

# Seafarer Abandonment and Vessel's Flag State Role Analysis

Mohit Gupta, S. Shanthakumar

Seafarers work in an environment of hardship and isolation. Abandonment is one of the major challenges faced by seafarers onboard vessels. Abandonment of seafarers broadly refers to the act of unilateral severance of ties by the shipowner with the seafarers' onboard ship, whereby the shipowner causes a breach of fundamental obligations owed towards seafarers. Abandonment is one of the shady practices of the shipping industry, where seafarers are subjected to cruel, inhuman, and life-threatening conditions. For the last two decades, ILO and IMO have been working together to develop a legal framework to protect abandoned seafarers.

As per the data on abandonment available on ILO Database, in the year 2020, more than 1200 seafarers were abandoned. These figures raise serious questions regarding the effectiveness of the present legal regime in resolving the abandonment situations. Legally speaking abandoned seafarer has plenty of avenues to seek assistance. They can approach flag state, port state, state of nationality, or seek relief through admiralty courts.

## KEY WORDS

Gujarat National Law University, Gujarat, India

e-mail: guptamohit830@gmail.com

doi: 10.7225/toms.v11.n01.019

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Received on: Aug 14, 2021 / Revised on: Jan 30, 2022 / Accepted on: Mar 24, 2022 / Published: April 20, 2022.

In addition to these, the abandoned seafarer can also approach financial security provider for abandonment, the provisions related to which were added in MLC, 2006 by 2014 amendments.

As the problem of abandonment constantly persists in the shipping sector, and the time taken to resolve the situation is often very long, the present paper will assess the flag state's role in protecting abandoned seafarers. The challenges that the flag state has to face in discharge its responsibilities towards abandoned seafarers have also been discussed in the Paper.

## 1. INTRODUCTION

Maritime industry functioning is due to the active support of seafarers, and the tasks they perform are indispensable. The maintenance of cordial relations between seafarers and shipowners is crucial for the smooth functioning of the shipping industry. Maritime Labour Law requires that there should be a written seafarer employment agreement between the seafarer and the shipowner.<sup>1</sup> Employment contract mentions rights and obligations of the parties, and terms and conditions of the employment.

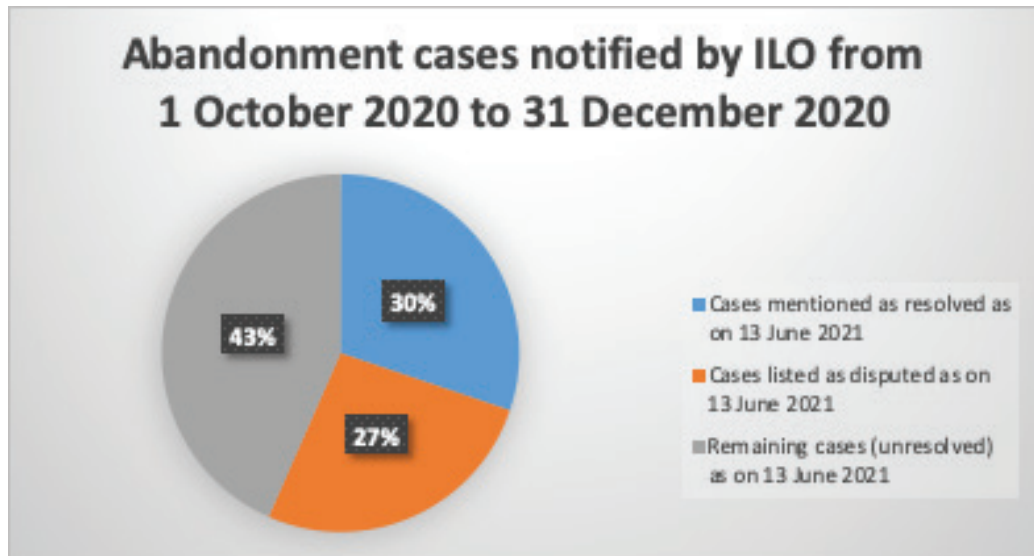
Three fundamental widely-recognized obligations of shipowners towards the seafarers are to pay repatriation costs, where validly claimed by the seafarer,<sup>2</sup> to ensure that the necessities like food, water, fuel, medicines, etc., are made available onboard vessel,<sup>3</sup> and to timely pay wages to the seafarer<sup>4</sup>. Breach of any of these three fundamental obligations can be broadly referred to as 'abandonment of seafarers', which is the focus of this study.

1. *Maritime Labour Convention, 2006, Regulation 2.1*

2. *Maritime Labour Convention, 2006, Standard A2.5.1*

3. *Maritime Labour Convention, 2006, Regulation 2.2*

4. *Maritime Labour Convention, 2006, Regulation 3.2, Regulation 4.1*



**Figure 1.**  
Abandonment cases notified by ILO from 1 October 2020 to 31 December 2020.

As per the data on abandonment available on the ILO Database, in the year 2020 more than 1,200 seafarers were abandoned.<sup>5</sup> The cases reported to the ILO from 1 October 2020 to 31 December 2020 were 53.<sup>6</sup> In each of these cases, at least one seafarer was abandoned. Out of the 53 cases, 16 were mentioned as resolved, and 14 were listed as disputed (as of 13 June 2021).<sup>7</sup> The remaining cases (unresolved) as of 13 June 2021 stand to be 23.<sup>8</sup> This data is displayed in the pie chart below.

