



An Analysis of Abandonment of Seafarers and Preventive Measures

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ARTICLE INFO

Article history:

Received 10 Sep 2023;
in revised from 11 Nov 2023;
accepted 15 Jan 2024.

Keywords:

abandonment, seafarer, preventive,
IMO, ILO.

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ABSTRACT

This paper discussed the preventive measures for seafarer abandonment. In the shipping industry, the term “abandonment” refers to the ill-treatment of seafarers aboard a vessel by the vessel’s owner. The issue of seafarer abandonment affects only a small part of the industry, but without money or a way of getting home, the abandoned crew suffers inhumane conditions and devastating financial consequences. This paper focused on the obligation to timely repatriation and payment, medical attention, inadequate medical facilities, and statistics on seafarer abandonment. The shipping company has followed the abandonment rules and regulations of the IMO and ILO.

1. Introduction.

The long waited implementation of the Maritime Labour Convention (MLC) changes pertaining to seafarers’ abandonment is anticipated to occur in 2017. The revisions are anticipated to be well-received given that the Convention is already seen as a success, often referred to as a “super convention” or “seafarers” bill of rights”. A seafarer will have been abandoned when:

- The ship-owner is in violation of the seafarer’s employment agreement.
- Despite the fact that there is a loyalty, which is regarded as an obligation towards the seafarer that is indirect rather than direct, they are left without help.

Garner (2000) describes that “the relinquishing of a right or interest with the intention of never again claiming it. An abandonment is merely the acceptance by one party of the situation

that a non performing party has caused. But a rescission due to a material breach by the other party is a termination or discharge of the contract for all purposes. 2. Family Law. The act of leaving a spouse or child wilfully and without an intention to return” (pp-1).

It was once again established in 2006 what constitutes abandoning sailors. An abandoned seafarer will be regarded as such under the Maritime Labour Convention : “(...) where, in violation of the requirements of this Convention or the terms of the seafarers’ employment agreement, the ship-owner: (a) fails to cover the cost of the seafarers’ repatriation; or (b) has left the seafarer without the necessary maintenance and support; or (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.” MLC (2014) defines that the first set of amendments to the Convention which were approved by the Special Tripartite Committee on 11 April of 2014 at the 103rd session of the International Labour Conference, at ILO headquarters in Geneva. The amendments are expected to come into force at the beginning of 2017”.

Abandonment has been described as “the cancer” of the shipping industry. To provide some hope, a support network of trade union, welfare, and maritime rights groups is fighting to ensure their protection on an international level. The ILO maritime labour convention, also known as the seafarer’s Bill of Rights, covers almost 97% of the world fleet and has been ratified by 79 member states today. As per the data on abandonment available

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on the ILO database, in the year 2022, more than 713 seafarers were listed as abandoned in the database since it was established in 2004. These figures raise serious concerns about the current legal regime's effectiveness in resolving abandonment situations. Seafarers are vital cogs in the maritime domain, and as such, abandonment issues are a priority that must be resolved as early as possible.

The IMO indicated that the recent occurrences of a total of 14 Indonesian crew in Port Alang, India, on board the *Miss Gaunt* and *North Wind* may serve as an illustration of the stressful and harsh effects for the abandoned crew on board, as well as for their relatives. Both vessels are listed in the Curaçao registry under the registration of the Kingdom of the Netherlands. The crew repeatedly complained to IMO in January and February 2019 that neither the ship's owner nor the insurer was paying them. Since they had not seen their families or young children in more than seven months, they were unable to pay for their needs. The port State, India, claimed that the ships could not be relocated to a safe lay-up harbour and that a fresh replacement (skeleton) crew was necessary, therefore the crew was also unable to return home.

