



THE FAIR TREATMENT OF SEAFARERS IN CASES OF ABANDONMENT: A CARIBBEAN PERSPECTIVE

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Structure of the Presentation

This presentation will cover the following areas in chronological order:

- Background
- Rationale
- Scope
- Relevance of abandonment to the Caribbean Region
- Cases of abandonment and international response
- The Caribbean response
- Recommendations and Conclusion



Background

- Consistent with global statistics, 90% of trade within the Caribbean is done by sea
- Without the worlds' seafarers, trade and commerce as we know it, would grind to a halt
- Seafarers are frequently exposed to difficult working conditions and particular occupational risks often times unknown to persons in land based jobs
- The ship represents: the place of employment; home; recreation; and most times, the floating extension of a foreign State
- Seafarers can be vulnerable to exploitation and abuse
- Protection from vulnerability requires the combined effort of all stakeholders within the Maritime States



Rationale

- To establish whether the current international response to the unfair treatment of seafarers is sufficient;
- Assess whether Caribbean States are positioned to protect seafarers against unfair treatment, with particular focus on the issue of abandonment; and
- To propose ways to close any existing gaps in the protection of seafarers



The Caribbean Region





The issue of abandonment

- Abandonment is defined by IMO Resolution A.930 (22) of 29 November 2001 as:
 - “Characterised by the severance of ties between the shipowner and the seafarer”. Meaning:
 - The shipowner fails to fulfil certain fundamental obligations to the seafarer relating to timely repatriation and payment of outstanding remuneration and the provision of the basic necessities of life: adequate food, accommodation and medical care...
 - Abandonment occurs when the master of the ship is left without any financial means for the ship’s operation



Relevance to the Caribbean

- The issue of abandonment is relevant to the Caribbean because the region is comprised of many developing maritime States with multi dimensional interests:
 - Flag State

The 35 flags of registration with the largest registered fleets, as of 1 January 2014

Country	Ranking	Number of Ships	Dead Weight Tonnage	Percent of World Total
Panama	1	7 068	355 700	21.21
Bahamas	7	1 327	74 874	4.47
Antigua and Barbuda	21	1 207	13 391	0.80
Saint Vincent and the Grenadines	35	485	4 273	0.25



Relevance to the Caribbean

- Port and Coastal States
 - Jamaica - 3,470 Vessels calls - 2014 (excluding cruise vessels)
 - 410 Cruise vessels - 2014
 - Trinidad and Tobago - app. 800 Vessel calls - 2014
 - St. Kitts and Nevis - 585 Cargo vessel calls - 2014
 - 334 Cruise vessel calls - 2014
- Crew supplying States
 - Jamaica – is a major crew supplying State in the Region
 - Caribbean Maritime Institute (Jamaica) – Recognized by IMO as training institution for Officers
 - University of Trinidad and Tobago



Caribbean Maritime Institute



- The professional seafarer's programmes are conducted in conformity with the Standards of Training, Certification and Watch-keeping for Seafarers Convention (STCW 1978, as amended)
- Audited by EMSA



Cases of Abandonment

- Global Statistics:
 - Reported cases – ILO Database
 - Between 2001 and 2015 – 211 ships
 - Over 1,600 seafarers
 - In 2009, at the height of the global economic crisis, over 50 vessels were abandoned, with over 600 seafarers

http://www.ilo.org/dyn/seafarers/seafarersbrowse.details?p_lang=en&p_abandonment_id=179&p_search_id=130110200706



Cases of Abandonment

Caribbean Statistics Since 2001

Flag State	Reported cases of abandonment
St. Vincent and the Grenadines	23
Antigua and Barbuda	10
Belize	7
Dominica	3
St. Kitts and Nevis	3

- While no Jamaican flagged ship has been listed on the IMO/ILO Database as being abandoned, Jamaica has recently recorded one case of abandonment in the Kingston Harbour