The above data demonstrate that around 50% of abandonment cases were unresolved even after six months from the date of reporting. It raises serious questions regarding the effectiveness of the present legal regime in resolving the abandonment situations. Legally speaking, in seafarer abandonment, there are plenty of ways to seek assistance. They can approach flag state, Port State, state of nationality, or seek relief through Admiralty Courts. In addition, they can also approach financial security providers for abandonment; the provisions related were added to MLC, 2006 by its 2014 amendments.

There have been views that despite MLC, 2006, protection that seafarers get on abandonment is inadequate.<sup>9</sup> As the problem of abandonment constantly persists in the shipping sector,

and the time taken to resolve the situation is often very long, the present paper will assess the flag state's role in protecting abandoned seafarers. The flag state is a crucial stakeholder in operating vessels in international waters, and proper discharge of responsibilities can undoubtedly protect abandoned seafarers. Chapter 2 of the paper will discuss the meaning of abandonment under MLC, 2006; chapter 3 will evaluate the role of the flag states in repressing the practice of abandonment; the chapter 4 will discuss the challenges faced by the flag state in fulfillment of its responsibilities; the last chapter comprises of conclusion.

## 2. MEANING OF 'ABANDONMENT OF SEAFARER' UNDER MARITIME LABOUR CONVENTION, 2006

Seafarers carry out their job in situations of hardships, isolation, and danger.<sup>10</sup> From the very beginning of shipping activities, there have been instances where seafarers have been ill-treated, underpaid, and overworked.<sup>11</sup> Abandonment can be referred to as a shameful practice of the shipping industry where abandoned seafarers are subject to cruel, inhuman, and life-threatening conditions with no means of sustenance.<sup>12</sup>

5. Abandonment Database, ILO; accessed from [https://www.ilo.org/dyn/seafarers/seafarersBrowse.list?p\\_lang=en](https://www.ilo.org/dyn/seafarers/seafarersBrowse.list?p_lang=en)

6. *ibid*

7. *ibid*

8. *ibid*

9. Sayedah Hajar, *Seafarer Abandonment: A Human Rights Perspective from Iran, Human Rights at Sea*, (2019:4)

10. Arranz, Caro, *Fraguela Formoso and de Troya Calatayud, Abandonment of Ships: Consequences for the crew and the Ship*, A Vega Saez et al (eds.), *Proceeding of the 25th Pan-American Conference of Naval Engineering* (Springer Nature, 2018) at 354

11. Annika Franziska, *Implementation of Maritime Labour Convention 2006 and its impact on P&I Insurance for Ship-owner, Hanseatic Underwriter*, (2013) at 7

12. Report by the International Transport Workers' Federation, 'Out of sight, out of mind Seafar-ers, Fishers and human Rights', (2006) at 12

Abandonment of seafarers can be described as a situation where the shipowner defaults to fulfilling his fundamental obligations towards the seafarers, including those related to payment of repatriation cost, payment of wages, and supply of necessities onboard vessel. MLC, 2006 points out three situations where seafarer is deemed to have become abandoned by the shipowner<sup>13</sup>, and these are when the shipowner:

(a) fails to cover the cost of the seafarer's repatriation, or

(b) leaves the seafarer without the necessary maintenance and support, or

(c) otherwise unilaterally severs the ties with the seafarer, including failure to pay contractual wages for at least two months.

These three situations comprising abandonment are individually discussed later in this part. A simple case of seafarer abandonment is where there is a seafarer onboard vessel who has been denied the repatriation cost unjustifiably by the shipowner. Sometimes, the abandonment of seafarers happens along with the abandonment of the ship. Although ship abandonment brings environmental, commercial, administrative consequences, seafarers face the severest repercussions of the abandonment of vessels.<sup>14</sup> Ship abandonment, in the majority of cases, is the result of economic crises faced by the shipowner<sup>15</sup>. The owner may decide to abandon the ship in a situation where he finds that the value of the vessel is lower than the amount due to the creditors and pending wages of the seafarers.<sup>16</sup>

In the past, there were plenty of instances where seafarers were abandoned in situations where the ship was arrested<sup>17</sup> or detained by a port state for unseaworthiness.<sup>18</sup> In the cases where the vessel is detained or arrested, the agents may be reluctant to supply food and water, much less their pending wages.<sup>19</sup> One example of abandonment after detention is demonstrated by a Russian-owned vessel named *Rhosus*, detained by Lebanese port authorities in 2013 for unseaworthiness. The shipowner disappeared, abandoning his ship along with its cargo. The crew of the vessel soon found themselves without necessities like food, water, etc.<sup>20</sup> The crew wages were also pending. Several

crew members had to wait for years on the unsafe vessel before they were repatriated with the help of the International Transport Workers' Federation.<sup>21</sup>

The most common reason behind the abandonment of seafarers is believed to have been the financial condition of the shipowner.<sup>22</sup> However, it is quite possible that the shipowner, although financially sound, is not paying the repatriation cost or is defaulting their wages deliberately. In a situation like a shipwreck, there have been instances where the shipowner wrongfully attributed the cause of the disaster to the crew's fault and thus denied repatriation and assistance to the crew.<sup>23</sup> In such situations, seafarers get abandoned on board an unsafe vessel without proper food, water, medical care, and wages.<sup>24</sup>

Maritime Labour Convention, 2006 does not identify abandonment of seafarers by its cause; it specifies three situations where seafarers will be deemed abandoned. This is a praiseworthy step because the idea is to protect the seafarers from the consequences of abandonment and not go into the reasons behind the abandonment. Three situations constituting abandonment as per Maritime Labour Convention are individually discussed below.

