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The Crew Follows the Hull: Seafarers' Protection in Armed Conflict and Maritime Security Operations

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Abstract: *Merchant seafarers are civilians whose legal protection in armed conflict is not held personally but derived from the ship beneath them. This article names that arrangement hull-derived protection and identifies the unargued assumption on which it rests: the congruence premise, according to which flag, ownership, cargo, control and crew nationality point in the same direction, so that a judgement about a vessel is a serviceable proxy for a judgement about the persons aboard it. Congruence has failed. Roughly three-quarters of world tonnage flies a flag other than that of beneficial ownership, crews are assembled across a dozen labour-supplying states, and belligerents in the Red Sea, the Black Sea and the Persian Gulf now select targets by imputed political association — port-call history, fleet structure, sanctioned cargo, destination — rather than by flag. The proxy has come loose from the thing it stood for. The article then shows why no adjacent regime repairs the defect, tracing what is termed here the deferral chain: humanitarian law defers to the platform, the law of the sea defers to the flag State, labour law defers to the shipowner, and maritime security operations defer to the trade interest, leaving no residual duty-holder. Against this, the article defends a narrow reconstruction. Platform-based targeting may remain the rule for the liability of the vessel; it cannot govern four personal entitlements of the crew — proportionality accounting, precautions and warning, detention status, and rescue with repatriation. The 2026 evacuation framework for the Strait of Hormuz is read as the first institutional expression of that decoupling.*

Keywords: seafarers; law of naval warfare; international humanitarian law; maritime security operations; flags of convenience; Maritime Labour Convention; Strait of Hormuz; proportionality

1. Introduction

In June 2026, with some eleven thousand seafarers held aboard vessels that could not leave the Persian Gulf, the Secretary-General of the International Maritime Organization reported that the crews felt forgotten (International Maritime Organization [IMO], 2026c). The remark was made in the register of pastoral concern, and it was received that way. It deserves a harder reading. Seafarers are not forgotten by international law in the sense that no rule addresses them; the difficulty is the opposite. Four regimes address them at once — international humanitarian law, the law of the sea, international labour law, and the institutional architecture of maritime security — and each of the four is built so that the seafarer arrives inside it as a consequence of something else. The something else is the ship.

The proposition that the crew follows the hull is not a rhetorical flourish. It is doctrine, and it is stated

with unusual candour in the specialist literature. McLaughlin (2025) observes that the targeting regime in the law of naval warfare is primarily platform-based and that the concept of civilian direct participation in hostilities has markedly less purchase at sea than ashore; the corollary, developed at length in his earlier study, is that merchant mariners generally share the rights and liabilities attaching to their vessel's status (McLaughlin, 2022). Heintschel von Heinegg (2021) reaches the same position from the law of neutrality, and the *Newport Manual* codifies it more carefully than the *San Remo Manual* did by distinguishing classes of vessel and specifying the criteria that fix enemy or neutral character (Kraska et al., 2023). None of this is a drafting accident. The rule has a defensible engineering rationale: a commander at twelve nautical miles can observe a hull, a wake and an automatic identification signal, and cannot observe a crew list.

The older literature took that rationale for granted because the world it described made it true. Writing on flags of convenience in the 1970s and 1980s treated the divergence between registry and ownership as a problem of labour standards, taxation and safety inspection — Boczek's early framing, later carried forward by Anderson (1996) and DeSombre (2006) — and not as a problem for the law of armed conflict at all. Studies of seafarers' working lives developed on a parallel and unconnected track: Couper et al. (1999) documented abuse aboard open-registry ships, Lillie (2006) reconstructed the transnational bargaining machinery built to answer it, and Sampson (2013) showed how thoroughly the seafaring workforce had been detached from any single national society. Armed conflict appears in that body of work, if at all, as a variety of occupational hazard. The two literatures have remained strangers.

Contemporary scholarship has narrowed the distance without closing it. Papanicolopulu (2018) established that persons at sea are protected by human rights law and identified the jurisdictional obstacles to enforcing that protection; Klein (2022, 2024) examined the Geneva Declaration on Human Rights at Sea as an attempt by civil society to connect the human rights regime to the law of the sea, and was candid about the limits of the connection. On the humanitarian law side, the debate has concentrated on the edges of the platform rule rather than on the rule itself: whether armed resistance by a merchant crew constitutes direct participation in hostilities (McLaughlin, 2022), whether the victim State of an attack on a merchant vessel can still be identified by its flag when seventy per cent of tonnage is foreign-flagged, and how far the *San Remo Manual* should be revised now that its update project has entered a drafting phase (International Institute of Humanitarian Law [IIHL], 2024). The International Committee of the Red Cross has put the difficulty plainly in describing the naval warfare workstream of its Global IHL Initiative: civilian seafarers with no connection to any belligerent may nonetheless be exposed to harm because of their vessel's flag or ownership (Smit & Thynne, 2025).

