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Stranded Within Sight of Land: Maritime Labor Rights and Seafarer Abandonment in the Time of COVID-19

J. SAM CHASE[†]

I. INTRODUCTION

In November 2013, the *Rhosus*, a ship leased by a Russian businessman, staffed by a Ukrainian crew, flying a Moldovan flag, and carrying a cargo of high-density ammonium nitrate owned by a Mozambican weapons manufacturing firm, docked in Beirut, Lebanon.¹ After Lebanese authorities found the *Rhosus* unseaworthy, the ship's lessor refused to pay for repairs or docking fees, functionally abandoning it.² The *Rhosus* was impounded, and multiple crew members, unable to disembark due to immigration laws, were confined to their vessel, despite the risk of the ship sinking.³

Nearly a year later, a Lebanese judge ordered the release of the crew on "compassionate grounds", although the court was unable to enforce the unpaid wages for the captain and crew.⁴ Following the repatriation of the crew to their home countries, Lebanese port officials towed the *Rhosus* up the pier, where it eventually sank in 2018, and moved the abandoned ammonium nitrate to a nearby warehouse until

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1. Declan Walsh & Andrew Higgins, *Blame for Beirut Explosion Begins With a Leaky, Troubled Ship*, N.Y. TIMES (Dec. 4, 2020), <https://www.nytimes.com/2020/08/05/world/middleeast/beirut-explosion-ship.html>.

2. *Id.*

3. *Id.*

4. *Id.*

it could be claimed or disposed of.⁵ However, on August 4, 2020, the impounded ammonium nitrate ignited, creating an explosion that killed 218 people, wounded 7,000 more, and leveled entire neighborhoods, displacing over 300,000 people.⁶ In addition to the human cost, the blast also caused an estimated US\$3.8–4.6 billion in material damage, which impacted 163 schools and fifty six percent of private businesses in Beirut, as well as incapacitated half of the city’s healthcare centers.⁷ While the sheer volume of human lives lost resulting from the abandonment of the *Rhosus* (along with the existence of easily shareable videos of the explosion) has generated international condemnation, alarm, and even the resignation of the Lebanese prime minister and his entire Cabinet,⁸ the larger pattern of abandoned ships wreaking havoc on ports, supply chains, and especially on the mental and physical health of seafarers has garnered far less attention or calls for reform, with seafarers stating that they feel “abandoned by my own government” or “forgotten and abandoned by everybody.”⁹

The International Maritime Organization (IMO), considers seafarer¹⁰ abandonment to occur when there is a “severance of ties between the shipowner and the seafarer” and when “the master of the ship has been left without any financial means in respect of ship operation.”¹¹ Seafarer abandonment is an extremely severe form of

5. Christoph Koettl, *Ship Cited in Beirut Blast Hasn’t Sailed in 7 Years. We Found It.*, N.Y. TIMES (Oct. 14, 2021), <https://www.nytimes.com/2020/08/07/world/middleeast/lebanon-explosion-ship.html>.

6. Lama Fakaih & Aya Majzoub, “*They Killed Us from the Inside*”: *An Investigation into the August 4 Beirut Blast*, HUM. RTS WATCH, <https://www.hrw.org/report/2021/08/03/they-killed-us-inside/investigation-august-4-beirut-blast#186> (last updated Aug. 8, 2021).

7. *Id.*

8. Bassem Mroue, *Lebanese Government Resigned After Beirut Blast, Public Anger*, ASSOCIATED PRESS (Aug. 10, 2020), <https://apnews.com/article/ap-top-news-international-news-middle-east-lebanon-beirut-598da05d3907aa58399c86ff85a9babc>.

9. *See How Seafarers’ Abandonment Affects Wellbeing Onboard*, SAFETY4SEA (Oct. 5, 2021), <https://safety4sea.com/cm-how-seafarers-abandonment-affects-wellbeing-onboard/>; *see also Abandonment of Seafarers Database*, INT’L LAB. ORG., https://www.ilo.org/dyn/seafarers/seafarersBrowse.list?p_lang=en (last visited Oct. 11, 2021) (listing over 100 current active or disputed cases of ship/seafarer abandonment).

10. The International Labour Organization (ILO) considers seafarers to be “anyone who is employed or engaged or works in any capacity on board a ship.” Maritime Labour Convention, 2006 art. II ¶1(f), Feb. 23, 2006, 2952 U.N.T.S. 3 [hereinafter MLC].

11. G.A. Res. A.930(22), annex, Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers. Int’l Maritime Org. [IMO], at 2.1.3 (Nov. 29, 2001).

labor rights violation, which can result in long periods of isolation, negative mental and physical health effects, and potentially devastating financial losses for affected workers and their communities.¹² Despite the importance of seafarers to global supply chains and the fishing industry and increasing rates of abandonment spurred on by the ongoing COVID-19 pandemic, international responses to the crisis have been insufficient to prevent the continued exploitation of some of the world's most invisible yet indispensable workers.¹³

This paper posits that the current international system to disincentivize and address cases of seafarer abandonment has been insufficient to meet the needs of seafarers, especially in the context of COVID-19.¹⁴ This paper argues that successfully addressing the problem requires stronger multilateral agreements facilitating repatriation for seafarers, as well as a dramatic reallocation of enforcement responsibilities toward port states and countries with a meaningful connection to the ship, shipowner, or crew.¹⁵

Part II presents the background and context of the problem of seafarer abandonment and the primary sources of international law governing seafarer abandonment, including the International Labour Organization's (ILO) Maritime Labor Convention and the United Nations Convention of the Law of the Sea.¹⁶ Next, the section examines the prevalence and impact of flags of convenience and how they offload enforcement power to states generally unable to mobilize power to support abandoned seafarers.¹⁷ Finally, it examines how COVID-19 has caused rates of seafarer abandonment to increase.¹⁸

12. *Seafarers and Abandonment: the Impact on Wellbeing*, INT'S SEAFARERS' WELFARE & ASSISTANCE NETWORK ('ISWAN') (Jul. 26, 2021), <https://www.seafarerswelfare.org/news/2021/seafarers-and-abandonment-the-impact-on-wellbeing>.

13. Drew Hinshaw & Joe Parkinson, *Crews Are Abandoned on Ships in Record Numbers Without Pay, Food, or a Way Home*, WALL ST. J. (Oct. 8, 2021), <https://www.wsj.com/articles/crews-are-abandoned-on-ships-in-record-numbers-without-pay-food-or-a-way-home-11633699978>.

14. *See infra* Part II.C.

15. *See infra* Part IV.

16. *See infra* Part II.A.

17. *See infra* Part II.B.

18. *See infra* Part II.C.