The matter essentially concerns a ship owner's ability to abandon his ship and be protected by insurance, giving a ship owner the right to abandon his ship whether it was captured by the enemy, held by a foreign authority, or confiscated for governmental use. The topic refers to the items on board the ship and their potential value for recovery. However, the personnel on board the ship at the time of its abandonment is not mentioned in the topic. It nearly seems as though the only valuable items on board a ship when it was abandoned were its cargo. Abandonment happens either because the ship owner has financial difficulties or because they can make more money by not paying the wages and bills they owe. This may be more frequent on older ships at the end of their sea life, where the ship is worth less than the money owed to the crew and other debtors. In determining the cases of abandonment of seafarers, the following considerations shall be among those taken into account but shall not be limited to:

Obligation to timely repatriation and payment.

Even when companies save money on basic expenses by deferring signing off dates, seafarers are not always paid on time. While most crew get their wages in the end, there are some who are never paid. The ship owners concerned use bullying tactics, promises of future payment, or small advances on the total amount outstanding in order to try to maintain the operation of their ship with the smallest possible outlay.

While the majority of crew members eventually receive their salaries, a small percentage are never paid, and some must wait months or years for a resolution of their unpaid earnings. In order to preserve the operation of their ship with the least amount of expenditure, the worried ship-owners employ bullying strategies, assurances of future payments, or modest advances on the entire amount due. Recall that operating a poor shipping operation includes not paying employees' salary. Also, there will be suppliers of products and services who are underpaid or paid on time, there won't be enough money for repairs or maintenance,

and there might be port state control detentions due to faults on board.

Medical Attention.

Not receiving such care can be a matter of life or death for seafarers working on ships. One case, according to the ILO, involved a seafarer suffering from a painful and debilitating eye complaint that progressively got worse to the point that he was sensitive to light. Since we don't have professional doctors on-board, the seafarer must be assisted with all the necessary medical attention at the nearest port.

Inadequate Medical Facilities.

A cargo ship and a large cruise ship are very distinct types of workplaces, but when examining these two environments from the point of view of crew member health and safety, everyone can spot some similarities. The risks to a crew member's health and safety, the motivations for leaving the ship, and the requirement to receive high-quality care in one's home nation are frequently comparable. Tasks are performed in a highly stressful atmosphere on board ships. The crew members are lengthy absences from home and family and the demanding shifts are factors in the lack of drive and focus. It apart from all of these aspects, working on a ship always involves being in a multicultural environment, which on the one hand adds exciting variation and cultural diversity, but on the other hand makes crew members' unity even more difficult and hectic. For this reason many of the crew members are affected their well-being on each and every day. The crew members are suffering greatly during this period of severe illness. The company has to consider their well-being and provide some rest for the crews. This is also a very big challenge for the ship owners. However, the crew member must receive medical assistance that complies with international standards because medical care and standards vary greatly from nation to nation. The ship owner will need to find a replacement if the absence is lengthy because they will be short of specialists while the crew member is away. The ship's owner will be responsible for covering both the substitute's salary and the sick leave during the absence.

Making sure that the required treatment is advancing and there is no delay in the process of treatment because the crew member missed a medical appointment or because the medical facility was unable to provide the care was one of the challenges when it came to handling medical cases for crew members in their home country. Depending on their total number of experience, Companies has created a clear and well-organized protocol for handling any kind of medical cases that ensures the ongoing success of the provided care. This procedure necessitates both the crew member's and the ship owner's involvement in order to successfully acquire or provide the required care. On a monthly basis, the progress is evaluated to provide a clear understanding of the case's expected outcome: whether the crew member will regain fitness for duty and resume working on board, or whether they will achieve the point of maximum medical improvement but be unable to do so.

Inadequate residential facility.

Decent accommodation and recreational facilities shall be provided for seafarers working or living on board, or both, con-

sistent with promoting the seafarer's health and well-being. Ship-owners sometimes do not provide seafarers with separate sleeping rooms of adequate size to ensure reasonable comfort and facilitate tidiness. On board, some of the insufficient residential facilities provided for the crew members included the lack of export containers, berthing delays, and restricted cargo operations. And also included transportation bottlenecks, a lack of truck drivers, and stopped production lines.

