



HRAS PUBLICATION

Photo Credit: Shutterstock.com

ABANDONMENT OF SEAFARERS: BACKGROUND, LEGAL STATUS, REMEDIES & PRACTICAL ADVICE

APRIL 2021

Human rights apply at sea,
as they do on land



in Partnership with

ReedSmith

www.humanrightsatsea.org
www.humanrightsatsea.org/publications/
[#humanrightsatsea](https://twitter.com/humanrightsatsea)

© April 2021 Human Rights at Sea All Rights Reserved.



Table of Contents

PART A: Abandonment	3
What is 'seafarer abandonment'?	3
What are the financial implications of seafarer abandonment?	4
Practical implications for the seafarer	5
Abandonment of a ship	5
PART B: Abandoned Seafarers: Legal Status and Protections	6
Convention rights under the MLC	6
Flag State rights	6
Port State rights	7
The home/national law of the seafarer	8
Repatriation of the seafarer	9
Sanctions against owners	10
PART C: Remedies for Seafarers – Claims	11
The maritime lien	11
What are maritime liens and how do they arise?	11
How to enforce a maritime lien	11
When might a seafarer lose their right to a maritime lien?	12
What are the practical boundaries to asserting a maritime lien?	12
Priority of liens generally	13
Key Information	14
What should a seafarer do before leaving the ship or jurisdiction?	14
Summary: Practical Advice for Seafarers	15
Appendix 1: Legal Status of Seafarers in Common Home States	16
Appendix 2: List of States that have ratified the MLC	18
Appendix 3: Draft Letter for Seafarers to send	19
Appendix 4: Helpful Contact Information for Seafarers	20
Disclaimer	22
Who We Are	23



Photo Credit: Nicholas Webster, The National News



Crew Members of MV AZRAQMOIAH. Photo Credit: HRAS

PART A: Abandonment

What is ‘seafarer abandonment’?

‘Seafarer abandonment’ can mean a number of different things, but most often means a situation where seafarers on board a ship are not being properly cared for by the owners of the ship (and in extreme circumstances, where the ship has also been abandoned). It can, however, cover other scenarios including where seafarers have been left behind in a foreign port.

Outside of the Maritime Labour Convention 2006¹ (the “**MLC**”), seafarer abandonment does not have a standard legal definition. Its meaning may vary, depending on which laws apply (and notably the country/jurisdiction where the seafarer finds themselves).

Under the MLC, ‘seafarer’ means: “*any person who is employed or engaged or works in any capacity on board a ship*”². If it is in doubt whether a person is a seafarer for the purpose of the MLC, the question should be determined by the “*competent authority*” in the relevant MLC member state (e.g. the Maritime & Coastguard Agency for a UK flagged ship, after the seafarer has first consulted with appropriate seafarer organisations³).

Where the MLC applies⁴, a seafarer is abandoned where any of the following occurs⁵:

“*The owner:*

- a) *fails to cover the cost of repatriation; or*
- b) *has left the seafarer without the necessary maintenance and support; or*
- c) *has otherwise unilaterally⁶ severed ties with the seafarer, including failure to pay contractual wages for a period of at least two months.”*

For the purposes of (b) above, ‘maintenance and support’ includes “*adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care*”⁷.

When abandonment occurs, seafarers may have legal rights and potential legal claims against the owners and/or managers and/or against the ship itself.

This Publication aims to provide guidance to seafarers about how to respond to abandonment and where to get help. It is not intended to be a comprehensive legal analysis, since (as will become clear) specific advice must be taken in the relevant jurisdiction.

¹ As amended.

² MLC Article II, 1 (f).

³ MLC Article II, 3.

⁴ A list of countries is at Appendix 2.

⁵ MLC, Standard A2.5.2 – Financial security.

⁶ Without agreement with the seafarer.

⁷ MLC, Standard A2.5.2 (5).

What are the financial implications of seafarer abandonment?

The financial implications to seafarers of being abandoned are usually serious, both for them and their dependants.

The most obvious and typical example is where seafarers are not paid the wages due to them, often for significant periods of time. Recent examples include:

- 3 months' unpaid wages for the seafarers of the "RIMA" in October 2020;
- 11 months' unpaid wages for the seafarers of the "ULA" in April 2020;
- 29 months' unpaid wages for the seafarers of the "TAMIM ALDAR" in September 2019; and
- 17-32 months' unpaid wages for the seafarers of the "IBA" in January 2021.

