

## **NEITHER AT SEA NOR ASHORE : THE ABANDONED CREW OF THE OBO BASAK**

by

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### **SOMMAIRE**

*Le but de cet article est de rendre compte des conditions de vie et de travail des marins abandonnés par l'étude d'un cas particulier – celui de l'OBO BASAK. L'article fournit une information consistante et détaillée sur les conditions des marins abandonnés à l'usage des praticiens, des législateurs et des organisations d'accueil des marins.*

*L'article débute avec une description brève de la réglementation la plus récente visant à solutionner le problème de l'abandon des marins. Les expériences de l'équipage de l'OBO BASAK pendant les 9 mois de leur séjour forcé à Dunkerque sont alors évoquées en ordre chronologique. Ainsi, l'attention du lecteur est portée sur les circonstances particulières des marins impliqués dans l'affaire, et l'accent est mis également sur les relations sociales entre eux à bord du navire. L'article démontre aussi la complexité juridique du traitement des cas d'abandon, ainsi que l'impact dévastateur de l'abandon sur les familles des marins. Les événements de cette affaire et les expériences des marins à bord de l'OBO BASAK sont relativement typiques des nombreux cas d'abandon qui ont lieu à travers le monde.*

## ABSTRACT

The aim of this paper is to document the living and working conditions of abandoned seafarers by focusing on one particular case - the *Obo Basak*. The paper provides rich and detailed information on the conditions of abandoned seafarers for practitioners, policy makers and seafarer welfare organisations.

The paper begins with a brief description of recent regulatory developments directed at addressing the problem of abandoned seafarers. The experiences of the *Obo Basak* crew during their nine month period of abandonment in Dunkirk are then documented in chronological order. In doing this, the individual circumstances of the seafarers who were involved are highlighted and special attention is paid to social relations on board. The paper also demonstrates the legal complexity involved in dealing with abandonment cases as well as the devastating impact of the abandonment on the seafarer families. The events of this case and the experiences of the seafarers on the *Obo Basak* are relatively typical of the many cases of abandonment that occur worldwide.

## INTRODUCTION

The 1990s had witnessed some major company collapses leading to abandonment of ships and their crews (i.e. Adriatic Tankers (1995-6) ; Unimar (1996) ; Regency Cruises (1995-6) ; Baltic Shipping (1995-6) ; Blasco (1996-7) ; Dragonix (1997) ; Navrom, Romline and Petromin (1997-8) etc.). However this list is by no means complete and in addition to these major cases there had been many other cases in the 1990s and after. Generally in all these cases the core problems experienced by abandoned seafarers included recovery of back wages, immigration status, support while being abandoned and repatriation.

In response to intensification of seafarer abandonment in the 1990s, the IMO and ILO have recognised that seafarer abandonment is a serious problem. After various meetings between 1999 and 2001 the Joint IMO and ILO expert working group drafted resolutions and related guidelines on the provision of a financial security system for abandoned seafarers. The Legal Committee of IMO and the Governing Body of the ILO approved these draft resolutions and related guidelines. Both resolutions and guidelines took effect on January 1<sup>st</sup> 2002.

Despite the joint IMO and ILO resolutions, the problem of abandonment continues. For example, within the first six months of 2002, the ITF recorded 89 cases of abandonment involving almost 1,800 crew members. In the reported cases there was no suitable financial security in place to deal with

the abandonment cases. Any assistance to the seafarers usually came only from seafarers' welfare organisations.

This paper provides a detailed case study of abandoned seafarers and focuses on the 1973-built, 103,235 dwt, Turkish flagged ore-bulk-oil carrier *Obo Basak* which was abandoned in Dunkirk between July 1997 and March 1998. There are a growing number of studies demonstrating the extent of seafarer abandonment (Couper et al 1998 ; ITF 1999, Alderton et al 2004), and the experience of the *Obo Basak* crew is not untypical.

The paper is based on a series of in-depth interviews with 29 seafarers and their families. Some seafarers and their families were interviewed at various times over a 4-year period (1998 – 2002). Four group interviews were conducted with seafarers and their families. Further interviews were conducted with managers of Marti Shipping (the owners of *Obo Basak*), lawyers involved in the case, the ship's agent, and Dunkirk Port Authority employees. In addition, 6 video tapes filmed by the bosun of the *Obo Basak* during the abandonment were analysed. The International Transport Workers' Federation (ITF) and Mission to Seafarers files on the *Obo Basak* case in their London offices were also examined.

## The Case of the *Obo Basak*

### *The company - Marti Shipping*

In late 1996 the Marti Shipping fleet consisted of nine ships, of which six were owned and three were chartered. Of those owned, Marti had one 78,000-tonne vessel, four 103,000-tonne ships and one 155,000-tonne vessel. It managed three 125,000-tonne ships. In total, its fleet came to 1.12m tonnes which was more than 10 % of the entire Turkish fleet of 11m tonnes (*Lloyd's List Turkey Supplement*, October 1996). Marti formed many one-ship sub-companies sharing the same addresses and telephone numbers (i.e. *Denmar Denizcilik ve Ticaret A.S.* ; *Ermarm Deniz Tasimaciligi* ; *Akdeniz Gemi Isletmeciligi* ; *Marti Deniz Isletmeciligi* ; *Marti Denizcilik ve Ticaret* ; *Marti Gemi Isletmeciligi*). The *Obo Basak* was registered under the *Denmar Denizcilik ve Ticaret A.S.*

Marti was involved in worldwide trade, mainly of coal, iron ore, grain and oil. Its mainstay turnover came from iron ore, and it had very close relationships with the two giant steel factories in Turkey, one at Ereğli, on the Black Sea coast, and the other the Iskenderun Iron and Steel Co on the eastern Mediterranean coast of Anatolia. The company also had offices around the Turkish ports and repair workshops in Istanbul. In total, the company employed circa 500 people. 1997 saw the arrest of almost the entire Marti fleet around the world – as a result of the debts that the company had accumulated.

In October 1998, the General Manager of Marti shipping was interviewed by the author in the company headquarters. When the author visited the company in October 1998, the company seemed to be working at full capacity. On the floor where the general manager's office was situated there were many office workers. The general manager's office was overlooking the Bosphorus and was very luxurious. The general manager volunteered the information that she had been with the company for 15 years and it was very concerned about human rights and seafarer families. When asked what went wrong with the company, she explained :

The owners of the company are outsiders to the industry. They originally were from the Zihni Shipping and in 1980 they started in Marti. Until 1987, Marti shipping owned small vessels (up to 6,000 grt), then they decided to buy big ships – like *Obo Engin*, *Obo Vega* - built in 1969. I think we paid \$16m each to a Norwegian company and continued to buy similar ships from the same company. Our creditors were happy to lend us money at foreign (\$) rates of interest, but they didn't know anything about shipping. The political climate has also affected the company badly because the owner is a close friend of the present PM [Mesut Yilmaz]. However, the political balance in Turkey shifts regularly (*interview by EK, October 1998, Istanbul*).

When the subject moved to the *Obo Basak*, she said that the crew did not work in Dunkirk and they had everything on board including 30 kilograms of ice cream. She claimed that she had not been paid for two years but had been loyal to the company. She also emphasised how much the owner was hurt by the ungratefulness of the *Obo Basak* crew. She said that :

If the owners had a single penny they would pay the families. It might take 2 or maybe 3 years but one day certainly the seafarer families will get all their money. The owner is a merciful person and I'm sure he will have pity even on the *Obo Basak* crew. One day he will pay their money as well (*interview by EK, October 1998, Istanbul*).

She complained about their shipping agent in Dunkirk and she claimed that the agent refused to serve without having money in advance. The Managing Director of Marti stated that the company was on the road to recovery and a couple of the leasing companies that arrested the ships had realised their mistakes and offered to return the ships. Meanwhile, the owner of Marti Shipping is the head of the Istanbul Chamber of Shipping.

### **The Obo Basak - on the way to Dunkirk**

Marti shipping was chartered for 3 voyages by Sollac to deliver ore from Mauritania to their Dunkirk steel plant. For the first voyage, *Obo Basak* left the Black Sea port of Eregli on February 7<sup>th</sup> 1997 for Mauritania. In Eregli, just before departure, 4 new deck cadets joined the ship. One of them was Haluk. It was Haluk's second cadetship at Marti. He tried very hard to get

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his cadetship on Marti's ships as it was a very prestigious company to work for. However, when he joined the ship he found the crew were already complaining that there had been some delays in salary payments, and the situation had got worse since January 1997.

*Obo Basak* finally delivered its cargo from Mauritania to Dunkirk on February 25<sup>th</sup> and left Dunkirk on March 18<sup>th</sup> in ballast, to load coal in Norfolk, Virginia. The ship anchored off Norfolk on April 3<sup>rd</sup>. On the second day at anchorage, official papers were posted on the bridge stating that the ship was under arrest by creditors. The bosun recorded on his camcorder that during his continuous 33 months on board, this was the second arrest that he had seen. The first arrest was in Brazil and had lasted one week.

The bosun started to work for Marti in 1992. He tried for more than a year to get a job in the company and in the end, with the influence of a relative, he succeeded. During his current contract he had been aboard the *Obo Basak* for 33 months (he stayed another 5 months on board till October 1997). Initially, he wanted to have a long contract in order to save money to buy a house, but his wife became seriously ill and he spent over \$ 7000 on the medical expenses. This prolonged his stay on board. However, all his savings gradually disappeared because his wages were not paid regularly.

During the anchorage off Norfolk the bosun recorded that :

The crew is very demoralised and stress is very high. We haven't received any money. There are rumours that Marti went bankrupt but no one knows anything. Some crew members say that there is news about the company in Turkish papers that it is in financial crisis. Is it just gossip or reality ? The ship is arrested by creditors for \$ 500.000 – we don't know what will happen. We are trapped here without any information. We can't use the ship's phone. We have millions of unanswered questions in our minds. I want to leave the ship but how can I get back to Turkey from here ? Even prisoners are better off than us. We are covered in shit up to our necks. Our hands are tied and we are in the middle of the sea (*recorded on April 7<sup>th</sup> 1997*).

The port chaplain in Norfolk knew the ship and the crew well and, with his help, some of the crew members were able to have shore leave. After talking to some of the crew, the port chaplain became very concerned about their welfare and unpaid wages and suggested that he could help the crew members to get their back wages through legal means. The ratings held a meeting in the messroom to explore the possible options, but only one crew member was in favour of seeking legal action. The next day, the ship was able to berth and loaded 50,000 tons of coal for Iskenderun – Turkish Eastern Mediterranean port. *Obo Basak* left Norfolk on circa April 13<sup>th</sup>. The crew was relieved that the next destination was Turkey.

On April 23<sup>rd</sup>, the bosun was in tears when he recorded on his camcorder that he had spoken to his wife over the ship's satellite phone and asked her to send 10m TL [circa \$70] for him to Iskenderun – the next port of call.

He also recorded that he couldn't sleep at night and there were 10 days more to reach Iskenderun. However, the ship dropped anchor in Gibraltar – for more than 10 days. During the anchorage the bosun continued to record the events. The main emphasis was on the stress on board and he mentioned often that they were waiting for fuel at the anchorage. Eventually the ship arrived in Iskenderun on May 15<sup>th</sup>.

In Iskenderun, nine out of 21 crew members left the ship before the end of their contracts because they were not receiving their wages : the Radio officer, AB, Fitter, Pumpman, Welder, Oiler, Wiper, Second Cook and Steward. According to trainee cadet Haluk, the second officer had also left the ship, leaving behind \$ 18,000 unpaid back wages. He was replaced by the captain's nephew. Four cadets also expressed their desire to leave the ship but the captain refused. Haluk recollects :

When the ship arrived in Iskenderun, we had been on board for three and half months. I went to see the captain with the other three cadets to tell him that we would like to leave the ship as none of us had received any money. The captain had blackmailed us and said that, if we left, he would write negative reports on us. As we needed a good report to complete our studies - we were trapped. Later it became clear that, as some deck officers had left the ship, they were short of officers. On our departure from Iskenderun, one of the young officers who didn't leave the ship became the chief mate. He was only 4 years older than me. I became the third officer, although I didn't have the right certificates. I hadn't even graduated from the school yet. The captain also gave me 50 million TL [\$ 350] – that is the only money I had from the company during my 7 months' stay on board (*interviewed by EK, November 1998, the port of Felixstowe, UK*)

In Iskenderun the electrician Aydin telephoned his wife in Istanbul and asked her to bring some money. Aydin was the eldest member of the crew and was born in 1938. He had been at sea since January 1967. He started to work for Marti in 1991 with the influence of a friend, who was a ship surveyor working for Marti. His friend encouraged him to work for Marti and said "they pay in green" (meaning in US\$). When he telephoned his wife, Aydin had been on board for 10 months and had not been paid for the last 6 months. His wife Semsal recollects :

Aydin telephoned me from Iskenderun asking to take some money for him. I had a cheque from the company and went to cash it at the bank, but it bounced. I went to the company and they gave me another post-dated cheque. There was very little money in our bank account and I withdrew all and borrowed some more from the neighbours. I exchanged the money in \$ currency and I took \$500 to Iskenderun. I travelled there by bus with a couple of other wives of the Obo Basak crew [over 18 hours' journey]. In Iskenderun, I stayed on board till the ship left. During my stay, I asked Aydin so many times to return with me back to Istanbul as there were some people leaving the ship. Aydin said "no", that he had been working for the company since

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1991 and had many happy days. He was also concerned that the company's difficulties would deepen if many people left. (*Interview by EK, October 17<sup>th</sup> 1999, Istanbul*).

