Human Rights at Sea: Exploring an Agenda for the Future

Dr. Donna J. Nincic

California Maritime Academy

While human rights protection has been promoted on land with greater or lesser degrees of success, there is little conversation about human rights at sea at the national, international or corporate level. A number of recent security developments in the maritime domain such as maritime piracy and its impact on seafarers and those who protect them, human trafficking at sea, illegal migration, and human slavery in some maritime industries have raised this issue to greater prominence.

Consequently, there is a need for highlighting human rights issues towards the end of protecting and respecting individual human rights in the maritime context, as well as mitigating and providing remedies for “human rights violations in the daily running of the maritime industry and for workers in the maritime environment.”

Keywords: Human rights, armed guards, piracy, illegal migration, human slavery, fishing industry, human trafficking

1. Introduction

A number of recent security developments in the maritime domain, coupled with our increased knowledge about abuses of the maritime industry by criminal elements, have raised the issue of “human rights at sea” to a greater level of importance than has been seen in recent years. Examples include – but are not limited to: Maritime piracy and its impact on seafarers and those who protect them – specifically privately-contracted armed security personnel (PCASPs); human trafficking at sea, illegal migration, and human slavery in some maritime industries.

The goal of this paper is to highlight some of the human rights issues as they occur at sea, and to present the global debate that is currently emerging on this issue.

2. Human Rights and Human Rights at Sea

According to the United Nations, human rights are those rights “inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status” [1]. Detailed in the United Nations Universal Declaration of Human Rights, they include (but are not limited to) the right to “life, liberty and security of person,” and “freedom of speech and belief and freedom from fear and want” [2]. More specifically, and directly applicable to the maritime industry, this includes the provisions that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (Article 4), and that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Article 5).

While human rights protection has been promoted on land with greater or lesser degrees of success, it has been noted that there is little conversation about human rights at sea at the national, international or corporate level. Consequently, there is a need for highlighting human rights issues towards the end of protecting and respecting individual human rights in the maritime context, as well as mitigating and providing remedies for “human rights violations in the daily running of the maritime industry and for workers in the maritime environment” [3]. As has been stated by the founder of the Human Rights at Sea initiative, “human rights apply at sea, as equally as they do on land” [4]; additionally,
“considerations of humanity must apply in the law of the sea, as they do in other areas of international law” [5].

2.1 The maritime dimension of human rights

Human rights concerns at sea are both a cause of, and a product of, the increasing criminal exploitation of the maritime and shipping environment. For example, maritime trade routes have long been used by criminal traffickers – Figure 1 shows maritime routes currently in use for the illegal movement of drugs and human beings around the world; the red and green lines are the routes used to move cocaine and heroin, respectively; while the purple line shows current movement of illegal migrants, and the blue line shows illicit trafficking in women and children.

Figure 1: Current world illicit trafficking: 2014 [6]

The global trade in illegal weapons exploits the maritime domain to a similar degree in that weapons traffickers use the same trade routes as all other trade – both legitimate and illegitimate. According to some estimates, up to one-quarter of all trade in small arms may be illicit, or not recorded as required by law [7].

The ability of criminal elements to commit human rights abuses at sea with far greater impunity than on land, stems from the fact that much of the maritime domain is what is known as an “ungoverned geographical space” which means it is ripe for abuse, given the lack of international or even national oversight in many cases. More specifically, an ungoverned geographical space is a social, political, or economic area where states do not exercise ‘effective sovereignty’ or where state control is “absent, weak, or contested” [8]. At sea, this includes nearly all of the high seas given the absence of a monitoring and enforcement mechanisms in much of the world’s oceans. Ungoverned geographical spaces can also unfortunately include the territorial waters of some states. In these cases, the national government is unable or unwilling to exercise effective judicial control over its maritime boundaries thereby effectively allowing criminal elements to conduct illegal activities – including human rights abuses – relatively unchecked and often even unobserved by local authorities or the international community.

2.2 Why does this matter?
Apart from the intrinsic value of the right to dignity of every individual, an attention to human rights in employment is increasingly seen as good business practice. Initiatives supporting “corporate social responsibility” have been shown to create loyal customer bases, and even increase profitability. Negligence of basic human rights has equally been shown to lead to boycotts in highly visible cases such as the Tazreen factory fire in Bangladesh that killed 112 workers, and current efforts to boycott fish products from Thailand due to the extent of forced labour used in the industry.

