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The Case of Mohammed Aisha: The Efforts in Protecting Seafarers against Abandonment

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Abstract

The abandonment case of Mohammed Aisha is a case that occurred in 2017, where the ship MV Aman was detained in the Egyptian port of Adabiya and caused a situation where Mohammed Aisha was trapped on the ship due to the failure of the shipowners. This then led to the case of the abandonment of seafarers. In this case, MLC 2006 is the instrument that covers regulation towards abandonment and seafarers' rights. This study was made to provide a broader and more detailed perspective related to cases of abandonment and MLC 2006. The goal of this research is to clarify matters that are unclear related to the regulation that is mentioned in MLC 2006, such as the vague regulation of who is in charge between flag states, port states, and nationals of seafarers in the case of the abandonment of seafarers in both theory and practice. Apart from clarifying the unclear matters of who is in charge of the three states mentioned previously, this research will elaborate even further regarding the International Transport Workers' Federation (ITF) role in advocating the repatriation of the abandoned seafarers. This research revealed that the 2006 MLC has not been very effective in protecting the rights of seafarers and that the obligation for repatriation lies within the flag state; however, in its practice, when a flag state fails to carry its obligation, then the port state and the origin country of the seafarers with the help from ITF shall take that roll.

Keywords: Abandonment, Seafarer, Shipowner, Repatriation, Flag State

Penelantaran Mohammed Aisha: Peran *Maritime Labour Convention* (MLC) dalam Memberikan Perlindungan Terhadap Kasus Penelantaran Pelaut

Abstrak

Kasus penelantaran Mohammed Aisha adalah kasus yang terjadi pada tahun 2017 dimana kapal MV Aman ditahan di pelabuhan Adabiya Mesir dan menyebabkan situasi dimana Mohammed Aisha terjebak di dalam kapal karena kesalahan pemilik kapal. Hal ini kemudian berujung pada kasus penelantaran pelaut. Dalam hal ini MLC 2006 merupakan instrumen yang mencakup pengaturan terhadap penelantaran dan hak-hak pelaut. Kajian ini dibuat untuk memberikan perspektif yang lebih luas dan mendetail terkait kasus penelantaran pelaut dan MLC 2006. Tujuan dari penelitian ini adalah untuk mengklarifikasi hal-hal yang belum jelas terkait dengan regulasi yang disebutkan dalam MLC 2006, seperti ketidakjelasan regulasi tentang siapa yang bertanggung jawab diantara negara bendera, negara pelabuhan, dan negara asal pelaut dalam kasus penelantaran pelaut baik secara teori maupun praktik. Selain menjawab hal yang belum jelas terkait siapa yang bertanggung jawab atas ketiga negara yang disebutkan sebelumnya, penelitian ini juga akan mengelaborasi lebih jauh mengenai

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peran *International Transport Workers' Federation* (ITF) dalam mengadvokasi pemulangan pelaut yang diterlantarkan. Penelitian ini mengungkapkan bahwa MLC 2006 tidak terlalu efektif dalam melindungi hak-hak pelaut, dan jika kewajiban utama repatriasi terletak pada *flag state*, namun dalam praktiknya ketika *flag state* gagal menjalankan tugasnya, maka port state dan negara asal pelaut dengan bantuan dari ITF dapat mengambil alih peran tersebut.

Kata Kunci: *Penelantaran, Pelaut, Pemilik kapal, Repatriasi, Negara Bendera*

A. INTRODUCTION

In the business world, many jobs can be classified as dangerous; among those categories seafarers and closely related occupations have one of the highest injury rates. They endure physically difficult shipboard conditions for months, sacrificing sleep, being subject to continuous vibration, noise, constrained physical spaces, dangerous weather conditions and a hazardous working environment.³ Cargo ship workers also experience continuous hard, monotonous work, and have to face the increasing rate of threat from pirates. They are also required to live for months with few technological facilities and a workplace that is cramped and not enjoyable for an everyday work. Security constraints, erratic work schedules, lack of privacy, and isolation from family and friends can also have a negative impact on seafarers' health. These risks are compounded when an accident occurs considering that access to a hospital or medical professionals may not be available. In addition to the high level of danger, many seafarers are also indicated to be victims in the crime of human trafficking, unpaid wages, deceived by fictitious jobs, abandonment, and slavery.

With the considerations of the existing issues above, it is truly correct that their rights for the protection of their safety are specifically regulated in an international convention. *Maritime Labour Convention* 2006 (MLC 2006) is an international legal instrument that regulates the rights of seafarers and its law enforcement. This convention regulates the minimum rights that must be obtained by seafarers along with the

obligations that must be fulfilled by the shipowner. However, it should be noted that this convention applies specifically to ships that are categorized as cargo ships; this happens due to the regulation regarding workers on fishing vessels that other international conventions have regulated.

Even with the already existing regulation, problems still arise when there are abandonment cases to seafarers. One of the cases that caught the attention was when a sailor from Syria, Mohammed Aisha, who worked on the cargo ship Bahrain was stranded for four years off the coast of Egypt. The case began in 2017 when the ship he was working with, the MV Amani, was detained at Egypt's Adabiya port because of its safety equipment and classification certificate that had already expired. The problem inside this issue is located when ship contractors in Lebanon failed to pay for fuel, and MV Amani owners in Bahrain run into financial problems.⁴ Since the ship's captain had left, Aisha as the ship's officer was appointed as the official guardian of the ship. By law he had to stay on the cargo ship, and that conditions remained even until he was left alone without electricity, sanitation, and information on when to leave the ship. Egyptian law required him to remain on board and not be paid; cooped up alone without being able to see or hear anything at night. To fulfill his daily needs such as food and cellphone battery, he

³ Victor Oyaro Gekara dan Helen Sampson, *The World of the Seafarer: Qualitative Accounts of Working in the Global Shipping Industry*, Springer: WMU Studies in Maritime Affairs, Volume 9, 2021, at.97.

