

Report on the communications and debates in the workshop entitled :

*The inventory of crew abandonment cases around the world*¹

By

Véronique GOY²

The abandonment of ships' crews is a phenomenon that has contributed to the genesis of certain recent published works in which the notion of human rights within the maritime industry has been introduced. This is both new and unusual, and the topic is polemical, as have shown the debates of the IMO/ILO joint working group for the last 7 years. The issue has suffered from the absence of legal rules, whether national or international, capable of resolving the problems originating in abandonment. There needs to be more research and information dissemination on every aspect of abandonment, but the sensitive nature of the issue restrains not only its official definition, but also access and dissemination of information. Stephen MILLER, Missions to Seafarers chaplain in Dubai, stated during the workshop that his pastoral work would suffer if he disseminated information on all the cases of abandonment that he has had to deal with, since certain ships belong to ship-owners in the region.

Out of 541 cases of abandonment registered with IMO and ILO on a world-wide level from 1995 onwards, 231 (42,7%) occurred in Europe (of which 178 (32,9%) were in southern Europe). This makes Europe the main 'Port Continent' in the world. Among Port States, Spain wins the day with 38 recorded cases, followed by Italy with 31, Greece with 22, etc. In France, only 18 cases have been reported to the IMO/ILO joint working group, whereas we have recorded 54 for the same period. The same thing can be said about other countries of Europe. Should the definition of abandonment be modified, in particular to include cases of long immobilization of a ship and of its crew, who may be unpaid and fed by charities, while the ship-owner has not totally relinquished his interest in the ship ? Such a modification would no doubt complicate the task of the international community, but the question is worth asking, as certain vested interests in the industry tend to minimize the abandonment problem, being reluctant to publicize in an international database the wrong-doings of employers who have abandoned their crews, or to recognize the negative effects of non payment of salaries.

Abandonment of employees by their employer more and more often extends beyond the seafaring profession and violates workers' human rights in the international context. Seafaring is no doubt the first global profession to emerge on the international market, and seafarers should not thereby be subjected to disenchantment with their profession. Antonio BLASI, ITF inspector in Venice (International transport workers' federation), denounced the tenuous support of the authorities for the search for a concerted solution to the abandonment problem. In his review of how abandonment cases are handled in Spain, Domingo GONZALEZ JOYANES, national legal director of the Apostleship of the Sea and of the Seafarers Rights Centre in Madrid, delegate of ICMA (International christian maritime association) with the ILO (International Labour Organization), emphasized that the ICONS (International commission on shipping) report had already pointed to the depreciation of the seafaring profession, to which crew abandonment contributes.

¹ Translated by James SMITH

² Master in local development policy at Rouen Faculty of Sociology.

Human and economic dimensions of the seafarer abandonment phenomenon.

According to the IMO, crew abandonment is proven when a ship-owner no longer fulfills his obligations with regard to the supply of all that is necessary for "the operation of his vessel", including the payment of seafarers' salaries, the supply of food, medical treatment, etc... and especially, he does not repatriate the seafarers. Generally, he makes a lot of promises that he does not keep.

Crew abandonment testifies to certain ship-owners' bad financial operations (bankruptcy), in particular connected with fluctuating charter rates, over-capacity of total number of ships, inadequate trading margins, over-indebtedness of small companies, and even dishonest financial calculations that sacrifice seafarers to profitability. Substandard operators are often tempted to get involved in suspect or openly criminal activities, and crew abandonment then appears as just a way of managing operational costs.

Tom BROWN and Nick MADDALENA, of the British insurance broker Seacurus, have examined the reasons for crew abandonment by ship-owners, and have identified causes in the excessive confidence granted to ship-owners by banks during shipping boom periods. This was the situation that prevailed in 1995, for example, but it has not stopped seafarers from being the victims of bad ship operation by managers who are not likely to reinvest their profits in the shipping industry. According to them, the situation is not very different today, since the development of China is boosting the industry. They have also identified a number of reasons for the refusal of the P&I Clubs to get involved in the protection of seafarers against the possibility of abandonment. In fact, the retroactive withdrawal of cover, the refusal of direct access, the withdrawal of cover without notice, etc, are among the factors that would tend to make the mutualist system practised by the P & I Clubs poorly adapted to crew abandonment.

As for the qualification of abandonment as a violation of human rights, no court decision has so far formally recognized this. Nonetheless, abandonment does seem to seriously violate seafarers' human rights, their bodily integrity, sometimes the rights of their families themselves, impairing their health (since they sometimes have to put up with hunger and cold weather), their freedom to come and go, to return home, their right to form a family, and the rights of their families themselves. They are sentenced to a kind of imprisoned exile. Their rights to justice and thereby, to humane treatment and adequate reparation, are also violated. Seafarers may also be dissuaded from filing a claim and threatened with inclusion on a blacklist which would prevent them from finding further work.