### 2.1. Abandonment Due to Failure to Pay the Cost of Repatriation to Seafarers

The literal meaning of repatriation is 'to send back.' This term is frequently used in Maritime Labour Law, where the Right to Repatriation of seafarers implies the right of the individual seafarer to be sent back to their home state by the shipowner on the happening of specified events. Since ancient times, repatriation has been seen as a mandatory obligation of shipowners, at least in some jurisdictions, and such obligation is due not only to seafarers but also to the state.<sup>25</sup>

The right of repatriation for seafarers was recognized in International Law as early as 1926 through the Repatriation of Seamen Convention. In 1987, the original Repatriation Convention of 1926 was revised through the C-166 Repatriation of Seafarers Convention 1987. Presently, Maritime Labour Convention 2006, in its Regulation 2.5, incorporates the provisions related to repatriation, and these provisions are mainly based on the Repatriation of Seafarers Convention 1987, with minor changes.

13. *Maritime Labour Convention, 2006, Standard A2.5.2, para 2*

14. Arranz, Caro, *Fraguela Formoso and de Troya Calatayud, Abandonment of Ships: Consequences for the crew and the Ship*, A Vega Saenz et al (eds.), *Proceeding of the 25th Pan-American Conference of Naval Engineering (Springer Nature, 2018)* at 350

15. *ibid*

16. Sayedah Hajar, *Seafarer Abandonment: A Human Rights Perspective from Iran, Human Rights at Sea, (2019:24)*

17. Annika Franziska, *Implementation of Maritime Labour Convention 2006 and its impact on P&I Insurance for Ship-owner, Hanseatic Underwriter, (2013)* at 28

18. RDML Charles D. Michel & LT Amber S. Ward, "Abandonment of Seafarers: Solving the Problem," *U.S. Coast Guard Proceedings, Summer 2009*, at 75 accessed from [https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Proceedings%20Magazine/Archive/2009/Vol66\\_No2\\_Sum2009.pdf?ver=2017-05-31-120604-383](https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Proceedings%20Magazine/Archive/2009/Vol66_No2_Sum2009.pdf?ver=2017-05-31-120604-383)

19. *Ibid* at 77

20. Ian Urbina, *Behind the Beirut blast: the perils of abandoned ships and cargo*, *Safina Center (2020)* <https://www.safinacenter.org/blog/behind-the-beirut-blast-the-perils-of-abandoned-ships-and-cargo>

21. *ibid*

22. Sayedah Hajar, *Seafarer Abandonment: A Human Rights Perspective from Iran, Human Rights at Sea, (2019:7)23.*

23. *Ibid*, p. 11

24. *Ibid*, p. 11

25. Elisa Ruozzi, *Toward a Growing Protection of Social Rights of Seafarers: The Amendments to the Maritime Labour Convention, 2006 Concerning Financial Security for Abandoned Seafarers and for Death and Long-Term Disability, The Maritime Law, (2016:8)*

As per Maritime Labour Convention 2006, Right of Repatriation accrues to seafarer in any of the following situations<sup>26</sup>:

- when the seafarer's employment contract expires while the seafarer is abroad;
- when the shipowner terminates the seafarer's employment contract;
- when the seafarer terminates the seafarer's employment contract for justified reasons;
- when the seafarers are no longer capable of fulfilling their responsibilities under their employment contract, or cannot be expected to fulfill them in specific circumstances.

The Convention mentions that the shipowner shall arrange the repatriation without charging any fees from the seafarer<sup>27</sup>. If the shipowner fails to provide repatriation costs to the seafarer, then the vessel's flag state should arrange for repatriation of the seafarer concerned. If the flag state also fails to do so, then the port state or the state of which the seafarer is national may arrange repatriation and recover the cost from the flag state.

One point on which Repatriation of Seafarers Convention 1987 defer from provisions on repatriation under Maritime Labour Convention 2006 is that the latter requires the ships flying the flag of a state party to maintain financial security for repatriation to ensure that seafarers are duly repatriated. Elaborate provisions related to Financial Security System were inserted in MLC, 2006 through 2014 amendments to MLC, 2006.

## 2.2. Abandonment Due to Failure to Provide Necessities to Seafarers

One of the shipowner's obligations is to ensure that all the necessities required for a decent sustenance of life on board the vessel are made available to the seafarers. Various provisions of Maritime Labour Convention 2006 elaborate on the necessities which have to be furnished on board. These provisions specify the standards relating to food<sup>28</sup>, accommodation<sup>29</sup>, and medical care<sup>30</sup> on board vessel.