⁴ International Transport Workers' Federation, "Seafarer Mohammad Aisha is Going Home Thanks to ITF, Ending Four Years on Abandoned Ship," *ITF Seafarers*, 22 April 2021, <https://www.itfseafarers.org/en/news/seafarer-mohammad-aisha-going-home-thanks-itf-ending-four-years-abandoned-ship>. Accessed 09 February 2022.

must first swim ashore. Tylos Shipping and Marine Services said that they tried to help Aisha for years but to no avail,⁵ which resulted in Aisha being stranded for four years on the cargo ship in the middle of the sea alone.

The case of Mohammed Aisha shows that there are many ship owners and contractors who does not care about the basic rights of their workers, and in summary they do not want to fulfill their responsibilities and obligations. Based on the data that has been covered by the International Labor Organization (ILO), the total number of cases recorded in the database since 2004 (as of August 2020) was 438 cases (5,767 seafarers).⁶ In 2020, 31 cases (involving 470 seafarers) have been recorded to date.⁷ There has also been a dramatic increase in cases over the past three years following the entry into force of the 2014 MLC amendments on 18 January 2017 on Financial Security in cases of abandonment. In 2019, there were 474 seafarers on 40 abandoned ships, while in 2018 a total of 44 cases were reported and in 2017 a total of 55 cases were also reported according to the IMO/ILO database. In the previous five years, on average only 12 to 17 ships per year were abandoned.⁸ On Iran's port of Assaluyeh, the 19 crew of the Ula bulk carrier with the majority of Indian nationals, went on a hunger strike after their ship was abandoned by its owners in July 2019. A crew member recently told shipping journal Lloyd's List that the situation on board was "very serious and critical", with widespread depression and the families of the sailors running out of money.⁹ Therefore referring from the high amount of case related to the

abandonment of seafarers, the case of Mohammed Aisha would only be one of many examples of the seafarer abandonment that has occurred annually. In specific matters it can be described that from the variety of cases that already happened, the case of Mohammad Aisha is an extraordinary case where a man were forced to stay at the ship without foods and electricity for 4 years, those circumstances led to the category of unhuman situation. Furthermore, the Egyptian government kept him in a situation where he should stay regardless of what happens. Based on the data gathered, the case of Mohammed Aisha can be categorized as a critical case that has garnered international attention, with several media outlets and organizations focusing on the issue. It is also one of the most severe and extreme case of abandonment that have ever been reported. As a result, the case of Mohammed Aisha is very significant compared to the average case of abandonment of seafarer.

In its regard to the concerning situation of the Mohammed Aisha case, a deep research and execution on preventing the abandonment of seafarers on board should take place. Several question such as is the 2006 MLC along with other related instruments not enough to protect the rights of seafarers and prevent shipowners from acting arbitrarily? Is it the instrument or the enforcement that is at fault? Other question that also arises is question such as with this neglect, who should be responsible? What is the role of the relevant organizations to solve this problem? In conclusion, cases of abandonment of seafarers involves various parties such as ship owners, flag states, ports along with maritime authorities, and seafarers' countries of origin. Based on the facts and questions that has been mentioned

⁵ International Transport Workers' Federation, "'I Have Had to Swim to Shore Every Few Days to Get Food and Water' – Meet the Seafarer Trapped on Board the MV Aman for Four Years (and Counting)", *ITF Seafarers*, 19 March 2021, <https://www.itfseafarers.org/en/news/i-have-had-swim-shore-every-few-days-get-food-and-water-meet-seafarer-trapped-board-mv-aman>. Accessed 09 February 2022.

⁶ International Maritime Organization (IMO), "Seafarer Abandonment," IMO, 15 July 2020, <https://www.imo.org/en/OurWork/Legal/Pages/Seafarer-abandonment.aspx>. Accessed 27 June 2021.

⁷ *Ibid.*,

⁸ *Ibid.*,

⁹ *Ibid.*,

previously, further elaboration and answers will be mentioned in the explanations below.

B. SEAFARER AND PROVISIONS REGARDING THE RIGHTS OF SEAFARER

1. Seafarer, Shipowner, and Abandonment towards Seafarer

Seafarers is a group of workers recruited by international agencies and working under contract on ships of various types: cargo and container ships; deep sea fishing vessels; and cruise ships.¹⁰ As for the crew of the ship, it includes the captain, officers and ranks on the ship.¹¹ There are complex relationships regarding seafarers with various countries, this is due to its work situation that inevitably involves a wide variety of cross-border agencies. Seafarers can be nationals of Country A, recruited in Country B, and work on a ship belonging to a company registered in Country C but flagged under the jurisdiction of Country D, dock at a port in Country E and will sail to Country F on a trade voyage starting in Country G.¹² From the previous example a small part of how complex the condition regarding the seafarers can truly be seen.

Ongoing global restructuring in the form of rising transnational corporations, the shift of companies from high-wage labor countries to countries with fewer restrictions, more convenient tax requirements and working conditions with longer hours and lower wages, has contributed to the growth of the international migration of temporary contract workers referred to as 'seafarers'.¹³ Issues also arise when many of these companies do not fulfill their

obligations, and can be described as the abandonment of seafarers.

Based on the *Guidelines of IMO/ILO 2001* that was included in *Resolution A.930 Assembly* about abandoned seafarers, it was further elaborated that *abandonment* is considered by severance of the relationship between the shipowner and the seafarer. Abandonment occurs when the shipowner fails to fulfill certain fundamental obligations to the crew related to the timely repatriation and payment of unpaid remuneration and to the provision of the basic necessities of life, adequate food, accommodation and medical care. Abandonment will occur when the crew has been left without any means of maintenance/financial support in connection with the operation of the ship.¹⁴ Or unilaterally terminating their relationship with the crew, that also includes failure to pay contractual wages for a period of at least two months. This understanding has been seen in the case that happened to Mohammed Aisha as mentioned above where the ship owner failed to fulfill his obligations without being given financial input for the ship's operation. In other cases, the ship owner inaccessible at all, compared to the *Tylos Shipping and Marine Services* where contacts are still exist and there is an effort to try and replace the captain.

