

# *Study on the Liability of Shipowners for the Protection of the Abandoned Seafarers under the Maritime Labor Convention*

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**Abstract:** At the 110th meeting of the IMO (International Maritime Organization) Legal Committee, the ITF (International Transport Workers' Federation) reported a total of 118 seafarer abandonment incidents in 2022, involving 1,841 seafarers. In the face of the sudden increase in the number of abandonment incidents, how to effectively prevent and resolve abandonment incidents and protect the abandoned seafarers is currently a major issue of the international shipping industry. The shipowner's conduct leads to the seafarer abandonment incidents, which is therefore the first responsible subject, and the ultimate bearer of responsibilities after other subjects, such as the flag state, the port state and the nationality state of seafarers. Currently, the number of seafarer abandonment incidents is increasing rather than decreasing. This essay will discuss the scope of the shipowners' liability for the protection of the abandoned seafarers, analyzing the problems existing in the provisions of the shipowners' liability, and put forward corresponding suggestions.

## **1. Introduction**

The seafarer career meets the needs of 8 billion people in the world, and people's normal life cannot be separated from the hard work of nearly 2 million seafarers. Compared to other occupations, seafarers are characterized by its technical, risky, international and public interest nature. The number of abandoned seafarers rose sharply during the COVID-19 epidemic due to the economic disruption caused by the generalized blockade of ports. Despite a gradual recovery in international trade since 2021, due to wider economic and geopolitical instability, 2022 is the year with the highest number of abandonment incidents ever reported to the IMO on record. The abandoned seafarers are adrift at sea, lacking food and drinking water, and unable to receive their wages. [1]

The 110th session of the International Labor Conference, which took place in Geneva in June 2022, adopted the 2022 Amendment of the Maritime Labor Convention (MLC). In order to better protect the abandoned seafarers. This amendment added flag state's responsibility in the repatriation section and modified the provision on shipowners' financial security. On December 13, 2022, a tripartite working group consisting of eight government representatives nominated by the IMO and eight representatives of shipowners and seafarers appointed by the ILO met and adopted a guideline on how to deal with seafarer abandonment incidents, which was reported to the ILO Governing Body

and the IMO Legal Committee in March 2023. And this guideline is the latest achievement of the current international community in dealing with the seafarer abandonment incidents. The shipowner's conduct leads to the seafarer abandonment incidents, this essay will therefore discuss the scope of shipowners' liability for the protection of abandoned seafarers, focusing on analyzing the problems of the existing liability provisions and proposing corresponding improvements.[2]

## **2. Analysis of the Shipowners' Liability for the Protection of the Abandoned Seafarers**

The shipowner, as the employer, should be responsible for the seafarers' safety and healthy in the event of abandonment. The following will introduce the concept of abandonment of seafarers, summarizing the rights and interests of seafarers in the abandonment incidents, and analyzes the scope of liability of shipowners.

### **2.1 Circumstances in which seafarers shall be deemed to be abandoned**

The MLC does not define the concept of abandonment separately, but only uses the term "abandon" in Standard A2.5.2 - Financial security provisions, and specifies that the subject of the conduct of abandonment is the shipowner. The 2014 amendment to MLC lists the following three circumstances in which abandonment is deemed to occur: (a) fails to cover the cost of the seafarers' repatriation; or (b) has left the seafarers without the necessary maintenance and support; or (c) has otherwise unilaterally severed their ties with the seafarers including failure to pay contractual wages for a period of at least two months. The above can be summarized as a breach of the shipowner's basic obligations to the seafarers, resulting in the inability of the employed seafarers to carry out the normal operation of the ship and to satisfy the basic necessities of life on board.[3]