Case I - The Oceanic Power

- Comoros flagged Vessel abandoned in the Port of Kingston on January 9, 2012 for just over a month
- Vessel was being towed from the Bahamas after it lost power en-route to Greece
- During the period of abandonment the salaries of the seafarers were outstanding although the owners had made several promises to pay the salaries and repatriate the seafarers
- The Maritime Authority of Jamaica contacted the local ship agents – the agents thereafter supplied food and drinking water to seafarers from personal funds
- The seafarers eventually retained counsel to make a claim against the owners for wages
- Before legal proceedings progressed the issues were resolved and the seafarers repatriated by February 16, 2012 with wages settled by the owners



Lessons learnt from the Oceanic Power

- The Jamaican authorities were uncertain about the exact division of responsibilities, since there was no written protocol or procedure on how cases of abandonment were to be handled
- The only clearly established procedure was that the Ministry of Foreign Affairs was responsible for notifying a Representative of the State of nationality of the seafarers. That Representative would thereafter be fully responsible for the welfare of the seafarers
- The Maritime Authority of Jamaica consequently developed Procedures to be followed in Cases of Abandonment



Case II - Donald Duckling

- Panamanian flagged vessel, “*Donald Duckling*” (Cited by Helen Sampson *International Seafarers and Transnationalism in the Twenty-first Century*, Manchester University Press; Manchester, UK, 2013, p. 43)
- Abandoned on November 9, 2013 Tyne Port after it was detained by the Port State Control
- 18 seafarers on board
- The operators failed to pay costs arising from the detention of the vessel and the original ship agents withdrew their services. No new local shipping agents were appointed
- The vessel remained in port for three weeks. No food or water was provided by the owner.
- The port provided fuel for heating; and the seafarers lived on the charity of locals. The shipping company did not respond to the crew, the International Workers Federation (ITF), or the crewing agents
- On December 13, 2013, the outstanding wages were paid by the owners and the crew repatriated



Case III - The Al Manara

- In February 2006 St. Kitts and Nevis flagged cargo ship was abandoned in Port Victoria in the Seychelles with 18 crew members
- The crew had no food or water and were owed US\$68,000 in unpaid wages dating from June 2005.
- The ship, (which the crew was not allowed to leave), was infested with rats and cockroaches.
- Apostleship of the Sea provided food and International Transport Workers' Federation (ITF) made a monetary donation
- Seafarers health started deteriorating; the Captain resigned out of frustration; the ship also started taking in water
- Some seafarers could not be so easily repatriated due to lack of diplomatic arrangements with their countries
- Supreme court ordered vessel sold and part of the sum used to pay seafarers
- Issues were not resolved until 21 January 2008; (2 Years later)



International response to the issue of abandonment

- IMO/ILO Working Group adopted Guidelines 29 November 2001
- Guidelines adopted by IMO Resolution A.930 (22) which took effect in January 2002. The Resolution recommends:
 - Shipowners ought to have an adequate financial security system for seafarers in cases of abandonment
 - The expenses of repatriation should be borne by the shipowner and not the seafarer
 - Where the shipowner fails to perform then the flag State, the State of nationality of the seafarer or the port State, may be called upon to intervene



International response cont'd

- The Maritime Labour Convention, 2006 (MLC) entered into force on August 20, 2013
- Provides comprehensive codification of seafarers' rights, as well as health, safety, and employment standards, and sets up an enforcement and monitoring mechanism
- MLC institutionalized repatriation at no cost to the seafarer and the need for financial security to cover repatriation (Regulation 2.5)
- Shipowners of State parties to the MLC are required to provide financial security to ensure seafarers are repatriated
- Currently there are 66 ratifications to MLC; as at May 25, 2015
- Guidelines on abandonment adopted by IMO Resolution A.930 (22) not incorporated