Regarding the terms of shipowners, it can be understood that shipowners are ship owners or organizations or other people, such as managers, agents, or bareboat charters, who have assumed responsibility for the operation of the ship from the ship owner and they have agreed to take over all duties and responsibilities.¹⁵ In the case and instrument to be discussed, namely MLC 2006, MLC applies to all ships, whether owned by public or private, which are usually engaged in commercial activities,

¹⁰ Maria Borovnik, "Are Seafarers Migrants? - Situating Seafarers in the Framework of Mobility and Transnationalism," *New Zealand Geographer*, Vol. 60, Issue 1, 2004, at.36.

¹¹ Sandra Lielbarde, "Concept of Seafarer Before and After the Maritime Labour Convention 2016: Comparative Analysis of the Legal Effects of Defining Legal Concepts in the Shape of Legal Terminology," *Riga Graduate Law School, RGSL Research Paper No. 17, 2017*, at.3.

¹² Lloyd Cameron, "The Maritime Labour Convention 2006: A Frozen Revolution in the Realisation of Social Justice for Seafarers?," *Master Thesis, Faculty of Law, Lund University, Spring 2013*, at.7.

¹³ Maria Borovnik, *op.cit.*,

¹⁴ *Guidelines On Provision of Financial Security in Case of Abandonment of Seafarers*, International Maritime Organization, A 22/Res.930 (2001)

¹⁵ *Ibid.*,

except fishing vessels or traditional vessels, warships, and naval aids.¹⁶ Based on that, it can also be understandable that the regulation excludes fishing ships because there are other existing conventions that regulate it.¹⁷

2. Assessing the Effectiveness of the 2006 Maritime Labor Convention (MLC) and Related Instruments in Protecting Seafarers' Rights

Tracing back to the roots of the main issue, *abandonment* occurs because the ship owners are unable to fulfill their basic obligations which are essentially related to timely repatriation and payment of remuneration. Technically, those provisions was set in MLC 2006. *Maritime Labour Convention 2006* that is also known as the *Seafarers' Bill of Rights*, was adopted on the 23rd of February 2006 on the 10th maritime session and the 94th session of the *International Labour Conference* (ILC) from the *International Labour Organization* (ILO), with the amendments that have been made towards 2014, 2016, and 2018.¹⁸

The Convention renews 37 ILO Conventions in the field of maritime employment. The MLC establishes minimum requirements for almost every aspect of seafarers' working and living conditions. As of December 2020, 97 countries have ratified the 2006 MLC, making more than 91% of the world's shipping fleets regulated.¹⁹ As the third-largest contributor to maritime workers globally,²⁰ Indonesia has also ratified this convention.²¹ Here, the presence of the

2006 MLC is complementary to the other 3 Conventions adopted by *International Maritime Organization* (IMO).

Regarding the regulation that was included in MLC, the regulation was divided into five chapters which include: Chapter 1) Minimum requirements for seafarers to work on a ship; Chapter 2) Conditions of employment; Chapter 3) Accommodation, recreational facilities, food, and catering; Chapter 4) Accommodation, recreational facilities, food and catering; and Chapter 5) Compliance and enforcement.

This convention itself consists of three parts: Articles, Regulations, and Code. *Articles* and *Regulations* establish basic rights and principles and basic obligations of ILO member states that have ratified the 2006 MLC. Meanwhile, the Code contains details for the application of the regulations.²² Code A contains mandatory provisions to be obeyed and applied by member countries. Code B contains instructions or guidelines that are recommendations or not mandatory to be applied by countries that ratify the Convention. Then in the latest amendments, there are additions to the rules governing repatriation in Regulation 2.5, namely regarding *Financial Security* in cases of abandonment. Where this addition means that countries understand there is an urgent need for further regulation of abandonment and their repatriation.

Judging from the case of Mohammed Aisha, he was abandoned for four years without getting paid and without being able to return to his country. This means that he has also lost valuable time without being able to do anything, so compensation also needs to be asked for.

¹⁶ Sandra Lielbarde, *op.cit.*, at.5.

¹⁷ See: ILO Work In Fishing Convention No. 188 (C188)

¹⁸ Seafarer's Rights International, "Introduction to the Maritime Labour Convention," SRI, 22 December 2020, <https://seafarersrights.org/introduction-to-the-maritime-labour-convention/>. Accessed 27 June 2021

¹⁹ *Ibid.*,

²⁰ Pusat P2K OI – BPPK Kementerian Luar Negeri Republik Indonesia, Strategi Perlindungan dan Penanganan Kasus Anak Buah Kapal (SEAFARER) Sektor Perikanan Indonesia yang Bekerja di Luar Negeri

²¹ JDIH Kementerian Ketenagakerjaan Republik Indonesia, "Pemerintah dan DPR RI Sepakat untuk Menyetujui Pengesahan Maritime Labour Convention, 2006," JDIH

Kemnaker, <https://jdih.kemnaker.go.id/berita-pemerintah-dan-dpr-ri-sepakat-untuk-menyetujui-pengesahan-maritime-labour-convention-2006-konvensi-ketenagakerjaan-maritim-2006.html>. Accessed 27 June 2021

²² Nina Farah Adela, "Perlindungan Pelaut Indonesia di Luar Negeri Melalui Ratifikasi Maritime Labour Convention, 2006," *Jurist-Diction*: Vol. 1, No. 2, November 2018, at.657.

He was also left without money to finance the ship until the power on the ship went out, and the fuel ran out. Technically, Aisha's basic rights have been guaranteed in MLC. Regulation 2.2 on Wages says that: "1. All seafarers shall be paid for their work regularly and in full in accordance withby their employment agreements," along with the Standard A2.2 – Wages "1. Each Member shall require that payments... no greater than monthly intervals and by any applicable collective agreement.." Based on that a prediction can be made related to how much salary was not received during the four years of waiting for Aisha, along with Regulation 3.2 concerning food and catering that explained that seafarers on board must be provided with free food during the period of work, meaning that during those four years this right has also been violated. Apart from these two rights, many other rights are regulated in the MLC but failed to be fulfilled by the shipping company where Aisha works.