Looking now more specifically at a number of human rights issues; we will focus on the following cases: Human rights issues in maritime piracy; human trafficking at sea; human slavery at sea; and the human rights dimension of illegal maritime migration. It should be stressed that these are not the only human rights concerns at sea; rather these cases have been selected to illustrate how pervasive human rights abuses can be on the world’s oceans.

3. Maritime Piracy

Three separate dimensions of human rights concerns can be identified within the very complex issue of maritime piracy. First, seafarers are often taken as hostage by pirates; their status as hostages and unfortunately their treatment by some employers during and after their time as hostages, is often a direct human rights abuse and is in direct contradiction to many elements of the Universal Declaration of Human Rights. Second, those that are increasingly hired by shipping companies to protect crews and vessels in waters where pirates are known to be active have faced problems of “criminalization” due to ambiguities in international law. For example, in a few high-profile cases, privately-contracted armed security personnel (PCASPs) have successfully fended off pirate attacks only to be arrested for weapons possession in their next port of call. Thirdly, those who are actually committing acts of piracy may also be victims of human rights abuses themselves.

3.1 Seafarers taken as hostages

Maritime piracy has been a significant concern off the coast of Somalia for some years. Although these numbers are now in decline due to the success of the UN-sanctioned international task forces operating off the Somali coast and into the Indian Ocean, and the use of armed security guards on board vessels, the United Nations estimates that about 40 people are still being held by Somali pirates [9].

While this is a welcome decline from the peak of their activity some three years ago when more than 700 seafarers were held hostage on more than thirty ships, it still is a critical problem. Many of these crewmembers have been held hostage for years while ransom negotiations languish. Understandably, the longer hostages are held the greater the risk of physical danger and long-term distress. As reported by Oceans Beyond Piracy, the average duration of captivity was 369 days for all seafarers held captive in 2013 [10].

The dire conditions of seafarers held in captivity are well-documented. During their time as hostages, seafarers are often may be subject to torture, beatings, lack of access to critical medical care, and other forms of physical and emotional abuse, coercion and intimidation. Frequent threats of death are not uncommon. As reported by a seafarer from the *MV Orna*, released in January 2013 is typical of the kinds of conditions experienced by hostages in Somalia:

“We were starved and tortured. The pirates would remove all our clothes and hit us with sticks covered with thorns and kick us. They would tie us up with thick rope, almost stopping our blood circulating. We could not move after the ropes were removed. The nights were cold and the days were scorching hot.” [11]
Release from captivity is rarely the end of distress for the seafarers who may continue to have significant problems when they return home. Post-traumatic stress disorder (PTSD) can be an ongoing debilitating problem, affecting their not only their health and relationships, but their future employment prospects as well. Because of the nature of their employment, it can be extremely difficult when they are released, as they get no welfare back up or support. Back wages from their time in captivity are rarely paid and they may be ostracized if they complain. Additionally, some seafarers who have been held by pirates find they may be considered “bad luck” when they seek work again.

3.2 PCASPs

One of the reasons attacks by Somali pirates have declined so significantly is the increasing use of armed guards (more formally, “privately contracted armed security personnel – or PCASPs). In 2013, 100 vessels out of 145 reporting suspicious approaches by suspected pirates in the Indian Ocean had security teams on board, as did ten of the nineteen vessels reporting attacks. Twenty-seven of the 100 vessels with security (27%) aboard during suspicious approaches reported firing warning shots to deter suspicious approaches, and eight of the ten vessels with security on board during attacks (80%) reported exchanging fire with pirates [12].

While successful in helping to mitigate capture of the vessels and hostage taking, the use of privately contracted armed security personal (PCASPs) onboard ships has clouded the issue of liability and responsibility for the individual guards, the ship’s master and the shipping company – who is responsible should someone – pirate or crew – die in the armed defence of the vessel? The “100 Series Rules for the Use of Armed Force” meant to establish internationally implemented rules and procedures for the use of force that will be accepted in a court of law, are an effort to address this problem and are in use by some PCASPs, but have not yet received full international acceptance. On a related note, what obligation does the ship have if pirates are severely wounded by PCASPs during an armed defense of the vessel? Are the captain and crew required to render medical assistance or perform a rescue at sea if the pirate’s ship has been permanently disabled during the armed exchange?