That sentence identifies the phenomenon and stops short of the analysis it invites. The legal dimension this study addresses is the one the field has stepped over: whether the platform rule is a *status* rule or a *proxy* rule, and what follows if it is the latter. A status rule assigns protection according to what a person is. A proxy rule assigns protection according to an observable feature that correlates with what a person is, and it is only as good as the correlation. The term proposed here for the unstated correlation is the congruence premise — the assumption that flag, beneficial ownership, cargo, operational control and crew nationality point in one direction, so that an assessment of the hull carries reliable information about the persons within it. The congruence premise is not defended anywhere in the classical instruments because it did not need defending: in 1907, and largely still in 1949, it was simply true.

This article extends the existing work in three directions. Where McLaughlin (2022, 2025) explains and justifies the platform orientation of the law of naval warfare on grounds of historical provenance and operational coherence, the argument here accepts that account in full and asks the further question he does not: what happens to a proxy when its underlying correlation collapses. Where Klein (2022) and Papanicolopulu (2018) show that human rights law reaches persons at sea but struggles at the jurisdictional threshold, the argument here shows that the struggle is not an isolated defect of one regime but the visible edge of a general structure, named below as the deferral chain, in which each protective

regime treats another as the primary duty-holder. And where the naval warfare literature and the maritime labour literature have proceeded separately, the argument here treats them as describing a single subject, since the same person is the addressee of the *Maritime Labour Convention* and the object of a targeting decision, often within the same voyage.

Two frameworks inform the approach. The first is the ordinary interpretive discipline of the Vienna Convention on the Law of Treaties applied to the conduct-of-hostilities rules, on the orthodox understanding that humanitarian law and other regimes are displaced only to the extent of genuine incompatibility rather than wholesale — the position the International Court of Justice took on the interaction of human rights law with the law of armed conflict (*Legality of the Threat or Use of Nuclear Weapons*, 1996; *Wall*, 2004). The second type is a functional-institutional interpretation of protective regimes, which not only asks what a rule affords but also which institution bears the burden if the rule is invoked. It is that second lens that reveals the deferral chain; a purely doctrinal reading yields four separate and individually reassuring answers.

Three dimensions have received less attention than they deserve. The first is the arithmetic of the mismatch: how far crew nationality has drifted from flag and belligerent nationality and what that drift does to a proxy rule. The second is proportionality accounting, the area where the platform rule is most impactful and where both manuals are most ambiguous: whether the anticipated deaths of a merchant vessel crew on board a ship that has been declared a military objective count as civilian casualties in the proportionality calculus. The third is the mandate of maritime security operations, which are commonly said to be for the protection of seafarers, but are legally defined to protect navigation and trade, a distinction that comes into play when a crew desires a remedy, not an escort.

The approach is doctrinal reconstruction based on a comparative reading of three theatres. The choice of these incidents is not made because they are compliance tests against a settled rule, but because they change the flag-ownership-cargo-destination-crew nationality nexus, to examine the premise of the rule. The selection of these incidents is not for the reason that they are compliance tests against a settled rule, but because they vary the flag-ownership-cargo-destination-crew nationality nexus, to test the premise of the rule. Each theatre provides a distinct means of failure of congruence: by association of the corporation, by cargo and destination, and by geographical enclosure. Primary materials are read in their own right, not through the secondary commentary, because the commentary has tended to regurgitate the congruence premise rather than explore it.

The limitations of the study are as follows. This is not an empirical study of seafarers; it does not claim to have accessed the experience it is discussing, nor does it rely on any interviews. Attribution for incidents in the Black Sea is provisional as data are from institutional and industry reporting, and some attacks are unclaimed. There are no targeting files, so there is no observed proportionality reasoning.

And the classification of the Houthi campaign — whether an international or a non-international armed conflict, and against whom — is contested; the argument is built to hold under either classification and does not resolve the question. Nor does it resolve a prior question about which normative vocabulary a party of that kind takes itself to be answering. Where a belligerent grounds its conduct partly in a religious-legal tradition, the protective norms internal to that tradition, including its classical prohibitions on harming non-combatants and traders, are a resource that argument addressed to it can use; the intersection between that tradition and modern humanitarian law is neither empty nor automatic (Haider, 2025). This article proceeds in the vocabulary of the Geneva instruments. Nothing in the reconstruction depends on that being the only vocabulary available.

Four objectives follow. The first is to identify and test the congruence premise. The second is to trace the deferral chain through the four regimes. The third is whether crew casualties are part of the proportionality calculus and what precautions are to be taken in that regard. The fourth is to specify a person-referenced minimum and a feasible institutional path to it. In Section 2, the congruence premise

of the classical law of naval warfare is reconstructed. The collapse is described in each of the three theatres in Section 3. In Section 4 the modern dogma is stated in its strongest form, and what is assumed. The deferral chain is developed in Section 5. Section 6 addresses proportionality. In section 7, the reconstruction is built. Section 8 sets out what practice must establish.