Regarding the MLC Regulation in 2.5 on Repatriation, Standard A2.5.2 on Financial Security Article 2 states that abandonment occurs when the ship owner: fails to cover the costs of repatriating the crew; or has left the crew without the necessary care and support; or otherwise unilaterally terminate their relationship with seafarers which also includes failure to pay contract wages for a period of at least two months. Therefore, when discussed about abandonment, that means the discussion about the two main aspects mentioned above, namely repatriation and remuneration as well as compensation which will be discussed in the following discussion. However there are a few key points that are needed be to noted first in this MLC.

The first aspect that we need to understand is the overall role of MLC as a codification of various conventions on seafarers, has comprehensively and clearly provided protection to seafarers or commercial crew. The problem is how to make these provisions not only exist, but also can be implemented. Because in

principle a good rule must also be "implementable". Even though the implementation of this MLC is comprehensive, it is difficult to carry out optimally. How could it not be, dozens of regulations on seafarers were absorbed in their essence and included in one convention at once, bringing with them various stakeholders and port states, flag states, and nationals of seafarers. Then also the cooperation from various organizations both domestic and international and the harmonization of domestic laws regarding salaries, ship worth and so on, is here. However the question still remains, especially towards the point of how to ensure that everything will be maximized regarding enforcement? Because in the implementation everything is different. Moira McConell mentioned that MLC reflects a tension between the 'pull' to allow for flexibility with respect to the details of national level implementation and the 'push' to simply impose single uniform requirements as set out in the Convention.²³ As it was mentioned previously, there are so many different issues combined into one convention, that the MLC contains a significant area of national flexibility regarding implementation, while at the same time requiring a pragmatic approach. In many cases, shipping is a global industry and is of industry interest (both shipowners and crew). Shipowners with dubious practices may have some interest in encouraging differing and even reduced stringency in flag State inspections.²⁴ Therefore, to guarantee the rights of Aisha who is a Syrian citizen who is restrained by Egyptian law as a port state which is ignored by the Bahraini shipping company and with contractors in Lebanon, it is definitely not an easy thing that can be resolved by this one convention.

²³ Moira L. McConnell, et. all, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime*, Leiden: Martinus Nijhoff Publishers, 2011, at 567.

²⁴ *Ibid.*, at 568.

The second aspect that also needed to be considered is MLC are not clear when the flag state or port state should be charged. Article 5 of the MLC stipulates enforcement and compliance obligations on three types of States: Flag States, Port States and Manpower Supply States, with the emphasis apparently shifting from a primary focus on Flag State jurisdictions to a system of obligations that incorporates as many State actors in the maritime industry as possible.²⁵ Flag State is required to issue a Maritime Labor Certificate to certify that the vessel has been inspected and a Declaration of Maritime Labor Compliance explaining how the MLC is applied on board. The Port State is required to ensure universal protection of maritime labor rights for all maritime workers under its jurisdiction – including those working under the flag of a non-ratifying State while they are in the port of a ratifying State. In essence, all visiting ships must be treated the same, regardless of the flag.²⁶ However when discussing about abandonment, there are only a few provisions that has regulated this such issue, such as the Regulation in 2.5 on Repatriation. In the case of Mohammed Aisha the port state has an obligation not to prevent repatriation. But sometimes, when everything is set in the convention, in practice there are still obstacles.

The third aspect that needed to be further discussed is the fact that MLC emphasizes the main obligation to be on the shipowner. However, when the shipowner is unable to fulfill his obligations (due to bankruptcy, or neglect to renew his policy) so that the shipowner company cannot be contacted, then according to this convention as stated in Regulation 2.5 concerning Repatriation, the flag state and port state that are in charge in carrying out their duties. But what happened in practice was that both countries abandoned the seafarer who were

abandoned by their shipowners, as in Aisha's case, he was abandoned by Bahrain as the flag state of MV Aman and also by Egypt as the port state. Even though the MLC has regulated the obligations of both, the two countries cannot follow the provisions as stated in the MLC. For this reason, the MLC should be sharper in regulating the obligations of the two countries and more firmly in regulating the consequences if they do not carry out their obligations (ie abandoning the seafarers). Without sanctions, these countries can escape this responsibility. As for the MLC, there is no regulated mechanism for providing sanctions or ways of law enforcement to resolve the problem of violating these obligations.

Referring to Laura Carballo in *International Maritime Labor Law*, in reality itself it is true that MLC has a system that is self-executing, however if a states are unable to apply the principles and rights that has been established for part A, they may resort to any law, regulation, collective agreement or other measures that are substantially equivalent.²⁷ Regarding the terms of "equivalent" itself, article VI (4) can be used as a reference where it was mentioned that states are granted flexibility in applying the convention in accordance with their particular circumstances and degree of development.²⁸ This flexibility also includes and applies in the convention that also manifest as the general formulation of numerous provisions of part A, leaving member states ample room for maneuver in its implementation. It can also be understood as stated in the Explanatory Note to the Regulations and Code of MLC, guidance on implementing the non-mandatory provisions in Part B is provided, but as they are non-binding, states may always resort to other types of measures.²⁹

²⁵ Lloyd Cameron, *op.cit.*, at 53.

²⁶ *Ibid.*, at 54.

²⁷ Laura Carballo Pineiro, *International Maritime Labour Law*, Berlin: Springer-Verlag, Hamburg Studies on Maritime Affairs, Volume 34, 2015, at.48.

²⁸ *Ibid.*,

²⁹ *Ibid.*,

Therefore with the existence of this flexibility, implementation in the field becomes difficult and sometimes hinders the process of solving existing problems.

It can be concluded that MLC 2006 has not been very effective in protecting the rights of seafarers, especially in dealing with the abandonment of seafarers, which incidentally has its own complexities, considering that there are many countries, jurisdictions, and other parties involved, which means, concerning the burden of responsibility for both aspects, both public (in this case the country that is related to the problem, such as the flag state, port state, seafarers recruitment country, seafarers' country of origin, or also the company's country of origin) and private (ship companies or other private bodies) entities.

Apart from MLC, there are several other international legal instruments governing seafarers' rights since the MLC was designed to be in line with these regulations. Some of those regulations are:³⁰

- a. SOLAS Convention 1974 (The International Convention For The Safety Of Life At Sea).