In the maritime sector, abandonment of sailors is a severe and persistent problem. It happens when shipowners or operators don't follow through on their commitments to the crew members onboard, putting them in stressful and occasionally dangerous situations. This abandonment can take various forms, including:

- **Non-payment of Wages:** Many times, seafarers are left behind and don't get paid for months or even years. The crew members and their families may experience serious financial challenges as a result of this loss of revenue.
- **Unpaid Overtime:** Many sailors put in a lot of overtime without getting paid for it, which makes their financial problems tougher.
- **Inadequate Living Conditions:** It's possible that abandoned mariners won't have access to nutritious food, safe lodging, or clean water. Health problems and a loss in general wellbeing may result from this.
- **Lack of Repatriation:** Repatriating crew men when their contracts expire or in an emergency is the shipowner's responsibility. Denying seafarers the opportunity to return home and leaving them stranded far from their relatives is a common aspect of abandonment.
- **Denial of Medical Care:** Abandoned sailors may occasionally not receive the proper medical attention, endangering their health and safety.
- **Isolation and Neglect:** In remote ports or aboard isolated ships, abandoned seafarers may be left alone with limited access to the outside world. Significant psychological and emotional pain can result from this solitude.
- **Violation of Human Rights:** As it denies seafarers their fundamental rights to fair treatment, secure working conditions, and prompt payment, abandonment is a violation of human rights.

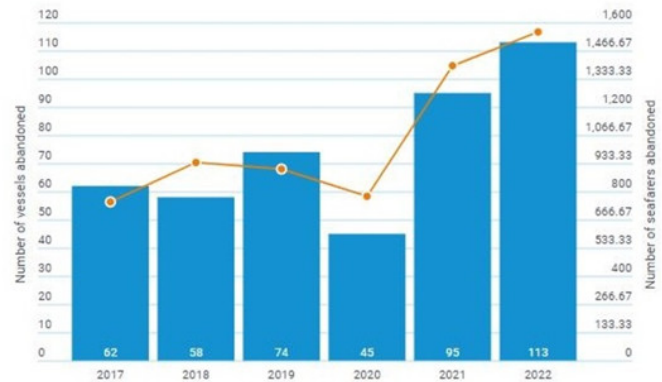
2. Case of seafarer extradition.

According to a recent incident, 15 of the 26 crew members of the Norwegian ship MT Heroic Idun are being held captive in Equatorial Guinea, while the remaining crew members are onboard the ship. In some cases, the company might abandon the seafarers.

3. Statistics of Abandonment of Seafarers.

In 2021 there was “an alarming spike” in case of ships and crew being abandoned by owners in wake of Covid Pandemic, the trend continued throughout 2022 being the worst year on record.

Figure 1: Total of 555 seafarers are abandoned last year.



Source: Authors.

According to joint database maintained by IMO & ILO 713 abandonment incidents listed in the database since establishment in 2004.

- Of those 305 cases were resolved.
- From year 2012 to 2016 12 to 19 per year.
- In year 2017 55 cases of abandonment were reported.

But an alarming signal was made in year 2018 to 2019 where cases increased drastically and the scale went on increasing.

- In year 2018 44 cases of abandonment were reported.
- In year 2019 40 cases of abandonment were reported.
- In year 2020 **85** cases of abandonment were reported {covid-19 pandemic year}.
- In year 2021 **95** cases of abandonment were reported.
- In year 2022 **109** cases of abandonment were reported.

4. An analysis of abandonment of seafarers.

Seafarers actively assist the maritime industry, and the work they do is essential to its operation. The effective operation of the shipping sector depends on the maintenance of friendly ties between seafarers and ship-owners. A written seafarer employment agreement is necessary according to maritime labour law and must be made between the ship-owner and the seafarer. Rights, obligations, and the terms and circumstances of work are all mentioned in an employment contract. The main problem is a lack of finance, which in turn leads to a few more

problems like unresolved debts and creditors. On account of the ship-owner being incapable of generating the required funds and continuing with the marine operations, the seamen are left without any support, “PITTY!”.