Where abandoned seafarers do assert their legal rights, fear of not being paid at all can induce them to agree to settle for less wages than they may be contractually entitled to.



For example, the seafarers of the "IBA" accepted 70% of what they were owed, which meant each seafarer gave up between 5 and 10 months of wages. Four seafarers on the "TAMIM ALDAR" barge gave up more than 7 months' pay in order to guarantee payment. The practice of owners pressuring seafarers to give up large amounts of their wages is objectionable, unfair and must be brought to an end.

It is understandable that seafarers give in to pressure to settle their claims for wages. They do so because it removes the prospective uncertainty of not being paid at all and guarantees payment sooner, which meets their or their family's inevitable immediate financial distress. The financial distress has been even more acute during the Covid-19 pandemic.

For example, seafarers on board the "ULA", when she was left abandoned in Kuwait, reported:

“

“Our families are not getting money to buy food, basic necessities, medical treatment.”⁸

“Several time[s] we explained [to] everyone our pathetic situation.... Although we are surviving with authorities support, all of seafarer family [are] badly suffering due to lack of finance.”⁹

”

Where seafarers come from countries with little or no social safety net, depriving them and their families of pay can expose them to poverty, hunger, sickness, social exclusion and even death.

⁸ <https://www.offshore-energy.biz/hunger-strike-of-abandoned-bulker-seafarer-in-kuwait-moves-into-2nd-month/>

⁹ <https://www.tradewindsnews.com/law/seafarers-on-abandoned-bulker-left-with-nowhere-to-turn/2-1-960470>



Unhygienic, poor living conditions



Photo Credit: Paul Hitlon/Greenpeace

Practical implications for the seafarer

Abandonment can mean seafarers are left on board a ship that is not being properly maintained (and therefore creates an unsafe working environment) without the necessary supplies to live.

This can mean:

- Ships run dangerously low on fuel, lube oil, fresh water, food and medicine.
- With water, food and heating in limited supply, conditions can be unhygienic and sickness can spread.
- Seafarers are denied access to medical treatment.
- Seafarers are left “*begging for vital provisions*”¹⁰, relying on charity to survive.
- Electricity fails and food starts to rot¹¹.
- Without adequate fuel or access to maintenance, ships can become dangerous¹².

Living in those unbearable conditions endangers the mental health of seafarers:

- Seafarers can be left for months, even years on end without seeing their families.
- Both abandoned seafarers and their families report frustration, distress, emotional hardship and depression.
- Where left without necessities or wages, the seafarers of “IBA” felt exploited – “*The conditions bordered on slavery*”¹³.
- The seafarers of “ULA” felt helpless and ignored and had to go on hunger strike for their plight to be seen as credible. 6 of 26 seafarers had to be hospitalised.
- The “SEA PRINCESS” abandonment tragically resulted in the suicide of one seafarer.

Even if conditions are not so severe, seafarers can be left uncertain of their legal rights. For example, we recently heard of a Russian seafarer, abandoned in Spain, who refused to leave the ship for fear of losing his right to claim against the ship (explained below), even though leaving would have had no effect on his right to claim wages as a maritime lien under either Russian or Spanish law.

Abandonment of a ship

Abandonment of a ship by her owners puts seafarers at risk, as well as the ship. Seafarers are left stressed and exhausted on board ships that are not being properly supplied or maintained. Accidents and casualties are more likely to happen. That means abandoned ships can be a danger to others and to the environment.

Whether a ship has been abandoned or not will depend on the local law of the country/jurisdiction it is in. The question often comes up when a ship is arrested or is going to be sold by the courts of that country. The owners do not have to declare that their ship is abandoned – it can be enough that they have failed in their responsibilities to the crew, including paying their wages.

Where a ship is actually (or is deemed under the local law to be) abandoned, it is likely to increase the risk to the ship and, in turn, the risk to the ship’s stakeholders, including its financiers. On occasion, this can result in those stakeholders stepping forward to secure the integrity of the ship, including supporting the seafarers on board.

¹⁰ The “CELANOVA” – <https://lloydlist.maritimeintelligence.informa.com/LLI132355/Disabled-LPG-carrier-and-seafarer-abandoned-off-Manila>

¹¹ The “KETAN METE”.

¹² For example, the “TAMIM ALDAR” was left listing dangerously after being abandoned by her owners.