The provisions in SOLAS 1974 explained about the safety and security of ships related to ship administration issues by identifying some applicable requirements, along with specific actions to improve maritime safety.

- b. MARPOL Convention (International Convention for the Prevention of Pollution from Ships).
- c. MARPOL 1973 regulates the protection of the marine environment with preventive and countermeasures in the event of an accident and/or pollution of the maritime environment. The importance of applying this convention is to maintain the seaworthiness of the

ship so that the ship can still operate which in this case is related to the fulfillment of the right to work.

- d. SCTW 1982 (International Convention on Standards of Training, Certification and Watchkeeping for Seafarers).

SCTW 1978 concerning the competence of ship crews by setting standard qualifications for captains, commissioned officer, and officers on duty on sailing commercial ships. This convention is the first regulation that establishes the basic requirements for the training, certification and watchkeeping of seafarers at the international level. This is related to the fulfillment of seafarers' rights to fair working conditions and the right to training and self-development.

However, the regulations mentioned previously are not as comprehensive as MLC which regulates the rights of seafarers as a whole. As for abandonment is also not regulated in these instruments. For this reason, the right reference as well as the main guide regarding the abandonment of seafarers is MLC 2006, which although still lacking in implementation.

To cover the above shortcomings, MLC is not yet clear and solid in regulating the issue of abandonment, and its implementation is no longer optimal, related to the facts mentioned above, the possible solution is to make a Guidelines for MLC implementation aimed to solve the problem in detail that has not been covered in MLC which led to a loophole for countries that do not want to comply. The guidelines should finely regulate the implementation of the following articles contained in the MLC such as problems regarding the financial security system, insurance, etc., Sanctions should also be discussed so that MLC does not become a "blunt" convention.

C. CLAIM FOR RESPONSIBILITY REGARDING MOHAMMED AISHA: COMPENSATION, REPATRIATION, AND RELATED ORGANIZATIONAL ROLES

³⁰ Nina Farah Adela, *op.cit.*, at.651-652.

1. Observing the Responsibilities of Related Parties: Remuneration and Repatriation Claim

The main obligation for remuneration and repatriation lies with the shipowner as described in Title 2 regarding Conditions of Employment, specifically in Regulation 2.5 regarding Repatriation, Standard A2.5.1. which explained that "Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code" and "Each Member shall *require ships* that fly its flag to provide financial security to ensure that seafarers are duly repatriated in according to the Code." But when they fail to carry out their duties, then there are other parties who should take action when abandonment occurs. The following are related parties who may be subject to a request for accountability under the rules in MLC.

a. Flag State

A ship must fly the flag of one State and submit to the jurisdiction of that State. A State grants its nationality to ships through a registration process to effectively exercise its jurisdiction and control over those ships in administrative, technical and social matters.³¹ It is well explained that it is the duty in law of the flag to maintain a regulatory environment that encompasses the operation of the ship, the physical status of the ship, the activities of the shipowners, and the working conditions of the seafarers.³² Meanwhile, the ship registration system is divided into Closed Registration and Open Registration. Under the open registry system, the flag of convenience can be flown by any ship regardless of the

nationality of the owner.³³ Regarding the system it can be concluded that other flag systems have stricter regulations regarding who can own and operate ships. In Aisha's case, for example, the flag state of the ship is Bahrain. Shipowners choose their country's flag for a range of commercial reasons, including avoiding the strict regulations imposed in their home country. They also avoid the fiscal obligations and the conditions and the terms of employment of factors of production, that would have been applicable if their ships were registered in their own countries.³⁴ Among certain countries, there are some with regulations that pays their labor quite cheaply. Which is why, for efficiency, many ships were registered under countries and use the flags of Panama, Liberia, Honduras and Costa Rica. This means that by registering their ships in these countries, they are not bound by minimum wage labor regulations and social security in their home countries, taxes (income tax exemptions for ships registered in their country), and service quality.

After using the flag of a country, the laws of that country apply on board, and each country is responsible for ships flying its flag. This includes ensuring vessels comply with relevant international standards through vessel surveys and certification. Flag states sign various international maritime treaties and are responsible for their enforcement. The treaty contains the rules made by the IMO regarding the construction, design, equipment and crew of ships. This is also explained in Article 94 regarding Duties of the Flag State in the United Nations Convention on Law of the Sea (UNCLOS) 1982, which stated that: "(1) Every State shall effectively exercise

³¹ John N. K. Mansell, *Flag State Responsibility: Historical Development and Contemporary Issues*, Springer-Verlag Berlin Heidelberg, 2009, at.19.

³² T. Alderton, *et. all, The Global Seafarer: Living and Working Conditions in a Globalized Industry*, Geneva: International Labour Organization, 2004, at.27.

³³ *Ibid.*, at 95.

³⁴ *Ibid.*,

its jurisdiction and control in administrative, technical and social matters over ships flying its flag. 2) In particular every State shall: ... (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship. 3) Every State shall *take such measures* for ships flying its flag as are necessary to *ensure safety* at sea with regard, inter alia, to: (b) *the manning of ships, labour conditions* and the training of crews, taking into account the applicable international instruments."

Based on the regulation included inside UNCLOS that was mentioned previously, the flag state of the ship can be held responsible for taking action regarding the abandonment of seafarers. This will be easier if the flag country of the ship is the same country as the country where the ship company originates, or also countries with a Closed Registration system. Problems arise when it comes to the open registration system above, where the "flags of convenience" system was criticized for allowing the application of more insufficient regulations and even ignoring international maritime rules. In addition, there are many ship companies or ship owners who register their ships under the flag of convenience regime because of the higher profits. Those situations mentioned above cause this abandonment case difficulties to hold the flag state responsible, especially to a country that has an open registration system which also has hundreds of thousands of ships registered under its flag. In addition, registering ships under a different flag makes it difficult for shipowners to be held accountable for disputes over wages or working conditions, according to the International