### **2.2 Seafarers' right and interest in abandonment incidents**

#### **2.2.1 Successful repatriation**

The MLC Standard A2.5 Repatriation provides for the following three situations in which seafarers are entitled to repatriation: (a) if the seafarers' employment agreement expires while they are abroad;(b) when the seafarers' employment agreement is terminated:(i) by the shipowner; or(ii) by the seafarer for justified reasons; and also(c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances. The first of the three circumstances in which seafarers are deemed to be abandoned under the MLC is the shipowner's failure to pay the cost of repatriation. Thus refusing to repatriate the seafarers is one of the conducts of abandonment. Therefore, if the shipowner fails to pay the repatriation cost and the seafarers are abandoned, then the seafarers have the right to be repatriated. A critical point, however, is whether seafarers can be entitled to repatriation when the two circumstances recognized as abandonment, (b) and (c), arise. If the seafarers are not provided with essential supplies and are owed more than two months' wages, the shipowner is in breach of the basic obligations under the seafarers' employment agreement and the seafarers cannot reasonably be expected to perform duties aboard the ship, i.e., the third circumstance entitling the seafarers to repatriation arises. Accordingly, if the seafarers are found to have been abandoned because of non-payment of wages for more than two months and refusal to provide essential supplies, the seafarers should be entitled to repatriation.[4]

#### **2.2.2 Access to food, drinking water and fuel supplies**

The second circumstance of abandonment in the MLC standard A2.5.2 is where the seafarers are

deprived of the necessary maintenance and support. Necessary provisions and supplies should include adequate food, standardized accommodation, an adequate supply of potable water and fuel necessary for survival. The lives of abandoned seafarers in foreign ports without life-sustaining food and potable water are at great risk. The human factor is a major contributor to all safety incidents on board ships, and ship navigation relies on seafarers' safe and efficient operations. Thus only when supplies are secured will seafarers be able to operate and manage the ship properly.

### **2.2.3 Receiving full salary**

The third circumstance of abandonment in the MLC standard A2.5.2 is the unilateral severance of relations with the seafarers, including failure to pay contractual wages for a period of at least two months. This suggests that in the case of abandonment, the seafarers have been owed at least two months' wages. According to the ITF's submission to the IMO at the Legal Committee meeting, the vast majority of abandonment incidents that occurred in 2022 that were recorded as resolved or disputed were for a period of eight months or less, and unresolved abandonments were for periods of up to nine to twelve months, with wages owed for well over two months. The majority of the world's seafarers come from economically underdeveloped countries, and in order to improve the living conditions of their families, seafarers choose this high-risk occupation mainly because of its lucrative remuneration. It is therefore very important that seafarers receive their wages on time and in proportion to the working hours.[5]

### **2.2.4 Access to medical assistance**

Access to medical assistance during sea voyages is one of the basic rights of seafarers. Prompt medical assistance after abandonment ensures the physical well-being of seafarers. The MLC requires that seafarers are provided with the same medical protection as shore-based workers, including prompt access to medicines, medical equipment and other equipment necessary for diagnosis and treatment. During the COVID-19 epidemic, a joint statement by IMO and ILO called on ports and coastal states to facilitate the disembarkation of seafarers seeking medical care, which was a matter of life and death, and emphasized on providing vaccinations for seafarers.

## **2.3 The liability of shipowners for the protection of the abandoned seafarers**

### **2.3.1 Providing shipowners' financial security for seafarers before abandonment occurs**

The 2014 amendment to MLC stipulates that, in order to ensure that seafarers are able to return home, shipowners should provide seafarers with financial security for reasonable repatriation. The financial security system should be prompt and effective in order to provide timely assistance to seafarers in the event of abandonment. It requires that seafarers have direct access to it, and that the assistance is rapid and the security covers an adequate range. The system of financial security may take the form of insurance or national funds or social security arrangements or other similar forms. Indeed, the most common form of financial security is insurance, including P&I insurance and commercial insurance. At present, however, it is often the P&I Clubs that take on financial security and provide certificates of security, assuming liability for a wider range of uncertain risks that marine insurance companies are usually reluctant to cover. The financial security assistance provided by the shipowners shall cover four months' wages; reasonable expenses incurred by the seafarers, including repatriation cost; and the basic needs of the seafarers, such as adequate food, necessary clothing, accommodation, a supply of potable water, fuel necessary for survival on board the ship, necessary medical treatment and any other reasonable costs and charges arising from the conduct of abandonment until the seafarers arrive at home. Financial security provided by the shipowners may

not be discontinued before the expiry of the period of validity unless the competent authority of the flag state has been notified by the financial security provider at least 30 days in advance.[6]