The bosun had received 10m TL from his wife as he had requested, but he became very concerned and asked for advice from the ship surveyor working for Marti, who came to visit the ship in Iskenderun. The surveyor told the Bosun not to worry about anything. Like Aydin and Caner, many other seafarers got in touch with their families in order to get some money. The families were already in dire straits as, in many cases, the seafarers were the sole breadwinners for their families. Some families did their best to find money. However, some were not able to do so. Mustafa, the oiler, recollects :

There was a pumpman, his name was Hayrettin. He telephoned his family in Cakraz on the Black Sea and asked them to send him some money, but his family had no money. Hayrettin asked them to sell one of their cows in the village. He waited for a couple of weeks, but luckily for him there was no buyer and in the end he left the ship in Iskenderun (*Interview by EK, October 15<sup>th</sup> 1998, Seafarers AKM, Istanbul*).

In order to stop the crew members leaving the ship, Marti had sent a telex to the ship. On May 29<sup>th</sup> 1997, the telex, which was posted on the ship's notice board, read as follows :

Dear Captain XX [name withheld]

Since November 1996, various incidents caused a cash crisis for the company. The reasons for this crisis include delays in ports, various groundings and collisions of our ships and for political reasons one of our creditor banks brought limitations to our use of credit. However, all the difficulties with our payments will be cleared next week and by Friday the 6<sup>th</sup> of June [the date ship sailed from Iskenderun], we expect to pay all our outstanding debts. We would like to thank our staff for being patient and understanding.

Regards

[*MtS File, translated from Turkish by EK*]

In fact, three days after the telex, Marti re-mortgaged the ship for the third time and received \$2.5m from a Turkish bank. The document on the Obo Basak's mortgage record (Ship's mortgages usufruct) shows that between 1995 and 1997 Denmark mortgaged the ship 3 times for the total amount of \$26.5m. The first mortgage was on December 2<sup>nd</sup> 1995 for \$5m by Turk Ticaret Bankasi A.S. (Turkish Bank of Commerce) ; the second mortgage was on March 1<sup>st</sup> 1996 for \$19m by Faysal Islamci Bank of Bahrain E.C. (Faysal Islamic Bank) ; and the third one was on June 2<sup>nd</sup> 1997 for \$2.5m by again Turk Ticaret Bankasi A.S. (*MtS File, Letter sent to MtS, Dunkirk by Lawyer Maitre Carlier, January 15<sup>th</sup> 1998*).

Despite the company receiving \$2.5m when the *Obo Basak* was in Iskenderun, there was not much money for the crew. In Iskenderun, to slow the crew exodus, the captain had paid 5m TL (circa \$35 in May 1997 exchange

rate) to each rating - the lowest paid crew member's monthly salary was \$ 500. The company also tried to fill the positions of seafarers who left the ship.

Yilmaz was an oiler who had been working for Marti since 1986. Yilmaz said that it was not easy to get a job in Marti as the company required a reference from someone who was known to them. They also required a minimum of 4 years' work experience. Yilmaz's first application to the company was rejected, but when he went to try his luck a second time he saw a chief engineer who was working for Marti. Yilmaz had worked with him before and the chief engineer told the personnel director to take on Yilmaz immediately.

In mid May 1997 Marti contacted Yilmaz. He recollects :

I signed off from another Marti ship – the Obo Deniz. The company owed me 7.5 months' salary for my service on board the Obo Deniz. I went to their office [in Istanbul] to get my money. They said that they would pay me if I joined the Obo Basak in Iskenderun. On May 16<sup>th</sup>, they gave me a post dated cheque for May 27<sup>th</sup>. Although the amount [about \$2000] didn't cover all my back wages, I accepted it. I left the cheque with my wife and joined the ship in Iskenderun on May 17<sup>th</sup> (*interviewed by EK, October 21<sup>st</sup> 1998, Cinarcik, Yalova*).

Before departure from Iskenderun, Yilmaz telephoned his wife and mentioned to her the telex received from the company and that all the outstanding debts would be cleared by June 6<sup>th</sup>. He advised his wife to cash the cheque on that day. However, when Yilmaz telephoned his wife later from Dunkirk he learned that his wife went to the bank on June 6<sup>th</sup> to cash the cheque, but the cheque bounced once again.

Murat had had a small metal workshop, but during the Gulf War in 1990 the Turkish economy was hit badly and he had to close his shop down. He started to work for Sonmez shipping but soon they also went bankrupt. He managed to get work in Marti in 1992. Murat was also one of the crew members who joined the Obo Basak in Iskenderun and he recollects :

I had been working for Marti since 1992. I worked on various ships of the company as well as in its workshops – called Kamar. I had not received my salary since January 1997 – they gave me just a little pocket money once or twice. On May 20<sup>th</sup> 1997, while I was working at Kamar, I received a phone call from the personnel director of the company. He told me to pack my belongings and go to Iskenderun to join the Obo Basak. I said, “but I don't have any money and my children are hungry”. He said, “don't worry about it, you just join the ship” (*interview by EK, October 15<sup>th</sup> 1998, Istanbul*).

On the 6<sup>th</sup> of June, *Obo Basak* left Iskenderun in ballast, once again to deliver ore for Sollac from Mauritania to Dunkirk. Murat continues to recollect :



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Between Iskenderun and Dunkirk, for over a month, I was not able to contact my family to find out whether they received any money from the company. There were no cigarettes, no soft drinks or anything like that in the ship's store. In Dunkirk, I learned that my family received no money and that was worse than anything else. (*interview by EK, October 15<sup>th</sup> 1998, Istanbul*)

In Mauritania, while the ship was loading ore for Dunkirk, the second officer, the captain's nephew, signed off unexpectedly. Haluk became second officer and his position as a third officer was filled by another trainee cadet, Cem. Within a month, therefore, Haluk had been promoted from trainee cadet to 3<sup>rd</sup> officer, then to 2<sup>nd</sup> officer. The *Obo Basak* left Mauritania with 30 crew members aboard – 5 officers, 4 deck cadets (two of them – Haluk and Cem - were listed as deck officers) and 21 ratings (including petty officers - electrician, radio officer etc.).

Mustafa joined the *Obo Basak* almost a year earlier and was working in the engine room as an oiler. He spoke of bizarre happenings on the way from Mauritania to Dunkirk :

It was a couple of days out of Mauritania ; I was on watch in the engine room. The chief engineer came and asked me to stop the engines. I asked why. He said that there was a fault. But I said there is nothing wrong with the engines. He said “do as I say”. We drifted for two days. We were in the middle of nowhere. We couldn't drop the anchor and there was no piece of land you could see. We ran the engines from time to time to reach a certain point. As I said, there was nothing wrong with them. (*interviewed by EK, October 15<sup>th</sup>1998, Istanbul*)

Mustafa reckons that the senior officers knew what was going to happen in Dunkirk even well before the ship left Mauritania. Looking back, he puts together the unexpected departure of the second officer and drifting for two days without any apparent reason. While the *Obo Basak* was in Mauritania, another Marti ship (*Obo Deniz*) delivered the second voyage charter for Sollac and she was arrested in Dunkirk. However, Marti had the ship released before the arrival of *Obo Basak*.

### *In Dunkirk*

On arrival in Dunkirk, on July 8<sup>th</sup> 1997, the ship had many more visitors than usual. When the cargo discharging was finished, on the fourth day, the ship was moved to a waiting berth. The ratings started to feel that something unusual was going on. Mustafa, the oiler, continued :

We had been to Dunkirk before and we knew the agent and other people in port, but there were so many new faces around. Almost a week after the arrival in Dunkirk, rumours started that the ship was under arrest. I didn't believe it and many others didn't either. The ratings hardly went to the bridge when the ship was in port. I went up to the bridge with a couple of friends. There were official papers in large print on the starboard side of the bridge.

It was in French. We asked the agent what they were about. He said that the ship was under arrest. We asked the captain why the ship was arrested, he didn't say anything (*interview by EK, October 17<sup>th</sup> 1998, Uskudar, Istanbul*).

In the first instance, there were nine parties involved in the arrest of the ship, with claims against the ship totalling \$4m. Among the companies with claims were Bahrain-based repair yard ASRY with \$650,000 and Korea Line demanding \$900,000. The *Obo Basak*'s owners had left a trail of debt around the world, which had finally caught up with them. As we have seen, the ratings of *Obo Basak* learned the news a week after the actual arrest. Zeynel, the cook, explained that the crew did not know what to do :

We didn't know where to go, how to complain or who to complain to. Our problems were first noticed by the Russian captain of the ship berthed next to us and he informed the Mission. If that hadn't happened, no one would have protected us. (*interview by EK, October 15<sup>th</sup> 1999, Istanbul*).

On hearing from the Russian captain, the Missions to Seafarers port chaplain immediately started to deal with the welfare of the crew and informed the ITF. The local ITF inspector visited the ship and held a meeting with the crew and told them about their legal rights. He also made it clear that he could not take any action against the company at will as the crew had to make a formal complaint. Although the crew became aware of their rights, they were divided about the ITF involvement or making a formal complaint concerning their condition. There were different opinions among the crew, represented by two different groups of seafarers : those working for Marti for a long time, and those who were newly recruited. The first group mainly consisted of Yilmaz (Oiler), Husnu (AB), Caner (Bosun) and Aydin (electrician). These seafarers had been working for the company for 12, 12, 7 and 7 years respectively. The old workers were talking about a similar situation in the mid 1980s, when the company was not able to pay the crew for 3 months, but they sold a brand new coaster and paid all the back wages. They also remembered another incident in the late 1980s, when the company bought *Obo Engin*. They sent messages to all its ships saying that, due to a big payment for *Obo Engin*, they had to delay the payment of salaries for a month. However, the company had asked for those employees who would be affected severely by the delay to contact them.

Yilmaz remembers that in Dunkirk, Mustafa (oiler), Serkan (AB) and Erol (OS) who were in favour of the ITF involvement, frequently came to his cabin to talk about the situation. Yilmaz told them many times that the company kept young seafarers' wages for a couple of months to stop the seafarers deserting the ship in the US and other places like that. But they were owed salaries for up to 9 months. Yilmaz realised the seriousness of the situation when he made a reverse charge telephone call to his wife. He says :

When I spoke to my wife from Dunkirk she told me that the cheque that

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Marti gave me to join the ship bounced on the 6<sup>th</sup> of June and she has been to the company everyday since then only to receive abusive treatment ; and there was nothing to eat at home (*interview by EK, October 15<sup>th</sup> 1998, Istanbul*).

A few days after the visit of the ITF inspector, Yilmaz recollected that during a tea break in the crew's mess-room, Aydin mentioned that his cheque had also bounced and suggested to Caner that they would have to do something as the company was taking advantage of their loyalty. Caner was very cross with him. The situation became so intense that the other crew members had to become involved to separate the two. However, the very next day the situation had changed and the crew members recollect that Caner walked into the crews' mess-room in tears. He had just spoken to his wife and learned how she and the other seafarers' wives had been treated by the company. Caner recollects the telephone conversation between him and his wife and his thoughts afterwards :

I was a bosun and had worked for the company for a long time ; therefore, unlike many other crew members, my wife was able to get some money from the company – not my full salary, but at least she was able to pay the rent and so on. After a certain point, she was not able to get any more money. That day, when I telephoned her, she said that she had just come back from the company and they told her not to disturb them again. My wife told them that she didn't have any money and asked them what they expected her to do. Did they expect her to sell her body on the streets ? She was crying over the phone. When I heard my wife telling me all this, I felt that the whole world had collapsed over me.... I gave my everything to the company - I worked under very difficult and unsafe conditions. I wanted them to run the ship and make money. They were like my second family. In return, they should give at least a little money to live on, but instead to get that sort of treatment affected me very badly (*Interview by EK, October 16<sup>th</sup> 1999, Istanbul*).