The argument stands on four foundational assumptions. First, that the category of civilian is person-referenced; any transfer of this determination to the status of an object must be justified, not asserted. Second, that the platform of the law of naval warfare is an epistemic tool that reflects the limitations of the commander's observation of the world, rather than a substantive law of what merchant seafarers are. Third, that states that afford protection to seafarers during peacetime do not cease to protect them during wartime unless such protection is fundamentally incompatible with the humanitarian law. Fourth, that institutional practice and expert restatement can be merged into law at the State level through a claim of right, which is why the 2026 Hormuz framework is more important than its provisional form suggests.

2. The Congruence Premise in the Classical Law

The classical law of naval warfare was drafted for a maritime world in which the ship was a reliable sign of the people aboard it. The 1856 Declaration of Paris ended privateering and gave protection to neutral goods under an enemy flag, so that questions of liability were answered by flag and cargo, since these two factors contained almost all the information. The Hague Convention XI of 1907 was more extensive and provided that the crews of captured enemy merchant ships could not be detained as prisoners of war, if they signed a written undertaking to refrain from participating in any operations directly related to the war, and that a corresponding exemption would apply to neutral crew members, without any restrictions. That structure can only make sense if the crew of a Norwegian ship is also Norwegian: it makes sense because the person issuing it is from a State that can be held to it.

The interwar instruments preserved the same architecture while tightening the humanitarian constraint. Part IV of the 1930 *London Naval Treaty*, reproduced in the 1936 *Procès-Verbal* after the treaty lapsed, prohibited the sinking of a merchant vessel before passengers, crew and ship's papers had been placed in safety, and specified that the ship's boats did not count as a place of safety unless sea and weather conditions and proximity to land permitted. The rule is remarkable for what it does not do. It does not ask about the nationality of the crew, the beneficial ownership of the vessel or the character of the cargo. It attaches a duty to the belligerent that is triggered by the presence of persons and discharged by reference to their physical survival. The 1936 rule is thus the earliest clear instance in the law of naval warfare of an obligation running to persons rather than through the hull, and Section 7 returns to it as the anchor of the reconstruction proposed here.

The 1949 settlement complicated matters in a way that has been insufficiently noticed. Article 13(5) of Geneva Convention II extends the Convention's protections to members of the crews of the merchant marine of the parties to the conflict who do not benefit from more favourable treatment under other provisions of international law, and Article 4A(5) of Geneva Convention III places the same category in the prisoner-of-war regime upon capture. Merchant seafarers therefore occupy a status that has no analogue ashore: civilians who, if taken, are handled as prisoners of war, and whose personal entitlement is defined by the flag their employer's vessel happens to fly. Crews of neutral merchant vessels are outside the Article 13 enumeration entirely, protected instead by the fundamental guarantees of Article 75 of Additional Protocol I and by general humanitarian principle. The 1949 drafters were not careless. They were writing for a merchant fleet in which flag, owner and crew were the same nationality often enough that the enumeration was serviceable.

The 1994 *San Remo Manual* has adopted the premises without changing the architecture of the Manual. Civilian objects are those that are not military objects; paragraph 60 enumerates what activities constitute the conversion of an enemy merchant vessel into a military objective, and paragraph 67 does

the same for neutral vessels; the words “capture” mean “take as prize” and “destruction instead of capture” is allowed only where “safety of passengers and crew” has been provided, and the ship's boats are expressly excluded from counting as “safety” in the terms inherited from 1936. All of these are rules concerning a ship, from which a consequence for people is then recited. The Newport Manual further clarifies the taxonomy, distinguishes between maritime militia and auxiliary vessels from ordinary merchantmen, and thereby expands the protections that are afforded to some crews (Kraska et al., 2023). It improves the proxy, not replaces it. What is shared by two centuries of drafting, then, is not a well-thought-out notion that seafarers should be safeguarded by their ships. It is an unexamined sufficiency: the ship was, while the rules were being written, an adequate substitute for the people on board. If there's no one to question it, it's not a proxy. It resembles the law itself.

3. The Collapse of Congruence

The empirical evidence against the congruence premise is not marginal and is not hard to select examples. Nearly three-quarters of the world merchant fleet is registered in a State other than that of beneficial ownership (Smit & Thynne, 2025), which is now being examined as a targeting problem rather than a labour and safety issue. The gap in the registry is not exclusive to the law of armed conflict. The same structure is found to be working against enforcement of the Convention in the context of marine pollution caused by trade: compliance is delegated to the flag State, the flag State is often the party least materially interested in the ship, and the responsibility is therefore addressed at an address where no one lives (Hui et al., 2025). What that literature calls a compliance failure is here a targeting failure. It is a single defect, a legal attribute without any concrete connection, and it has been met only twice. The number of exposed people is large: the International Chamber of Shipping estimates that there are some 1.9 million seafarers on board some 109,000 merchant ships trading internationally, with a tonnage of over 100 gross tons. One modern container ship can be owned by the Swiss, registered in Liberia, and staffed by 34 crew members from several States, with the cargo destined for and from a dozen other States. The ship is no longer a representation of anyone. The Red Sea campaign is the most evident example. The seized *Galaxy Leader* was Bahamas-flagged, under the ownership of a corporate structure with an imputed Israeli connection, chartered to a Japanese operator and manned by 25 nationals from the Philippines, Bulgaria, Romania, Ukraine and Mexico. Not one of the crew's States of nationality was a party to the conflict in Gaza on any account of it. The crew were held for fourteen months and released in January 2025 through Omani mediation tied to a ceasefire, at the request of a non-State party, rather than by operation of any legal entitlement (Maritime Executive, 2025). The selection criterion was corporate association, refracted through the hull; the cost was borne by five labour-supplying States with no stake in the quarrel. Subsequent advisories confirmed that the criterion had been generalised, extending risk to any vessel within a fleet structure whose owner had called at Israeli ports (U.S. Maritime Administration [MARAD], 2026).