A seafarer is considered abandoned, in accordance with 2014 modifications to the Convention, when the ship-owner neglects to provide basic needs such food, water, housing, necessary fuel, and medical attention. 31 Humanitarian catastrophes might result from the lack of essentials on board, and the flag state is responsible for handling such circumstances. Because the ship owner's severance of links with sailors is viewed as abandonment, this is a fairly broad standard. With the ship-failure owner's to uphold its obligations to sailors, the severing of relationships may be discerned. For non-payment of wages to qualify as abandonment in the case of a breach of the obligation to pay regular wages, there must be a two-month gap. It is important to note that all three of these circumstances non-payment of salaries, refusal to cover the expense of repatriation, and lack of access to basic requirements on board the vessel can lead to abandonment. For instance, when a ship-owner falls financially insolvent, he would neither pay the employees nor organize repatriation charges and secure supply of essentials on the vessel. The function that flag states play in deterring desertion and helping those who have been left at sea will be covered in the following chapter.

What are the steps taken in order to prevent the abandonment of seafarers?

- Make sure that your employment agreement is written and signed by you and your employer and that it deals with your repatriation in the event of your abandonment.
- Be alert to the early signs of abandonment and take action as soon as appropriate.
- If you are abandoned, you may wish to contact the port state control authority; the flag state of your ship; your embassy or consulate; various government departments in the port state; the ITF, your own or local trade union; various welfare organizations and/or a local lawyer.
- If you have not been paid your wages and need food, accommodation, drinking water supplies, fuel for survival on board your ship and medical care and require repatriation at no cost to yourself, you can directly access the financial security system under the MLC (for up to four months).
- If your ship-owner fails to meet the costs of your repatriation under the MLC, you should approach the flag state to affect your repatriation. If it fails to do so, the country from which you are to be repatriated or the country of which you are a national may arrange for your repatriation.
- If you have not been paid your wages (for any period of time) and need repatriation instruct a lawyer to enforce your rights under your maritime lien by arresting the ship

to which the maritime lien attaches, or by arresting a sister ship in the event that the ship to which your maritime lien attaches is of insufficient value to pay for your wages and repatriation.

- If your rights to financial security under the MLC; a maritime lien; and to arrest a sister ship are to no avail and the ship-owner is seeking to evade your claim, you may be able to obtain a court order compelling him not to remove his assets from the country so that if you get a judgment against him based on your employment agreement you can execute the judgment against those assets.
- If you are at risk of detention and deportation, you should instruct a lawyer to manage those risks and ensure your repatriation.

5. Where to get help?.

There are several organizations you can contact for advice and support with cases of abandonment at sea. The following organizations mentioned below:

- The ITF or your local trade union.
- Flag state.
- Port State Control.
- The Seafarers Embassy.
- Welfare organizations.
- A Local Community.
- A Lawyer.

A major problem in the marine sector is the abandonment of seafarers, who are not given the basic support they need, such as salary, repatriation, and decent living circumstances, by shipowners and operators. This may occur for a number of causes, including the shipping company's financial troubles, conflicts, or other unforeseen events. Several precautionary measures and international laws have been implemented to address this issue:

- International Maritime Organization (IMO) Regulations: The Maritime Labour Convention (MLC), 2006, was created by the IMO and lays out detailed rules for seafarers' living and working circumstances, including restrictions to avoid abandonment. These rules, which include the provision of money security to pay for outstanding wages and repatriation expenses, must be put into effect by member states.
- Shipowners' Liability Insurance: In order to cover the costs of returning seafarers to their home countries and paying their back salaries in the event of abandonment, many nations mandate that shipowners maintain liability insurance. For seafarers, this insurance acts as a safety net in terms of money.

