued by the competent authority, and in compliance with the standards of this Convention, every ship shall be manned by an adequate crew, in terms of number and qualifications, to ensure the safety and security of the ship and its crew, under all operational conditions.

My experience indicates that these are the more typical issues that might come up; however, there are many other rights as well.

#### IMO AND ITS IMPACT ON SEAFARER RIGHTS

One significant UN agency is this well-recognised maritime organisation namely the International Maritime Organization. It has significantly impacted the evolution of maritime regulation at sea ever since it was created (IMO).



If we concentrate on the issues, we may see that the organization's primary focus has always been on the rights of seafarers, which are particularly included in the categories of safety, security, training, and rescue of distressed individuals at sea.

IMO have always wanted to develop maritime safety and security. Hence today, there are many international instruments which have significant impacts on the safety and security of seafarers. For example, the SOLAS convention is the main instrument for the development of safety and security of crew on board. In the training and standard theme, because of its impact on safe transport at sea and linked to seafarers' rights, there is specific attention. IMO with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), attempted to improve training and specified qualification standards. However, the speed of development and new learning from various maritime events has caused newer versions to appear in a short period. Its adoption was in 1978, with Major revisions in 1995 and 2010. Aside from that, as part of the MLC's request for connected seafarers' rights, seafarers must also be trained or certified as competent or otherwise qualified to perform their duties on a ship. Moreover, seafarers must complete a personal safety training program before they can work on a ship. The International Maritime Organization's mandatory instruments shall be considered for training and certification.

Another important issue is rendering assistance to those who are in danger of lost life at sea. As mentioned before one fundamental of human rights is the right to life. Rendering assistance to a distressed person is enshrined from immemorial time and stemmed on natural law. Nonetheless, various conventions repeated this ethical rule under IMO or other international organisations' auspices. In this regard, the most important conventions are the international maritime search and rescue convention of 1979, the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for Life at Sea (SOLAS), the International Convention on Salvage and the Collision Convention, 1910. However, as we can see, there are many supportive laws and strategies for defending seafarers' rights. They must be aware of their own rights to report violations to port state authorities for protection. In addition, port and flag state authorities must conduct stringent inspections to ensure that all rights are upheld. In this context, a number of Non-governmental Organizations (NGOs) put in a lot of effort and significantly impacted the advancement of seafarers' rights. E.g., International Transport Workers' Federation (ITF) worked to ensure safe and decent working conditions for seafarers. Further, it greatly impacted increasing inspections and audits worldwide by helping the adoption of the Merchant Shipping (Minimum Standards) Convention, 1976 (C. 147) or its attempts to support Chinese crew in the *Arcadia case* 1992.

## CONCLUSION

There are many recognized rights for seafarers, and they are even emphasized accurately through various organisations. Seafarers play a vital role in the lives of mankind as key workers. In this regard, states must adhere to these regulations to protect seafarers' rights. In particular, seafarers may experience more tension when faced with small issues due to the nature of their work, similar M/T Fortune case. In this context, MLC, as a comprehensive global treaty incorporating international customary and developed regulations, is now regarded as the fourth pillar governing maritime standards. The advantage of this convention is the IMO and ILO cooperation; they have partnered to ensure that seafarers enjoy basic and fundamental rights. Hence, seafarers have to understand their own rights, consequently, in case of violation must report to port states authorities for the defence of their rights, and moreover, the port and flag state authorities, with rigorous inspection, shall make sure all rights are respected. Furthermore, non-governmental organizations (NGOs) can contribute to the evolution of safety and security standards for seafarers' daily lives at sea, similar to the ITF.



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