As per 2014 amendments to the Convention, a seafarer is deemed abandoned when the shipowner fails to provide necessities, including food, water, accommodation, essential fuel, and medical care.<sup>31</sup> Non-availability of necessities on board can give rise to humanitarian crises, and the flag state has the

responsibility to address such situations.<sup>32</sup> Flag states have the responsibility to ensure that the fundamental human rights enunciated under the human rights law instruments like the ICCPR are respected for all on board its vessels.<sup>33</sup>

In situations of non-availability of necessities like food and water on board vessel, the seafarer has to seek assistance from charities and local people.<sup>34</sup> They also look towards Port States for instant assistance during such crises. Few Port States like the US have created a fund to assist abandoned seafarers.<sup>35</sup> The fund is used to provide necessities on board vessel, and repatriation cost.<sup>36</sup> Such seafarers who have been denied the necessities on board can also activate financial security system for abandonment. The Financial Security provider is under obligation to give prompt assistance to the seafarer.<sup>37</sup>

## 2.3. Abandonment Due to Severance of Ties With the Seafarer, Including Non-payment of Wages for at Least Two Months

This is a very broad ground as it regards severance of ties with seafarers by the shipowner as abandonment. The severance of ties may be identified through breach of responsibilities owed to seafarers by the shipowner. In case of breach of duty to pay regular wages, non-payment of wages should be at least two months to constitute abandonment.<sup>38</sup>

Wages of seafarers constitute the most significant component of ship operations.<sup>39</sup> Crewing cost is 45% of the operating cost for bunker, and it is 50% on average for

26. Maritime Labour Convention, 2006 Standard A2.5.1

27. Maritime Labour Convention, 2006 Standard A2.5.1, § 3

28. Maritime Labour Convention, 2006, Regulation 3.2

29. Maritime Labour Convention, 2006, Regulation 3.1

30. Maritime Labour Convention, 2006, Regulation 4.1

31. Maritime Labour Convention, 2006, Standard A2.5.2 Standard 2.5.2, § 5

32. Report of Joint IMO/ILO Ad hoc expert working group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers 1st Session Agenda item 11 IMO/ILO/WGLCCS 1/11 22 October 1999, para 6.12.

33. Urfan Khaliq, *Jurisdiction, Ships and Human Rights Treaties in Ringbom, Henrik. 'Jurisdiction over Ships: Post- UNCLOS Developments in the Law of the Sea', ed. Leiden: Brill Nijhoff, at 337; see also Article 2(1) of ICCPR which states: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.."; see also The Human Rights Committee observation in General Comment No. 31 with respect to Article 2(1) of ICCPR which reads "States Parties are required by article 2, paragraph 1... to respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."*

34. A Report by the International Transport Workers' Federation, 'Out of sight, out of mind Seafarers, Fishers and Human Rights', (2006:12)

35. Craig H. Allen, *United States Establishes Fund for Abandoned Seafarers, Seaways (Journal of Nautical Institute), (2015:2)*

36. *Ibid*, p. 3

37. Maritime Labour Convention, 2006 Standard A2.5.2, § 8

38. Maritime Labour Convention, 2006 Standard A2.5.2, §2(c)

39. Marbun, Hanna Friska Luciana, *Wages of Seafarers, Legal Rights, Protections, and Remedies under the Perspectives of International Conventions, University of Oslo, 2018, p. 1 <https://www.duo.uio.no/handle/10852/67259?show=full>*

40. *ibid*

tankers.<sup>40</sup> Non-payment of wages is one of the significant challenges a seafarer faces in the shipping industry.<sup>41</sup> The situation of un-paid wages creates additional stress for seafarers, which may, in turn, impact the safety of the vessel and its crewmembers.<sup>42</sup>

One option available to seafarers to recover pending wages is to initiate litigation. There are two rights in Admiralty for the recovery of pending wages: maritime lien over wages, and statutory right for pending wages.<sup>43</sup> Since the 18<sup>th</sup>-century English High Court of Admiralty have specifically recognized the existence of maritime lien arising from the service rendered by the seafarers on board ship.<sup>44</sup> The priority of seafarers' claim for wages was recognized under various ancient maritime codes<sup>45</sup>, and such priority is still maintained<sup>46</sup>.

Two remedies available to the seafarers for recovery of wages are action in rem and action *in personam*. Through in rem action, the claimant can arrest the ship as a defendant, and the only connection the vessel may have with the forum is that it is within one of the ports of that country.<sup>47</sup> An arrested vessel can be sold if the pending claim is not discharged. Traditionally, whenever any vessel was abandoned, the crew used to stay on board until the vessel is auctioned judicially to recover unpaid wages from the proceeding of sale.<sup>48</sup> In action in *personam*, the proceeding is instituted against the shipowner or the person responsible for paying the wages.

Although, theoretically, seafarers can have recourse to courts to recover their pending wages, the same is not always an easy option to exercise.<sup>49</sup> Filing litigation and arranging

lawyers is both costly and time-consuming.<sup>50</sup> A foreign court may sometimes require the physical presence of the seafarer.<sup>51</sup>

Maritime Labour Convention 2006, now after 2014 amendment, recognizes that a seafarer who has not been paid wages for at least two months will be regarded as an abandoned seafarer. After including this provision in MLC, 2006, seafarers have an additional option to recover pending wages from financial security providers for abandonment. Seafarers can directly approach financial security provider for recovery of pending wages<sup>52</sup>, and it should promptly assist.<sup>53</sup> Here it has to be noted that wages pending for a maximum up to four months can be recovered from the financial security provider.<sup>54</sup>

Here, it is essential to note that abandonment can be occasioned because of all three things: non-payment of wages, denial of cost of repatriation, and non-availability of basic necessities on board vessel, happening together. For instance, when a shipowner gets financially insolvent, he will neither pay the wages nor arrange repatriation costs and ensure supplies of necessities on the vessel. The next chapter will discuss flag states' role in preventing abandonment and assisting the abandoned seafarers.