Transport Workers Federation. However, the problem is that, under MLC, the main responsibility for the greater responsibility for abandoning seafarers and their repatriation lies with the Flag State when the shipowner fails to fulfill its obligations. It was stated in Standard A2.5.1. where "Each Member shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances...", along with Standard A2.5.5. "If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated: (a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned... " etc. With the flag of convenience, it will further complicate the implementation of the articles in the MLC.

b. Port State

Port state jurisdiction has been used as a means to avoid the incompetence of law enforcement on the high seas, the ineffectiveness of flag states, but also the absence of international rules due to a lack of consensus at the international level. Molenaar itself refers to the idea of a 'responsible port state' i.e. a state committed to making full use of its jurisdiction under international law to advance not only its own rights and interests but also the interests of the international community.³⁵ Coming along from this understanding we can conclude that port state also bear the responsibility to help protect seafarers from cases of abandonment. Responsibilities of the port State under Regulation 5.2 'enable' each member state to carry out its

³⁵ Sophia Kopela, "Port-state Jurisdiction, Extraterritoriality and the Protection of Global Commons," ESIL Law of the Sea Interest Group on "International law and the Sea", the occasion of the 10th Anniversary Conference of the European Society of International Law (Vienna, 4 September 2014), at.1.

responsibilities regarding international cooperation in the application and enforcement of maritime labor standards, including seafarers' rights, on foreign vessels.³⁶ Port States must ensure that the working and living conditions for seafarers on ships entering their ports meet the requirements of the Convention. Overall, although the general obligations are mandatory, it has been recognized that the decision when and how to cooperate with other Member States will be left to the discretion of individual States.³⁷

In addition, the port state must also provide assistance regarding the repatriation. Guideline B2.5.2.1 regarding Implementation by Members states that "Every possible practical assistance should be given to a seafarer stranded in a foreign port pending repatriation and in the event of delay in the repatriation of the seafarer, the competent authority in the foreign port should ensure that the consular or local representative of the flag State and the seafarer's State of nationality or State of residence, as appropriate, is informed immediately."

It can also be understood that the mechanism for the repatriation of abandoned seafarers in accordance with the regulation inside 2.5 on Repatriation contained matters such as condition where Seafarers may return home free of charge under the circumstances set out in this Code, States are obliged to require ships flying their flags to provide financial security to ensure that crew members are repatriated in accordance with this regulation. Apart from that aspect, other aspect such as the reason why the Convention stated that financial security is required

regarding repatriation is that in case a situation where the shipowner become insolvent occurs, the seafarers will be stuck. In such a case, the financial security will come in and supply the financial means, or the logistical assistance, to send the seafarers back to home.³⁸

Seafarers have the right to be repatriated if the crew's employment agreement ends while they are abroad, when the seafarer's employment agreement is terminated by the ship's owner or by the ship's crew for justifiable reasons, or also when the crew is no longer able to carry out their duties under the employment agreement. The rights will be granted by the shipowner for repatriation, including those relating to the purpose of repatriation, mode of transportation, items of costs to be paid and other arrangements.

If the ship owner fails to arrange or meet the costs of repatriating the crew who are entitled to be repatriated, then: (a) the competent authority of the *State whose flag is flown by the ship (the flag State) must arrange for the repatriation of the crew concerned*; failing to do so, the State from which seafarers will be repatriated or the State of which they are nationals may arrange for their repatriation and recover fees from the Flag State. The cost of repatriation in any case will not be borne by the crew. The country that has paid the cost of repatriation can hold the ship owner of the ship concerned until the replacement has been made. Each State (in this case is the Port State) must *facilitate the repatriation of crew members serving on ships that stop at their ports or pass through their territorial waters or inland waters, as well as their replacement on board*. The State may not deny the right of repatriation to any crew

³⁶ Jennifer Lavelle, *The Maritime Labour Convention 2006: International Labour Law Redefined*, New York: Informa Law from Routledge, 2014, at.169.

³⁷ *Ibid.*,

³⁸ *Ibid.*, at 100.

member because of the shipowner's financial_situation or because of the shipowner's inability or reluctance to replace the crew.

Meanwhile, the financial security system may take the form of a social security scheme or insurance or a national fund or other similar arrangement. The assistance provided by the financial guarantee system must be sufficient to cover unpaid wages and other entitlements due from shipowners to crew members under their employment agreement. It is clear that in this MLC a financial security system is required from the flag state of the ship to ships flying its flag to ensure that seafarers are repatriated in accordance with the Code. However it was stated that MLC does not require any legislation in this matters and can be done simply by the body issuing certificates stipulating that evidence of financial security is required. Insurance, a guarantee or self-insurance are also a possible ways of providing financial security – it should also be understood that the Convention does not stipulate in what form it should be provided.³⁹

The cost of repatriation must cover travel in an appropriate and prompt manner, usually by air, and include the provision of food and accommodation for the crew from the time they leave the ship until they arrive at the home of the crew. The normal transportation itself should be by air. Countries to which seafarers are repatriated include countries where the seafarer agrees to enter into the agreement, the country of residence of the seafarer, or other agreed place. Any practical assistance to be provided to seafarers stranded in a foreign port awaiting repatriation, the competent authority at the foreign port should ensure that the

consular or local representative of the Flag State and the National or State of Residence of the Seafarer is informed promptly. Each State shall take into account whether appropriate provisions have been made for the repatriation of crew members employed on ships flying the flag of a foreign country stranded in foreign ports for which it is not their responsibility to return to the port where the crew members are employed or to ports in the state of nationality or the country of residence of the crew members, or to another agreed port. Any practical assistance to be provided to seafarers stranded in a foreign port awaiting repatriation, the competent authority at the foreign port should ensure that the consular or local representative of the Flag State and the National or State of Residence of the Seafarer is informed promptly.