- **Flag State Control:** Making sure that ships flying their flag adhere to international laws is the responsibility of the flag state, which is the nation where the ship is registered. Shipowners who abandon seafarers may face penalties from flag states, such as the vessel being impounded or having its registration revoked.
- **Port State Control** to ensure adherence to international laws, notably the MLC, port state authorities can inspect ships at their ports. A ship may be impounded until the problems are fixed if a violation is discovered.
- **Crew Welfare Organizations:** A number of charities and organisations offer assistance to abandoned sailors, including access to legal counsel, food and medical care, as well as help with repatriation.
- **Global Reporting Mechanisms:** Mechanisms for reporting desertion incidents have been created by the IMO and the International Labour Organisation (ILO). These reporting mechanisms can be used by seafarers, their representatives, and concerned parties to request assistance and spread knowledge about abandoned crew members.
- **Contractual Protections:** Seafarers should have clear contracts outlining all of their rights, including compensation, return to their home country, and working conditions. Legal clauses in employment agreements may serve as a disincentive to abandonment.
- **Crisis Management Plans:** Plans for crisis management should be in place at shipping companies to handle monetary issues or emergencies that might result in abandonment. These plans may contain emergency cash, backup strategies, and specific guidelines for taking care of the crew's welfare in the event of abandonment.
- **Awareness and Training:** The rights that they have and how to report situations of abandonment should be made clear to seafarers. Training programmes can assist them in comprehending the rules and practises put in place to safeguard their interests.
- **International Cooperation:** To effectively combat abandonment, governments, business associations, and unions must collaborate. An integrated solution to this issue may be made possible by international cooperation.
- In order to effectively avoid and address the issue of abandonment of seafarers, governments, the maritime sector, and international organisations must work together. The marine sector may endeavour to solve this issue and safeguard the rights and welfare of seafarers by enacting preventive measures and guaranteeing compliance with current legislation.

6. Call of actions.

- If you think you are in danger of abandonment, DO NOT WAIT. If the ship owner does not respond contact the insurance company.

- The insurance will cover you up four months outstanding wages and entitlements in line with your employment agreement, SO DON'T LEAVE IT TOO LATE.
- The insurance must also cover reasonable expenses such as food clothing with necessary, accommodation, drinking water and many more. It will apply from the moment of abandonment arrival back.

NOTE: You can always contact an ITF inspector or an ITF affiliated union using the ITF seafarer app or the look up section of the ITF seafarer website or by contacting the ITF Seafarer support team by email at seafsupport@itf.org.uk.

Relevant NGOs in consultative status with IMO include the following:

- International Transport Workers' Federation (ITF).
- International Chamber of Shipping (ICS).
- International Christian Maritime Association (ICMA).
- International Maritime Health Association (IMHA).
- International Association of Classification Societies (IACS).
- International Federation of Shipmaster's Associations (IF-SMA).
- International Ship Suppliers & Services Association (ISSA).
- International Group of Protection and Indemnity Associations (P&I Clubs).
- International Harbour Masters' Association (IHMA).
- International Association of Ports and Harbors (IAPH).

Conclusions.

Abandonment can happen for a number of causes, such as the shipowner's financial issues, conflicts, bankruptcy, or other unforeseen events. It is a serious problem that poses serious threats to the welfare and safety of seafarers, regardless of the cause. Many international treaties and laws have been put in place to address the issue of abandonment, such as the Maritime Labour Convention (MLC), 2006, which outlines the rights and protections of seafarers and includes provisions for financial security to cover unpaid wages and repatriation costs. In order to recognise and address situations of abandonment, port state control, flag state control, and international reporting procedures all play a part. Stricter enforcement of these rules, increased awareness of the problem, better access to legal recourse for seafarers, and the promotion of ethical business practises within the marine sector are all actions taken to prevent abandonment. In order to identify solutions and punish individuals accountable for desertion, governments, industry players, and international organisations must collaborate. For the maritime sector to be safe and last, it is essential to protect the rights and welfare of seafarers.

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