### 3. ABANDONMENT OF SEAFARERS AND ROLE OF FLAG STATE

The flag state has a crucial role in protecting the rights of seafarers on board its registered vessels. Law of the Sea Convention 1982 recognizes the role of the flag state in maintaining proper labour conditions on board ship.<sup>55</sup> MLC, 2006 has also recognized the active role of the flag state in maintaining decent labour conditions on board its registered vessel and in the overall implementation of the Convention.<sup>56</sup>

In case of abandonment of seafarers due to denial of repatriation cost<sup>57</sup>, the flag state has a well-defined role under MLC, 2006. It is the flag state that should arrange the repatriation when the shipowner denies the repatriation of a seafarer on board his vessel.<sup>58</sup> If abandonment has been caused by non-availability of necessities like food, water, fuel, etc., on board vessel,<sup>59</sup> the flag

41. ITF Report, Non-Payment of wages at 1 <https://itfseafarers.org/sites/default/files/paragraph/issues-attachments/files/A4%20-%20Your%20Rights%20%E2%80%93%20Non-payment%20of%20wages.pdf>

42. Marbun, Hanna Friska Luciana, *Wages of Seafarers, Legal Rights, Protections, and Remedies under the Perspectives of International Conventions*, University of Oslo, 2018, p.20 <https://www.duo.uio.no/handle/10852/67259?show=full>

43. Michael Ng, *The Protection of Seafarers' Wages in Admiralty: A Critical Analysis in the Context of Modern Shipping*, *Austl. & N.Z. MAR. L.J.* Vol 22, p. 135

44. M. Black, *Admiralty Jurisdiction and the Protection of Seafarers*, 15 *Austl. & N.Z. MAR. L.J.* 1 (2000:15)

45. M. Black, *Admiralty Jurisdiction and the Protection of Seafarers*, 15 *Austl. & N.Z. MAR. L.J.* 1 (2000:14)

46. See *International Convention on Maritime Liens and Mortgages*, Article 5(2),

47. Michael Ng, *The Protection of Seafarers' Wages in Admiralty: A Critical Analysis in the Context of Modern Shipping*, *Austl. & N.Z. MAR. L.J.* Vol 22, p. 135

48. Denis Nifontov, *Seafarer Abandonment Insurance: A System of Financial Security for Seafarers In 'The Maritime Labour Convention 2006 International Labour Law Redefined'* Jennifer Lavelle (ed.) (Informa) (2014) at 117

49. *Ibid*

50. Eugene Cheng Jiankai, *The Effectiveness Of The Maritime Labour Convention's Financial Security Certificates In Resolving Claims For Unpaid Seafarers' Wages*, working paper (2020) at 4; see also Denis Nifontov, *Seafarer Abandonment Insurance: A System of Financial Security for Seafarers In 'The Maritime Labour Convention 2006 International Labour Law Redefined'* Jennifer Lavelle (ed.) (Informa) (2014) at 117

51. *ibid*

52. *Maritime Labour Convention, 2006 Standard 2.5.2, § 4*

53. *Maritime Labour Convention, 2006 Standard 2.5.2, § 8*

54. *Maritime Labour Convention, 2006 Standard 2.5.2, § 9(a)*

55. *UNCLOS, 1982 Article 94(3)(b)*

56. *Maritime Labour Convention, 2006, Regulation 5.1*

57. *Maritime Labour Convention, 2006, Standard A2.5.2 § 2(a)*

58. *Maritime Labour Convention, 2006, Standard A2.5.1 § 5*

59. *Maritime Labour Convention, 2006, Standard A2.5.2 § 2(b)*

60. *Flag state has duty to ensure that basic human rights of Seafarers on board its registered vessel are protected; see Urfan Khaliq, Jurisdiction, Ships and Human Rights Treaties in Ringbom Henrik. 'Jurisdiction over Ships: Post-UNCLOS Developments in the Law of the Sea', ed. Leiden: Brill Nijhoff, p. 337*



state should render immediate assistance to the seafarers.<sup>60</sup> The lack of necessities on board ship will be detrimental to individual seafarers and will also impact the ship's safety.<sup>61</sup>

The following subchapter will elaborately analyze some specific roles of the flag state in the situation of abandonment of seafarers on board its vessels.

### 3.1. Regular Inspection and Monitoring

Under MLC, 2006, a flag state must verify through regular inspection and monitoring that all its registered ships comply with the Convention's provisions as implemented through its municipal laws.<sup>62</sup> In relation to abandonment, relevant provisions of the Convention require that sufficient necessities for survival of seafarers should be made available on board vessel by

the shipowner, their wages should be paid regularly by the shipowner, along with the repatriation cost where the right of repatriation accrues to the seafarers.