The consequences escalated from detention to death. Over the campaign, more than one hundred merchant vessels were targeted, four were sunk and at least eight seafarers were killed (gCaptain, 2026). The two-day assault on the Liberian-flagged *Eternity C* in July 2025 combined drones, missiles, explosive uncrewed surface vessels, small craft and rocket-propelled grenades; four of the twenty-five persons aboard were killed or presumed dead, and the ship was abandoned and sank (DefenceWeb, 2026). Of the crew, twenty-one were Filipino. The *Magic Seas* had been sunk a week earlier. In each case the hull carried an imputed association and the persons aboard carried nothing at all.

The Black Sea supplies a second and different failure. There the operative criterion is not corporate association but cargo and destination. Russian strikes on shipping in and around Odesa have killed and injured crews aboard Panama-flagged, Togo-flagged and Vanuatu-flagged vessels carrying grain and vegetable oil, among them an Egyptian cook aboard the bulker *Victress* and, in July 2026, three seafarers killed and five injured aboard a Togo-flagged vessel in the Odesa region (Marine Employees' Solidarity Association, 2026; Seatrade Maritime News, 2026). Ukrainian uncrewed systems have in turn struck

well over a hundred vessels associated with the sanctioned shadow fleet in the Sea of Azov and the Black Sea. The IMO's response to that campaign is the doctrinally significant fact: the Organization rejected the proposition that a vessel's destination renders the seafarers aboard it legitimate objects of attack. That rejection is a person-referenced claim advanced against a hull-referenced justification, and it is the shape of the argument this article defends.

The Persian Gulf theatre of 2026 illustrates a third mode of failure, in which congruence collapses not through attribution but through enclosure. Following the outbreak of hostilities involving Iran and the United States in late February 2026, some 20,000 seafarers were affected across the region and roughly 11,000 were unable to leave the Gulf aboard approximately 600 vessels (IMO, 2026b; United Nations News, 2026). The IMO verified 70 attacks on international shipping by late August 2026, with 19 seafarers killed (Cyprus Mail, 2026). What is instructive is that the trapped crews were not the crews of belligerent-flagged vessels; they were whoever happened to be inside a closed waterway. Their vulnerability had no relation to any characteristic of the hull at all. The Gulf case therefore reaches back past the modern instruments to the oldest person-referenced holding in the field. When the International Court of Justice found Albania responsible in the *Corfu Channel* case, it did so not because the damaged vessels were British but because Albania knew of a danger in an international strait and said nothing, and the duty to warn was grounded in elementary considerations of humanity rather than in any characteristic of the ships (Haider, Iqbal, & Khan, 2023). The obligation ran to whoever was passing. Enclosure in the Gulf reproduces that situation with the hazard multiplied and the warning replaced by an evacuation corridor; the principle has not changed, only the machinery for giving effect to it.

The three theatres therefore establish the same proposition by three independent routes. In the Red Sea, protection failed because the hull's imputed political association diverged from the crew's; in the Black Sea, because the cargo's provenance diverged from the crew's; in the Gulf, because geography made the hull's characteristics irrelevant. A proxy that fails in three unrelated ways is not suffering from three separate defects. It has ceased to be a proxy for anything.

4. The Doctrinal Position at Its Strongest

The argument must now grant the platform rule its best case, because the reconstruction offered later depends on preserving most of it. The case runs as follows. First, the law of naval warfare has always been platform-based and has good historical reason to be: at the Hague Conference of 1907 the question whether the land-based category of the *franc-tireur* should be transposed to the sea was expressly considered and answered in the negative, which is why merchant crews who resist or even attack an adversary warship commit no violation and are treated as prisoners of war on capture, while a civilian ashore doing the same thing would face prosecution (McLaughlin, 2025). Second, the rule is generous rather than restrictive in that respect: it permits merchant crews conduct that would forfeit civilian protection on land, and it withholds the forfeiture. Third, it is epistemically honest, since the commander's information at sea is overwhelmingly about the vessel. Fourth, it is operationally coherent, since the alternative — case-by-case assessment of who is aboard — would be unworkable in the tempo of naval engagement.