The absence of a preventive solution to the crew abandonment problem is a serious shortcoming. It not only violates the seafarers' rights, but facilitates reprehensible activities and renders the Port State's legal system inoperative. James SMITH has outlined some governance problems caused by the abandonment of seafarers : the limitations of national legislations, despite the responsibilities of Port states ; the difficulty to accept the claims of seafarers for non payment of salaries ; the difficulties involved in getting a court sentence against ship-owners ; the limitations of the defenders of seafarers : trade unions, lawyers, seafarers' welfare agencies, which, in the final instance, are all called on to substitute for States' action.

International opinion has become aware of these phenomena and illegal acts. The international community has finally resolved to search for a solution. One can only hope that abandoned seafarers obtain justice thanks to a binding instrument guaranteeing human rights. And that crew abandonment becomes a penal offense, especially as it is often connected with other criminal acts.

The search for solutions in international law:

At the end of 2001, the IMO and ILO jointly adopted Resolution A 930 (22) emphasizing the need of special protection for abandoned seafarers, stating that their maintenance, salaries and repatriation ought to constitute a contractual obligation on the part of the employer, calling for an effective financial guarantee system and the flag State's responsibility for abandoned seafarers' maintenance and repatriation. It is proposed that the establishment of the financial security system should be the Flag State's responsibility, with the aim of not only providing a remedy for the problems of abandonment, but also of preventing the latter. Several types of financial guarantee are possible : social security, a national fund, insurance or other forms of financial guarantee.

The IMO and ILO also jointly drafted Resolution A 931 (22), which defines ship-owners' responsibility in the event of seafarers' bodily injury and death. These two resolutions define a number of possible guarantees, but they remain insufficient, since they are not binding. From a formal point of view, since a resolution is not compulsory, it is not applied in practice by ship-owners and P&I Clubs. The two resolutions are not considered useful by the latter, who argue that the new maritime labour convention adopted in February 2006 provides adequate protection. Undoubtedly, one must hope for a binding legal instrument, which is indispensable for the setting up of a financial security system. However, this advance demanded by the seafarers' representatives and by most States finds no acceptance among ship-owners who want to remain free and not to have to pay for the shortcomings of others.

Fabien JORET, spokesperson for the French delegation at the IMO/ILO joint working group, reviewed the avenues that the latter could explore in order to attain « viable long-term solutions ». Following the adoption in February 2006 of the Maritime Labour Convention, amendments could be drafted for inclusion in codes A and B, after its entry into force. However, the crucial question which will determine which direction will be taken by the work on hand is the ship-owners' position, since they presently support the P&I Clubs' refusal. If the ship-owners persist in upholding this position, a lasting solution would have to come from the IMO, whereas it would better suit the traditional role of the ILO, the difficulty being that the latter's tripartite system requires a unanimous decision by the participants. Finally, Fabien JORET examines the relative merits of insurance and guarantees for the protection of seafarers, taking the view that the best protection would come from a combination of the two systems.

Tom BROWN and Nick MADDALENA, on the other hand, were of the opinion that commercial insurance was less costly (being subjected to market forces), more dependable, better regulated, and also less of an imposition for the more reliable companies. The difficulty lies in the question : who will pay ? Both Flag States and Port States are prudent, but nevertheless have the means to fulfill the task of ensuring that ships flying their flag or using

their ports have the required cover : ships' registry and port entry fees can provide sufficient resources to enable them to recover their outlay.

In order to draft an insurance policy, there is a need to determine the correct premium levels, a task for which an inventory of abandonment cases over a period of almost ten years (1995-2005) is required. The treatment of the raw data should enable the frequency of abandonment cases to be gauged, as well as their causes and circumstances, number and state of health of their victims, the legal follow-up (if any) that took place, and especially the cost of abandonment, in terms of unpaid salaries and maintenance and repatriation costs. For Erol KAHVECI, senior researcher at SIRC (Seafarers international research centre), the estimation of the cost of abandonment requires that about 10% of files on abandoned ships be processed. The most complete and significant files would take precedence in establishing a representative sample.

Finally, the workshop felt that the European Union, which would like to be a precursor in the field of social rights within the framework of its forthcoming maritime policy, was in a good position to both support such research and to encourage its member states to set up a financial guarantee to protect seafarers, even if it has to be a unilateral measure.