For instance, the state party must ensure through regular inspections that on board its registered vessels there are sufficient food and other necessities for seafarers. In case a situation of a lack of basic necessities on board for the seafarers (referred to as abandonment of seafarers, as per 2014 amendment to MLC) comes to the attention of the flag state during the inspection, it should resolve the issue and comply with the provision of MLC, 2006.

From the above mentioned, it can be concluded that if the flag state is vigilant and properly fulfills its duty to conduct regular inspection, the cases of abandonment can be timely identified, and the shipowner can be obliged by the flag state to take

**Table 1.**

MLC Inspection Report for the year 2019 for Denmark, Isle of Man, Germany, Norway, Hong Kong, and Liberia.

Country	No. of flagged vessel inspected for compliance with the requirements of the MLC, 2006	No. of complaints filed relating to labour standards on the flagged vessel	Total MLC deficiency issued
Denmark	237	13	Information not available
Isle of Man	327	3	211
Germany	205	Information not available	46
Norway	436 MLC inspections carried out on ships with MLC certificate; and 263 MLC inspections were carried out on ships not required to have MLC certificate;	Information not available	118 MLC deficiencies issued to ships with MLC certificate, and 441 MLC deficiencies issued to ships not required to have MLC certificate; 5 Norwegian ships were detained or prohibited from leaving port due to serious MLC deficiencies;
Hong Kong (1 June 2019 - 31 May 2020)	1013	33	Information not available
Liberia	1272	44	320 19 Liberian-flagged vessels were detained for deficiencies, including 4 detained vessels for non-payment of wages.

61. Flag state has responsibility to take measure to ensure safety at sea with respect to labour condition, see UNCLOS, 1982 Article 94(3)(b)

62. Maritime Labour Convention, 2006, Regulation 5.1.4 §1

63. Maritime Labour Convention, 2006, Standard A5.1.4.13

suitable measures to remedy the situation. MLC, 2006 not only requires state parties to inspect their registered vessels regularly, but they are also required to publicly release an annual report of inspections conducted in a particular year.<sup>63</sup> Such report should include details like the number of vessels inspected, complaints received related to labour standards, identified deficiencies, actions taken, etc.

For the year 2019, the following table highlights the inspection data from the Danish Maritime Authority<sup>64</sup>, Norwegian Maritime Authority<sup>65</sup>, German Ship Safety Division<sup>66</sup>, Isle of Man Registry<sup>67</sup>, Liberian Maritime Authority,<sup>68</sup> and Marine Department of Hong Kon<sup>69</sup>.

Table 1 demonstrates that the states are doing inspections of their flagged vessels to fulfill their obligations under MLC, 2006. If these inspections are done diligently and at regular intervals by all the flag state parties to MLC, 2006, the ships having substandard working conditions or on which seafarers are facing abandonment or there is a likelihood of seafarers' abandonment in the future, can be identified, and suitable actions can be taken by flag states to remedy the situation.

### 3.2. Efficient Complaint Mechanism

Apart from flag states conducting regular inspections on their registered vessel, labour conditions on board can be brought to the notice of the flag state through a complaint. A seafarer who becomes abandoned can file a complaint to the flag state. However, it has to be noted that MLC, 2006 promotes the resolution of complaints, first at the lowest level possible before approaching external authorities like flag states.<sup>70</sup> MLC, 2006 says that where a flag state receives a complaint that its registered vessel is not confirming the requirement under the Convention, it should investigate the matter and ensure that

the deficiency found is rectified.<sup>71</sup> For example, if a seafarer becomes abandoned because of non-payment of wages<sup>72</sup>, he/she can file a complaint to the flag state. Although the flag state of a vessel is not obliged to pay pending wages of seafarers that are defaulted by the shipowner, the flag state of the vessel on receiving a complaint from seafarers on board vessel regarding non-payment of wages, must ensure that the wages are paid and the dispute is resolved.

The flag state can also take action against the shipowner that defaults wages to the seafarers. For instance, in 2017, Liberian Maritime Authority detained nine (9) of its registered ships with serious deficiencies related to payment of wages, food, catering, health, and safety.<sup>73</sup> It is also important to note that out of 56 complaints received by the Liberian flag state in 2017 involving aspects related to working and living conditions, 49 were related to payment of wages and repatriation.<sup>74</sup> On repeated breaches by a shipowner, the flag state can even cancel the registration of the ship.

### 3.3. Effective Implementation of Financial Security System for Abandonment on Flag State's Registered Vessels

One of the significant contributions of the 2014 amendments to MLC, 2006 was that it developed a financial security system for protecting abandoned seafarers.<sup>75</sup> By virtue of the financial security system, every shipowner should maintain financial security to assist seafarers when they are abandoned. Financial Security Certificate has to be kept on board every vessel as proof of such financial security.<sup>76</sup>

The idea behind its establishment was to ensure that the abandoned seafarers do not suffer because of a breach of obligation by the shipowner. In the situation of abandonment, the seafarer can directly approach the financial security provider.<sup>77</sup> Such a financial security provider should give prompt assistance to the seafarer.<sup>78</sup> The assistance provided by financial security should be sufficient to cover repatriation costs, necessities on board, and outstanding wages/other entitlements for up to four months.<sup>79</sup>