Each of these is right, and none of them is damaging to the argument advanced here. Two of them are in fact confirmatory. The historical point establishes that the platform rule was adopted as a solution to an observational and characterisation problem, not as a metaphysical claim about the nature of merchant mariners; the epistemic point states the same thing in contemporary terms. A rule adopted because the ship is what the commander can see is exactly a proxy rule, and the concession that it is generous in the specific matter of resistance is not carried over to the matters where it is not generous at all.

The place where the rule ceases to be generous is now of consequence. The point is succinctly made in the context of belligerent auxiliaries by McLaughlin (2025): If a vessel is a military objective from the beginning, then the civilian mariners who crew it share the platform's liability, and they are not treated

as collateral damage but as a target in their own right, and have a corresponding duty to ensure that their crews are aware of this. That's a defensible allocation for auxiliaries, which are part of a belligerent's naval effort by function and typically by contract. The problem is that it is offered as a statement of a general principle and not an exception to it, and the general principle then moves. A merchant crew on a ship that has become military property under paragraph 60 of the San Remo Manual would be in the same position as an auxiliary crew, and the deaths of 21 Filipino seafarers would be lost from the proportionality calculation because they would never have been on the civilian side of the ledger.

The literature has not defended that conclusion; it has more often declined to draw it. The gap is instructive. Scholarship on the maritime application of direct participation in hostilities has established that the concept has little work to do at sea (McLaughlin, 2022; and compare Melzer, 2009, and Schmitt, 2010, on the land-based debate), and the *San Remo* and *Newport* manuals both address the status of vessels in detail and the status of crews chiefly in the contexts of capture and prisoner-of-war treatment. What neither manual states in terms is whether a merchant crew that has not directly participated in hostilities remains a civilian population for the purposes of the proportionality rule when its ship becomes a military objective by reason of use, location or purpose. The silence is not evidence of an answer. It is evidence that the question was never separated from the vessel-status question, because the congruence premise made the separation look unnecessary.

The tacit assumption, then, is this: that a rule allocating targetability to platforms also allocates personhood. Naming it is what makes it refutable. Nothing in Article 50 or Article 51 of Additional Protocol I makes civilian status contingent on the character of the object a person occupies, and nothing in Geneva Convention II converts a merchant seafarer into a combatant by reason of the flag above the seafarer's head. The vessel's liability to attack and the crew's civilian character are separate determinations that the classical law was able to run together only because they usually produced the same answer.

5. The Deferral Chain

When humanitarian law's proxy has failed, what one expects is that some nearby regime takes over the leftover. It does not, and this is not coincidental, but structural. All four regimes that deal with seafarers are organized in such a way that the protective duty is transferred to a different target. Here is the proposed chain of deferrals, with its four links described. The first one has been explained already: humanitarian law takes precedence over the platform. The second is that the law of the sea gives precedence to the flag State. Article 91 of the United Nations Convention on the Law of the Sea provides that there shall be a real connection between State and ship, and the flag State shall have duties of effective jurisdiction and control in administrative, technical and social matters, including the conditions of the labour and training of the ship's crew. The architecture is self-explanatory and application-free.

The International Tribunal for the Law of the Sea has consistently declined to allow the absence of a genuine link to defeat a registration's opposability (*M/V Saiga* (No. 2), 1999; *M/V Virginia G*, 2014), which preserves order in the law of nationality at the cost of leaving Article 94 to be performed by States that have neither the administrative capacity nor the political incentive to perform it. The point has been documented for decades in the open-registry literature (Anderson, 1996; DeSombre, 2006; Gould, 2023). Its consequence in armed conflict is specific: the entity that international law designates as the protector of the crew is, in the cases that matter, a registry office.

The third link is that international labour law defers to the shipowner. The *Maritime Labour Convention* is a substantial achievement and the amendments adopted by the Special Tripartite Committee in April 2025 are the most significant expansion of seafarers' entitlements in the instrument's history: seafarers are designated key workers, repatriation obligations are strengthened and the shipowner is required to bear the full cost of return until the seafarer reaches home, shore leave is reframed as a right rather than

a concession, and States are required to have regard to the IMO and ILO guidelines on the fair treatment of seafarers detained in connection with alleged crimes (International Labour Organization [ILO], 2025; IMO, 2025). The amendments respond directly to a surge in abandonment. They also confirm the structure of the problem. Every one of the strengthened entitlements is owed by the shipowner and enforced by the flag State or, secondarily, through port State control — which is to say by the two actors least available when a vessel is enclosed in a war zone, when its owner has ceased to answer, or when the crew is in the hands of a non-State armed group. The 2025 package, negotiated while the *Galaxy Leader* crew were in captivity, does not address armed conflict.