Related to MLC it can be seen that the obligation to repatriate is indeed in the flag state, but in implementation it is difficult due to the fact that the flag state often does not want to be responsible. For example, in Aisha's case, his flag state was silent during the four years of neglect. This case can still be considered quite simple due to the flag state and the country of origin of the shipowner are the same, namely Bahrain. A more complex problem arises when this abandonment involves countries that implement an open registry system for registration of ship flags as described in the previous description. Because it seems that Panama, as a favorite country for ship registration, will be able to run away from responsibility since it will argue that his country does not know anything about this issue and suddenly it must be responsible for the mistakes of the ship owner. Plus, there are hundreds of thousands of other ships that have registered under

³⁹ *Ibid.*,

the flag of Panama, or Liberia for example, which if these ships were involved in legal issues, it would be very inconvenient for the two countries to sort things out. Other factors such as the criticisms from the community that have been proven to be true that led to the prove that this system opens up opportunities for violations of the law of the sea. Because of this freedom where anyone can register, ultimately the flag state's obligations are more uncontrolled for problems that arise due to shipowner neglect. Because there are many shipping companies that register under his banner, it seems impossible to cover all cases related to the shipowner's obligations if he cannot be held responsible.

Another possibility that can be simulated is when the flag state is not problematic, but when situation such as the overlap of the three countries because the MLC arrangements are not clearly addressed to whom the responsibility must be held when the shipowner does not want to be responsible. Such as the explanation of the mechanism above, MLC is inconsistent in stating who should be in charge. In the early sections it said flag state, then the country where the seafarer is a citizen, then the port state is also subject to the obligation to be responsible. So which one comes first for repatriation, is still a question and it all depends on field practice. Because in the end, when the flag state is passive and doesn't want to be responsible, it is the national state/state of origin of seafarers who regulates and is responsible for the repatriation of abandoned seafarers on the basis that every state has a primary obligation to protect its citizens wherever they are. So on that basis it is the national state that must be proactive in regulating the repatriation of seafarers who are its

citizens; first of all with a consular/diplomatic mission in the port state to facilitate the exchange of communication and information for the seafarers, then coordinate with relevant trade union organizations in their country and also the ITF as an international organization for assistance to the seafarers' return, along with the calculation to coordinate as well with local authorities in the port state because that is where the sailors are abandoned.

In conclusion it can be seen that in this convention, the obligation of flag states (especially those that implement an open registry) must be emphasized where many registrants are not from their own nationals but citizens of other countries who make it seem as if this flag state is ignoring the citizens of other countries and anything that he did with their ship company. So that these countries not only pursue the benefits of registration, but also so that they do not run away from their international responsibilities. Then the sanctions must also be reaffirmed if these countries do abandonment of these seafarers. Port states should also reach the diplomatic and consular missions of the countries concerned so that these seafarers are not abandoned in their country. Because it is their obligation that if there are seafarers who are abandoned, then while waiting for their repatriation, the port state must guarantee all accommodation until the seafarer is returned to his home country. The case of Mohammed Aisha opens our eyes to how he was forced to stay on the boat alone for four years and had to swim to get food and charge his cellphone. Which questions the role of the port state in this case. Egypt as the port state which based on its own laws (regulations regarding legal guardians) made Aisha trapped there

without electricity, fuel, food supplies, and adequate places. Then the next thing is regarding the compensation for the salary that has not been paid for several years for the neglected seafarer (salary/compensation), in this convention it is also not specified who should replace it, since the company does not want to pay it. It is still not clear where the authority to replace this remuneration, whether it is in the flag state, port state, or the country where seafarers are citizens, or it is not paid at all. In this case MLC still seems to be blurry in managing this.

Ideally in the case Mohammed Aisha, referring to the legal regime that is in force within the MLC, the main obligation to repatriate Aisha lies in the flag state of the ship, namely Bahrain. If Bahrain fails to meet this obligation, then Syria as Aisha's home country should take control with Egypt's help as a port state. With the failure of all the countries that should be in-charged above, in this case the ITF plays a very important and crucial role.

2. Role of Organizations Related to: International Transport Workers' Federation (ITF)

In reality itself, it can be seen that there are other organizations that play a very important role in protecting seafarers' rights, such as the main one, of course, the International Labor Organization (ILO), which since its founding in 1919 has set international labor standards for all workers, and in particular has set standards for seafarers in more than 65 comprehensive Conventions and Recommendations covering almost all aspects of seafarers' living and working conditions, which also led to the creation of the 2006 MLC.⁴⁰ In addition, of course there is the *International Maritime*

Organization (IMO) which makes global standards for the safety, security, and environmental performance of international shipping.⁴¹ Apart from the two mentioned organizations, there is an organization that also have an important role in advocating the interests of seafarers abroad, which is the International Transport Workers' Federation (ITF). The ITF is an international trade union federation of transport workers' unions whose purpose is to help affiliated unions defend the interests of their members and to provide general assistance to transport workers in distress. The ITF also organizes international solidarity when a transport union in one country is in conflict with an employer or government and requires direct assistance from a trade union in another. One of the ITF's campaigns in the maritime industry is against the use by shipowners of Flags of Convenience to escape national laws and national unions.⁴²

Regarding its own development, ITF has also created a new forward motivation with the announcement of ITF implementing MLC and its enforcement study. The move that was made by the International Transport Workers federation (ITF) itself will be helped by the Seafarers Right International (SRI) to further help the study of enforcement. For over a decade itself ITF have been moving and have worked with governments and shipowners along with the representatives of the International Labor Organization (ILO) to create and shape the MLC with the focus of making sure the MLC full implemented globally, encouraging the ratification of MLC, and the public knowledge for seafarers to know their own rights under the MLC, The ITF played a leading role in developing the MLC, which

⁴⁰ International Transport Workers' Federation, "Your Legal Rights," *ITF Seafarers*, 30 February 2019, <https://www.itfseafarers.org/en/your-rights/your-legal-rights-0>. Accessed 29 June 2021

⁴¹ International Transport Workers' Federation, "The IMO," *ITF Seafarers*, 8 August 2020, <https://www.itfseafarers.org/en/your-rights/imo>. Accessed 29 June 2021

⁴² International Transport Workers' Federation, "About Us," *ITF Seafarers*, <https://www.itfseafarers.org/en/about-us>. Accessed 29 June 2021

sets comprehensive and enforceable minimum standards for seafarers living and working conditions.⁴³