While these may not seem prima facie to be human rights issues, the realities at sea for some PCASPs might suggest otherwise. PCASPs legally hired to protect vessels from pirate attacks have been jailed when entering the waters of some countries, and absent clear international law on their rights, responsibilities and status, have been accused of piracy or terrorism themselves, or languished in jails abroad. Similar situations have occurred with merchant ships who have chosen to carry weapons to protect themselves.

For example, at the height of Somali piracy in 2010 off East Africa, several British security guards were accused by the Eritrean government of terrorism and sabotage after they were found with weapons inside Eritrea’s territorial waters [13], October 9, 2013. In another case, several Russian sailors onboard the MV Myre Seadiver were accused by the Nigerian government of weapons trafficking when arms were found onboard their vessel in Nigerian waters. The vessel belonged to the Russian security firm Moran which claimed the MV Myre Seadiver had all the required permissions to carry arms, and was in Lagos only to change crew on its way from Madagascar to Conakry [14].

The situation in Nigeria – where pirate attacks continue to increase – is proving to be complicated for ships wishing to protect themselves from pirate attacks due to the fact that the Nigerian Army and the
Nigerian Marine Police do not agree on the use of PCASPs onboard vessels. As reported in June 2014, the Nigerian Army has begun to begin to detain and/or arrest vessels with armed security guards on board even if they have been provided by the Nigerian Marine Police. The issue is one of jurisdiction – even though the Nigerian Army’s role in anti-piracy operations has been confined to the provision of escort and patrol boats, it has claimed enforcement jurisdiction over the territorial sea and EEZ [15].

According to Peter Cook, CEO of the Security Association of the Maritime Industry (SAMI), these incidents are part of a “worrying trend” on the part of some government authorities towards the “criminalization” of maritime security operatives. Specifically, “Maritime security professionals should not be used as makeweights in political disputes, nor be seen as scapegoats in commercial quarrels” [16]. He goes on to add,

“…it is deplorable that such individuals are being made to suffer the indignity, uncertainty and distress of arrest and incarceration, especially as the maritime security industry has been at the forefront of efforts to protect seafarers and world trade from piracy.” [17]

3.3 Children in Piracy

While it may be difficult for some to feel compassion for the perpetrators of maritime piracy, the reality is that human rights abuses do occur within pirate gangs, specifically the use and exploitation of children¹. The first significant attention given by the media to the use of children in piracy was as a result of the *Maersk Alabama* attack in the Gulf of Aden in April 2009, when the sole survivor among the pirates claimed at various times to be 16, 18, 19 and 26 years old. Despite the confusion over his age, he was subsequently tried as an adult.

This was not a unique situation – the Indian Navy discovered that 25 out of 61 pirates that they arrested were under the age of fifteen years, four of whom were estimated to be just eleven years old [18]. And in 2011, of the 87 pirates on trial throughout the world, 50 were under the age of 18, or just over 57%. [19]

The use of children as pirates by criminal gangs raises a number of concerns, first among which must be the deprivation of a proper childhood for these children. They are not educated in anything but criminal activity that makes it difficult to consider rehabilitating them or even providing them with a proper education. It also raises concerns at a more practical level – people are known to hesitate if they believe their actions might kill a child, raising concerns for the efficacy of armed guards in some situations. And if the children are captured as pirates, are their rights as children throughout their detention and subsequent trials properly protected in all parts of the world? These questions and concerns have implications for the future stability of Somalia as a viable country, or indeed any society where children are routinely exploited in criminal activity (as often seen in militias and terrorist organizations as well).

The use of children in piracy also has implications not only for the defence and security of vessels, but the protection and safety of the world’s seafarers. Anecdotally, sailors held captive by Somali pirates often report that the children may typically be the ones that treat them the worst and are the most abusive in their behaviour, presumably in an effort to please or impress the leaders of their pirate gangs.