The fourth link is that maritime security operations defer to the trade interest. This is the least noticed of the four and the most revealing. EUNAVFOR Aspides was established in February 2024 with a mandate to safeguard freedom of navigation in relation to the Red Sea crisis, and the Council decision extending it to February 2027 describes the operation in terms of protecting vessels, safeguarding sea lines of communication and protecting global trade flows (Council of the European Union, 2026). The operation has in practice done a great deal for seafarers: it has supported more than 1,960 merchant vessels, provided close protection to over 650, and rescued fifty seafarers from damaged ships and other incidents (European External Action Service [EEAS], 2026). The distinction that matters is between what an operation does and what it owes. Aspides protects crews as an incident of protecting shipping; no seafarer denied an escort has a claim against it, no mandate requires the reporting of crew casualties, and the operation's own account of its purpose is the preservation of a global common good. The same focus is reflected in Security Council Resolution 2722 (2024), which called for “an end to attacks on merchant ships” and states’ “right to defend their ships,” but the monthly reporting obligation was based on attacks against shipping, not on attacks against persons.

The chain is completed by the regime that is supposed to catch what the others drop. The problem is answered precisely by international human rights law, which is person-referenced, but it engages by jurisdiction, and jurisdiction at sea is where the difficulty concentrates (Papanicolopulu, 2018). Before any right can be made actionable, a Filipino seafarer on a non-Filipino ship, operating under the flag of a different State, and carrying cargo for a different State, and operated by a non-Filipino company, who is attacked by a non-State armed group in the southern Red Sea, must find a State with jurisdiction over the person or the conduct. The Geneva Declaration on Human Rights at Sea was developed to fill just this void, and Klein's evaluation is balanced, not negative, as the instrument restates obligations with useful clarity and provides a platform for attention – its ability to generate binding obligation remains to be realised through State uptake, which has not yet occurred (Klein, 2022, 2024). A duty-holder may be identified in soft law. It cannot install one of these. The challenge is not unique to the sea. The enforcement mechanism of the human rights system extends through treaty bodies, periodic reporting and State consent, and the system does not reach beyond the scope of a State's jurisdiction, and a harm which lies between jurisdictions is beyond the reach of the system (Haider, Ahmad, & Gohar, 2023). This is an occasional defect as a result of this gap. On the sea, it is the normal state of the working class.

Table 1 sets out the structure.

Table 1. *The deferral chain: protective regimes addressing seafarers, their primary referent, and the actor left holding the obligation*

Regime	Primary referent	Nominal duty-holder	Failure condition in armed conflict
Law of naval warfare	The vessel and its status	Belligerent commander	Congruence between hull and crew has collapsed
Law of the sea	The flag	Flag State (UNCLOS arts. 91, 94)	Open registry lacks capacity and incentive
Maritime labour law	The employment relationship	Shipowner, enforced by flag and port States	Owner unreachable; port State inaccessible; conflict unaddressed
Maritime security	Navigation and trade flows	Coalition or Union	Crew protection is an

operations		operation	incident, not an entitlement	
Human rights law	The person	State exercising jurisdiction	Jurisdictional threshold rarely satisfied at sea	

Read together, the five rows describe a person surrounded by obligations, none of which is owed to that person by an actor capable of performing it. The seafarer is the residual subject of every regime and the primary subject of none.

6. Proportionality Without a Denominator

The deferral chain would be a governance problem rather than a doctrinal one if the humanitarian law position were secure. It is not, and the insecurity is concentrated at the point where the platform rule produces its gravest consequence. When a merchant vessel becomes a military objective — because it is carrying war materials, because it is incorporated into an intelligence or logistics network, or because its use otherwise makes an effective contribution to military action — the vessel may lawfully be attacked. The question is what happens in the proportionality assessment to the fifteen or twenty-five people aboard it.

Three answers are available and they diverge sharply. On the first, the crew shares the platform's liability without remainder, as auxiliary crews do, and their expected deaths are not incidental civilian harm because they are not on the civilian side of the calculation. On the second, the crew are civilians who happen to be located on a military objective, so their expected deaths enter the proportionality assessment in the ordinary way and must be weighed against the concrete and direct military advantage anticipated. On the third, the crew's position varies with the ground on which the vessel became a military objective, so that carriage of war materials engages one analysis and a port-call history engages another. Only the second is consistent with the structure of Additional Protocol I. Civilian status under Article 50 is not conditional on the object a civilian occupies, and Article 51(5)(b) counts expected incidental loss of civilian life without regard to whether the civilians are standing on a bridge, in a factory, or in an engine room.

The consequence is that hull-derived reasoning does not merely misallocate protection at the margins: it can silently remove the denominator from the proportionality fraction. If the crew is treated as an attribute of the platform, an attack expected to kill twenty-five seafarers and destroy one bulk carrier registers as an attack expected to destroy one bulk carrier. Nothing in the anticipated military advantage need be large, because nothing is being weighed against it. This is the practical difference between a proxy rule and a status rule, and it is worth stating without hedging: a proxy that has come loose from its referent does not produce approximate justice, it produces an empty scale.