¹³ <https://lloydlist.maritimeintelligence.informa.com/LLI135853/Seafarer-abandonment-cases-continue-to-climb>

PART B:

Abandoned Seafarers: Legal Status and Protections



Ships and seafarers are regulated by various different laws and international treaties (where they apply). This means that seafarers may have rights under a number of laws, including the laws of the Flag State of the ship, their home nationality, and any country whose territorial waters the ship is in (the Port State), and potentially the law governing their employment contract.

At **Appendix I**, there is a table summarising seafarers' rights in various jurisdictions. Please be aware that this is founded on information collated at the time of publishing and should always be confirmed by a local lawyer in the relevant jurisdiction.

Convention rights under the MLC

The purpose of the MLC was to draw together all the relevant principles governing seafarers' rights in one document and to set a minimum standard for the member states to enforce.

It contains a set of protections for seafarers, and member states that have signed up to the MLC agree to protect these rights and to make sure their own national laws reflect the requirements of the MLC.

Importantly for seafarers, the MLC imposes financial obligations in respect of any outstanding wages and other entitlements due from the owner, including the expenses and support that seafarers may require when abandoned, including the cost of repatriating them to their countries of origin.



These rights are enforced by Flag States and Port States, as explained in more detail below.

Flag State rights

Status of seafarers

The Flag State is the country where the ship is registered or licensed – the deemed 'nationality' of the ship.

Under Article 91 of the United Nations Convention of the Law of the Sea 1982 ("**UNCLOS**"), the jurisdiction of the Flag State applies on the high seas and seafarers on board have rights under the law of the Flag State.

For example:

- A Filipino seafarer on a Panama-flagged ship will have rights under the laws of the Flag State of Panama.
- A German seafarer on a Greek-flagged ship will have rights under the laws of the Flag State of Greece.

Protections

Flag States have primary responsibility for ensuring the rights of seafarers. However, not all Flag States offer the same protections to seafarers.

When ships are registered with a Flag State they will either register with a 'closed' or 'open' registry. A closed registry is only open to a ship whose owner is based in that country or will have some other requirement such as a certain percentage of its crew having the same nationality as the Flag State. Open registries, on the other hand, have more relaxed admission requirements and are open to foreign-owned ships. For this reason, such registries are often called 'flags of convenience'.

In particular, some Flag States such as the Marshall Islands and Saint Kitts and Nevis (open registries or flags of convenience) offer fewer protections than, for example, the UK (a closed registry), although all three have signed up to the MLC. States with flags of convenience may only take limited actions or may take longer to implement corrective measures due to the minimal contact between owners and the Flag State. For that reason, seafarers may need to look to the Port State (the location of the ship) or their home state for help in times of difficulty.

Under the MLC, all members have to implement laws that prohibit violations of the MLC and are to take “adequate” measures that will discourage violations of the MLC¹⁴. However, enforcement of such violations varies, depending on the Flag State in question.



Where a Flag State has signed up to the MLC, they must set up some form of social security scheme or insurance or a national fund or other similar arrangement to assist seafarers in the event of their abandonment. The purpose of this kind of financial security is to provide direct and quick access to funds when required to support an abandoned seafarer.

The financial system should cover:

- 1 outstanding wages and other sums payable under the seafarer’s employment contract, collective bargaining agreement or law of the Flag State for a period of up to 4 months;
- 2 all expenses reasonably incurred by the seafarer, including costs of repatriation. This includes expedited travel, usually by air, necessary medical care, transport of personal effects (up to 30 kg of the seafarer’s personal luggage) and any other reasonable costs incurred because of abandonment (such as hotel costs and food after leaving the ship); and
- 3 the essential needs of the seafarer, including adequate food, clothing, accommodation, drinking water, fuel for survival on board the ship, and medical care.

The Flag State is required to ensure its ships carry on board documentary evidence of financial security to meet outstanding wages and other entitlements due by the owner for up to 4 months and all expenses reasonably incurred by the seafarer, including the costs of repatriation.

To access this support, the seafarer should contact the Flag State of the ship and, where applicable, the Port State (see below), explaining that the owners have:

1. failed to repatriate the seafarer or cover the cost of doing so;
2. left the seafarer without the necessary maintenance and support; or
3. otherwise severed ties with the seafarer. This includes a failure to pay wages for at least 2 months.

Port State rights

The Port State is the country in whose territorial waters (or inland waters) the ship is located.