MLC and Abandonment

- “Abandonment” is not expressly mentioned in the Convention
- Amendment to MLC was agreed by the Special Tripartite Committee of the MLC in April 2014 to take effect 2017
- Amendment incorporates the Guidelines of IMO Resolution A.930 (22) which details the circumstances where abandonment will have occurred and provides:
 - An expeditious and effective financial security system to assist seafarers if abandoned
 - Mandatory financial security net for abandoned seafarers
 - Form of financial security - a social security scheme/ insurance/national fund or other similar arrangement
 - Ships of State Parties to carry on board evidence of financial security
- **Amendments on the agenda of the International Labour Conference June 2015**



Parties to MLC in the Caribbean



Intends to become party to MLC

Party to MLC



MLC in the Caribbean

State	Party to MLC	Implementing Legislation
Antigua and Barbuda		
The Bahamas		
Barbados		x
Belize		Convention not yet in force – July 2015
St. Kitts and Nevis		
St. Vincent and the Grenadines		Draft legislation but some provisions in the Shipping Act 2004

MLC in the Caribbean

Country	Implementing Legislation	Repatriation and Abandonment	Penalty for Flag Ships
Antigua and Barbuda	The Merchant Shipping (Maritime Labour Convention, 2006) Regulations, 2011	Repatriation and Financial Security Abandonment - No	General Penalty Reg. 10 - Fine not exceeding \$30,000, or imprisonment not exceeding 6years or both If government pays - arrest the ship until reimbursed
The Bahamas	Merchant Shipping (Maritime Labour Convention) Regulations, 2012	Repatriation and Financial Security Abandonment - No	If government pays – Detain ship until government is reimbursed
St. Kitts and Nevis	Merchant Shipping (Maritime Labour Convention 2006) Regulations, No. 27 of 2013	Repatriation and Financial Security Abandonment - No	If government pays for repatriation – Detain ship until government is reimbursed
St. Vincent and the Grenadines	Draft Shipping (Maritime Labour Convention) Regulation 2015 Shipping Act 2004	Repatriation and Financial Security Foreign Ships must have Insurance Coverage	No Insurance coverage - Fine not exceeding \$55,000
Barbados		Repatriation covered generally in Shipping Legislation	
Jamaica		Repatriation - Shipping Act 1998, Draft MLC Legislation - financial security and abandonment	S. 207 – Fine- JMD \$250,000