Twenty-four members of the crew approached the port chaplain and expressed their desire to take legal action against the company. The local chaplain contacted the ITF headquarters in London and they advised the local inspector to visit the ship to obtain power of attorney forms from seafarers who wished to fill in the form. In late June 1997, the ITF inspector visited the ship and 24 crew members signed power of attorney forms, including the cadets, the radio officer and the electrician. Only the captain, chief engineer, chief officer, second and third engineers and one rating refused to sign. However, as we shall see in some detail, one crewmember (one of the oilers) withdrew his claim later on, reducing the number of crew claims to 23. In consultation with the crew, the ITF inspector's calculation of the total back wages due amounted to approximately \$95,000 (ITF Files, letter from James Smith, August 14<sup>th</sup> 1997). The captain and the chief engineer abandoned the ship the day after the visit of the ITF inspector, Yilmaz said :

I was on 4-8 am watch in the engine room and Husnu [AB] was on the deck. I had a tea break, it was around 6 am and I decided to go to the deck to have a chat with Husnu. We were near the stern of the ship and saw the captain and the chief engineer. They were dressed up and had suitcases in their hands. The gangway was down on the starboard side. They came to the upper deck from the port side and went around. Husnu said “look ! They are leaving the ship” I said “don’t talk rubbish” (*interview by EK, October 15<sup>th</sup> 1998, Istanbul*)

However, the bosun had learned about the senior officers’ arrangement a day before :

The captain and the chief engineer left a day after the ITF inspector’s visit. The inspector made a calculation of our back wages in the crew’s mess-room and went to see the captain to demand the money. The captain’s response was that there was no cash in the ship’s safe. Later that evening, the captain called me and told me that he was leaving the ship next day with the chief engineer. He said that they were doing it for us so that we could get along with our legal action. He also asked me to look after one of the stewards as he didn’t apply to the ITF. I told him that there were no hard feelings. Later I learned that both of them went to work on another Marti ship called *Tahir Kaptan*, but 5 months later they also left Marti and didn’t get any money either. But I can’t understand why they didn’t say goodbye to the crew before they left. We had always been well-mannered towards the officers. (*Interviewed by EK, October 16<sup>th</sup> 1999, Istanbul*)

As we shall see later, during her 9 month arrest in Dunkirk, Obo Basak had four different captains. When the last captain was interviewed in October 1999 in Istanbul, he said that the company knew that the ship would be arrested in Dunkirk while she was in Mauritania. He also said that the company provided the tickets for the captain and chief engineer to leave the ship. However, he was very critical that the captain wrote nothing in the log book about his departure and did not hold a meeting with officers to nominate his successor, and did not inform the crew, leaving them in confusion.

During the interviews and focus group discussions with the Obo Basak crew, the majority of them believed that the captain left the ship with the content of the ship’s safe. However, there are strong indications that there wasn’t much money in the ships’ safe, even for the captain’s personal use. As Caner explains :

The captain didn’t have any money. The ship’s telephones were cut off. We used to telephone home through *Alo Vatan* [Hello motherland]. You telephone the switchboard in Turkey and they connect you if the receiver accepts the caller’s reverse charge call – it is a very expensive service. The captain was feeling very ashamed to use this service. I used to dial *Alo Vatan* for him to contact his family and, after connecting, I would signal him and he would enter the phone box (*Interview by EK, October 16<sup>th</sup> 1999, Istanbul*).

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*Marti's response to the crew action*

On the 29<sup>th</sup> of July, the ITF co-ordinator for France sent a strong letter asking Marti what it intended to do to settle the back wages in full, as well as proper repatriation once this was done (*ITF Files, letter by James Smith, July 29<sup>th</sup> 1997*). Marti did not respond to this letter directly, but sent a fax to the agent for Caner, Aydin and Zeynel (the cook). Caner recollects :

After we applied to the ITF, we [Caner, Aydin and Zeynel] received a fax from the company via the agent. In the fax the company was saying that they would like us to go back to Turkey and they were ready to instruct the agent to buy our tickets immediately. We discussed the content of the fax with the crew openly. The main response from the crew was "don't go, Marti wants to divide us". We decided to stay (*interview by EK, October 16<sup>th</sup>, 1999, Istanbul*).

On August 8<sup>th</sup>, four crew members (3 officers and one of the stewards) who did not take legal action against the company received \$250 each from Marti (*MtS Files, MV Obo Basak, Crew Cash Advance Record, August 8<sup>th</sup> 1997*). On the 12<sup>th</sup> of August, the other 24 crew members wrote letters to support their court case explaining their situation and the reasons for their actions. Here are some of the letters.

Letter 1 :

I haven't received my wages for the last six months. My wife and children at home are suffering. They are looked after by the neighbours and relatives. I haven't got money in my pocket even to buy a razor to shave. I don't know what to do, please help us !

Letter 2 :

My family haven't received any money for the last 10 months. My relatives have been supporting my family, but they cannot do it any more. I want to have my money and go home.

*What he did not write in his letter was that his wife had had a baby quite recently but she could not get out of hospital before paying the expenses. She was taken hostage in hospital with her new born baby.*

Letter 3 :

.... In the last ten months I have only received \$100. I live in a rented house and my wife receives expensive medical treatment, my son is doing his unpaid compulsory military service. I am the only breadwinner. My neighbours cannot support my family anymore. We have been here since the 7<sup>th</sup> of July. None of the officials from the company come to see us. We have been abandoned completely here. Only news we get from the company through the second officer is that – if you take legal action you will pay for it. They should not have done it to us. We need your help, please, please, please !

Three days after these letters, on 15.8.97, copies of a telex were sent by Marti to the 24 crew members. The telex reads as :

In application of article 14 of the Maritime Labour Law, your work contract is terminated.

In conformity with article 21 of the Maritime Labour Law, all the necessary steps have been taken for your repatriation ; airline ticket and expenses of the journey.

If within one week you have not responded to this proposal, in conformity with article 25/II of the Maritime Labour Law, you will lose the provision of repatriation offered and you will return at your own expense (*MtS Files, Dunkirk, translation by EK*).

Article 14 of the Turkish Labour Law gives the right to the ship owner or his/her representative (e.g. the captain) to terminate the contract under occurrence of any of these conditions :

- a) seafarer's refusal to work, or leaving the ship
- b) arrest and imprisonment of seafarer
- c) activities of seafarers against the law, rules and regulations
- d) seafarer's behaviour against the law of the sea or immoral behaviour.

Other parts of the Labour Law list some other conditions, like the change of flag state, disablement or illness of crew member etc. In this respect, as far as the Obo Basak crew was concerned, the application of Article 14 of the Turkish Merchant Navy Labour Code was questionable. However, more importantly, Article 29 of the Labour Law clearly states that :

It is compulsory for the ship owner or his/her representative to pay the seafarer's wages fully in cash according to work contracts.

The maximum period between the payments of the wages should not exceed 1 month.

If the work contract was terminated or broken either by the employer or his/her representative, the seafarer's wages should be paid in full and immediately.

(Deniz Is Kanunu [Turkish Merchant Navy Labour Code] ; *Resmi Gazete* [Official Gazette], April 29<sup>th</sup> 1967, No :12586)

The crew were advised by the port chaplain not to respond on the grounds that judgement had not yet been given in the Dunkirk court in respect of a hearing to establish the legitimacy of their claims. They were told that, should they return home, they would be disqualified from their action. However, one crew member (oiler) had an aunt who worked in the office of Marti in Istanbul and his aunt said that there was a strong chance that she could get his wages. The oiler withdrew his application to the court as a creditor and responded immediately for his air ticket and travel expenses. Although Caner did not withdraw his application to the courts as part of the crew claims, he wrote to Marti that he was willing to accept Marti's offer of repatriation if he was paid his back wages fully. Neither the oiler nor Caner got any response

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from the company. As we shall see later, the oiler was repatriated to Turkey with the other 23 crew members when their tickets were paid by the ITF. His aunt was not able to get his wages. Meanwhile, Marti tried to capitalise on the request for repatriation by the two crew members in the international shipping press :

... The Istanbul [based] company has strongly denied neglecting the welfare of the crew, as has been suggested by the Mission to Seamen in Dunkirk and the International Transport Workers' Federation. It said the vessel was being supplied with provisions, fresh water and bunkers. Crew who previously refused to return to Turkey had "realised their mistake", and applied to the company chairman for repatriation, said a Denmark spokesman (*Lloyd's List* 1/9/1997).

### *Daily work and provisions on board*

Despite all the turmoil, the crew continued to work hard and continued to do repair and maintenance work, as the French *Affaires Maritimes* affirmed after a technical inspection on July 20<sup>th</sup>, finding nothing wrong with the ship. The ship's agent in Dunkirk said that the crew kept the ship in good condition :

We didn't get a cent from Marti for our services, but we continued to act as the ship's agent and one of the main reasons for this was the Obo Basak crew. There was no risk for us because none of the crew went in town to break or steal things. Every crew member remained proud and dignified. There was no riot on board. The situation wasn't easy because they were always waiting, waiting to be paid, waiting for the court to decide today, tomorrow, next week, next month. It was difficult for them to keep calm under the circumstances and sometimes I felt completely useless when I went aboard. There was nothing I could tell them - no news, nothing ! When I was going up the gangway each time I mentally prepared myself to hear comments like "why are you coming on board if you have nothing to tell us" ? But this never happened. They were very friendly. The crew seemed like completely untouched by the problem. AB, cook, oiler, and all the others were working despite being trapped in such a situation and being completely abandoned. They kept the ship very well. (*Interview by EK, September 9<sup>th</sup> 1998, Dunkirk*)

Caner also talked about their daily work in Dunkirk :

In Dunkirk, we carried on with the work as usual. The ship had 9 cargo holds, each with 12,000 tonnes capacity. We cleaned all the cargo holds and lubricated all the hatches. It was a 25 years old ship so chipping rust and painting was done regularly. On top of all this, there were some checks and maintenance work that needed to be done periodically. The ship was moored in a tidal area and this also created some extra work, such as regularly securing the gangway and so on. The departure of the captain and the chief officer and the involvement of the ITF did not stop us working. Even on our last

day onboard, before leaving the ship, we doubled the lines for security reasons. The ship was secured with 18 mooring lines when we left (*interview by EK, October 16<sup>th</sup> 1999, Istanbul*).

The engine room was not different. Hakan and Mustafa, who were both oilers, reported that in Dunkirk they cleaned and maintained all the pistons and injectors, as well as carrying out routine work in the engine room. Both in the engine-room and on deck, watches were kept.

One of the main issues during discussions amongst the crew on taking legal action against the owner was provisions. When the ship arrived in Dunkirk, there was no fresh water and the crew solved this problem by connecting to the port's mains at night time to take fresh water – when the tanks were full, they stopped this as it was a risky practice. As far as food supplies were concerned, although there was no fresh fruit or vegetables in the stores, the cook told the crew that with effective rationing they would have enough rice, pasta, flavour, onion, potato and beans etc. for a month. The crew also made best use of their time while drifting en route from Mauritania to Dunkirk during rest hours by fishing, and were able to store some 500 kg of fish in the deep freeze. (*the cook and the second cook were interviewed by EK, October 15<sup>th</sup> 1999, Istanbul*).