Part III of this paper analyzes current international responses to heightened rates of ship abandonment, which have been accelerated by the COVID-19 pandemic.¹⁹ This section explains resolutions by intergovernmental bodies governing international shipping, as well as changes to international agreements.²⁰ It then examines country- and region-specific laws and agreements addressing issues related to seafarer abandonment and their successes in ameliorating the issue.²¹ Finally, it examines the efforts of non-governmental organizations directly assisting abandoned seafarers.²²

Part IV discusses proposed actions to mitigate this issue, including strengthening international labor standards governing the treatment of seafarers via port state control,²³ increasing and streamlining accountability by limiting flags of convenience,²⁴ and creating and funding organizations that directly assist seafarers who do become abandoned.²⁵ Finally, Part V provides a concise summary of seafarer abandonment in the context of COVID-19 and how stronger international action can better address and redress this issue for the frequently invisible yet truly essential workers who connect our maritime supply chains.²⁶

II. BACKGROUND

International maritime shipping is an industry valued at more than US\$14 trillion and involves transporting well over eighty percent of the world's trade goods.²⁷ Without seafarers to move goods across borders, service passenger vessels, and supply the world's demand for seafood, international trade and even food systems would grind to a

19. *See infra* Part III.A

20. *See infra* Part III.B.

21. *See infra* Part III.C.

22. *See infra* Part III.D.

23. *See infra*, Part IV.A.

24. *See infra*, Part IV.B.

25. *See infra*, Part IV.C.

26. *See infra*, Part V.

27. INT'L CHAMBER OF SHIPPING, *Shipping and World Trade: Driving Prosperity*, <https://www.ics-shipping.org/shipping-fact/shipping-and-world-trade-driving-prosperity/> (last visited Oct. 18, 2021); INT'L SEAFARERS WELFARE & ASSISTANCE NETWORK, *Seafarers and Abandonment, the Impact on Wellbeing*, <https://www.seafarerswelfare.org/news/2021/seafarers-and-abandonment-the-impact-on-wellbeing> (last visited Oct. 18, 2021).

halt.²⁸ Despite the importance of their work, seafarers as a labor force face severe challenges in terms of effectuating their labor protections under both country-specific and international law.²⁹ This issue is not new; writing in 1911, a U.S. court held that “seamen are, of all classes in the community, perhaps the most helpless and unable to protect themselves, and are most frequently the subject of gross injustice and maltreatment.”³⁰ More than 100 years later, seafarers still face a significant risk of labor exploitation in addition to the inherent risks of working on the high seas.³¹ Furthermore, the complex transnational legal frameworks which govern the seafarer–employer relationship are coupled with seafarers’ frequent physical isolation from advocates or regulators, which leaves seafarers uniquely vulnerable to forms of labor exploitation including harassment, unacceptable living and working conditions, non-payment of earned wages, and in the most extreme cases, complete abandonment.³²

A. Seafarer Abandonment

Abandonment, which constitutes a total lack of support services or income from the contractual employer or its agents, is one of the most severe forms of labor exploitation that a seafarer can face.³³ Moreover, incidences of seafarer abandonment are increasing; there were forty abandonment cases in 2019, and the COVID-19 pandemic and the resulting economic crisis appear to be exacerbating the crisis,

28. See Luci Carey, Comment, *The Maritime Labour Convention, 2006: The Seafarer and the Fisher*, 31 AUSTL. & N.Z. MAR. L.J. 14, 14 (2017).

29. See INT’L TRANSP. WORKERS’ FED’N, *The Maritime Labour Convention 2006: An ITF Guide for Seafarers to the ILO Maritime Labour Convention, 2006*, 1 (2020) (ebook) (noting that seafarers need “special protection” in part because they are often excepted from domestic labor laws, and instead are generally protected by international conventions on maritime labor rights, primarily the Maritime Labour Convention, 2006 (MLC, 2006)).

30. *The Ester*, 190 D. 216, 229-29 (E.D.S.C. 1911).

31. The isolated nature of maritime labor, where “seafarers spend most of their working li[ves] stuck on a confined metal box [. . .] where intimidation is easier than in most workplace”, coupled with high power differentials between workers and employers, creates situations where labor abuse can be severe, hard to detect, and difficult to redress. See Luci Carey, Comment, *The Maritime Labour Convention, 2006: The Seafarer and the Fisher*, 31 AUSTL. & N.Z. MAR. L.J. 14, 14 (2017) (quoting Rose George, *Ninety Percent of Everything: Inside the Invisible Industry that Puts Clothes on Your Back, Gas in Your Car, and Food on Your Plate*, 178 (Metropolitan Books, 2013)).

32. *Id.*

33. See G.A. Res. A.930(22), *supra* note 11, at 2.1.3.

as eighty five abandonment cases were reported in 2020.³⁴ Seafarer abandonment results in heavily delayed or completely unrecovered wages for the affected workers, who are frequently the sole breadwinners for their families.³⁵ In 2020 alone, inspectors from the International Transport Workers Federation (ITF) recovered more than US\$44.6 million in unpaid wages to seafarers; however, ITF officials estimate that number is merely the “tip of the iceberg” of total unpaid wages.³⁶

Additionally, abandoned seafarers can be stranded on their ships for periods lasting more than a year, causing severe physical and mental health effects.³⁷ A stark example of the hardships abandoned seafarers may face is the experience of Mohammad Aisha, a Syrian seafarer on the Bharani-registered ship *MV Aman*, who was required to live on the ship after it was impounded by Egyptian authorities and subsequently abandoned by its owner.³⁸ Mr. Aisha spent four years living on the *Aman*, which “had no power and was covered in insects and rodents.”³⁹ To obtain food and water and to charge his phone, he was forced to swim to shore, each time committing technical immigration violations, as he lacked both the requisite legal status and the required negative COVID-19 tests to lawfully enter Egypt.⁴⁰ Mr. Aisha also experienced mental and physical symptoms “typical of someone imprisoned in poor conditions,” including malnourishment,

34. *Seafarers and Abandonment: the Impact on Wellbeing*, INT’S SEAFARERS’ WELFARE & ASSISTANCE NETWORK (‘ISWAN’) (Jul. 26, 2021), <https://www.seafarerswelfare.org/news/2021/seafarers-and-abandonment-the-impact-on-wellbeing>.

35. *Seafarer Abandonment*, INT’L MARITIME ORG., <https://www.imo.org/en/OurWork/Legal/Pages/Seafarer-abandonment.aspx> (last visited Oct. 14, 2021).

36. INT’L TRANSP. WORKERS’ FED’N, *‘Tip of the Iceberg’: ITF Inspectors Recover \$45m in Seafarers’ Wages Amidst Record-High Abandonments* (Jun. 7, 2021), <https://www.itfseafarers.org/en/news/tip-iceberg-itf-inspectors-recover-45m-seafarers-wages-amidst-record-high-abandonments>.

37. *Id.*

38. INT’L TRANSP. WORKERS’ FED’N, *Seafarer Mohammad Aisha is Going Home Thanks to ITF, Ending Four Years on Abandoned Ship* (Apr. 22, 2021), <https://www.itfseafarers.org/en/news/seafarer-mohammad-aisha-going-home-thanks-itf-ending-four-years-abandoned-ship>.