### **2.3.2 Arranging repatriation for seafarers immediately after abandonment occurs**

When abandonment occurs, the shipowner, as the employer of the seafarers, is responsible for arranging and paying for the repatriation. The cost shall cover the repatriation by an appropriate and expeditious means, normally by air, and shall include the provision of food and accommodation for the seafarers from the time of departure from the ship until seafarers' arrival at home, necessary medical treatment, the transportation of personal belongings, and any other reasonable costs or charges incurred as a result of the abandonment.

### **2.3.3 Protecting the lives and health of seafarers on board**

Every seafarer is entitled to the protection of health protection, medical treatment and welfare measures. In the case of seafarers working on board a ship, the shipowners shall be liable for the cost of sickness or injury incurred from the date of commencement of seafarers' duties until the date on which seafarers are deemed to have been duly repatriated. The safety of life and health of seafarers is the most important right that should be attended to after abandonment incidents occur. It is the prerequisite and foundation of all other rights and interests, and the shipowners should provide effective and sufficient safeguards.

## **3. Problems with the Liability of Shipowners for the Protection of the Abandoned Seafarers**

In reality, seafarer abandonment occurs frequently and is not handled in a reasonable way. There are three main existing problems with the shipowners' liability provisions for the protection of abandoned seafarers.

### **3.1 Failure of shipowners to give timely abandonment notice**

The MLC defines abandonment by way of enumeration, but the problem is that it does not provide a standard of the occurrence of abandonment, resulting in frequent problems in practice. Generally, seafarers turn to the shipowners for help, relying on their own judgment as to whether they have been abandoned. However, in most incidents, shipowners in debt distress do not heed the seafarers' request for assistance and will not notify the financial security providers of abandonment. As a result, financial security providers generally take a wait-and-see attitude as they wait to see what the shipowners will do. If the shipowners do not give abandonment notice, or if there is no clear evidence that the shipowners have abandoned seafarers, then the financial security system will not be triggered. As the MLC sets the first liability of the shipowners in the event of abandonment, until the shipowners take the initiative to repatriate the seafarers or contact the financial security providers, the flag state will choose to urge the shipowners or the financial security providers to repatriate seafarers first. The competent authorities of the port state and the nationality state of the seafarers will also take action only after no measures have been taken by the shipowner, the financial security provider, or the flag state.[7]

In fact, the lives and health of seafarers are already in a precarious situation due to the lack of food and drinking water and the lack of fuel supply. Due to the ambiguity of the status of abandonment, the process of dealing with abandonment incidents is slowed down by the fact that the responsible parties are waiting to take action, which is why some abandonment incidents take up to two years to resolve. Moreover, in many cases, the financial security provider will also object to the seafarers' request for repatriation. For example, the financial security provider believes that the seafarers can

still contact the shipowners and that the shipowners have not given express notice of the imminent abandonment, and this uncertainty of abandonment is an excuse for the financial security provider to deny its liability. This has resulted in time-consuming disposal of abandonment incidents, and in some incidents the issue of wage recovery has even remained unresolved.