The port chaplain made provisional arrangements with the port authority, who agreed to advance fresh water and fuel for humanitarian and safety reasons. However, food was going to be a problem. The crew appealed to the Turkish Embassy for help, but they received no response to their numerous calls and faxes. In August 1997, the crew decided to appeal directly to the public via the local, national and international press. Three TV and seven radio stations ran stories. In addition, local, national and international newspapers covered the case of the *Obo Basak* (see text box 1, for a newspaper article published in *Libération*). The crew also managed to get two Turkish television stations to come aboard and broadcast and this was followed by reports in many Turkish newspapers. The response from the community in Dunkirk and beyond was enormous. As the ship's agent in Dunkirk explains :

One thing I would say was easier for this particular ship - *Obo Basak* - was that the crew were in fact not abandoned completely. They were not allowed to be repatriated, and nobody was ready to send a replacement crew, but as far as I could see there was enough water and things to eat onboard. Because we have seen abandoned vessels here where the crew were really completely abandoned – nothing to eat or even a piece of soap to wash with.... The situation of the *Obo Basak* crew was not the worse we have seen, for example like the *Samarkand* [a ship abandoned in Dunkirk for 10 months in 1996]. The *Samarkand* crew had nothing to eat, but nothing. That was because in the *Obo Basak* case there was an appeal on TV. A wedding couple came aboard with their wedding cake and a lot of food from their wedding reception. The community spirit was there. Many charitable institutions were involved.



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But there was a balance to be kept – it was done in a way so that the seafarers didn't feel undignified (*interview by EK, September 9<sup>th</sup> 1998, Dunkirk*).

Aydin also recollected events in relation to the response of the community to their appeal :

I saw this young woman walking towards the ship. On the gangway she said that she had heard about us on the radio and came to help. She was second generation of a Turkish migrant family living in Dunkirk. Her name was Serpil and her Turkish was broken. Serpil visited us everyday. She became our translator. She was also working for a charity organisation and arranged that there was a fresh bread delivery every morning. In response to our appeal, further help came from migrant Turkish people living in France, Belgium, and Holland. We had fresh bread, yogurt and everything else. The Mission to Seamen gave us telephone cards every other week. (*Interview by EK, October 17<sup>th</sup> 1999, Istanbul*)

What Husnu said also illustrates the community support :

As soon as they read our news in the papers, three deaf and mute French people came to visit us. We learned that they had been in Turkey for a holiday and had just come back. They brought some biscuits and soap with them and also gave us a cheque for FF 800 to telephone our families in Turkey. Even the deaf and mute people heard about our appeal but no response came from the owner or the Turkish Embassy (*interview by EK, October 15<sup>th</sup> 1998, Istanbul*).

In fact Erol, the OS, recalls that when he telephoned the Turkish Embassy in Paris, the person on the phone said “you are all showmen” and hung-up.

**Text box 1**

**Twenty eight Turkish seafarers abandoned in Dunkirk  
Their vessel was arrested, the master disappeared, and they are penniless**

Twenty eight Turkish seafarers, unpaid. Abandoned by their captain and their employer. Ignored by their Government. Virtually prisoners aboard their ship in the port of Dunkirk. After six weeks, the shipowner – Marti Shipping – has been silent and invisible. The captain of the bulk carrier “OBO Basak” left the ship along with the contents of the safe. Shortly after its arrival early in July the “OBO Basak”, whose owners have left a worldwide trail of bad debt, was arrested by the French authorities on the petition of creditors.

Only after the alarm was raised by an officer of another ship in the port was it discovered that aboard the “OBO Basak” there were about thirty penniless seafarers who had received no wages for nine months. The crew had been afraid to reveal their situation for fear of reprisals. Pressure had been exerted on them by the shipowner to keep quiet. Now the Mission to Seamen and the Franco-British Seamen's Club are caring for the crew by

co-ordinating the supplies of food and other provisions supplied by local voluntary organisations. The port authorities have provided the ship with water and fuel.

On board ship, the crew works normally so that if necessary, the "OBO Basak" could sail immediately. Until a few days ago, none of the crew dared leave the ship for fear that by doing so they would forfeit their chances of getting the wages owed them. A Dunkirk lawyer who is giving his services free of charge has now assured them that they can return home without jeopardising their chances of being paid. "Return to Turkey ? But with what money ?" asks a member of the crew. According to the Reverend Tony Rimmer, Chaplain of the port of Dunkirk, the International Transport Workers' Federation (ITF) has agreed to pay their fares after an embarrassing silence from the Turkish Embassy. Back in Turkey, the situation for the majority of the families is serious. Without any income, some families have had their electricity supplies cut and others face eviction from their houses and apartments. "What is happening to us is less serious than it is for our families", says the Electrician of the OBO Basak. "Here, thanks to the solidarity of the different associations, we can live more or less in a normal way, but our families have nothing."

Dunkirk's commercial court has ruled that the shipowner has until December to reach agreement with his creditors who are owed some Ffr30 million francs. Otherwise, the bulk carrier, which has a value of 4 million dollars, will be auctioned. Even then, the crew will have to wait some months before receiving their wages. According to the Reverend Rimmer, abandonment of ships and crews is all too common. Last year, around fifty vessels were arrested in French ports, most of them with unpaid crews and shortages of food and supplies. "We will shortly be meeting the EU Commissioner for Transport to see if we can organise a solidarity fund for the abandoned crews. We have to hope that European pressure on ships' flag states will make them accept their responsibilities", says Tony Rimmer.

In a separate development, the ITF has asked the French Government not to ratify the Franco-Turkish Commercial Convention drafted by the Alain Juppé government. This proposed that commercial disputes between Turkish citizens in France would not be heard by French courts. An indignant Tony Rimmer said, "If this Convention is ratified it would mean that the courts would not be able to intervene in cases like that of the OBO Basak".

Libération, August 17th 1997  
(Translated by Jaime Veiga)

### *Relations on board*

During social hours, the officers and the ratings were physically separated by their respective mess-rooms. Eventually, the electrician and the radio officer joined the ratings in their mess and recreation rooms. Three officers (second officer, second and third engineers) stayed away from the ratings

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during social hours. However, this was not due to the fact that the ratings and officers had a different attitude towards the company. In Dunkirk, for example, the oiler Yilmaz said that during his 2 months onboard (before the captain's departure) he had seen the captain only once. However, it would be wrong to assume that the ratings were fully united before their action. Although they were divided according to their seniority, many of them also suspected that amongst those 24 there were some seafarers close to the company. This prevented seafarers from openly expressing their views about conditions onboard and collective action. As Murat expressed :

At first, we were reclusive ; however, the feeling of being reported by somebody on board to the company was the main reason for that. We were cautious about talking openly. (*interview by EK, October 16<sup>th</sup> 1998, Istanbul*)

As we have also seen, the news of the families and their sufferings brought the *Obo Basak* crew together. Aydin's English was better than any other crew member's so he became a spokesman for them. Apart from that, no one took any leadership position within the group. Everything was openly discussed in the crews' mess-room. However, with the passage of time, the economic difficulties of the families had an adverse effect on social relations on board. As Husnu said, "relations were good at the beginning, but we became much more stressed later on". Here are some first person accounts to highlight the situation further.

Caner :

There was no major problem amongst the crew, but the money was the key to everything. Everyone was worn out. There was no other talk in the mess-room apart from the situation of the families and the money. Everyone had their own problems. Some heard that their children were ill, some heard that electricity, telephone, water were cut off in their houses. Some heard about bailiffs' visits to their houses. We're all overwhelmed with money and problems at home. It was a vicious circle. When I telephoned my wife, there was no way we could comfort each other. I was unhappy, so was she. How could we comfort each other ? (*interview by EK, October 16<sup>th</sup> 1999, Istanbul*)

Aydin :

You haven't experienced it so you can't understand what it means being abandoned. In Dunkirk, we worked even harder than ever before, just not to think about anything else. Everyone onboard was restless, psychologically and financially collapsed. A time came when I was afraid to ask anyone how they were. I never forgot that one day I was having tea in the galley and AB Hasan came in. He was in tears. His wife had had a baby recently. He was telling me that he had spoken to his wife and his five children were hungry. They had already sold their 2 cows. A cow is very important in a village, you might not have cash but you could get milk and make cheese and yogurt. There was nothing I could do for him.... Many of the crew were the same, they became half insane, the situation of the families was terrible. Many were married with 4, 3, 2 children (*interview by EK, October 17<sup>th</sup> 1999, Istanbul*).

Murat :

I tried to sell some electronic goods that I had on board, but no one had money to buy them. I became very depressed and walked on the jetty up and down for three days. In the end, I decided to run away. I threw all my belongings into a skip, but the friends on board calmed me down and stopped me (*interview by EK, October 15<sup>th</sup> 1998, Istanbul*).

In desperation, Husnu and Hakan separately contacted the company saying that they were willing to withdraw their court case if they were sent tickets for repatriation. As they explain :

Hakan :

I wrote to the company saying that I didn't want any money or anything, "just help me to return to Turkey", but there was no response (*interview by EK, October 18<sup>th</sup> 1998, Istanbul*).

Husnu :

I telephoned the company and said that I wanted to return home, but they said that I need to speak to the owner first and apologise to him. I lost my dignity by telephoning them, but I was not prepared to go that far (*interview by EK, October 17<sup>th</sup> 1998, Istanbul*).

As there was no help coming from the company, all the attention of the crew focused on the forthcoming court case and that was the only way out from Dunkirk for the seafarers. The seafarers were also very optimistic that the courts in Dunkirk would settle their back wages and that justice would be done.

### **The court case and the repatriation of the crew**

The *Obo Basak* case was complicated from the start by three factors :

- being a national flag ship, ITF does not normally arrest the vessel on behalf of the crew ;
- The company for many years operated an illegal system by officially contracting crews for a very tiny salary, for tax purposes, but in fact giving the bulk of the money in cash. So there was no written contract to establish the wages owed to the seafarers ;
- There was a bi-lateral commercial treaty between France and Turkey, dated 6.11.1996 – article 10 of which agrees that neither State should allow litigation by the other's nationals in the host courts. This treaty seemed to deny what should be the basic rights of individuals to have access to justice in the host countries.

A local lawyer in Dunkirk (who also arrested another Marti ship, *Obo Deniz*, in early June 1997) said that he was willing to arrest the vessel on behalf of the crew, without ITF involvement, for the advance of ushers' fees

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(around FF 9,000). He also said that he did not need to be paid on the crew's behalf, as he would get enough money from the *Obo Basak* case since he was representing some other creditors. The crew accepted the offer. They had originally filled in ITF power of attorney forms, and they also had to fill in similar forms authorising the lawyer to act. The lawyer had also defended at least two other crews of abandoned ships (*Samarkand* and *River Asab*), without payment. The 24 Russian crew of *Samarkand* had been abandoned in Dunkirk between March and December 1996 and had similar contractual problems to the *Obo Basak* crew. The lawyer was successful in obtaining French salary rates for the *Samarkand* crew in the absence of work contracts. The crew also won psychological damages. Three months after the sale of the vessel they received their unpaid wages. With the involvement of the local lawyer, the first two of the above complications were in practice solved. In fact, as the report of the ITF inspector shows, the Affaires Maritimes had instructed the Gendarmerie to draw up a list of the *Obo Basak* crew members with salary claims, ascertain what they should receive as if they were French seafarers, and hand this to their lawyer (*ITF Files*, London, Report on the *Obo Basak*, by James Smith, October 14<sup>th</sup> 1997).

As far as the 1996 bi-lateral agreement was concerned, Article 10 of the Franco-Turkish agreement aimed to restrict the rights of seafarers to have recourse to the French courts in order to recoup salary arrears. The French Government had a further 20 similar agreements, signed mostly with francophone African countries. The lawyer for the *Obo Basak* crew was of the opinion that Article 10 of the bi-lateral agreement was contrary to the French law of 1967 on crews' rights when ships were arrested. It also seemed to be contrary to the rights of seafarers as defined by the Brussels convention of 1952. The Franco-Turkish agreement was published in the Turkish Official Gazette and this in effect ratified the agreement by Turkey (*Resmi Gazete [Official Gazette]*, 6 November 1996, No : 22809), but there were questions over the French Government's ratification of the agreement, as it had not been signed or ratified by France. However, the application of this bi-lateral agreement was still open to the court's interpretation.

The first court hearing relating to the seafarers' claims was set for September 2<sup>nd</sup> 1997 and was expected to last one week. This meant that the *Obo Basak* crew would be repatriated soon after the first hearing on September 2<sup>nd</sup>. It was expected that on the first day of the hearing the seafarers would be recognised as creditors. To lessen the seafarers and their families' ordeal, the port chaplain and their lawyer decided to proceed immediately with a swift repatriation of the crew soon after the first hearing. They approached the ship's agent to request the repatriation of the crew from Marti. However Marti refused to repatriate and the ship's agent, still effectively acting for Marti, also refused to issue the release of seafarers for repatriation and informed the harbour master about Marti's decision. The agent explains his standpoint :

We did our job as a charterer's agent first because normally as a charterer's [Sollac] agent we should have been able to say to the owners just after discharging the cargo - when we shifted the vessel to the waiting berth - "our job is finished". We asked Marti to have another agent or to have a caretaking agent in Dunkirk. We exchanged some telexes. They said that they had nobody. Then we made our proposal regarding what our fee would be and we didn't get a cent since then, but we kept on acting as their agent. It is a question of our shipping tradition : we have been here for two centuries. It is also easy to let people down when they are in trouble. We were not responsible for making payments on behalf of Marti, so there was no risk for us (*interview by EK, September 9<sup>th</sup> 1998, Dunkirk*).