Port States exercise their control of the ships within their jurisdiction and step in where they believe owners and Flag States have failed to comply with the requirements of international maritime conventions, including the MLC, MARPOL¹⁵ and SOLAS¹⁶. This is known as Port State Control (“PSC”), and would include, for example, the Maritime and Coastguard Agency in the UK, the Maritime Port Authority in Singapore or the Australian Maritime Safety Authority, and is often exercised in the form of inspections performed on ships within their jurisdiction.



¹⁴ MLC Article V (6).

¹⁵ International Convention for the Prevention of Pollution from Ships, 1973 (as amended).

¹⁶ International Convention for the Safety of Life at Sea, 1974.

PSC means that the Port State identifies and deals with problems and issues, often of the nature that should have been addressed by the owners and/or Flag State. The Port State will notify the owners and/or Flag State and may detain the ship or prevent her from trading, until the problems have been resolved.

Port States that have signed up to the MLC have their own obligations to seafarers that pass through their territorial or inland waters and call at their ports. Even if the owners and Flag State are not upholding seafarers' rights, a Port State that has signed up to the MLC is required to do so.

Filing a complaint with the Port State



Where owners (and by extension, the Flag State) are in breach of their obligations under the MLC or any other maritime convention, seafarers can contact the Port State and make a complaint to an authorised officer of that Port State. Practically, this means getting in touch with the administration of the local port or the coast guard or local government maritime safety organisation.

This may lead to an initial inspection and, if necessary, a detailed inspection on board the ship by the Port State to establish whether seafarers' rights have been violated. Deficiencies will be brought to the attention of the Master (acting as owners' agent).

Depending on what the Port State finds, and if it is not addressed promptly, the Port State may (a) notify the Flag State and/or (b) notify the next port of call and/or (c) detain the ship. The precise sanctions a Port State may impose will depend on the jurisdiction, i.e. what the national law of that country allows and how proactive the Port State is in upholding such standards.

Other active organisations within the Port State

There are organisations in some Port States that will provide support to seafarers and play a role in how PSC carries out its duties.

For example, when a ship is in Australian waters, seafarers who consider their rights have been violated can notify the International Transport Workers' Federation ("ITF"), which will in turn notify the Australian Maritime Safety Authority ("AMSA"). AMSA will attend a PSC inspection.

Therefore, it can be important to seek out information about the Port State and any organisations within it that can provide direct support. Some of the contacts listed at the end of this document will be able to put seafarers in touch with the relevant organisations in a given Port State.

The home/national law of the seafarer

Where the Flag State and Port State fail to uphold a seafarer's rights under the MLC, the home country of the seafarer (where they have nationality or residence) may also provide assistance.

Certain home states recognise that they have a duty of care to their citizens and will take steps to provide support to and, if necessary, repatriate seafarers. Others will only provide limited consular assistance (if any at all). Where repatriation assistance is provided, the home country will be able to claim back the cost from the Flag State of the ship under the MLC (where that Flag State has signed on to the MLC).

Seafarers that have been abandoned by the owners should contact an embassy of their home country. Where a report or complaint is made to the Flag State or Port State, seafarers also should ask that the Flag State or Port State contacts their home country's embassy to inform them of the situation.

Where the seafarer's contract of employment is subject to the law of their home country, they may have certain rights under domestic (home) law. For example, there may be a collective bargaining agreement produced by a trade union or an employees' association, or their employment contract may be in a form where the government has taken an active role (for example, the POEA Contract: Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships).

These different arrangements can affect seafarers' rights, including rights to repatriation. At **Appendix 1**, there is a table setting out information that has been provided to us regarding seafarers' status and protections in various jurisdictions.

Repatriation of the seafarer

It is internationally recognised that seafarers must be repatriated to their homes and that this right must be protected.

Where the Flag State of the ship has signed the MLC, the Flag State must provide financial security to ensure that abandoned seafarers on the ship can be returned home in accordance with MLC requirements¹⁷.

The seafarer should be able to choose where to be repatriated to. That might be: (a) the place agreed in their contract of employment; (b) the place where they agreed to enter into the engagement; (c) a place stipulated by a collective bargaining agreement (where one applies); or (d) their own country of residence.



Photo Credit: Captain K. Beirnaert

The MLC imposes obligations on the Flag State to ensure that seafarers on ships flying their flag are able to be repatriated in the following circumstances¹⁸:

- a) The seafarers' employment contract comes to an end while they are abroad;
- b) When the seafarers' employment agreement is terminated:
 - i) By the shipowner; or
 - ii) By the seafarer for justified reasons; and also
- c) When the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.