The precautionary obligations point in the same direction and supply the more tractable remedy. The duty to take feasible precautions in attack requires the choice of means and methods that minimise incidental civilian harm, and at sea the most obvious such measure is the one the law already knew in 1936: to place crew and passengers in safety before destroying the vessel, with the ship's boats excluded from counting as safety unless conditions permit. That obligation was drafted for submarine warfare against merchantmen and it maps directly onto contemporary attacks by uncrewed surface vessels and loitering munitions, which share the relevant feature of being launched against a hull by an operator who cannot see who is inside it. The rule does not require the attacker to know the crew's nationality, employer or contractual status. It requires the attacker to know that persons are aboard, which is a fact about every merchant vessel afloat.

Two objections deserve a hearing. The first is that a warning requirement is impracticable in a contested environment, since it forfeits surprise and exposes the attacking platform. The objection is real where the target is capable of defending itself or of evading, and it is weak where the target is a laden bulk carrier making eleven knots. Feasibility is a standard, not a licence, and the *Eternity C* engagement — conducted over two days with successive waves of drones, small craft and rocket-propelled grenades

— is not a case in which the tempo of operations precluded an opportunity to abandon ship. The second objection is that crews on vessels running a blockade or defying an exclusion zone have assumed the risk. Assumption of risk is not a category of humanitarian law, and it sits particularly badly at sea, where the decision to enter a high-risk area is taken by a charterer in an office and executed by a crew whose alternative is to refuse duty in a labour market that has never rewarded refusal.

7. Person-Referenced Protection: The Reconstruction

The reconstruction proposed here is deliberately narrow, and the narrowing is the argument rather than a concession. Platform-based determination should be retained for the liability of the vessel, because the reasons for it are sound and the alternative is unworkable. What must be decoupled from the platform are four entitlements that attach to the seafarer as a person. The term proposed for this is person-referenced protection, and it is a reconstruction of existing rules rather than a proposal for new ones.

The first element is a rebuttable presumption of civilian status for merchant crews, irrespective of the status of the hull, defeasible only by direct participation in hostilities on the part of the individual concerned or by the crew's integration into the belligerent's armed forces as in the auxiliary case. The presumption does nothing to protect the vessel and everything to preserve the denominator identified in Section 6. It is not a novel construction; it is what Article 50(1) of Additional Protocol I already provides, applied without the assumption that the sea is an exception.

The second element is a mandatory crew-count input into the proportionality and precautions assessment. Merchant vessel manning is not a mystery: complement is a function of vessel type and tonnage, is recorded in safe manning documents, and is estimable within narrow bounds from an automatic identification signal alone. A belligerent who can determine that a hull belongs to a fleet whose owner called at a particular port can determine that the hull carries roughly twenty-two people. Where such an estimate is available, its exclusion from the assessment is a choice rather than a limitation.

The third element is a duty of rescue and repatriation that does not switch off when hostilities begin. The obligation to render assistance to persons in distress at sea under Article 98 of the Law of the Sea Convention and Chapter V of the *Safety of Life at Sea Convention*, and the duty to search for and collect the shipwrecked under Articles 12 and 18 of Geneva Convention II, converge on the same practical requirement. The convergence should be stated as a single rule rather than left to be assembled: a belligerent that attacks a merchant vessel owes, to every person aboard it, the duties owed to the shipwrecked, and the crew's nationality, flag and employer are irrelevant to that duty. The *Eternity C* survivors and the *Galaxy Leader* crew were retrieved through mediation. Mediation is not a legal regime. There is a further reason to state the duty in that form. Obligations protecting the basic rights of the human person are owed to the international community as a whole rather than to a particular injured State, and the distinction between the peremptory status of a norm and the *erga omnes* reach of the obligations flowing from it is what permits a State with no national aboard to press the claim. Were the duty to the shipwrecked to run only to the flag State or the State of nationality, it would reproduce the defect this article identifies. It does not; and the point is worth making expressly, because the crews most exposed are supplied by the States least placed to press claims of their own.

The fourth element is institutional and is where recent practice has run ahead of doctrine. The Hormuz framework of 2026 is the first instance in modern practice of a protective arrangement negotiated for crews rather than for hulls. Following an extraordinary session in March 2026, the IMO Council called for a safe maritime framework as a provisional and urgent measure to permit the evacuation of merchant ships confined within the Gulf, directing the Secretary-General to initiate its establishment (IMO, 2026a). Under that framework 136 vessels carrying approximately 2,900 seafarers left the region between 23 and 26 June 2026 before the operation was paused following an attack on a vessel that was

not transiting under it (Cyprus Mail, 2026; IMO, 2026c). The framework's constitutive feature is that it required all parties to the conflict to undertake to refrain from attacking maritime assets during the operation, and that the vessels' eligibility rested on the humanitarian need of the persons aboard rather than on flag or ownership. That is person-referenced protection, constructed under pressure and without a doctrinal label.