39. *Id.*

40. INT’L TRANSP. WORKERS’ FED’N, *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* (Mar. 19, 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>.

anemia, localized pain, and psychological damage from stress and prolonged isolation.⁴¹ While Mr. Aisha's case is extreme, prolonged isolation, insufficient access to food, water, and medical care, as well as an inability to disembark and recover wages are commonly experienced by abandoned seafarers, which negatively affect their families and communities, who are frequently remittance recipients.⁴²

B. International Maritime Treaties

International custom and law have long dictated that the high seas belong not to an individual country, but to all nations collectively, and the right of navigation upon them is available to all.⁴³ Despite this ancient and durable standard, the modern international maritime shipping industry, as well as the labor rights of the seafarers employed by it, exists in a legal context controlled by binding international agreements.⁴⁴ The ILO and IMO are specialized agencies of the United Nations (UN) and the primary bodies responsible for securing the rights of seafarers in international shipping.⁴⁵ Together, the ILO and IMO run joint working groups to discuss and further policies and procedures to combat the prevalence of seafarer abandonment, as well as maintain an international database of abandonment incidents.⁴⁶ Additionally, the IMO and ILO work jointly to investigate reported abandonment cases and attempt to facilitate communication between the flag state and the port state to resolve the case.⁴⁷

41. *Id.*

42. INT'L MARITIME ORG., *supra* note 35.

43. Boleslaw Boczek, *Ideology and the Law of the Sea: The Challenge of the New International Economic Order*, 7 BOS. COLL. INT'L. & COMPAR. L. R., 1, 1 n.2 (1984). By the end of the 18th century, international norms recognized a prohibition on any state subjecting the high seas to national sovereignty; by the middle of the 20th century, international treaties had formally codified it. *See Id.* (Citing Geneva Convention on the High Seas Art. 1, Apr. 29, 1958, 450 U.N.T.S. 82).

44. Olukayode Aguda, *Maritime Labour Convention 2006: Implications for Seafarers After a Decade*, 8(2) NNAMDI AZIKIWE UNIV. J. OF INT'L L. AND JURIS. 125–26 (2017).

45. *Id.* In addition to labor rights, the IMO and ILO seek to regulate and facilitate international maritime trade generally.

46. *See* INT'L MARITIME ORG., *supra* note 35. The joint IMO–ILO database can be accessed via: <https://www.ilo.org/dyn/seafarers/seafarersbrowse.home>.

47. *Id.* The IMO Secretariat is generally the party responsible for contacting flag and port states and providing MLC compliance advice. The IMO/ILO also communicate and work with other non-governmental organizations to share information and support abandoned seafarers.

However, despite the efforts of the IMO and ILO, the prevalence of flags of convenience, which allow ships to largely shirk regulatory inspection by nominally associating with nations that do not seek to meaningfully enforce international norms, coupled with barriers to direct enforcement of labor rights by non-flag states, serves to limit the efficacy of international regimes.⁴⁸ The principal Conventions relevant to combating ship abandonment are the United Nations Convention on the Law of the Sea⁴⁹ (UNCLOS) and the Maritime Labor Convention (MLC).⁵⁰

i. United Nations Convention on the Law of the Sea

The UNCLOS is a foundational international treaty establishing the fundamental legal framework for all maritime activities conducted by ratifying countries or those which occur within their territorial waters.⁵¹ Famously termed “a constitution for the oceans,”⁵² the UNCLOS works within and codifies customary maritime law, but distinguishes itself from most international treaties both in the sense that signatory states cannot unilaterally withdraw from its provisions, and it generally preempts other international treaties.⁵³ Thus, the foundational and ‘constitutional’ nature of the convention results in all other agreements by signatories relating to marine and maritime activities operating under interpretations of the UNCLOS framework.⁵⁴

Paramount to discussions of seafarer abandonment and international labor rights is the flag state jurisdiction regime imposed

48. INT’L TRANSP. WORKERS’ FED’N, *Flags of Convenience*, <https://www.itfglobal.org/en/sector/seafarers/flags-of-convenience>, (last visited Nov. 17, 2021).

49. *See infra*, Section II.A.i.

50. *See infra*, Section II.A.ii.

51. *See* United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S 397 [hereinafter UNCLOS]

52. Tommy Koh, *A Constitution for the Oceans*, in THE LAW OF THE SEA: UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, xxxiii, U.N. Sales No. E.83.V.5 (1983).

53. *See* Alan Boyle, *Further Development of the Law of the Sea Convention: Mechanisms for Change*, 54 INT’L AND COMPAR. L. Q., 563, 566 (Jul. 2005). While a full discussion of the history and implications of the modern iteration of the UNCLOS is outside the scope of this paper, Prof. Boyle’s article offers a useful overview.

54. *Id.*

by the UNCLOS.⁵⁵ This system mandates that a ship flying a given nation's flag must abide by that nation's laws, regulations, and registration requirements, and the 'flag state' is tasked with the primary responsibility for regulation and protection of the vessel flying its flag.⁵⁶

ii. *The Maritime Labour Convention*

The central international treaty governing seafarer labor rights is the MLC, which is ratified by ninety eight countries.⁵⁷ The current iteration of the MLC, which entered into force in 2013, sought to update and aggrandize more than thirty five previous international Conventions, with the goal of creating a "single, coherent instrument" to standardize maritime labor rights.⁵⁸ Like other international maritime treaties, the MLC operates within the framework of the UNCLOS and thus explicitly recognizes the modern system of flag state jurisdiction⁵⁹ over ships in international waters.⁶⁰

The MLC's enforcement provisions are outlined in Title 5 of the UNCLOS, which allocates enforcement responsibilities to three types of signatories; flag states, port states, and labor-supplying states.⁶¹ A flag state is required to oversee implementation of the MLC on ships flying its flag and conduct regular inspection and certification

55. See generally, Michael Kabai, *The Maritime Labour Convention and Open Registries: Hand in Glove or Chalk and Cheese*, 30 INT'L J. MARINE & COASTAL L. 189, 195 (2015).

56. See UNCLOS, *supra* note 51, Art. 91, Art. 92, Art. 94 (outlining the structure and duties of the flag state jurisdiction system). Under these articles, a ship can be considered to have the nationality of the flag state, analogous to how a corporation is a 'citizen' of the state in which it is registered.

57. See MLC, *supra* note 10. The ILO considers the MLC to be one of the 'four pillars' of maritime law relating to seafarers, along with the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping (STCW), and the International Convention for the Prevention of Pollution from Ships (MARPOL). See Deepak Mantoju, *Analysis of Impact of the Maritime Labour Convention, 2006: A Seafarer's Perspective*, 5(3) J. INT'L MAR. SAFETY, ENV'T AFFAIRS, AND SHIPPING 107, 108 (2021).