A week after the refusal of repatriation by Marti, their decision was also reported in the shipping press :

Turkish ship-owner and manager Marti Shipping & Trading has refused to repatriate the crew of ore/bulk/oil mv Obo Basak under arrest in Dunkirk and has told the ship's agent that the crew is not to leave the vessel. (*Lloyd's List, August 26<sup>th</sup> 1997*).

On condition that the repatriation of the crew after the first court hearing would not jeopardise the seafarers' claims in courts, the ITF offered to advance the ticket fares of those 24 seeking help. The letter of assurance was provided by the lawyer to the ITF immediately, but the repatriation was still a problem. Since Marti and their agent in Dunkirk refused to assist the repatriation of the crew, the lawyer turned to the immigration police for a solution. The lawyer and the port chaplain wrote to the immigration police to obtain safe conducts to the airport. The immigration police refused on the grounds that seafarers, having arrived in the country by sea, may only leave by sea. The immigration police also emphasised that there was no official document to say that the crew could leave the ship. Having been turned down by immigration, the lawyer tried the harbour master next but he also refused to authorise the crew repatriation on the grounds that the ship would not be secured. The lawyer had to take a tough stand and argued that each crew member had been dismissed by the company, and the immigration and the harbour master could be liable and taken to court for illegal detention of foreign nationals. It was also suggested that, for the safe keeping of the ship, the port authority could employ French seafarers to take the place of Turkish seafarers. In the end, the persistence of the lawyer and the port chaplain paid off and the harbour master agreed that only 8 seafarers needed to stay onboard for the safety of the vessel in port. He gave the rank of each who should stay (a deck officer, an engine room officer, electrician, cook, two deck and two engine room ratings). As the harbour master was not willing to employ French seafarers, the pressure was put on Marti via the agent to repatriate the crew on board, and send a relief crew of eight.

During the court hearing on the 2<sup>nd</sup> of September, the owners instructed their lawyer to claim that French courts were not competent to hear the case

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and that it should be heard in Turkey. There was also an argument that Marti Shipping and Denmar were different companies, one owned the ship and the other one employed the seafarers. However, this was rejected by the judge on the grounds that some papers submitted to the court were letter-headed by Marti and some others came from Denmar, so therefore the court deemed that they were one and the same. Nonetheless, the first requests for formal arrests and the crew's claims were heard. The lawyer for the crew argued in his presentation that the bi-lateral agreement with Turkey had no validity and also stated that the absence of written contracts for the crew meant that French wages should be paid for equivalent ranks on board. He quoted his own "*River Asab*" judgement for this by the same courts. He also lodged a claim on their behalf for FFr1.6m (\$256,000) wages, based on salaries in the French merchant navy. The final decision for the crew claims was expected to be given on the 5<sup>th</sup> or the 9<sup>th</sup> of September. The managing director of Marti commented in the shipping press that the sum was more than required and said that "the company owes the crew USD 76,000" ("*Marti keeps fighting*", by Gillian Whittaker, *Trade Winds*, September 1997).

Meanwhile on the 3<sup>rd</sup> of September, two crew members were repatriated for compassionate reasons. The oiler, Necdet, wanted to be with his wife who was undergoing a critical hospital operation. His son was also a kidney patient. The radio officer Ferit was anxious to attend the wedding of his son, for which he originally hoped to pay from his earnings at sea. The ITF paid for their repatriation. However the next day the ITF inspector received a fax message from Marti via the agent. It read as :

4 September 1997

Message from Marti to Lemaire

Re : M/V Obo Basak

Please convey this message to the ITF representative.

We have been advised by the master that 22 crew of subject vessel will be repatriated to Turkey by ITF. By repatriation of 22 crew, there will be only 3 persons onboard. However, Dunkirk Port Authority would require a minimum of 8 crew to remain onboard for the ship safety. Although the court would order a watchman, we hold you fully responsible for all consequences. (*MtS Files, Dunkirk*)

However, the ITF took no notice and on the 7<sup>th</sup> of September four cadets were also repatriated as their final term at the maritime school was about to start. The remaining *Obo Basak* crew went to court again to hear the judge award them 70 % of a French seafarer's salary of equivalent rank to each. But they were told that they would not be able to receive their money for at least another six months. After hearing the case, on the 9<sup>th</sup> of September a further 14 crew members were repatriated. The Mission to Seafarers gave FF800 to each seafarer to help them to reach their houses from the airport in Istanbul. As requested by the harbour master, in addition to three officers, four ratings (Caner, Aydin, Hasan and Mustafa) stayed aboard waiting for

their reliefs. The port authority accepted that 7 seafarers should remain onboard since Marti had promised replacements within the week. Meanwhile Caner received an urgent message that his wife was taken to hospital to have kidney surgery on the 19<sup>th</sup> of September. The port chaplain drove him to the airport in Paris at 4 am on the day of the operation.

During this time, there was an intense exchange of messages between the harbour master, the agent and Marti in relation to the replacement crew. The correspondence started in mid-August and finally, on the 15<sup>th</sup> of September, Marti submitted the names and ranks of 8 seafarers to the harbour master via the agent. However, the harbour master refused the list on the basis that one of the persons reported as a crew member was a two-year-old child. In fact Marti contacted an electrical officer called Adem and for some reason Adem wanted to join the ship with his family (his wife and two-year-old son). The wife was listed in the crew list as a purser. After the rejection of the first crew list, another crew list arrived on the 18<sup>th</sup> of September with names and ranks of 8 crew members. This time the harbour master accepted the list. The list contained a bosun (Yasar), an oiler (Huseyin), a cook (Bekir), a donkeyman (Mustafa C.), an AB (Yusuf) and a second officer (Volkan), Electrical officer (Hayati) and a second engineer (Metin).

#### **Text box 2**

##### **Turkish crew wins court fight for wages**

James Brewer

Monday September 8<sup>th</sup> 1997

Lloyd's List

A French court has backed a pay claim made by 23 Turkish crew of the combination carrier the OBO BASAK, according to the Rev Anthony Rimmer, a Missions to Seamen chaplain acting on the crew's behalf, writes James Brewer.

Dunkirk's Tribunal d'Instance awarded them 70 % of the FF1.6m (Dollars 256,000) sought, Mr Rimmer said. The Turkish-flag vessel would be held as collateral against the claim and, in the absence of a settlement, sold, the court decided.

The crew succeeded in the application to be paid according to French rates of pay.

Missions to Seamen lawyer Jean-Claude Carlier represented the crew, some of whom said they had not been paid for nine and a half months. Mr Rimmer said only three crew would remain on board. Another five would have to be hired to reach the statutory minimum manning level.

The action was taken in relation to Istanbul-based Marti Denizcilik ve Ticaret, which says it is the manager of the vessel, and another Turkish company, Denmar, which says it is the owner. The Turkish parties say the vessel has been wrongfully arrested.

Organisations claiming to be creditors include Dunkirk port authority and a bunkering company.



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As we have seen, the court in Dunkirk decided in favour of the seafarers – the judge awarded them 70 per cent of a French seafarer's salary of equivalent rank to each (see also Text Box 2) The court in Dunkirk also scheduled the sale of the ship for October 15<sup>th</sup> 1997. Marti Shipping, however, took the local court's ruling to the court of appeal in Douai. The appeal was upheld. The court in Douai ruled that claims by Turkish citizens against other Turkish citizens had to be heard in Turkish courts. Ironically, the ruling of the court of appeal was in line with Article X of the unratified Franco-Turkish bi-lateral agreement. The lawyer of *Obo Basak* crew then advised that the appeal court ruling could be successfully challenged in the Supreme Court but that he was not qualified to conduct cases at that level. The Missions to Seafarers in Dunkirk then approached the ITF to ask them to provide sufficient funding for a study to evaluate the prospects of a successful appeal. The ITF agreed.

But the ordeal of the replacement crew in Dunkirk was about to enter a new phase. The following section documents their experiences from the beginning of their journey in Istanbul to join *Obo Basak*.

### *The replacement crew*

The acting captain Adil remained on board from the original crew. The eight new crew members arrived in two groups, the first group arrived on September 25<sup>th</sup> (relieving Aydin and Hasan on the 26<sup>th</sup>) and the second group – the remaining 3 - arrived on October 2<sup>nd</sup> (relieving the last remaining rating, Mustafa, from the original crew). Before their departure from Turkey, the replacement crew were told not to believe anything that the Turkish press reported about the *Obo Basak*. The replacement crew were also told that the sea careers of the 23 crew members of *Obo Basak* were ended because they were blacklisted. They were also warned to keep away from the local chaplain because he was trying to convert Muslim seafarers to Christianity. They were assured by Marti that the company had won the court case and the ship would be ready to sail back to Turkey in 15 days' time (reported by Mustafa C., October 18<sup>th</sup> 1998). However, the court case that Marti referred to was one where the court in Dunkirk had dismissed a \$1m claim of Korean Trading House Pan Ocean against Margem, ruling that a link between Margem and the vessel's owning company, Denmar, could not be proven. Interestingly, a London-based credit information company, International Company Profile, listed on its website Armar, Denmar, Egemar, Ermar, Izmar and Margem as part of Marti Shipping and all these sub companies shared the same address. There were another 23 creditors in the queue and 18 of them, including the port of Dunkirk and the *Obo Basak* crew, were represented by the same lawyer (*Trade Winds*, 4/9/1998).

Mustafa C. had been at sea since 1980, but in 1986, and while at sea, he heard that his father had died. He returned home immediately and didn't go

back to sea. His daughter was then 9 months old and his father had left money to start a business. He opened a small garage and then expanded into a car hire business with a partner. However, the partner subsequently disappeared with a large sum of money and the business went bankrupt. He had to go back to sea again after twelve years. He joined Marti Shipping in 1998 and his first voyage was to Brazil :

I was aboard the *Akova*. After seventy days we came back to Turkey to Eregli with iron ore. I telephoned home and my wife told me that she had received no money from the company. I left the ship immediately. I kept telephoning the company for the money, but there was no luck (*interview by EK, October 18<sup>th</sup> 1998, Istanbul*).

Mustafa received an unexpected phone call from the company 45 days after he had left the *Akova* in Eregli. It was the personnel director and he said that the company needed some seafarers to go to Dunkirk. If Mustafa went there he would receive his 70 days of back wages – 90 million TL. Mustafa insisted he had to have the money first, but the director also said that if he gave the money to him he could not go to Dunkirk. Mustafa went to Marti headquarters to negotiate with the personnel director :

The personnel director told me that I'd return to Turkey with *Obo Basak* in two weeks' time. I told him that the news about the ship in the papers was that the seafarers were hungry ; there was no fuel onboard etc. He told me not to believe them. He assured me that Marti won the court case and the ship would leave Dunkirk soon (*interview by EK, October 18<sup>th</sup> 1998, Istanbul*).

After the meeting with the personnel director the deal was done. Mustafa's close friend Yusuf was also working for Marti and was trusted by both parties. The arrangement was that the personnel director would give 90 million TL to Yusuf and, after Mustafa's departure to Paris, Yusuf would deliver the money to Aysel (Mustafa's wife). Mustafa had to accept the arrangement because he was desperate. He also met Metin, Yasar and Yusuf (a replacement crew member) at Marti headquarters. They were also being asked to join the ship in Dunkirk.