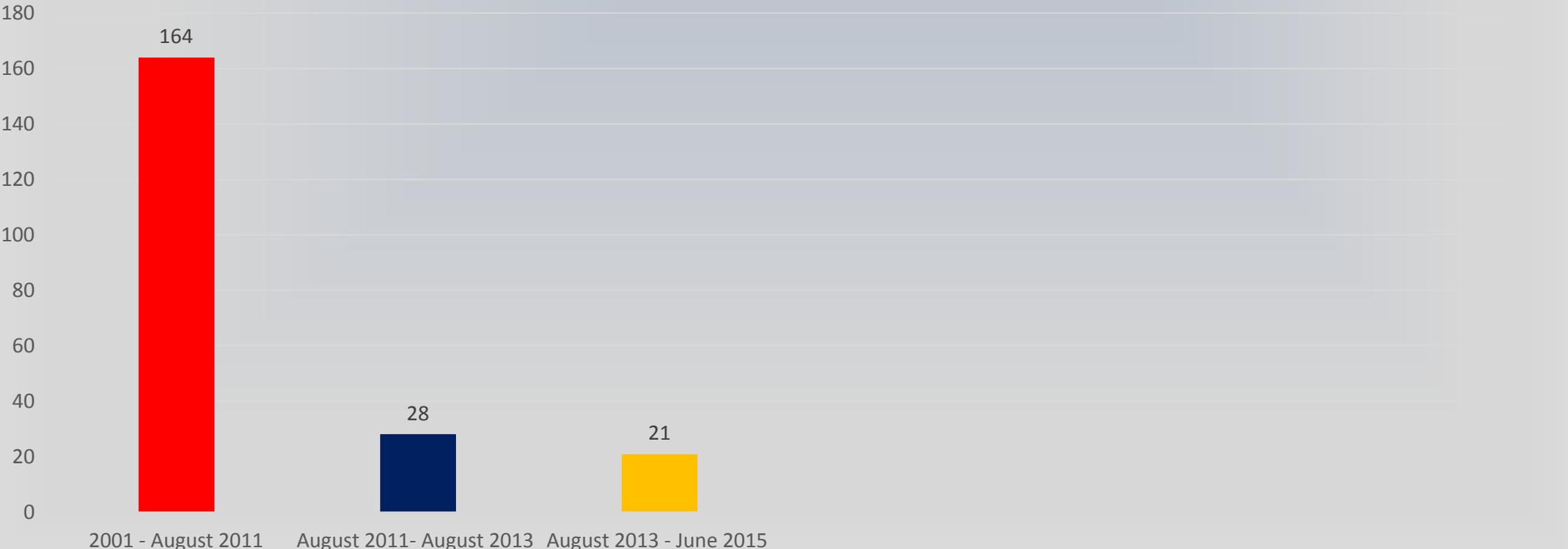
MLC in the Caribbean

- Six countries have ratified the MLC
 - 3 of those countries have legislation incorporating the convention
 - 1 has draft legislation
- Jamaica
 - The government has given its approval for the country to become a party to MLC but...
 - As a dualist State for the convention to be enforceable there needs to be domestic legislation incorporating the provisions
 - Legislation is being drafted
 - Some aspects of MLC are covered in the Shipping Act but not abandonment
 - In the interim Jamaica has a system of voluntary compliance



Comparative Statistics – Global

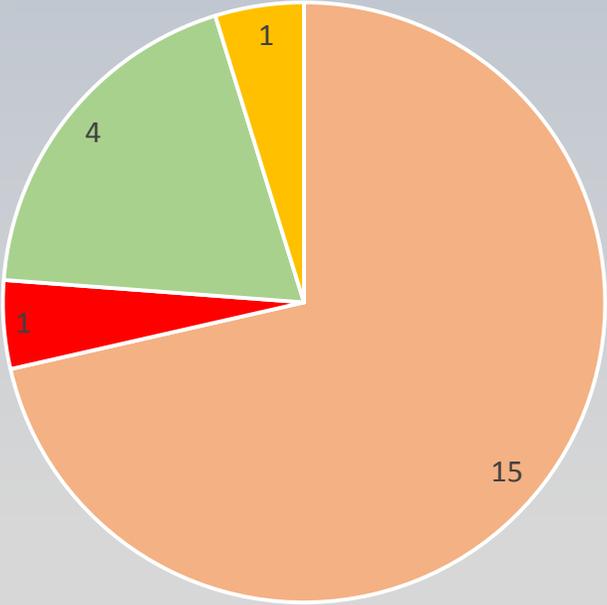
Comparative Statistics





Comparative Statistics – Caribbean

Caribbean Cases



Other English Speaking Caribbean Panama Fishing vessel



Recommendations to the Caribbean

- Jamaica, Trinidad and Tobago and Dominica to accede to the Convention and promulgate MLC legislation
- All Caribbean States to incorporate the Amendments to MLC in local legislation
- States should produce and disseminate information to seafarers about their rights under the MLC, with particular emphasis on the Seafarer Employment Agreement and repatriation
 - Jamaica has started this process
- The Registrars of Seafarers to maintain a database of seafarers and their employment details



Conclusion

- There is a recognition of the challenges faced by seafarers and the necessity of implementing a robust legislative framework for the overall fair treatment of seafarers
- The international community has been actively seeking to protect the welfare of the seafarers
- Caribbean Maritime States are seeking to give full and complete effect to the MLC
- Shipowners seem to have an increased interest in the protection of seafarers – voluntary compliance