58. See MLC, *supra* note 10, Pmb.; Art. X.

59. See *supra* Part II.B.i.

60. See UNCLOS, *supra* note 51, at art. 94 (stating that each state shall "exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag). See also MLC, *supra* note 10, Pmb. (acknowledging the MLC operates within the existing framework of UNCLOS).

61. MLC, *supra* note 10, at Title 5. This section explicitly does not determine a jurisdiction or legal venue for any enforcement action under the title.

of the living and working conditions of the seafarers on a flag vessel.⁶² States are empowered to impose penalties on non-compliant shipowners through their domestic laws.⁶³ Port states are likewise responsible for conducting inspections on ships in their ports in order to ensure compliance with the MLC regarding the living and working conditions of seafarers.⁶⁴

When a port state determines that a ship violates the MLC, and the health or security of the seafarers is jeopardized, the port state is empowered to impound the ship and notify the flag state.⁶⁵ Nothing in the MLC requires port states to take action or bear a financial burden to rectify violations by a ship flying the flag of another nation that has ratified the Convention.⁶⁶ Lastly, the Convention requires that labor-supplying nations exercise oversight over the recruitment and placement of seafarers but does not require the labor-supplying nation to exercise control over the ships its citizens are employed on once they are outside of its ports.⁶⁷

In drafting the MLC, the ILO sought to add labor protections to the existing UNCLOS framework, which “failed to do more than peripherally address [. . .] the high seas, as a workplace or a site for human rights.”⁶⁸ The MLC requires a variety of employment-related guarantees for seafarers, including mandating specific recruitment policies, employment conditions, requirements for the physical ship, provisions for seafarer health and social security, and establishing mandatory enforcement procedures.⁶⁹ Specifically, the MLC includes

62. *See Id.* at Reg. 5.1.4.

63. *See Id.* at Reg. 5.1.3.

64. *Id.* at Reg. 5.2.

65. *See Id.* at Reg. 5.2 Standard A5.2.1. Note that the impounding of the *Rhosus* under this title was the triggering event that led to abandonment of the ship, crew, and cargo, and thus, the subsequent tragedy in Beirut described *infra* Section I.

66. Interestingly, Article 5 empowers port state signatories to inspect vessels flying the flags of *non*-ratifying states as well; this ensures that there is not a competitive advantage for flag states which fail to ratify the Convention, however, it does not require port states to bear the burden of repatriation for non-ratifying flag states. *See Kabai, supra* note 55, at 195–96.

67. MLC, *supra* note 10, Reg. 5.3.

68. MOIRA MCCONNELL ET AL., *THE MARITIME LABOUR CONVENTION 2006: A LEGAL PRIMER TO AN EMERGING INTERNATIONAL REGIME* 23 (2011).

69. *See* Luci Carey, Comment, *The Maritime Labour Convention, 2006: The Seafarer and the Fisher*, 31 AUSTL. & N.Z. MAR. L.J., no. 1, 2017, at 20. A full discussion of the MLC is outside the scope of this paper, which seeks to focus on seafarer abandonment.

a provision guaranteeing a right to shore leave, which requires the flag state to allow seafarers regular access to disembark from their vessel for both physical health and mental well-being purposes.⁷⁰ The MLC tasks the flag states, not the port states, with enforcing seafarers' right to shore leave, and as a result, there is no guarantee that a given port state, especially one that is not a signatory to the MLC, will allow a seafarer to disembark, especially in the absence of political or legal pressure to do so by the flag state.⁷¹

Another relevant provision to the issue of seafarer abandonment is the entitlement to repatriation.⁷² The MLC tasks signatory states with guaranteeing seafarers a right to return to their home countries⁷³ at no cost to themselves if their employment expires or is terminated or if they cannot be expected to carry out their duties under their employment agreement.⁷⁴ While the Convention does not explicitly require that either the member states or the shipowners pay the cost of repatriation, it expressly forbids a member state to refuse to repatriate a seafarer because of financial default on the part of the shipowner.⁷⁵

The MLC also mandates that signatories establish an “expeditious and effective financial security system to assist seafarers in the event of their abandonment.”⁷⁶ This provision requires that the financial security fund cover the cost of food, accommodation, drinking water, essential fuel, medical care, and any other costs reasonably incurred by the abandoned seafarer, as well as pay for any outstanding wages.⁷⁷ Additionally, the 2014 amendments to the MLC require the shipowners to carry a form of financial security, usually

70. MLC, *supra* note 10, Reg. 2.4.

71. *See Id.*

72. MLC, *supra* note 10, Reg. 2.5.

73. It should be noted that a seafarer's home country refers to the individual's country of residency or citizenship, which is often distinct from the ship's flag state. MLC, *supra* note 10, Guideline B2.5.1(6).

74. MLC, *supra* note 10, Standard A2.5.1.

75. *Id.* at Standard A2.5.8. The Standard additionally requires signatory states to facilitate the repatriation of seafarers who pass through their borders. *Id.* at Standard A2.5.7.

76. Maritime Labour Convention, 2018, Standard A2.5.2(1), 2952 U.N.T.S. 3.

Thus, in the event that the shipowner abandons the seafarer and fails to cover the cost of repatriation, the burden to effectuate repatriation shifts to the flag state. *Id.* at Standard A2.5.2(3)

77. *Id.* at Standard A2.5.2(9–10).

insurance, which is both directly accessible to seafarers and covers up to four months of pay, as well as the full cost of repatriation.⁷⁸

C. *Flags of Convenience*

International shipping, as governed by the UNCLOS and MLC, is a flag-state-based system, where the country in which a ship is formally registered has jurisdiction over it and is ultimately responsible for both creating and enforcing the laws that apply to the vessel.⁷⁹ Thus, individual countries impose their own requirements for which ships or shipowners can register in their flag rolls, and owners can select the nationality of their ship at will, assuming they comply with the flag state's registration and inspection requirements, which are specific to each country.⁸⁰ Ships registered in a country primarily because of the legal or logistical benefits conferred are considered to be flying 'flags of convenience.'⁸¹

Although 'flag of convenience' does not carry a formal legal definition under any international agreement, it typically refers to a flag state that allows nearly any foreign shipowner to register their vessel under the flag, irrespective of any meaningful connection between the flag state and the ship, shipowner, crew, or typical ports of call.⁸² This is an attractive option for shipowners, as many small countries will allow essentially any ship owner to register with them

78. See INT'L TRANSP. WORKERS' FED'N, *supra* note 27, at 7.

79. See Saiful Karim, *Flag State Responsibility for Maritime Terrorism*, 33 SAIS REV. INT'L AFFAIRS 127, 127–28 (Summer-Fall 2013).

80. See Saiful Karim, *Flag State Responsibility for Maritime Terrorism*, 33 SAIS REV. INT'L AFFAIRS 127, 128 (Summer-Fall 2013). See also UNCLOS, *supra* note 51, art 91, which states, "[s]hips have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship." 'Genuine' is distinct from the more subjective 'meaningful', and most commentators agree that a 'genuine' link only refers to a factual relationship, including mere legal agreement to register a ship on a given nation's rolls. Marcelo Molina Villalobas, *The Ever Given and the Problem with Flags of Convenience in International Shipping*, BERKLEY J. INT'L. L. BLOG (Apr. 18, 2021), <https://www.berkeleyjournalofinternationalallaw.com/post/the-ever-given-and-the-problem-with-flags-of-convenience-in-international-shipping>.