Metin started to work for Marti in 1980. First he was an oiler and, eventually, a fourth engineer. When the company contacted Metin, he had been ashore 2 months, trying to recover from his experience aboard another Marti ship – the *Obo Engin*. The ship had been arrested in China and there were no provisions on board. Metin was repatriated to Turkey on compassionate grounds when his daughter was taken to hospital with hepatitis B. The company owed him 10 months' wages – he had not been paid since October 1996. In October 1997 he went to the company to make some inquiries about his unpaid wages. Since an engine room officer was one of the ranks requested by the harbour master in Dunkirk and Marti was having difficulty in finding one, Metin, knowing nothing of the situation, was asked and agreed to join the *Obo Basak* in Dunkirk :

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The company owed me rather a lot of back wages. Although I received very nominal pocket money – which is not worth mentioning – I hadn't received any proper money since October 1996. They told me that – Mustafa C. was also at present – “we will pay 80 % of your salary on the day of your departure to Dunkirk”. They asked me to leave my passport with them for a French visa. Before the airport, I went to the company to receive 80 % of my back wages, but they gave me only \$1,000. They told me that I would receive the rest as soon as I arrived in Dunkirk. What could I do ? I had to believe them (*interview by EK, October 20<sup>th</sup> 1998, Istanbul*).

*Obo Engin*, the arrested ship that Metin left in China, hit the international maritime press in October 1997 after fleeing the Suez Canal with nine Egyptian officials as unwilling passengers (see *Lloyd's List* 25<sup>th</sup>, 28<sup>th</sup>, & 31<sup>st</sup> of October 1997). The vessel fled from the Suez Canal defying a ban on its departure imposed by an Egyptian court after the ship's agent complained its owners had not paid him \$375,000 in canal fees. The ship had been carrying 44,000 tonnes of coal from Singapore to Turkey. In April 1998, six months after the incident, a court in Cairo sentenced the captain of *Obo Engin* to 15 years in his absence (*Middle East Times Egypt, 20/4/1998*)

Two Marti ships, *Obo Selim* and *Obo Elif*, were arrested in Gibraltar by Den Norske Bank (DbN) and on the 16<sup>th</sup> of September 1997, they were sold. Yusuf, Bekir, Yasar, Hayati and Huseyin were aboard the *Obo Selim* in Gibraltar and, after the sale of the ship, returned to Istanbul with the other crew members. On average, the company owed them 5 months back wages each. They were approached by Marti and had been told that the *Obo Basak* was ready to sail after a court case had been resolved. They would be paid wages owed as soon as the ship began to earn money again. Hulya, Bekir's wife, said that when her husband joined *Obo Basak*, the company owed him 4 months' back wages. Bekir spent 6 months on board the *Obo Selim* unpaid, but the Norwegian bank paid the last two months' salaries as the ship was under arrest by them during that period (*Reported by the Replacement Crew, October 15<sup>th</sup>, 1999, Kadikoy, Istanbul*). On September 25<sup>th</sup>, five crew members (Mustafa C., Metin, Yusuf, Yasar and Volkan the second officer) joined the *Obo Basak* and they were followed by a second group of three seafarers (Huseyin, Hayati and Bekir) on the 2<sup>nd</sup> of October.

In Dunkirk, on the 5<sup>th</sup> of October 1997, the port chaplain held a meeting with the new crew. The seafarers said that the periods for which they had not been paid were (in months) 2, 3, 4, 5, 7, 7, 10 (one crew member refused to say how long). The chaplain suggested that he would consult the lawyer in Dunkirk about their ability to claim for wages earned on their previous ship, along with their time on the *Obo Basak*. However, they told the chaplain that they wanted to test the loyalty and honest dealing of Marti for themselves before coming to any conclusions about action. Before they left Turkey, Marti had promised to pay wages owed to their families and give money to the seafarers after they had been on board one month, and would pay the remainder before too long. This, they said, would be one test. They also said

that Marti had sent \$1,000 with each group that joined the ship for the ship's safe (\$2,000 in total), for provisions (*MtS Files*, Dunkirk, *Obo Basak* Up-Data September 3<sup>rd</sup>, 4<sup>th</sup>, and 28<sup>th</sup> and October 5<sup>th</sup> 1997).

Around October 27<sup>th</sup>1997, the acting captain (Adil), and second officer (Volkan), went back to Turkey. In their case, there wasn't any involvement with the ship's agent, the Mission or the ITF, and the reasons for their departure are not known. Marti again started to look for officers to replace them. Aydemir had worked for the company for 15 years. He was the brother of Zeynel, the *Obo Basak's* cook. The company owed Aydemir 5 months wages. He was approached by Marti to go to Dunkirk and was promised promotion from Bosun to third officer if he joined the *Obo Basak*. He accepted the offer despite a warning from his brother, Zeynel, on his return to Turkey from Dunkirk. When Aydemir was asked why he ignored his brother's warnings, he explained that the company told him that they would pay his back wages. Unlike many other seafarers, Aydemir was told by Marti that *Obo Basak* would be sold in November 1997. Aydemir had also heard that when *Obo Selim* and *Obo Elif* were sold in Gibraltar, the Norwegian company paid the crews their salaries while the ship was under arrest ; so he thought that if the *Obo Basak* was sold he would get some money and would be back in Turkey a month later. Aydemir, together with Captain Cem, joined *Obo Basak* on October 27<sup>th</sup> in Dunkirk as a third officer.

Captain Cem had worked for Marti as a superintendent. When Marti contacted him to join the *Obo Basak*, he was about to set up a new business in one of the ports in Istanbul. At first, he said that he could not join due to his new business, but Marti managed to persuade him and told him that he would be away less than a month. However, Cem was stuck in Dunkirk and in the end he told the company he was returning back to Istanbul at his own expense. Cem was also determined to take Yusuf back with him to Turkey, as Yusuf was very ill. As he lost his house in Turkey due to not being able to pay the instalments, Yusuf had developed a heart condition and was seriously depressed (*reported by Mustafa, Replacement Crew, October 15<sup>th</sup> 1999, Kadikoy, Istanbul*)

The replacement crew did not receive any wages from Marti. Their situation was in fact worse than the first crew. Their ship was removed to an isolated berth and by January 1998 the ship's electricity, supplied from ashore by the port authority, was cut off. Since there was no fuel aboard for the ship's generator, and therefore no adequate heating and lighting, the remaining crew's health deteriorated in the winter conditions. Metin :

It was all right at the beginning, we were using electricity from the port. But later they cut the supply. We started to use the ship's generator. In winter we ran out of fuel. All of us got ill. I had bronchiectasis and Yusuf's condition became worse. We had received no wages from the company. They kept promising to repatriate and pay us. None of it materialised.

Captain Cem returned to Turkey with Yusuf on January 28<sup>th</sup> 1998. The

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company did not send a replacement for Yusuf. Captain Cem's relief, Captain Zeki, arrived in Dunkirk on January 27<sup>th</sup>, and was the last to join the ship.

Captain Zeki had resigned from the Turkish Navy in 1985 and worked for Marti until 1989. But as Marti started to buy OBO (Oil-Bulk-Ore carrier) - type ships, he decided to leave the company, as he preferred to work on small bulk carriers. He recollects a phone call from Marti that was made in January 1998 :

They asked me to join *Obo Basak* in Dunkirk, but by chance I had heard about the ship on the news a couple of days earlier. I told them this, but they said there would be a court case on February 20<sup>th</sup>, that the ship would be released, would load coal for Iskenderun, and they were asking me to just bring the ship back to Turkey. Well, I always felt gratitude towards Marti that they had helped me in my difficult days in the 1980s, so I felt that I had to do something for them in return.... I can't remember the exact amount, but they gave me either \$ 3,000 or \$ 5,000 to take to the ship, for daily expenses (*interview by EK, October 18<sup>th</sup> 1998, Istanbul*).

Zeki, of course, had learned the real situation on his arrival in Dunkirk :

When I started to read the documents on board, I saw the public auction decision by the French courts. I knew then the ship was never going back to Turkey, but I could not go back immediately. I didn't want to leave the crew behind. They were extremely demoralised (*interview by EK, October 18<sup>th</sup> 1998, Istanbul*).

Zeki was familiar with abandonment - as one of his previous ships was abandoned in Genoa. He was stranded for 10 months and 5 days and spent the last 3 months as the only crew member. His experience proved to be extremely valuable for the *Obo Basak* crew. He promised them that he would get them all back to Turkey. "That was the only hope to keep the crew going" he said. The crew's hardship was also eased because he had brought some money with him. Zeki gave some pocket money to the crew, but kept the rest for provisions - as he knew that they would be there at least until the 20<sup>th</sup> of March. By this time, the majority of the crew had not received any money from the company for over a year, and as reported earlier, the ship was now tied up in an area of Dunkirk's docks where there were no shore facilities. There was no fuel nor electricity, and fresh water was about to run out. He sent faxes via the agent and made numerous phone calls to the company, but nothing came. The crew was heavily reliant upon charitable help including Turkish market stall holders, who knew the crew and sold them food at very low prices. During this time, Huseyin fell on the deck and was badly bruised. Lacking access to health care, the local Turkish community provided assistance by "lending" him a local resident's papers so that he could receive professional treatment. He did not fully recover while in Dunkirk. Every evening the crew walked to the Mission, where they phoned home. On these occasions, Captain Zeki said :

After each telephone call home, crew members were returning to the ship in a state – shaking like a leaf. The news from home was distressing - no money, no food, children being ill. As a representative of the owner, in each telephone conversation to the company, I explained the situation of the crew but the response was “you have money to buy food, what else do you want?”. All the seafarers were there to earn money and support their families and there was nothing coming from the company. Personally there was not much I could do but support them psychologically. I was not in a good condition, either. I could not share my problems with the crew. I had no money in my pocket. I felt suffocated after each phone call home and in the end I had to ask my wife not to tell me anything that I couldn't solve from Dunkirk (*interview by EK, October 18<sup>th</sup> 1998, Istanbul*).

During this period, Metin heard that his daughter was still struggling with hepatitis B and his family had received no money from the company, neither for his wages from *Obo Engin* nor for his service aboard *Obo Basak*. In the end, on February 20<sup>th</sup>, he sent a fax to Marti requesting repatriation and payment of his back wages. In his fax he made reference to the promise of the personnel director before he joined the *Obo Basak*, but no reply came (*MtS Files, Dunkirk*).

Where the ship itself was concerned, the time for auction was approaching. The lawyer for the *Obo Basak* crew in Dunkirk sent a message to the replacement crew through the port chaplain warning that if they would like to claim their back wages as creditors from the ship's sale they needed to act quickly. It was legally impossible to claim anything from the sale of the ship after it was sold and the crew was advised to apply at least 3 days before the sale date of March 20<sup>th</sup>.

Captain Zeki telephoned the company almost everyday. “Most of the money they gave me went on telephone calls”, he said. Marti kept telling Captain Zeki that *Obo Basak* would be bought by a Turkish company and there were two interested - Turk Bank and Yasar Bank. In the end, just 24 hours before the sale, on the 19<sup>th</sup> of March, Zeki telephoned the port chaplain and asked him to contact the lawyer that they would like to apply to the court as creditors. Zeki also informed the company about their intention. On March 20<sup>th</sup>, the ship was sold at auction for F.fr 9.2m to an unnamed buyer. After the sale of the ship Zeki, together with the crew, refused to leave the ship : “Were could we go if we left the ship without any ticket ? In the end we signed a paper that we would not claim anything from the new owner and our tickets were bought”, he said.

The unnamed new owner appointed a new agent in Dunkirk. After negotiations with the new agent, the *Obo Basak* crew were guaranteed repatriation and agreed to leave the ship upon the arrival of the new crew. The *Obo Basak* crew made the declaration below on March 26<sup>th</sup> :

To Whom It May Concern :

We, the undersigned Master and the crew of M.V OBO BASAK, declare

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that we will leave the said vessel upon the completion of the transfer of the ship to her new owners, we having first received all that is necessary for our repatriation.

We, and all the previous crew members now already repatriated, declare that we will continue to use all means necessary to recover our legitimate wage claims against our employer Marti Denmark Shipping of Istanbul (*MtS Files, Dunkirk*).

The next day, on March 27<sup>th</sup>, 18 Indian crew members joined the vessel and on the 28<sup>th</sup>, the last of the *Obo Basak* crew left the ship. Since their tickets were from Paris to Istanbul and they had no money to travel to Paris, the local chaplain gave lifts to the crew to the airport. There is a strong indication that their tickets were bought by Marti (as *MtS Files* in Dunkirk contain a fax from Marti to the new owners' agent confirming the flight details of the Marti crew to Istanbul, document dated March 26<sup>th</sup> 1997). The captain also took all the logs and official papers with him, as by law it was his responsibility to take them back to Marti. During the check-in, there was too much excess luggage and the crew were asked to pay FF300 per excess kilo. But when the port chaplain explained the situation of the crew, the extra charges were waived.

