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 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

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

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

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.

http://www.ilo.org/dyn/seafarers/seafarersbrowse.list?p_lang=en&p_sortby=ABANDONMENT
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

<table>
<thead>
<tr>
<th>State</th>
<th>Party to MLC</th>
<th>Implementing Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua and Barbuda</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>The Bahamas</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Barbados</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>St. Kitts and Nevis</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>St. Vincent and the Grenadines</td>
<td>✓</td>
<td>Draft legislation but some provisions in the Shipping Act 2004</td>
</tr>
<tr>
<td>Country</td>
<td>Implementing Legislation</td>
<td>Repatriation and Abandonment</td>
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<tr>
<td>Antigua and Barbuda</td>
<td>The Merchant Shipping (Maritime Labour Convention, 2006) Regulations, 2011</td>
<td>Repatriation and Financial Security Abandonment - No</td>
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<td>Merchant Shipping (Maritime Labour Convention) Regulations, 2012</td>
<td>Repatriation and Financial Security Abandonment - No</td>
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<tr>
<td>St. Kitts and Nevis</td>
<td>Merchant Shipping (Maritime Labour Convention 2006) Regulations, No. 27 of 2013</td>
<td>Repatriation and Financial Security Abandonment - No</td>
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<td>Draft Shipping (Maritime Labour Convention) Regulation 2015</td>
<td>Repatriation and Financial Security Abandonment - No</td>
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<td></td>
<td>Shipping Act 2004</td>
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<tr>
<td>Barbados</td>
<td></td>
<td>Repatriation covered generally in Shipping Legislation</td>
</tr>
<tr>
<td>Jamaica</td>
<td></td>
<td>Repatriation - Shipping Act 1998, Draft MLC Legislation - financial security and abandonment</td>
</tr>
</tbody>
</table>
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 – Caribbean

Caribbean Cases

- Other: 15
- English Speaking Caribbean: 1
- Panama: 4
- Fishing vessel: 1

Total cases: 21
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