81. *Id.* at 131.

82. *Id.* at 130–31.

for a fairly low fee,⁸³ with minimal regulation, low or no taxes, and limited enforcement of labor laws.⁸⁴

The ITF's Fair Practices Committee has identified forty two nations as "flag of convenience countries,"⁸⁵ and as of 2013, about seventy percent of international shipping was conducted using vessels flying a flag of convenience.⁸⁶ Flag states that allow for flags of convenience are less likely than other states to have failed to ratify the MLC; however, mere ratification of the Convention does not guarantee that a flag state enforces the MLC in a way that meaningfully ensures its labor protections are actually effectuated.⁸⁷ Additionally, countries providing flags of convenience also tend to be developing countries, often without the ability to meaningfully enforce their laws or treaty obligations outside their ports, even if they had the political will to do so.⁸⁸

Due to the risk to seafarers' rights, health, and wellbeing, international labor unions and related advocacy organizations have routinely campaigned against flags of convenience.⁸⁹ For instance, the ITF advocates for a binding international agreement that would require a "genuine and meaningful" link between the flag a ship flies and the

83. These states are considered to have "open registries", as they do not impose residency or other meaningful requirements on shipowners seeking to enroll. *Id.* at 127.

84. INT'L TRANSP. WORKERS' FED'N, *Flags of Convenience*, <https://www.itfglobal.org/en/sector/seafarers/flags-of-convenience> (last visited Oct. 21, 2021). The International Transportation Workers' Federation (ITF) is an international organization advocating for seafarers and considers flags of convenience to be indicative of a 'race to the bottom' where each country attempts to outdo the others to have fewer labor protection or nominal limits on which ships may register, and shipowners will respond to economic incentives by selecting the flag state which results in the lowest cost of running the vessel.

85. *Id.*

86. Karim, *supra* note 80, at 128. This percentage is calculated by gross tonnage and refers to all ships flying flags of convenience, or which are otherwise registered in open registries.

87. See INT'L CHAMBER OF SHIPPING, *Shipping Industry Flag State Performance Table* (2021), <http://www.ics-shipping.org/wp-content/uploads/2021/01/Flag-State-Table-2021.pdf> Additionally, it should be noted that major countries, including the United States, have not ratified the MLC, and non-ratification does not inherently equal a complete dearth of labor protections under a country's domestic law.

88. See Kabai, *supra* note 55, at 192–95. Examples of such states include North Korea, Vanuatu, the Marshall Islands, and St. Vincent. *Id.* at 193; See also Eric Powell, *Taming the Beast: How the International Legal Regime Creates and Contains Flags of Convenience*, 19 ANN. SURV. INT'L. & COMP. L. 263, 266 (2013).

89. See INT'L TRANSP. WORKERS' FED'N, *supra* note 84.

nationality or country of residence of its workers or owners, rather than the current ‘genuine relationship’ standard, which refers only to a factual legal relationship between the ship’s owners and the flag state.⁹⁰ While the ITF has had some success in uniting various labor unions and governments to enforce minimum safety standards on ships flying flags of convenience, the nature of international maritime law makes it very difficult for a national seafarers’ union or an unrelated state to exercise control over a ship that does not fly its flag.⁹¹ Fundamentally, the prevalence of flags of convenience and the related lack of flag state accountability for ensuring ship owners are respecting seafarers’ labor rights present a serious gap in the UNCLOS and MLC international maritime regime’s ability to prevent and redress seafarer abandonment.⁹²

D. The Impact of COVID-19

Seafarer abandonment was a significant issue even before the COVID-19 pandemic, but after the emergence of the novel Coronavirus and the resulting economic and social upheaval, 2020 saw staggering increases in seafarer abandonment, with some estimates showing nearly a ninety percent increase in reported cases from 2019.⁹³ This increase can be attributed to both economic conditions, which make it more difficult for shipowners to service their debts or rectify issues with their ships,⁹⁴ as well as increased border control and

90. *See Id.* *See also* Marcelo Molina Villalobas, *The Ever Given and the Problem with Flags of Convenience in International Shipping*, BERKLEY J. INT’L. L. BLOG (Apr. 18, 2021), <https://www.berkeleyjournalofinternationallaw.com/post/the-ever-given-and-the-problem-with-flags-of-convenience-in-international-shipping>.

91. Kabai, *supra* note 55, at 194.

92. In addition to the high potential for labor rights violations, many ship owners which are based in traditional maritime states (those that do impose reasonably strict requirements on ships flying their flags) view shipping firms utilizing flags of convenience as unfair competition, as in addition to cost savings stemming from failures to comply with conventions establishing minimum standards for seafarers, many ships flying flags of convenience operate in virtually tax-free environments. *See Id.*

93. *See* K. Oanh Ha & Bruce Stanley, *Covid-19 Fuels Abandonment of Ships- and Their Cargos and Crews*, INS. J. (Dec. 18, 2020), <https://www.insurancejournal.com/news/international/2020/12/18/594596.htm>.

94. Abandonment is often precipitated by a ship failing an inspection conducted by a port state. Under the MLC, port states are empowered to impound a ship when an inspection shows that the onboard conditions are “(a) clearly hazardous to the safety, health or security of seafarers; or (b) the non-conformity constitutes a serious repeated breach of the requirements of [the MLC].” As these violations can often be expensive to fix, unscrupulous shipowners may choose to abandon the ship and seafarers in lieu of

immigration restrictions on the ability of seafarers to leave their ships or access transnational repatriation.⁹⁵ Additionally, as a result of the pandemic, some countries imposed greater restrictions on unvaccinated or untested crew members, closed their ports entirely, or imposed targeted immigration controls based on factors such as specific flag states or previous calls in heavily infected areas.⁹⁶ Furthermore, the widespread cancelation of international flights, or travel restrictions on those who cannot demonstrate either proof of vaccination or negative COVID-19 tests, also presents logistical barriers to repatriation for seafarers.⁹⁷ Flag states' lack of action on the repatriation of abandoned seafarers, coupled with the practice of port states scrapping previously held immigration and border crossing exemptions for seafarers, all in the face of increased abandonment spurred by the COVID-19 pandemic, has resulted in a situation the ITF considers "a situation of forced labour [...] tantamount to slavery."⁹⁸

III. RESPONSES TO SEAFARER ABANDONMENT

In response to increasing incidences of seafarer abandonment, nations, inter-governmental organizations, and non-governmental organizations (NGOs) alike have attempted to address the problem, with varying degrees of success.⁹⁹ This section discusses and evaluates

undertaking expensive ship repairs in a foreign port. *See* MLC, *supra* note 10, Standard A5.2.1(6); *see also* Abandoned Seafarers, ITF SEAFARERS, <https://www.itfseafarers.org/en/issues/abandoned-seafarers> (last visited Nov. 21, 2021).