The name of the ship changed to *SAKI* (they just painted over "Obo Ba" and added 1 after "sak" - and the port of registry was changed from Istanbul to Kingstown. The ship now flew the flag of St Vincent and Grenadines, a flag notorious for its safety record. *SAKI*'s last journey was to Pakistan to be scrapped. The Indian crew also contacted the port chaplain to express their worries, as when they left Mumbai to join the ship, their agent in Mumbai did not inform them about the destination of the ship. They expressed concerns about their safety in Pakistan and were seriously considering refusing to sail.

In Istanbul, Captain Zeki took the log books and all the papers to the Marti Office, where he met the Managing Director of the company :

I asked her what would happen now. She said, "You applied to the French courts as a creditor and that is where you should follow your case up". I explained to her that we applied to the court as a precaution, at the last possible minute, with the knowledge of the company, and no money came from them. Her response was "bye bye, go and get your money from the court". I haven't been in touch with the company again (*interviewed by EK, October 18<sup>th</sup> 1999, Istanbul*)

However, the company did contact the crew asking them to join another Marti ship - *Urgup* that was arrested in Iskenderun – they all refused (*reported by Captain Zeki, Replecement Crew, October 15<sup>th</sup> 1999, Kadikoy, Istanbul*).

As we have seen, the sale of the ship had been postponed by about 5 months because of the appeal by Marti against the award to the crew. The

sale of the *Obo Basak* realised F.fr 9.2m and the Port Authority of Dunkirk immediately presented a F.fr 8.5m bill for port dues to the courts. Since in French law state bodies are privileged creditors, virtually the whole of the proceeds of the sale of the ship went to the Port Authority. The port authority charged \$3,500 per day during the discharge of cargo, but after the arrest of the ship and its removal to a waiting berth, the port authority doubled the fees to \$7,000 a day. The port also continued to charge these double dues even when the ship was moved to a remote and abandoned berth with no facilities at all. The amount charged for port dues were a shock to many people involved. The *Obo Basak* crew were furious, and felt robbed, saying that the port charged that amount of money just for an empty ship lying alongside "a concrete quay". The ship's agent was also very critical of the outcome. During the interview with him, the agent pointed to four white ships tied up on the quay in front of the office building and said :

You can see there are four vessels there. They were laid up by the owner. Before the ships came here, the owner shopped around. Of course in Dunkirk you have an official tariff like anywhere else. But in this case to make some extra money the port negotiated a special rate for these ships so that the owners, instead of sending their ships to Dover, London or Antwerp etc., sent them here. When the *Obo Basak* was arrested, there was no owner to negotiate, the ship could not leave the port, so no one had any bargaining power. The port took advantage of the situation (*interview by EK, September 9<sup>th</sup> 1998, Dunkirk*)

The general secretary of the port was also interviewed and when the subject of port dues was raised, he said that the port had not arrested the ship, it was arrested by external creditors and the port authority by law had to take berthing dues. He also emphasised that, due to the port being publicly owned, he had to follow the rules and regulations. He also said that :

The port authority has no legal relationship with the seafarers. We have a legal relationship with the ship and the shipowner, but not with the crew itself – that relationship does not exist in French law (*interview by EK, September 7<sup>th</sup> 1998, Dunkirk*).

The port's general secretary, being a lawyer himself, knew that port had no legal responsibility for the *Obo Basak* crew, but the matter was also getting to be a source of embarrassment for the port as there was such negative publicity. The port authority accordingly instructed its lawyer to find a possible solution. Since the lawyer who represented the port as one of the creditors of Marti also represented the *Obo Basak* crew during the court case in Dunkirk, there was an open channel. The port general secretary talked about his determination to find a solution :

Unfortunately there is publicity saying that the port authority took all the money from the sale of the ship. We are aware of this, but there was no way we could act differently, we are governed by the law, but the people who are working within the port authority recognise that justice is not done as the



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seafarers worked and did not get any money and their families have been suffering. The port authority has already asked the lawyer to find a way in which some money could be paid to the seafarers. I must emphasise not their salaries, but some money. We could not be held responsible for anything that happened before the ship's arrival at the port. But in the end we are trying to find a way so that 23 and plus 8 would get some money. Whichever solution we find will not be a perfect solution. Regardless of the port being a privileged creditor and regardless of bi-lateral agreements, some solution needs to be found. (*interview by EK, September 7<sup>th</sup> 1998, Dunkirk*).

As we shall see in the next section, the port authority did find a way of getting money to the crew. However, it is worth mentioning that as we have seen earlier, there had been a comparable case to the *Obo Basak* - the *Samarkand*. The ship was arrested in Dunkirk by creditors and stayed in port for 10 months between March 25<sup>th</sup> and December 11<sup>th</sup> 1996 – almost a year earlier than the *Obo Basak*. However, the berthing dues were not double for *Samarkand*. The ship was sold in Dunkirk and about 3 months after the sale, 24 Russian crew got their back wages comparable to their French counterparts, and damages for their psychological sufferings.

The court case leading to the sale of the *Obo Basak* was not the end of legal proceedings because the crew's claim for unpaid wages was taken for appeal to the French Supreme Court by the ITF on behalf of the crew. The ITF aimed to overturn the decision of the Douai appeal court. The arguments put by the seafarers' legal representatives to the Supreme Court were based mainly on the Brussels Convention of May 10<sup>th</sup> 1952, according to which, in matters of international law, the claims should be brought to the jurisdiction of the country where the arrest of the vessel took place – France in this case. For the purpose of this case, the other relevant criterion was that the debt to the *Obo Basak* crew was created in the course of the journey during which the arrest took place.

The Supreme Court accepted this argument and decided on July 18<sup>th</sup> 2000 that :

“looking at Article 7 I c of the Brussels convention of May 10<sup>th</sup> 1952 which harmonises various rules on the “saisie conservatoire” (i.e. protective attachment) of a sailing vessel”

“according to the terms of the text, the national courts of the state in which the arrest of the vessel took place are competent to judge the merits of the case, as long as the debt is created during the course of the journey during which the arrest took place”

“the court of appeal decided that the French courts were not the appropriate jurisdiction to hear the claims for unpaid wages of the sailors of the *Obo Basak*, which was the object of the arrest in the Port of Dunkirk, notably at the demand of these creditors. As such, the Court of Appeal *misapplied* the above mentioned article.” [italicised by EK]

The Supreme Court decided the judges of the court of appeal in Douai mistakenly accepted Marti's appeal. This decision was extremely important

for any future cases involving foreign seafarers in France. However, there needed to be a further court case to secure the precedent. The Supreme Court's ruling applied only to the particular case unless and until the court of appeal ruled that this particular judgement was acceptable as a precedent (see Text Box 3).

**Text box 3**

**New hope for abandoned crews**

*Sandra Speares*

Wednesday August 23<sup>rd</sup> 2000

Lloyd's List

France

A recent French appeal court ruling in the case of the Obo Basak may prove to be a turning point in the treatment of abandoned crews.

The court found in favour of the crew of the combination carrier Obo Basak, who were appealing against a previous appeal court judgment which overturned a ruling ordering back wages to be paid through the sale of the vessel.

According to Dunkirk Mission to Seafarers chaplain Tony Rimmer, who has campaigned vociferously on behalf of the 23 Turkish crew members of the Obo Basak, the judgment could set a precedent for the future handling of abandoned crew cases in French courts.

One of the points at issue was a crew's ability to make a claim in a French court which included wages earned when the vessel was trading in international waters.

The latest appeal ruling would appear to clarify the position on this point, although changes to French law will be needed if the judgement is to have real legal impact, according to one source.

The case is just the latest stage in a long running struggle by the crew members to assert their rights alongside other preferential creditors.

The saga of the Obo Basak began in July 1997 when she was arrested in Dunkirk on behalf of a number of creditors, including the local port authority.

The crew members were stranded on the vessel from that time until the vessel was sold in March 1998, by which time some crew members were owed as much as 18 months back pay.

Although Dunkirk's Tribunal d'Instance awarded the crew 70 % of the FFfr1.6m (\$221,625) sought in September 1997, Turkish operator Marti Denizcilik ve Ticaret went to the appeal court to overturn a ruling awarding the crew wages through the sale of the vessel.

The appeal court at that time declared itself ineligible to hear the case and told the crew that they needed to take their claim to a Turkish industrial tribunal.

The appeal court has now declared the ruling to have been an error of judgement in the light of the 1952 Brussels Convention.

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In the meantime, a similar case came to court in France. A Romanian vessel, *Oscar Jupiter*, was abandoned and then arrested in Nantes in January 1998. In 1999 the Court of Appeal of Rennes ruled similarly to the Dunkirk appeal court in the case of the *Obo Basak*, saying that the crew could have no claim in respect of wages in a French court and that the case should be heard in the Industrial Tribunal of Constanza (DMF [Tribunal d'Instance de Nantes] 1999-437 cited in Chaumette 2000). The Romanian crew were repatriated without being paid wages due to them.

### *Families*

Of the 31 crew of the *Obo Basak*, 24 of them were married. Their families were rather large. Some had up to five children and older relatives living with them. The seven unmarried crew members included four maritime school students – cadets. Out of the 31, 19 had families in Istanbul. The remainder were spread out around Turkey, mainly in the Black Sea region. Family members living in Istanbul frequently visited the company office. However, there were other crew and workshop workers who were in the same position, so people went to the company office in their hundreds. Some came from other cities. Wives borrowed money from neighbours to visit the offices in Istanbul to try to get money owing. They were often verbally abused by the staff and only occasionally were given small sums, - on some occasions not enough to pay the ferry home to cross the Bosphorus. Some took sick children to show their need and to try to shame the company into paying, others were given post-dated cheques which bounced. Here, some wives speak about their experiences in the company office :

Sengul, the cook's wife :

There was some hope that if we went to Taksim [where the company office was located] early we would get some money. By 8am, I was in their office. I went there for 5 months, but got nothing. I would come back home after darkness, in order to hide from the landlord, shop keepers, and neighbours that I borrowed money from. We didn't put the lights on at night, just in case the landlord would see the light and ring on the bell asking for the rent. I never forget at the office one woman begged the personal director for five million Lira. She said that she had no money to buy milk for her baby. The personal director responded that "you are not the only one who cannot buy milk".... On another day, there was a woman who could not pay her mortgage and she was telling them to do something about it. She had a notice that her house was about to be repossessed. The director's response was "did you ask me when you bought your house ?" (*interview by EK, October 15<sup>th</sup> 1999, Istanbul*).

Hanimzade (the bosun's ex-wife)

I went to the company to ask for money. I saw another seafarer's wife there. She was coming from Samsun – 13 hours journey, just one way. She

said that she spent her last money to get here, but had no money to return and passed out. There were also heavily pregnant women there asking for money (*interview by EK, October 20<sup>th</sup> 1998, Istanbul*).

Sevtap, Husnu's wife :

I have an eight-year-old daughter and because of her schooling I could not go to Marti everyday, but I went to the office in rotation with my father. He is 85 years old, has a heart condition and had a stroke and is paralysed on one side. One day he came back in tears like a small child and I told him not to go again, but I had to go. I needed money for rent, for bills, for schooling. If I don't pay my rent, the landlord will ask me to leave. If I don't pay the bills, the service cuts off. We bought a TV on instalments, I was not able to pay the instalments and the shopkeeper came to my home and took the TV away. I was not the only one, there were many other people at the company. People were in queues to see the personnel director. I saw people spit at him (*interview with EK, October 17<sup>th</sup> 1998, Istanbul*).

Most of the families were without money. They had borrowed from extended families, friends and neighbours. Since the company had not paid national insurance for them for two years, they had no health cover and had to pay for all medical treatment. Several had had their furniture and personal effects removed by bailiffs for creditors. Many were told by their landlords to leave, and telephones were disconnected. All wives had local shop debts and one wife spoke of a trader who had offered to cancel the debt if she would have sex with him. Several families became dependent upon the goodwill of neighbours who had given second-hand furniture, mattresses, food, coal etc. Sultan's experience highlights the support of neighbours :

Sultan (Murat's wife) :

I could not send my children to school. I can't tell what we have been through. Only these walls know what we have been through [weeping !].... One morning, my two children sat on the table waiting for their breakfast. There was nothing in the house I could put in front of my children to eat – not even a slice of bread. Our landlord lives downstairs I ran and knocked on his door. I told him that I swear to Allah we have nothing to eat at home. He gave me some money to buy some food for the children. Later he also sent a sack of coal for our stove (*interview by EK, October 16<sup>th</sup> 1998, Istanbul*)

Some wives with very young children said that since the children were very young, they did not notice much about the situation their parents were in, but children of school age were badly affected. As Sengul, Zeynel's wife said :

I could not pay for my children's school bus. I could not pay the monthly instalment for the schooling, so every so often someone from school came to our house to ask for money. They went to school on foot in the winter months. They were badly affected and turned against me. The bus money is not much - about 5 million a month [5]. They could not understand how such a small

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amount couldn't be paid. They felt embarrassed in front of their class mates (*interview by EK, October 15<sup>th</sup> 1999, Istanbul*).