### **3.2 Shipowners' financial security does not cover wages**

The scope of the shipowners' financial security for the purpose of resolving an abandonment incident includes four months of unpaid wages, which would appear to cover arrears of wages. In fact, however, during the negotiation to constitute the financial security system of the MLC, only a period of four months appeared to be sufficient because there were insufficient incidents at the time to substantiate exactly how much time would be required to resolve an abandonment incident. However, the incidents recorded in the current ILO database sufficiently demonstrate that when wages are owed for more than four months, they remain unresolved even after the financial security provider has fulfilled its obligations under the MLC. In the majority of abandonment incidents, seafarers' unpaid wages have been outstanding for more than four months, or even up to one or two years. If the seafarers continue to be on board the ship without being repatriated, the wages will continue to accrue, so that a four-month financial security is far from sufficient to cover the actual arrears of wages. If seafarers are repatriated to the nationality state or port of employment, there is a high probability that the owing wages will never be paid, despite the fact that the seafarers will be able to leave the abandoned ship. Under the MLC, abandoned seafarers are also liable to have their wages paid in full upon repatriation. Therefore, in the face of frequent and escalating serious abandonment incidents, the existing provision to provide a four-month financial security is no longer a solution to the critical issue of safeguarding the wages of seafarers.[8]

### **3.3 Lack of punitive provisions for abandoned seafarers by shipowners**

The fundamental protection of the rights and interests of seafarers requires a reduction in the number of abandonment incidents. However, the MLC and its amendment only stipulates liability and subsequent remedial provisions, and there is a lack of penalty provisions for shipowners. Only in the section of Responsibility for Implementation and enforcement, the MLC provides that member states shall prohibit breaches of the requirements and shall, in accordance with international law, impose sanctions or take corrective measures under their domestic law. Abandonment will be a profit-maximizing way if the shipowners are in debt distress and other circumstances. In this way, the MLC leaves the sanctions or measures required to be taken to the domestic law, but this makes it difficult to ensure that the shipowners are actually penalized because of the conduct of abandonment. The lack of punitive provisions makes it difficult to curb the abandonment incidents and further challenges the protection of seafarers.

For example, seafarers on board the *Med Sea Lion* were abandoned in Guyana by the shipowner, Sea Lion Shipping Company. After waiting anxiously, although the shipowner provided a repatriation ticket, when the seafarers arrived at the airport, they were told that the tickets were fake. After this, the shipowner even deceived the seafarers again by suggesting that if they signed a legal waiver giving up the recovery of wages they would be given new, genuine tickets. The shipowner committed the above conduct apparently because it was not subject to the relevant penalties. Therefore, it is important to include punitive measures against abandonment so that shipowners will realize the zero-tolerance attitude of the maritime authorities towards fraud and bullying and better protect the abandoned seafarers.

## **4. Improvements in Liability of Shipowners for the Protection of the Abandoned Seafarers**

The completeness of the shipowners' liability provisions has a direct impact on the number of seafarer abandonment incidents and the time it takes to dispose. To address the above three main issues, the following discussion will focus on the improvement of the shipowners' liability provisions for the protection of the abandoned seafarers.

### **4.1 Incorporation of provisions on shipowners' liability of giving abandonment notice**

In order to expedite the abandonment incidents handling process, provisions should be added to impose a liability on the shipowners to give clear abandonment notice to the financial security provider. After the seafarers have first sought the assistance of the shipowners, the shipowners should assume liability for repatriation and, if unable to do so because of debt problems, should immediately issue a formal abandonment notice to the financial security provider. Upon receipt of the formal notice, the financial security provider should expeditiously arrange repatriation, provide the seafarers with food, fresh water and the necessary medical assistance, and ensure the payment of at least four months' wages. In practice, there may also be lapses such as expiry of the financial security or non-payment of premiums by the shipowners, in which case the provider will not be liable for repatriation. Therefore, the notice should also be given to the flag state, the port state and the nationality state of the seafarers. This will enable the other responsible parties to respond quickly in the event of a lapse in the financial security, reduce the time seafarers are abandoned and safeguard human rights at sea.