95. *See* G.A. RES. 75/313 (Jul. 29, 2021).

96. Alina Miron, *Port Denials and Restrictions in Times of Pandemic: Did International Law Lose its North Star?*, EUR. J. INT'L. L. (Apr. 22, 2020), <https://www.ejiltalk.org/port-denials-and-restrictions-in-times-of-pandemic-did-international-law-lose-its-north/>. Prof. Miron also argues that all members of the World Health Organization ('WHO'), which are bound by the Organization's International Health Regulations, may permissibly restrict port access, but cannot do so "unreasonably", on basis not grounded in scientific studies or upon WHO recommendations. *Id.*

97. *See* U. N. Conf. on Trade and Dev., *Review of Marine Transport 2021*, UNCTAD/RMT/2021 at 111. (Nov. 18, 2021). https://unctad.org/system/files/official-document/rmt2021ch5_en.pdf.

98. *Day of the Seafarer is Meaningless Without Vaccines and Our Rights Restored*, INT'L TRANSP. WORKERS' FED'N (Jun. 25, 2021), <https://www.itfglobal.org/en/news/day-seafarer-meaningless-without-vaccines-and-our-rights-restored>.

99. *See Seafarer Abandonment*, INT'L MARITIME ORG., <https://www.imo.org/en/OurWork/Legal/Pages/Seafarer-abandonment.aspx> (last visited Nov. 21, 2021) (listing IMO/ILO actions to combat seafarer abandonment, as well as a list of NGOs in consultative status with the Organizations); *see also* Ted McDorman, *Regional*

the enactment of region-specific port state control laws¹⁰⁰ and actions by NGOs and seafarer self-advocacy organizations to address the rise of seafarer abandonment cases.¹⁰¹

A. Port State Control Agreements

Port State Control (PSC) refers to an inspection regime that places the ultimate responsibility for ensuring a ship's compliance with relevant international standards on the country in which a ship is physically located at any given time, rather than tasking the flag state with ensuring compliance, irrespective of how distant the ship might be from its territory.¹⁰² Thus, when docking in a nation which has ratified a regional or unilateral PSC agreement, a ship can be impounded if it is in violation of labor or technical requirements, the ability or willingness of the flag state to enforce those standards notwithstanding.¹⁰³ Currently, there are nine regional PSC regimes, with the United States maintaining a tenth; the goal of these regional agreements is to balance the ability of port states to ensure compliance with international norms, while also avoiding repeated inspections when a ship visits multiple adjacent countries.¹⁰⁴

In terms of enforcement, PSC has several advantages over flag-state inspection regimes, including the superior ability for a port state to conduct inspections over a ship within its physical control and territorial waters and the ability for a port state to apply international treaties against ships whose flag states may not have ratified them.¹⁰⁵

Port State Control Agreements: Some Issues of International Law, 5 OCEAN & COASTAL L. J. 207, 211–212 (2005).

100. *See infra* Part III.A.

101. *See infra* Part III.B.

102. *Port State Control*, INT'L MARITIME ORG. (IMO), <https://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx> (last visited Dec. 27, 2021).

103. Z. Oya Ozcayr, *The Use of Port State Control in Maritime Industry and Application of the Paris MoU*, 14 OCEAN & COASTAL L.J. 201, 233 (2009).

104. The ten regional agreements, known as 'memoranda of understanding' or MoUs, are: the Paris MoU, comprising Europe and the north Atlantic; the Tokyo MoU, governing Asia and the Pacific; the Acuerdo de Vina del Mar, governing Latin America; the Caribbean MoU; the Abuja MoU, governing West and Central Africa; the Black Sea MoU; the Mediterranean MoU; the Indian Ocean MoU, and the Riyadh MoU, governing the Arab Gulf. Additionally, the United States operates a tenth PSC regime, but does not partner with other nations in enforcement. *See Id.*

105. Ted L. McDorman, *Regional Port State Control Agreements: Some Issues of International Law*, 5 OCEAN & COASTAL L.J. 207, 210–11 (2000).

While some flag states have argued that port states should not apply international treaties, they have not ratified against ships flying their flags; international law is clear that when a ship voluntarily enters the territorial waters of another state, it is beholden to the national laws of the host nation.¹⁰⁶ Thus, PSC regimes, and especially regional PSC agreements, are able to use their collective economic pressure to force flag of convenience countries into compliance with the MLC regime or forgo the use of the PSC signatory ports and the related market access.¹⁰⁷ Additionally, some PSC regimes have taken direct aim at specific flag of convenience countries with poor safety records and publish ‘black lists’ of countries which are subject to higher inspection standards.¹⁰⁸

B. The Role of Non-Governmental Organizations

In addition to the efforts of national governments and inter-governmental organizations, several NGOs are actively working to assist seafarers directly, both in terms of advocacy and direct assistance efforts.¹⁰⁹ Perhaps the most influential NGO advocacy organization is the ITF, which serves as an international trade union federation comprised of 670 local unions and represents over eighteen million workers from 147 countries.¹¹⁰ The ITF works closely with affiliated unions in education, information sharing, and organizing and mobilizing its membership to advocate for better treatment for seafarers.¹¹¹ The organization also directly represents the interests of seafarers in ILO and IMO proceedings.¹¹² The IFT also employs more

106. *Id.* at 212.

107. Z. Oya Ozcayr, *The Use of Port State Control in Maritime Industry and Application of the Paris MoU*, 14 OCEAN & COASTAL L.J. 201, 234, 237 (2009).

108. Paris Memorandum of Understanding on Port State Control § 4.1.1, Oct. 2, 2020, 41 I.L.M. 1.

109. See THE MISSION TO SEAFARERS, *Ship Abandonment*, <https://www.missiontoseafarers.org/about/our-issues/abandonment> (last visited Mar. 3, 2022). See also INT’L TRANSP. WORKERS’ FED’N, *About Us*, <https://www.itfseafarers.org/en/about-us> (last visited Mar. 3, 2022).

110. *Id.* Because of the transnational nature of the maritime shipping industry, and because of the piecemeal nature of the contract labor system, international federations of local unions have a far better ability to exercise economic pressure on ship owners than a single national union.