The ideal instrument and the feasible path should be kept apart so that neither contaminates the other. As an instrument, the four elements above would sit most naturally in a dedicated chapter of the revised *San Remo Manual*, expressed as rules on the protection of merchant crews rather than as commentary appended to rules about vessels. As a feasible path, four openings exist and they are unusually well aligned in time. The San Remo update project has entered its drafting phase and has held consultative meetings with States (IIHL, 2024). The naval warfare workstream of the Global IHL Initiative, co-chaired by the ICRC with Egypt and Indonesia, is scheduled to adopt actionable recommendations by the end of 2026, and has already identified the protection of people after attacks as a theme (Smit & Thynne, 2025). The Joint ILO/IMO Tripartite Working Group has a renewed mandate, and the next Special Tripartite Committee cycle falls in April 2028, which is the first realistic occasion for an armed-conflict standard within the *Maritime Labour Convention*. And the Security Council's monthly reporting requirement on Red Sea attacks, renewed at six-monthly intervals since Resolution 2722 (2024), is an existing reporting channel that could be extended to seafarer casualties and detentions at negligible political cost.

One institutional point deserves separate statement because it inverts the flag State problem rather than solving it. Where the flag State is an open registry incapable of protecting its crews, the State with both capacity and incentive is the crew's State of nationality — the Philippines, India, Indonesia, Ukraine, Egypt. Those States have consistently been the actors that press for release and repatriation, as the Philippine intervention in the *Galaxy Leader* case and the ASEAN statement during the Hormuz crisis both illustrate. A protective architecture that recognised the labour-supplying State as a standing interlocutor — with a right to information about detained or trapped nationals, and a role in evacuation frameworks — would not require a single new treaty obligation. It would require the practice to be named and made routine, which is how the flag State's own competences were consolidated in the first place.

8. Limits, and What Practice Must Settle

Four questions remain open, and their tests can be specified. The first is whether the crew-count input survives contact with operational reality: the test is whether any State, in a public statement of its targeting methodology, acknowledges merchant complement as a factor in the proportionality assessment. No State has yet done so, and until one does, the argument of Section 6 remains a claim about what the law requires rather than a description of what belligerents accept. The second is whether the Hormuz framework consolidates or evaporates. Its status as provisional was insisted upon by the Council itself, and the pause following the attack of 25 June 2026 exposed the fragility of a mechanism resting on guarantees that no party is obliged to renew. If comparable frameworks appear in the Black Sea or the Red Sea, and if States describe them as required rather than offered, the practice will have hardened; if Hormuz remains singular, it will read as improvisation.

The third open question is jurisdictional. Whether human rights obligations can be made to reach a seafarer aboard a foreign-flagged vessel attacked by a non-State armed group is a question that the Geneva Declaration raises and does not answer, and the answer will come from litigation or from treaty practice rather than from analysis. The fourth is classification. The argument here has been constructed to hold whether the Red Sea campaign is characterised as an international or a non-international armed conflict, but the characterisation matters for the prisoner-of-war provisions discussed in Section 2, and the detention of the *Galaxy Leader* crew would look different under each. That question is left open

deliberately, since resolving it would require a study of the conflict rather than of the seafarer.

The limits of the reconstruction should also be stated. It does not address fishing crews, whose numbers exceed those of merchant seafarers by an order of magnitude and whose legal position is worse in almost every respect. It does not address the seafarers aboard sanctioned shadow-fleet tankers, whose vessels are frequently uninsured, whose employers are often untraceable, and for whom the argument developed here supplies a presumption of civilian status without supplying anyone to enforce it. And it offers nothing to the crews of vessels that have been converted into warships under Hague Convention VII, whose position is settled and correctly so.

9. Conclusion

The protection of seafarers in armed conflict has been treated as a humanitarian problem in search of political will. It is better understood as a doctrinal problem with a specific and identifiable cause. The law of naval warfare protects seafarers through their vessels, and it does so on the strength of an assumption — the congruence premise — that has been true for most of the period during which the rules were drafted and is no longer true anywhere. Three-quarters of tonnage flies a flag unrelated to ownership; crews are assembled from States with no stake in the conflicts they sail through; and belligerents now select targets by imputed association, sanctioned cargo and destination, which are attributes of commercial arrangements rather than of the people who bear the consequences. The proxy has separated from its referent, and a separated proxy does not degrade gracefully.

What follows is neither the abandonment of platform-based targeting nor a new convention. It is the decoupling of four personal entitlements from the hull: the presumption of civilian status, the crew-count input to proportionality and precautions, the duty of rescue and repatriation, and an institutional route to evacuation that does not depend on the goodwill of the party that trapped the crew in the first place. Three of the four are reconstructions of rules already in force, one of them since 1936. The fourth exists already in practice, having been improvised in the Strait of Hormuz in June 2026 because nothing in the settled law supplied it.

The instruments through which this could be settled are all in session. The San Remo Manual is being redrafted, the Global IHL Initiative's naval workstream reports at the end of 2026, the Joint ILO/IMO Tripartite Working Group has a renewed mandate, and the Security Council has a reporting channel already open. What is missing is not an occasion but a formulation, and the formulation is short. The vessel's liability to attack and the crew's civilian character are separate questions, and the law has been answering only the first. Practice will settle whether the second is asked in time, and practice at sea moves at the speed of the next engagement.

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