### **4.2 Expanding the coverage of shipowners' financial security**

Under article 13 of the MLC, the Governing Body of the International Labor Office shall keep the working of the convention under continuous review through a committee established by it with special competence in the area of maritime labor standards. The committee shall consist of two representatives nominated by the government of each member which has ratified the convention, and the representatives of shipowners and seafarers appointed by the governing body after consultation with the joint maritime commission. At the fourth meeting of the special tripartite committee in March 2022, the chairman of the seafarers' representatives put forward a proposal on the need to extend the financial security to cover wages from four to eight months. This is due to the large number of abandonment incidents that are not resolved promptly, with the majority of them taking longer than four months to resolve. The security should therefore be extended from four months' pay to eight months' to enable the concerned seafarers to receive all their remuneration. However, the proposal was not supported by shipowner representatives and government representatives, mainly because of the high insurance risk that financial security provider, namely the insurers would face. In the end, however, a joint resolution was adopted calling for the establishment of a working group under the auspices of the special tripartite committee to discuss the financial security system required by standard A2.5.2, in order to make recommendations on possible improvements.

What is certain is that the current four-month scope of financial security is clearly insufficient to cover the amount of demand following abandonment incidents. The amendment to the MLC does not set a cap on the amount of financial security, but only a minimum standard to be provided. The member states are supported and encouraged to increase this minimum standard. In the future, the MLC should extend the minimum coverage beyond four months, but this also raises the question of whether an extension of the coverage to eight months would cover the wages corresponding to the lasting time of abandonment. Obviously, there are a large number of incidents in the database where the period of abandonment is up to one year or more, which would be difficult to cover even for eight months. Therefore, rather than setting a fixed period of time for the financial security, a flexible method of calculation could be adopted, by extending the scope of the financial security to cover the period from the time the seafarer was abandoned, to the time of the actual repatriation. If shipowners

and P&I Clubs knew that the covered wages continued to accrue, they would have a greater incentive to ensure that seafarers were repatriated expeditiously, thereby reducing the amount of wage claims. In this way, the resolution of the abandonment incidents would be accelerated to a large extent.

### 4.3 Inclusion of punitive provisions for seafarer abandonment by shipowners

Penalizing shipowners who abandon seafarers can be effective in curbing the abandonment incidents, with the UAE being a typical example. In December 2022, the UAE was ranked as the country with the highest number of abandonment incidents in the world, with ICS recording 29 such incidents. However, currently, despite the rising number of abandonment incidents around the world, the UAE has seen a significant drop in the number of incidents.

Operators of merchant ships and other commercial vessels will face financial penalties for abandonment in order to protect seafarers' rights in the UAE's waters and ports, according to a new government resolution set by the UAE's Ministry of Energy and Infrastructure. Shipowners who abandon seafarers or fail to provide them with financial security to guarantee their rights and the operation of the ship will be penalized with a fine of 20,000 dirhams. The UAE example mentioned above confirms that the abandonment incidents can be solved. But the successful resolution requires political will at the national level, national legislation and strong enforcement mechanisms. Therefore, the provision should be included in the MLC to penalize shipowners in the event of abandonment. As for the authority and criteria of imposing penalties, the amount of penalties, etc., should be set out in detail in domestic law. In addition, states should commit to implementing the 2022 ILO-IMO guideline and make a concerted effort to ratify existing international regulations in order to safeguard the rights of seafarers.

## 5. Conclusion

The current seafarer abandonment incidents cannot be resolved quickly and effectively. A large number of seafarers are suffering, the provisions of existing convention therefore need to be enhanced. The basic rights and interests of seafarers, as key workers in the international shipping industry, are not adequately protected, and the problems exposed during the COVID-19 epidemic have become more prominent. Shipowners as employers should be responsible for seafarers. This essay puts forward three proposals on the liability of shipowners, including the requirement for shipowners to give abandonment notice, the extension of the scope of the four-month wage security, and the inclusion of punitive measures towards shipowners, which are of great significance for the protection of abandoned seafarers and the promotion of the international shipping industry.

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