111. *Id.*

112. *Id.* Notably, a core focus of the ITF’s advocacy arm is eliminating the use of flags of convenience in shipping. See INT’L TRANSP. WORKERS’ FED’N, *What is the ITF*, <https://www.itfseafarers.org/en/about-us/what-is-the-itf> (last visited Dec. 29, 2021).

than 140 inspectors at ports around the world, who directly work to ensure that seafarers' shipboard conditions meet the relevant international standards.¹¹³ While the ITF is perhaps the most influential and best known advocacy NGO, many others are engaged in similar work, and both the IMO and ILO have multiple NGOs with consultative or observer status working within their organizations specifically on issues of combatting seafarer abandonment.¹¹⁴

In addition to the efforts of seafarer self-advocacy organizations, there are NGOs working to assist abandoned seafarers directly, a process which includes funding and organizing legal cases against abandoning shipowners, ensuring repatriation is achieved in compliance with local immigration codes, and in some cases providing abandoned seafarers with food, water, healthcare, and the ability to contact their families.¹¹⁵ The ITF and its affiliated labor unions conduct and coordinate much of this work, but other local and transnational NGOs, including faith-based organizations, are also engaged in providing direct assistance to abandoned seafarers.¹¹⁶ Often, the same groups are engaged in both direct assistance and legal reform and advocacy efforts simultaneously.¹¹⁷

IV. PROPOSED SOLUTIONS TO THE SEAFARER ABANDONMENT CRISIS

A. *Increase International Labor and COVID-19 Protections for Seafaring Workers*

113. INT'L TRANSP. WORKERS' FED'N, *ITF Inspectors*, <https://www.itfseafarers.org/en/about-us/itf-inspectors> (last visited Dec. 30, 2021)

114. INT'L MARITIME ORG., *Seafarer Abandonment*, <https://www.imo.org/en/OurWork/Legal/Pages/Seafarer-abandonment.aspx> (last visited Dec. 30, 2021). For a full list of the relevant NGOs in consultative or observer status with the IMO and ILO, which include organizations representing both in interests of labor and capital/ownership, *See Id.*

115. *See* THE MISSION TO SEAFARERS, *Seafarer Abandonment*, <https://www.missiontoseafarers.org/about/our-issues/abandonment> (last visited Dec. 30, 2021); *See also* 99 PERCENT INVISIBLE, *Abandoned Ships* (May 4, 2021) <https://99percentinvisible.org/episode/abandoned-ships/>.

116. *Id.*

117. For instance, in 2021, the Mission to Seafarers, in coordination with the IFT, was advocating and providing technical assistance for the drafting of a proposed UAE law which would empower local port officials to seize and auction a ship after sixty days of abandonment, which would allow for a much quicker repatriation process. *See Id.*

The modern UNCLOS–MLC regime has undoubtedly resulted in improvements in labor protections for seafarers, but more can be done.¹¹⁸ Firstly, the UNCLOS should be updated to require not only a ‘genuine’ connection between a flag state and a registered ship, but also a ‘meaningful’ one, which accurately reflects a real connection between a ship, owner or crew, and potential flag state; by mandating a meaningful connection between the ship and the flag state, the prevalence of flags of convenience will be reduced, while strengthening the traditional and important role of flag state jurisdiction in international waters.¹¹⁹ This proposal and similar methods to increase accountability for ensuring seafarers’ labor rights are protected are very likely to be opposed by shipping firms operating under FoCs.¹²⁰ To counteract this, the MLC or individual governments could either guarantee subsidies for voluntary registry with non-FoC countries, or public pressure could be mobilized to threaten economic and reputational damage against shipping companies that operate using FoCs or other firms that use their services.

Additionally, the MLC should be amended to require port states to quickly repatriate seafarers in the event of their abandonment and incur any financial cost associated with their repayment if the original owner cannot be located. By creating a clear chain of custody, as well as robust financial penalties and incentives for allowing ships into port if their owners cannot supply the necessary documentation showing they are meeting their financial obligations to their employees under the MLC, port states and flag states alike will be heavily incentivized to take full responsibility for policing labor violations which occur in their territories. Additionally, and somewhat more simply, countries which as of now have not ratified the MLC should be lobbied to do so.¹²¹

In addition to increasing labor protections for seafarers, NGOs, the ILO and IMO, and local governments should implement robust

118. *See supra* Part II.B.

119. *See* Kabai, *supra* note 55.

120. Firms choose to enroll their ships in FoC national registers precisely because of the lower enforcement and oversight costs. *See* Karim, *supra* note 80.

121. For a full list of countries that have ratified the MLC, *see* INT’L LABOR ORG., *Ratification and Implementation Information for the Maritime Labour Convention, 2006*, <https://www.ilo.org/global/standards/maritime-labour-convention/database-ratification-implementation/lang--en/index.htm> (last visited Dec. 29, 2021).

COVID-19 protections for seafarers.¹²² Seafarers need to be fully vaccinated not only in order to do their jobs safely, but also to avoid transmission of COVID-19 variants across national borders and to safely and effectively return home in the event of their abandonment.¹²³ Therefore, governments, port officials, employers, and unions should partner to provide seafarers with accurate information and free COVID-19 vaccination regimes, including boosters, prior to the seafarers embarking from shore.¹²⁴ Additionally, employers and port officials should ensure that seafarers are provided with accurate vaccination records which would enable them to successfully disembark and access their right to repatriation in the event of their abandonment.¹²⁵

B. *Reallocate Enforcement Obligations*

To combat the rampant use of flags of convenience, and the associated lack of MLC enforcement,¹²⁶ the international community should continue moving away from a primarily flag-state based jurisdictional system and toward port-state control systems with empowered third-party observers.¹²⁷ While it should be admitted that PSC regimes have not given rise to conclusive data showing that they result in amelioration of all types of international shipping violations,¹²⁸ anecdotal data have shown that regions party to PSC regimes, especially those which have low rates of corruption,¹²⁹ have

122. A detailed overview for a COVID-19 vaccination regime for seafarers has been published by the International Chamber of Shipping, which has been endorsed by both seafarer and shipowner organizations. See INT'L CHAMBER OF SHIPPING, *Coronavirus (COVID-19) Roadmap for Vaccination of International Seafarers* (May 2021), <https://www.seafarerswelfare.org/assets/documents/resources/Coronavirus-COVID-19-Roadmap-for-Vaccination-of-International-Seafarers.pdf>.

123. *Id.* at 4.

124. *See Id.* at 8.

125. *Id.* at 21.

126. *See supra* Part II.B.

127. *See supra* Part III.B for a full discussion of port state control systems.

128. This is particularly true in the case of preventing violations of international agreements related to ship-based pollution. See Ho-Sam Bang, *Recommendations for Policies on Port State Control and Port State Jurisdiction*, 44 J. MAR. L. & COM. 115, 126 (2013).