64. Danish Maritime Authority, *Maritime Labour Convention, 2006 Annual Report on activities in accordance with Regulation 5.1.4, § 13, Reporting period 1 January 2019 to 31 December 2019*, <https://www.dma.dk/Documents/Publikationer/AnnualMLCReport2019.pdf>

65. MLC 2006 Annual report 2019 – Norway, <https://www.sdir.no/globalassets/sjofartsdirektoratet/fartoy-og-sjofolk---dokumenter/mlc/nor/mlc-2006-annual-report-2019---norway.pdf>

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70. *Maritime Labour Convention, 2006, 2006, Standard A5.1.5 § 2.*

71. *Maritime Labour Convention, 2006, 2006, Regulation 5.1.4 § 5*

72. *Maritime Labour Convention, 2006, Standard A2.5.2 Para 2(c)*

73. *Annual Report, Maritime Labour Convention (MLC), 2006 Inspection Activities Liberia Maritime Authority, 1st January 2017 to 31st December 2017*, p. 6

74. *Ibid*, p. 7

75. *Maritime Labour Convention, 2006, Standard A2.1.2*

76. *Maritime Labour Convention, 2006, Standard A2.1.2, § 6*

77. *Maritime Labour Convention, 2006, Standard A2.1.2, § 4*

78. *Maritime Labour Convention, 2006, Standard A2.1.2, § 8*

79. *Maritime Labour Convention, 2006, Standard A2.1.2, § 9*

80. *Maritime Labour Convention, 2006, Standard A2.1.2, § 3*

An essential role of the flag state with respect to the financial security system is that it should require its registered vessel to maintain financial security for abandonment through its domestic laws. It should specify the types of financial security it recognizes valid for the purpose of MLC, 2006. The flag state has been given flexibility in deciding which type of financial security they will recognize suitable for fulfilling requirements under MLC. Financial security can be in the form of insurance, social security scheme, state fund, and others<sup>80</sup>. The state can also issue a list of the institutions that can act as financial security providers. It is believed that the best way to comply with a requirement under MLC is through the issuance of a Financial Security Certificate from the P&I club.<sup>81</sup> P&I clubs have emerged as a major financial security provider for abandonment.<sup>82</sup>

Financial Security Certificate is open for inspection by both flag and port state since both Appendix A5-I and Appendix A5- III of MLC, 2006 include a financial security certificate for repatriation as an item to be inspected. Regular inspection and vigilance of the flag state will ensure that financial security is maintained for all its vessels at all times. MLC, 2006 requires that financial security providers give one month's notice to the flag state when they want to terminate the financial security. On receiving such a notice, the flag state should keep the concerned vessel on its watch list to ensure that the shipowner gets new financial security cover.

Flag states should also coordinate with other states to ensure proper implementation of the financial security system. On getting the information that the financial security certificate has expired for one of its vessels, the flag state should take action against the shipowner. Flag state should also bring the matter to the notice of other states where ship calls regularly. Such port states can also take suitable measures against the vessel, including detaining it. These coordinated actions contemplated above will deter the shipowners from breaching the requirement related to financial security for abandonment. It is worth mentioning that timely identification of ships in which financial security for abandonment is not maintained, and their elimination can help reduce the cases of abandonment of seafarers.

## 4. CHALLENGES FOR FLAG STATE IN THE DISCHARGE OF ITS RESPONSIBILITIES

### 4.1. Existence of Open Registry and Lack of Cooperation Between States

Although states are obliged to exercise control on their registered vessels to ensure continuous fulfillment of MLC requirements, fulfilling this obligation becomes difficult for states that have open registries.<sup>83</sup> Ships registered with open registers rarely call at the ports of the state where they are registered.<sup>84</sup> It is difficult for seafarers to lodge a complaint to the flag states in this situation.<sup>85</sup> The majority of open registries have big fleets that are scattered all across the world.<sup>86</sup> Thus, monitoring and controlling the registered vessels is difficult. Furthermore, there have been views that in order to attract more business of ship registration, the flag of convenience state may itself be less interested in enforcing international rules and regulations.<sup>87</sup>

Under Maritime Law treaties, effective discharge of responsibilities by flag states is also dependent on the support provided by port states. One of the responsibilities of the Port State under MLC, 2006, is to report any deficiency found on a vessel calling at its port to the flag state. However, the rigour of port state monitoring and control may vary from port to port because the availability of financial resources and manpower is different in various ports around the world.<sup>88</sup> Furthermore, Labour Law matters on foreign vessels may be regarded as internal matters on board vessels, so the port state might not be willing to intervene.<sup>89</sup> Thus flag states may not get ample assistance from every port state, which would have otherwise led to the identification of substandard vessels of flag states calling at ports worldwide.