Another perspective for solving a case that is well related to the neglect of sailors that has occurred as well as a case where the ITF has a very significant role in can be seen from the case of the abandonment of 16 crew members of the Avonmoor container ship who had been returned to Ukraine. In January 2018, the crew of a Bahrain-flagged ship were abandoned in the Port of Casablanca, Morocco, leaving them without wages, supplies, fuel and first aid supplies. The ship experienced a power outage while anchored at the port which caused a significant safety issue for the crew. The ship is owned by Tylos Shipping and Marine services (the same company that abandoned Mohammed Aisha). The ITF has previously identified problems on similar vessels with unpaid wages and an inability to repatriate crew members. The situation was resolved due to the efforts that was given by *Protection and Indemnity Insurance (P&I)*, the port authorities, the Ukrainian Embassy, the ITF and the Moroccan Trade Union. A wage of \$107,000 was paid to the crew and the crew was successfully repatriated.⁴⁴

Another example can also be taken from the case where 15 Indian sailors and one Pakistani sailor got neglected and was stranded on a tanker off the coast of the United Arab Emirates (UAE) for more than a year. The crew of the Panamanian-flagged tanker MT Zoya 1, moored 15 miles from the UAE, have not been paid for four months. Their passports have been in the possession of the UAE authorities since 1 October 2017 following a legal dispute with the shipowner ECB International. Aurum Ship Management has asked the

owner to pay the salaries and port fees as soon as possible, but the request has not been acted upon. The crew were provided with food and water, and the Indian diplomatic mission has been working with local authorities to help resolve the situation. In addition to that, Indian Consulate has helped repatriate around 250 Indian national seafarers since May 2017.⁴⁵

Regarding to the case of the abandonment of Mohammed Aisha, ITF also has the significant role for the repatriation of Mohammed Aisha to his homeland. Aisha is now free because the ITF offered to the court to have one of its union representatives in Egypt take his place and become the vessel's legal guardian. He has been represented by the ITF to Egyptian port and immigration officials on a daily basis. Aisha's case, however, is far from end, as the global union federation fights to recover the seafarer's wages – a battle that is frequently required when shipowners abandon their vessels.⁴⁶

From several cases mentioned previously, it can be concluded that the role of seafarers' organizations or other related organizations plays an important role in the repatriation and compensation of abandoned seafarers. Especially, when the flag state or other relevant stakeholders find it difficult to coordinate in the repatriation of abandoned seafarers. In addition to the organizational role, maximum efforts from the seafarers' home country to carry out diplomacy and consular missions with the port state are also very much needed to return the seafarers to their country, a good example has been carried out by India which has succeeded in repatriating 250 seafarers. Conversely, from the two examples it can

⁴³ International Transport Workers' Federation, "Maritime labour convention", <https://www.itfglobal.org/en/sector/seafarers/maritime-labour-convention>. Accessed 23 May 2022

⁴⁴ The Maritime Executive, "Sixteen Abandoned Seafarers, and Sixteen More," Maritime Executive, <https://www.maritime-executive.com/article/sixteen-abandoned-seafarers-and-sixteen-more>. Accessed 29 June 2021

⁴⁵ *Ibid.*,

⁴⁶ ITF, "Seafarer Mohammad Aisha is going home thanks to ITF, ending four years on abandoned ship", 22 April 2022 . <https://www.itfseafarers.org/en/news/seafarer-mohammad-aisha-going-home-thanks-itf-ending-four-years-abandoned-ship>. Accessed 24 May 2022

be seen that the flag state in general does not make any effort regarding this abandonment. As mentioned above, Bahrain and Panama did not react when the crew was abandoned on a ship with their flag. As there is no major difference from the flag state, the port state also seems to complicate and hinder the repatriation of seafarers who are abandoned due to disputes with the ship company where they work and also the national legal rules that require seafarers to stay when the ship company is involved in funding problems. Whereas supposedly, these seafarers should not be victims of negligence/mistakes committed by the company where they work. They have suffered enough losses from working excessive hours without any payment, along with the burden of forbidding them to return to their home countries due to legal problems that involved big companies in faraway countries that do not give any contribution.

D. CONCLUSION

Seafarers are a group of workers recruited by international agencies and work under contract on board ships of various types. Problems arise when there is the abandonment of them, this term can be defined as the failure of the ship owner to fulfill certain basic obligations to the crew. Regarding the case itself, the case of Mohammed Aisha started in July 2017 where the MV Aman was detained at the Egyptian port of Adabiya due to issues such as safety equipment and classification certificates; following up the detainment of MV Aman, it took four years before the help from ITF has led to the result of Mohammed Aisha capable of going back home. Related to the case of Mohammed Aisha, it can be seen that the complexity of the problem exists because abandonment cases involve many countries and related agencies, such as flag state, port state, and seafarers' country of origin, where the flag state that implements an open registry often evades its responsibility to repatriate the abandoned seafarers when the shipowner fails to fulfill its obligations due to bankruptcy or other matters. Not only the flag

state, the port state as well as the country where the seafarers are abandoned often makes it difficult to return them, this can happen due to a legal conflict with the ship owner or for other reasons. The cooperation of the three countries, namely the flag state, port state, and the country of origin of seafarers is required for the repatriation and remuneration of abandoned seafarers. The Maritime Labor Convention (MLC) 2006 already exists to regulate the protection of seafarers, but it is not been very effective in protecting the rights of seafarers. In its implementation it is not yet clear when the port state or flag state is in charge. MLC should be sharper and clearer to regulate the responsibilities of all related parties and if possible, apply sanctions for those who run away from their responsibilities as is often done by flag states. The active role of the seafarer's country of origin is also very significant in the repatriation of its citizens who are abandoned in these other countries. In its conclusion, we can say that the 2006 MLC has not been very effective in protecting the rights of seafarers, especially dealing with the abandonment of seafarers, which in fact this problem has its own complexity considering that there are many countries, jurisdictions, and other parties involved, which means, concerning the burden of responsibility for both aspects, both public and private. With the failure of all the countries that should be in-charged above, the ITF plays a very important and crucial role in advocating the rights of seafarers including when there is the case of abandonment of seafarers. The ITF has helped to repatriate a lot of seafares to their homeland.

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