129. TRANSPARENCY INT'L., *Corruption Perceptions Index 2020*, <https://www.transparency.org/en/cpi/2020/index/nzl> (last visited Dec. 30, 2021). Notably, merely moving to PSC regimes, especially if they are not regionally administered and without parallel anti-corruption measures, will to some degree merely substitute a 'race to the bottom' for flag states with one for port states. Even in the face of imperfect anti-

meaningfully reduced ship abandonment; for example, the problem has been largely eliminated from United States and European Union ports.¹³⁰

While flag state jurisdiction should not be eliminated, both regional and international organizations should impose stricter penalties on flag of convenience countries, similar to how the Paris MoU signatories currently subject ‘black listed’ and ‘grey listed’ flag states to increased inspection regimes.¹³¹ Furthermore, port states and flag states alike should empower and fund parallel inspection efforts by seafarer self-advocacy organizations like the ITF, which can also operate as a forum for seafarers to self-report if they suspect imminent abandonment or another violation of their contracts or international agreements.¹³² Parallel efforts might include regional agreements which would specifically criminalize seafarer abandonment and establish a regional forum for prosecution.¹³³

A. *Fund Direct Actions to Support Seafarers*

Finally, increased funding for direct service efforts should be allocated to existing or novel organizations tasked with assisting currently abandoned seafarers.¹³⁴ While every effort should be made to effectuate changes to address seafarer abandonment on a structural level, these efforts must be combined with assistance for currently abandoned seafarers who are actively separated from their families and suffering the negative physical and mental health effects of

corruption efforts, avoiding physical ports which fully and fairly enforce international obligations is much more costly and difficult to shippers than merely failing to register a ship in a flag state that fully engages in due diligence when enforcing obligations.

130. 99 PERCENT INVISIBLE, *Abandoned Ships* (May 4, 2021), <https://99percentinvisible.org/episode/abandoned-ships/>.

131. Paris Memorandum of Understanding on Port State Control § 4.1.1, Oct. 2, 2020, 41 I.L.M. 1.

132. See INT’L TRANSP. WORKERS’ FED’N, *ITF Inspectors*, <https://www.itfseafarers.org/en/about-us/itf-inspectors> (Last visited Dec. 30, 2021).

133. For a parallel example of how this might work, see Prof. Matiangai Sirleaf’s chapter discussing the Malabo Protocol, which created a regional criminal tribunal focused on prosecuting violations related to the trafficking in and dumping of hazardous waste. Although these topics are distinct, both issues face difficulty in international regulation and enforcement, and not accidentally, disproportionality occur in and effect the residents of the Global South. See generally MATIANGAI SIRLEAF, *THE AFRICAN COURT OF JUSTICE AND HUMAN AND PEOPLES’ RIGHTS IN CONTEXT: DEVELOPMENT AND CHALLENGES*, 564-567 (Charles C. Jalloh, Kamari M. Clarke, & Vincent O. Nmeielle eds., 2019).

134. For examples of NGOs assisting seafarers, see *supra* Part III.B.

abandonment.¹³⁵ Additionally, accessing repatriation, navigating immigration systems, and recovering unpaid wages all require significant financial expenditure on legal, administrative, and logistical costs, in addition to providing aid to the families and dependents of seafarers who may not be receiving income for the duration of the abandonment period.¹³⁶

Considering recent victims of seafarer abandonment have at times been forced to wait in deplorable conditions onboard their ships for periods exceeding a year, it is clear that the level of direct assistance is insufficient to meet the present challenge of increased seafarer abandonment.¹³⁷ Therefore, this paper advocates for increased expenditures by national governments, as well as intergovernmental organizations, to continue to fund efforts to directly provide support and legal services to abandoned seafarers and their families.

In addition to direct assistance, there is a role for corporate social responsibility (CSR) policies among shipping firms and their insurance carriers.¹³⁸ CSR programs are emerging but have not gained widespread adoption; CSR is “a fairly new concept to the maritime industry” and lacks any meaningfully unified CSR procedures between shipping firms.¹³⁹ Challenges to implementation of CSR programs in the maritime industry include the amount of stakeholders, often with competing interests, as well as the targeted hiring of low-wage and ‘unskilled’ workers who have comparatively little power.¹⁴⁰ A significant challenge for seafarers remains the outsized influence that

135. *Seafarers and Abandonment: The Impact on Wellbeing*, INT’L SEAFARERS’ WELFARE & ASSISTANCE NETWORK (‘ISWAN’) (Jul. 26, 2021), <https://www.seafarerswelfare.org/news/2021/seafarers-and-abandonment-the-impact-on-wellbeing>.

136. ISWAN, *Seafarers’ Emergency Fund*, <https://www.seafarerswelfare.org/relief-funds/seafarers-emergency-fund> (last visited Dec. 30, 2021).

137. See ISWAN, *Seafarers and Abandonment: the Impact on Wellbeing*, (Jul. 26, 2021), <https://www.seafarerswelfare.org/news/2021/seafarers-and-abandonment-the-impact-on-wellbeing>.

138. CSR programs can be defined as “where the firm goes beyond compliance and engages in ‘actions that appear to further some social good, beyond the interest of the firm and that which is required by law.’” Abigail McWilliams et al., *Corporate Social Responsibility: Strategic Implications*, 43 J. MGMT. STUD. 1–18, 1 (2006).

139. Lan Phoung Tran & Toan Duc Nguyen, *CSR in the Maritime Industry: Impact of Maritime CSR Policies on Seafarers’ Welfare* (2021) (unpublished paper) (on file with SSRN 3804349) at 2.

140. See *Id.* at 10.

corporate actors hold, coupled with relatively light regulation from international law.¹⁴¹ This article advocates for placing public pressure on firms, insurers, and governments associated with maritime shipping in order to force employers to institute *sua sponte* protections or guarantees to assist seafarers should they become abandoned.¹⁴²

V. CONCLUSION

In the face of the ongoing COVID-19 pandemic, the already dire situation of abandoned seafarers has worsened. In part due to a weak international inspection regime, and especially due to an offloading of enforcement responsibilities to flag of convenience countries which in many cases are unwilling or unable to ensure that international labor standards are met, too many seafarers continue to languish in ports far from their homes when their ships are abandoned. This situation has been further exacerbated by a tightening of immigration restrictions due to COVID-19 concerns, which are especially damaging to abandoned seafarers who may not physically be able to access vaccines or negative tests prior to repatriation.¹⁴³

In order to ameliorate this problem, the international community should continue the move toward systems of port-state control, create stronger disincentives for the use of flags of convenience, lift immigration restrictions as applied to abandoned seafarers, and provide more funding to organizations which engage in direct assistance to abandoned seafarers and their families. Additionally, private citizens, NGOs, and public interest groups can do more to raise awareness and generate public pressure against the countries and shipping firms that refuse to fully comply with international law and allow the crisis of seafarer abandonment to continue unabated. Fully tackling this problem requires collective action from governments and citizens alike, in consultation and solidarity with seafarers, who form the lifeblood of international trade.

141. *See Id.*

142. For a model of how social pressure can affect corporate change in the international business environment, *see generally* Pia Lotila, *Corporate Responsiveness to Social Pressure: An Interaction Based Model*, 94:3 J. OF BUS. ETHICS 395, 395–409 (2010).

143. *See* Auror Almendral, *The Seafarers Keeping the Supply Chain Moving Aren't Getting the Vaccines They Need*, QUARTZ, (Oct. 29, 2021) <https://qz.com/2079677/vaccine-issues-for-seafarers-are-worsening-the-supply-chain-crisis/>.