¹ According to the United Nations Convention on the Rights of the Child (UNCRC) Article 1, the term ‘child’ means every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier.
4. Human Trafficking at Sea

Human trafficking is estimated to be the third largest criminal enterprise in the world behind illegal drugs and arms trafficking. According to the United Nations Office on Drugs and Crime, trafficking is defined as the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them [20].

The CNN Freedom Project has reported that trafficking in humans is believed to generate upwards of $32 billion dollars [21]. Globally, between 600,000 and 800,000 people are trafficked across international borders annually [22]. Major source countries now include Ukraine, Russia, Romania, Bosnia, Brazil, Myanmar and the destination countries are mostly the United States and Western Europe. Most of those trafficked each year are women and children, primarily for the sex industries.

As is clear from Figure 2, the illicit movement of human beings is clearly a maritime issue:

![Figure 2: Human Trafficking – Transnational Flows, 2007-2010 [23]](image_url)

Human trafficking has two maritime dimensions: 1) the movement of people on the water across geographic regions and sub-regions, and 2) the illicit entrapment and movement of people for use in the maritime industry. More commonly known now as “human slavery,” this element of human trafficking will be covered in the next section, with this section focused on the illicit movement of people by sea.

The methods used to traffic human beings around the world are numerous and include transporting people across borders hidden in cars or trucks as well as people trafficked into countries as stowaways onboard vessels or packed into shipping containers. Smugglers and traffickers have also been known to use passenger ferries as a way to transport people across bodies of water, hiding them among crates to avoid detection from officials [24].

Only a small percentage of human trafficking occurs by air due to the high risk of detection and the fact that traffickers can only take one to three people at a time. For those routes that are not exclusively land-based (where trucks are the preferred means of transportation), boats are the primary means of transportation. Hiding individuals in ship cargos is often used, but is also high risk due to inspections at ports. Usually a more common method of transporting people illegally is by rickety fishing boats or other derelict vessels, crammed and overcrowded, seeking to exploit weaknesses in maritime boarders by transferring the trafficked human beings onto unpatrolled beaches and shores at night where the chance of detection is relatively low.
5. Human Slavery at Sea

As noted by Dr. Mark Lagon, Professor at Georgetown University and expert on human trafficking:

“Human trafficking is not limited to activities on land, and increasingly evidence indicates that labor and even sexual exploitation are occurring at sea, and particularly on fishing vessels that exist largely unnoticed by the rest of the world.” [25]

The fishing industry is often easily exploited as fishing vessels are exempt from the vessel safety standards and monitoring requirements of the International Maritime Organization (IMO). The result is that fishing vessels are regulated only by the vessel’s flag state fishing vessels and often much less carefully regulated than other ships. Additionally, as fishing vessels may operate at sea with complete autonomy months or even years at a time, they are often geographically well beyond the jurisdiction of even the most conscientious state.

The typical crewmember employed by the fisheries sector in many countries is often a relatively low cost migrant worker. Without a network of supportive friends, family and community, migrant workers are vulnerable to forced labor and human trafficking. They are typically low skilled, lacking training and often have inadequate language skills to understand their rights and legal protections in environments where the enforcement of safety and labor standards may be lacking.

A typical scenario may be as follows: Migrant workers are eager to sign onboard vessels as fishermen due to typical promises of high wages. Either that, or they are tricked by agents believing they are agreeing to become gardeners or construction workers, only later to find out that they are being sent to sea. Fishing company agents may rush these men into signing misleading contracts, with the workers only finding out later that the company can withhold their salaries until the completion of the voyage, and that collateral assets may be collected from their families. Any personal identification papers or documentation they have may be confiscated or held for “safekeeping” until they completion of their contracts.

Once onboard the vessel they live in cramped and unsanitary conditions, often with the daily threat of physical violence and sexual assault. They can be assessed fines for not working; there have even been anecdotal cases of fishermen being killed and thrown overboard if they refuse to work, or complain about the working conditions. When the ship makes port calls, they fishermen are usually reluctant to complain, for fear of retaliation. At the end of their voyage, they may not even be paid and their passports and identification papers (if there were any) not returned to them. They will then incorrectly be told that they are illegal workers and if they complain to the authorities, they will be thrown in jail.