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81. Ranka Petrinović, Ivana Lovrić, Trpimir Perkušić, *Role of P&I Insurance in Implementing Amendments to Maritime Labour Convention 2014* *Transaction on Maritime Science* (2017:46)
82. Eugene Cheng Jiankai, *The Effectiveness Of The Maritime Labour Convention's Financial Security Certificates In Resolving Claims For Unpaid Seafarers' Wages*, working paper (2020:13)
83. Marbun, Hanna Friska Luciana, *Wages of Seafarers, Legal Rights, Protections, and Remedies under the Perspectives of International Conventions*, University of Oslo, 2018 at 22 <https://www.duo.uio.no/handle/10852/67259?show=full>

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84. *Ibid*
85. *Ibid*
86. Hamad Bakar Hamad, *Flag of Convenience Practice: A Threat to Maritime Safety and Security*, *Journal of Social Science and humanities research*, Volume-1(8), 2016, p. 216.
87. *Ibid* at 215, 216.
88. Gang Chena Desai Shanb, *Seafarers' access to jurisdictions over labour matters*, *Marine Policy* (2016:4)
89. *Report of the Second Session of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers* (London, 30 October-3 November 2000:8); also see Gang Chen & Desai Shan, *Seafarers' access to jurisdictions over labour matters*, *Marine Policy* (2016:3) "Port States may also be reluctant to exercise the enforcement jurisdiction over maritime labour matters, and their practices may be confined within certain limits."
90. *Maritime Labour Convention, 2006, Standard A2.5.2*



## 4.2. Unawareness Among Seafarers About Their Rights

Through the 2014 amendments to MLC, 2006 financial security system for abandonment is established.<sup>90</sup> However, the success of the system will depend on the awareness of the seafarers about this system. The seafarers have to timely approach financial security providers in the situation of abandonment to get relief. It has been found that abandoned seafarers keep waiting on board vessel, hoping that the shipowner will pay the wages while their wages accumulate.<sup>91</sup> Delay in approaching the financial security provider will be detrimental to the interest of the seafarers because financial the security provider is obliged to pay pending wages only up to four months.<sup>92</sup>

There is a need to educate seafarers about the financial security system for abandonment. The vessel's flag state can organize short courses on how seafarers should respond in a situation of abandonment. These measures will undoubtedly help reduce the problems abandoned seafarers face and assist them in the timely resolution of the situation.

## 4.3. Financial Security Certificate Issued by Private Entities

One of the drawbacks of the current provision of MLC, 2006 is that the financial security certificate is directly issued by the financial security provider.<sup>93</sup> This is in contrast to other maritime law treaties where financial security certificate is issued by the state<sup>94</sup> or an institution authorized by the state.<sup>95</sup> When the state issues financial security certificate, it can exercise more control. It can even refuse to issue such certificate in circumstances where there is a likelihood of seafarers getting abandoned in the future on board vessel. For example, when the flag state finds that the

shipowner is on the verge of bankruptcy that may lead to the abandonment of seafarers in near future, it can deny the issuance of the certificate.

Although MLC, 2006 does not oblige financial security providers to consult flag states before issuing financial security certificates, states can impose such requirements in their Municipal Law. This will allow flag states to play an active role in the issuance of Financial Security Certificates. The flag state should first verify that shipowners are financially sound before financial security providers, including P&I, issue the financial security certificates.<sup>96</sup> Such a two-step verification process can reduce the number of abandonment cases because the shipowners likely to make wages default in the future can be stopped from taking their ships to sea.<sup>97</sup>

## 5. CONCLUSION

The flag state is emphasized as one of the most important stakeholders for a vessel navigating in international waters. Undoubtedly, it can play a crucial role in protecting abandoned seafarers. Regular inspection and easy complaint procedure can bring to light the situation of abandonment of seafarers, which may otherwise go unreported. Flag state should impose severe penalties on the shipowners on whose vessels abandonment has been reported. This step will deter other shipowners from the shameful practice of abandonment.

Flag state judicial system should be made more accessible and less time-consuming to give immediate relief to the seafarers who are abandoned on a vessel in the waters of the flag state. Litigation costs should not come in the way of doing justice to abandoned seafarers. Furthermore, the vigilance of the flag state can also help identify the ships for which there is the likelihood of abandonment of seafarers in the future. Under the present regime, the financial security certificate is not issued by the flag state of the vessel, but it must ensure that financial security certificate is not issued for ships that are already facing financial difficulties.

Lastly, the unawareness of seafarers about their rights is a most significant challenge in protecting abandoned seafarers. The flag state should train seafarers on how they should respond in the situation of abandonment. They must be familiarised with the financial security system for abandonment.

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91. Eugene Cheng Jiankai, *The Effectiveness Of The Maritime Labour Convention's Financial Security Certificates In Resolving Claims For Unpaid Seafarers' Wages*, working paper (2020:14).

92. *Maritime Labour Convention, 2006, Standard A2.5.2 para 9*

93. *Report of Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers Geneva, 2–6 March 2009, ILO/IMO/WGPS/9/2009/10, para 116.*

94. *see International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, Article 7(2); See also Nairobi International Convention on the Removal of Wrecks, 2007 Article 12(2); See also International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010, Article 12(2); see also International Convention on Civil liability for Oil Pollution Damage, 1992 Article 7(2); see also Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, Article 4(bis)(2)*

95. *see International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, Article 7(3)(a); see also Nairobi International Convention on the Removal of Wrecks, 2007, Article 12(3)(a); see also Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, Article 4(bis)(3)*

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96. Eugene Cheng Jiankai, *The Effectiveness of The Maritime Labour Convention's Financial Security Certificates In Resolving Claims For Unpaid Seafarers' Wages*, working paper (2020:30).

97. *Ibid.*

## CONFLICT OF INTEREST

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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