Sevtap, Husnu's wife :

We have lost our first child and our daughter is the only child we have and she is very close to her dad ; therefore I did not tell her anything about Husnu's situation. But this had an adverse effect on me so that I could not share my problems with anyone. My mind was so busy with the problems in the end, I started to talk to myself (*interview by EK, October 17<sup>th</sup> 1998, Istanbul*)

Other wives reported varying degrees of depression, anger, grief, crying bouts, lack of energy, humiliation, loss of hair, stomach ulcers, some on the verge of nervous breakdowns. Many also believed that further long term health problems would develop because of what they had been through.

The next part looks at the experiences of the families when their husbands returned home.

### *Reunion*

*Obo Basak* crew members returned home to find their families in difficult circumstances. They had been away for between six and eight months without pay. Many of them reported that due to living in rented accommodation and children's education etc., even when they received their salaries regularly, it was only just enough to make ends meet. Return was often no less difficult than their detention in Dunkirk had been. Mustafa was one of the single seafarers, but his income from the sea was vital for the survival of his family. He reported about the situation at home on his return :

When I came back from Dunkirk, the family was relieved and very pleased to see me. All the time they asked questions about what had happened in Dunkirk. "How did you survive ?", "How was morale onboard ?" and things like that. When we were in Dunkirk we could not easily communicate with our families we both played down to each other our real problems so as not to worry each other. But a couple of days after my arrival home, I faced the reality and I felt cheated, humiliated by the company. Pressure also started from home that I should start working immediately as there was no money, nothing to eat, and creditors visiting the house all the time. Then the arguments started. Why did I stay there that long ? Why didn't I leave the company earlier ? I remember smashing the glass door in the living room with frustration after one of those arguments (*interview by EK, October 17<sup>th</sup> 1998, Istanbul*).

Nusret, the second cook, had been married for 25 years with four children. All of his children were in full-time education and living at home. Nusret, with his three brothers, had started to build a two-story building with four flats – one for each brother - and it was still in construction ; but when he

was stranded in Dunkirk the family had to move in, in order to save money. A glazier put the glass up in one room on credit and his 4 children and wife started to live in one room. When he was asked to explain the situation at home on his return he explained :

Thanks to the Mission the money they gave us in Dunkirk was just enough to get me home. I was happy to be home, but it didn't last long. The situation at home was very grave – my children looked so shattered that they had no clothes, no shoes to wear, but the worse thing was the creditors. The first person who came to the door was the glazier asking for his money ; then the coal merchant turned up asking for 40 million (circa 80). My breath was smelly from hunger, but there was no way I could explain my situation to the creditors. They were asking “How come ? You have just come back from France you must have some money !” Think about the other crew members. I had no rent to pay, and had only four months' backwages, some others were owed up to 10 months (*interview by EK, October 15<sup>th</sup> 1999*).

Mustafa C. had been married for 12 years and had two young children going to elementary school. As we have seen, Mustafa went to sea after a long break to earn some money and recover from his financial difficulties, as his business had collapsed. He describes his return home :

When I came home, there was nothing but the running water. The bailiffs took all the furniture and everything else. The neighbours gave some chairs and a floor mattress. My wife told me that after staying hungry for two days she contacted her father. He came around and asked my wife to leave the house and stay with him. My wife had refused. I feel lucky that my wife and children were at home waiting for me (*interview by EK, October 18<sup>th</sup> 1998, Kartal, Istanbul*).

Zeynel, the cook, had been married for 15 years and had three children of school age :

I was feeling relaxed when I left Dunkirk. I trusted the French justice system and people in Dunkirk were very supportive. I've never seen such support in my life, but the situation at home was different. There was no money and we were heavily in debt. The rent was unpaid, telephone and electricity were cut off. There were so many creditors. Basically, we were in a big mess (*interview by EK, October 15<sup>th</sup> 1999, Istanbul*).

While the seafarers were struggling to put their lives together again, Marti was preoccupied with the court case in Dunkirk and contacted some of the *Obo Basak* crew asking them drop their court cases. As Yilmaz explains :

On my return from Dunkirk, I received a phone call from the company. They asked me to drop my name from the list of creditors and invited me to the office. I said, “you should first ask about what we have to eat !” I think Husnu was also contacted by them (*Interview by EK, October 21<sup>st</sup> 1998, Yalova*)

### *Life after Obo Basak*

Many seafarers had to look for a ship immediately after their return. Hasan found a job at sea on the third day after his return from Dunkirk, but finding work at sea proved very difficult for many others, as they faced the possibility of blacklisting and months without work. Aydemir tried very hard to go back to sea, but he was not able to and associated this difficulty of finding work with the *Obo Basak* crew being blacklisted. However, he said he had no evidence to support this. However, some others reported direct experiences of blacklisting. Mustafa Y. said : “I went to *Ulale Denizcilik* [Ulale Shipping] they kept telling me to “come back later”. In March they told me that I was on the [black] list !” (*interview by EK, October 20<sup>th</sup> 1998, Istanbul*).

Caner had a similar experience :

On my return, I applied to *Dunya Denizcilik*. Their response was “we have no business with seafarers who met the ITF”. In the end, I had to accept a low paid job in a shipping company with a bad reputation.... Without a job I felt empty. I had to work. One and a half months later, I found a job. The pay was \$500 less than what I would normally get. The working conditions were terrible and the ship was very old. The name of the ship was *Melih Sah* and I left her three months later. (*interview by EK, October 16<sup>th</sup> 1999, Istanbul*)

Like Caner, Mustafa also went to work for a company with a bad reputation. Mustafa left the ship after two months as she was used for smuggling illegal migrants for \$15,000 per passenger. He never went back to sea again – now he works as a security guard in a bank. In fact, when the families and seafarers were visited in October 2000, out of 31 only 6 were at sea. For example, Caner was divorced from his wife and working in a small electrical repair shop. He strongly believed the *Obo Basak* and the strain the experience put on his relationship with his wife was the main reason for their divorce. Murat migrated to Canada with his wife and 2 children. Cem, the cadet, in his third ship after the *Obo Basak*, experienced unpaid wages again. He gave up the sea and went to Romania to work. Nusret was working in a restaurant as a cook. Ali Osman (Steward) was working in a small shop. Yilmaz, Zeynel, Aydemir, Erol (OS), Serkan (AB), Musfafa C., Metin and Captain Zeki were unemployed. Husnu, Hakan, and Mustafa said that it could have been worse as one of their friends (Mustafa Kemal Odabasi), who worked for Marti, had committed suicide. They believed that the financial problems caused by Marti were the main reason behind his suicide (*interview by EK, October 1998, Taksim, Istanbul*). Meanwhile, the owner of Marti shipping became the president of the Assembly of the Turkish Chamber of Shipping and his presidency continues to date (March 2006).

In October 1999, the electrician Aydin became seriously ill and bedridden. During an interview in his house, Aydin reported that he felt ill on his return from Dunkirk, but due to financial difficulties he went back to sea without any proper diagnosis for his illness. Despite the difficulties during his

contract, he kept his condition secret from his new company for fear of being sent back home. He was able to pay all the debt that accumulated during *Obo Basak*. However, when he finished his contract, his cancer was well advanced and his wife did not tell him about his condition. However, in his bed he said that :

I have to work, if you don't have money that's the only thing you can do. I'll go for a check up again in the New Year. I'll see what the doctors say, but I need to go back to sea again (*interview by EK, October 17<sup>th</sup> 1999, Istanbul*)

Later, in early November, Aydin's wife requested some help from the Mission to Seafarers so that she could buy a wheelchair for her husband to take him out from time to time. The Mission responded to her plight and sent some money. They heard from her a week later that the money was very timely, that she was able to give her husband a decent burial.

As late as March 2006 the crew members and their families said that the *Obo Basak* and her consequences were still with them, despite the ship being sold and the crew returning home. Some said they'll never get over it. However, there had been some financial support for the families over the years. In October 1998, after hearing about the severe conditions of the families, Mission to Seafarers sent 200 per family. This was followed by the ITF's contribution of \$1,500 to each crew member. Meanwhile the port chaplain increased the pressure on the Dunkirk Port Authority and finally, on the 16<sup>th</sup> of December 1998, the port paid the sum of FF 540,826 to the crew members for securing the *Obo Basak* while awaiting sale. The money was divided equally between the 31 seafarers.

### **The final court decision**

As we have seen earlier, on the 18th of July 2000, the Cour de Cassation had overruled the previous decision at the Douai appeal court, dated December 1st 1997, which had itself overruled the original court decision in Dunkirk in September 1997, when Denmark and Marti Shipping had been sentenced to pay the salaries, an indemnity, and repatriation costs. The Cour de Cassation had declared the French courts competent to judge the seafarers' claim on a ship arrested in a French port, in application of the Brussels Convention of May 10th 1952, as long as the claim originated during the last voyage. At the same time, the Cour de Cassation had ordered the Douai Appeal Court, 'differently constituted' to try the case again with regard to the essence of the claim, (i.e. to pass judgement both on the law that should be applied in the French court, and on the seafarers' claim itself).

On the question of which law should apply, on May 17th 2004, the court reached a decision that it should be Turkish law, since all factors indicated that the crew worked in a completely Turkish context, with regard to flag,



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residence of employer, usual place of work, competence of Turkish judicial authorities, salaries paid in Turkish currency, reference to the Turkish Maritime Labour code.

On the claim itself, the final court decision said that the employer had not contested the salary arrears, did not pay any leave, the contract was not breached according to Turkish law, with proper warning of dismissal. So it appeared to the court that the seafarers' wage claims were justified, as well as their claim for compensation for abandonment and breach of contract, given that Turkish law is not opposed to seeking the employer's responsibility in a case where he abandons his employees without resources in a foreign country. Since the 'damage' occurred in France and was caused by 'a fault of exceptional gravity', the court acknowledged the claim for reparation and ordered the shipowner to pay the salary arrears (after deduction of what had already been paid by the port of Dunkirk), together with the damages fixed by the court.

On May 18th 2004, the court issued the order to have the judgement applied. However, this would be a technical victory for the *Obo Basak* crew because no financial compensation for lost wages would ensue. On the other hand, a successful outcome in the court would establish legal principles capable of improving the rights of foreign seafarers abandoned by their employer in France.

## CONCLUSION

It is evident from the context of this paper that Marti abandoned its crew. It was not however the sort of fly-by-night operation with which abandoned ships are often associated. As we have seen, all of its employees were proud to be working for Marti and they sometimes had to wait for years, or use their influential networks, to get into the company. It is difficult to establish what factors brought Marti into financial difficulties. What is clear, however, is that during its final period Marti managed to operate in breach of international regulations, for example by forcing its cadets to sail as navigation officers and not paying the salaries of its employees for up to one year. The *Obo Basak* crew, despite all the signs of betrayal, had been loyal to their employer and taken legal action as a last resort, when they were confronted with the realities of the hardship faced by their families at home. The *Obo Basak* crew, unlike their families, had been "fortunate enough" to be looked after by the voluntary organisations and local communities in Dunkirk and beyond. Their appeal for help had a very good response, but cases do not always work out like this.

There were no legal safety nets to protect seafarers. Even when the *Obo Basak* crew resorted to legal action they were let down by the French legal system, which was unable to deal with foreign seafarers abandoned in French

ports (see also Chaumette 2004a and 2004b, Alderton et al 2004). The *Obo Basak* demonstrates that there are some central issues with abandoned seafarers such as repatriation, wages owing and welfare of the crew during the process of their abandonment, and there are no existing instruments to provide direct solutions to these problems. As we have seen, IMO and ILO resolutions and guidelines on the provision of financial security for abandoned seafarers came into effect on 1 January 2002. It needs to be emphasised that they are the first comprehensive guidelines addressing the various problems of abandoned seafarers globally and need to be brought into practice.

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