6. The Human Rights Dimension of Maritime Illegal Migration

As we see in human trafficking, illegal migration also has a maritime dimension; indeed it may often be difficult to distinguish between migration and trafficking as many people who begin as migrants often end up trafficked by unscrupulous individuals they have hired to help and assist them. What begins as a promise of safe passage by sea and illegal entry into another country may end up as forced labour on board fishing vessels, as we have seen as well.

For trafficked individuals and migrants alike, transportation by sea – typically on dangerously maintained boats – if fraught with peril. The boats in which these migrants travel are not properly manned, equipped or licensed for carrying passengers on international voyages. Migrants transported
by sea generally travel without documents, in cramped conditions, facing severe weather at sea and often even death. The result has been several tragedies of overcrowding, capsize and sinking in recent years:

- On 26 August 2001, the Norwegian cargo ship Tampa responded to a distress call issued by the Australian Rescue Coordination Centre and rescued over 430 Afghan asylum seekers from a sinking migrant boat. The Australian government refused to permit the Tampa to offload the rescued asylum seekers on Christmas Island, the closest place of safety. The Tampa’s captain eventually declared an emergency and entered Australian territorial waters, upon which they were boarded by Australian SAS special forces who took control of the ship. The asylum seekers were eventually transferred to a naval vessel and sent to Nauru where they were detained;

- In May 2007 a small and overcrowded boat apparently full of migrants was spotted in some distress by the Maltese Air Force. Over fifty people were on board and at the time they were spotted, they were apparently trying to bail out water from their vessel. Boats dispatched to render assistance found no trace of these individuals, and they were all presumed lost at sea;

- On 3 October 2013, a boat carrying migrants from Eritrea, Somali and Ghana to Italy sank off the Italian island of Lampedusa. The Italian Coast Guard responded and were able to rescue 155 survivors of the reported 500 migrants on board;

- A second shipwreck occurred just over a week later in the same area. In this incident, the boat was reportedly carrying migrants from Syria and Palestine, and at least 34 individuals were later confirmed dead;

- In June 2014, Italian rescuers attempting to assist a fishing boat from North Africa with almost 600 people onboard found 30 people dead of suffocation in the hold of the vessel. This occurred on a weekend where the Italian Navy rescued over 5,000 individuals at sea fleeing the conflicts in North Africa and the Middle East.

These are but a few examples of incidents that have occurred recently. Migrants lost at sea is not new but the increasing frequency of reported shipwrecks and losses has resulted in renewed attention to this humanitarian concern, and to the difficulties subsequent to rescue of individuals who are undocumented, often fleeing significant danger and harm, but who were nonetheless attempting to enter other countries illegally.

### 7. Conclusion: Next Steps and the Human Rights at Sea Initiative

This paper is not meant to be an exhaustive discussion of human rights concerns at sea; nor it is meant to rank-order or prioritize human rights concerns in any definitive manner. Rather, the goal has been to introduce issues that have been treated independently as part of a greater whole of human rights concerns, and to begin to show some of the inter-linkages that exist between them. While some of these issues – such as rescue of migrants at sea – have received significant attention and are supported by IMO guidelines, amendments to SOLAS the SAR Conventions – others, such as human slavery at sea is relatively new to international awareness and is still lacking an internationally accepted and supported regulatory framework.

Assisting in this effort of greater awareness, is the Human Rights at Sea Initiative [26], which has stated the following goals and objectives as its vision:

- Increased global awareness of the explicit requirement for protection of, respect for and provision of remedies in relation to human rights at sea.
Continued international development of effective, enforceable and accountable remedies for human rights abuses at sea.

Independent and effective state, business and individual lobbying in support of the concept of human rights at sea.

Global awareness of the UN Guiding Principles on Business and Human Rights in the maritime environment and throughout the maritime industry based upon the Human Rights at Sea (HRAS) initiative [27]

The goals include the development of a maritime interpretation of the 2011 UN Guiding Principles on Business and Human Rights and the creation of voluntarily applied Corporate Social Responsibility (CSR) documentation [28]. This will involve not only participation and agreement of governments around the world, but significant contribution and expertise from the international shipping community and maritime experts in academia, the public and the private sectors.

References


[12] Ibid.


[17] Ibid.


[19] Ibid.


[27] Ibid.

[28] Ibid.