In practice, points (b) and (c) above cover situations where (i) the owners may be insolvent or are at least refusing to meet their financial obligations; (ii) they are selling the ship; or (iii) there are similar, internationally recognised reasons, requiring the seafarer to be returned home without any cost to themselves.

Therefore, where seafarers have been abandoned and the owner fails to repatriate them, a Flag State that has signed up to the MLC should pay to return the seafarers home.

Where a Port State has signed up to the MLC, they cannot refuse to repatriate seafarers simply because the owner is in financial difficulty or cannot replace the seafarers. Port States that have signed up to the MLC have their own obligations to seafarers located in their ports, or their territorial or inland waters. Where necessary, the Flag State or Port State will arrest the ship to recover their costs.

The only circumstances where a Flag State or Port State has a right to claim back repatriation costs from the seafarer (where the MLC applies) is if the seafarer is found to be in breach of their obligations to the owner (e.g. gross negligence or gross misconduct under their contract of employment). This is a very high threshold and is rarely the case.

Some contracts, national laws and collective bargaining agreements say that seafarers must exercise their right to repatriation within a reasonable time; otherwise they might be considered to have lost it. Seafarers should check their employment contracts and seek help and advice as to applicability and interpretation of these rules.

¹⁷ Regulation 2.5, MLC.

¹⁸ MLC Standard A2.5.1 – Repatriation.

Sanctions against owners

Unfortunately, where owners abandon ships and their seafarers, there are rarely significant consequences for them beyond the financial distress, which has usually led to the situation arising in the first place (and which ultimately may cost them their ship). Owners themselves are rarely fined or sanctioned by Flag States or Port States, although it does happen occasionally. Australia, for example, banned two ships¹⁹ from their waters for failing to pay their crew on time, but no sanctions were placed directly upon the owners for breaching the MLC.

The Flag State or PSC (or any other creditors) may detain and sell a ship itself in a judicial sale. However, the actual legal entity that owns the ship is likely to be a single ship owning company with no other assets. If that is the case, any penalties applied to the owners (and which cannot be recovered from the ship itself) are unlikely to be paid. The people behind the owners will usually reappear in the market, operating under a different company and name.

For this reason, seafarers have special priority rights against the ship itself, which are explained in the following section.



¹⁹ The "FORTUNE GENIUS" and the "XIAN JING HAI".

PART C:

Remedies for Seafarers – Claims

Rights against the owners/managers

In an abandonment situation, seafarers will have claims under their employment contracts against the owners or managers, depending on the contractual counterparty, i.e. who the contract says the employer is. This is known as an *in personam* claim, which means a claim against a person – in this case, the employer they have signed the contract with.

The value of an *in personam* claim for seafarers' wages is only worth what the employer can or will (be forced to) pay. When a ship or seafarer is abandoned, it is usually because the owners have been in financial distress for a period of time and cannot (or will not) pay everyone they owe money to. There are often many creditors with claims against them and it is very common for owners to simply stop operating and to refuse to pay any creditors (including their crew).

The maritime lien

Rights against the ship – a maritime lien

In addition to *in personam* claims discussed above, seafarers can also pursue claims in respect of their wages and other contractually owed amounts against the ship itself – this is known as an *in rem* claim²⁰.

Importantly, seafarers' claims against the ship for wages are 'maritime liens', which means they have special status in almost all countries (this is explained below). Not only do they exist against the ship (and survive even if the ship is sold by the owners), but they also rank very highly against the proceeds of sale of the ship if the ship is sold by a court (which is often the case in scenarios of financial distress).

What are maritime liens and how do they arise?

Maritime liens are rights against the ship itself. Sometimes the terminology may be different – for example, in the UAE, they are called 'priority debts'. However, the concept is broadly the same.

They arise automatically in respect of a small number of claims²¹. In relation to crew claims, they include claims for wages and (depending on the country/jurisdiction) are likely to include other sums payable to seafarers in respect of their employment on the ship – for example, costs of repatriation and social insurance contributions payable on the seafarer's behalf.

Maritime liens are high-ranking claims that take precedence over most other claims against the ship²².

Because maritime liens attach to the ship (not its owners), they survive if the ship is transferred to a new owner when the sale has been made voluntarily. As noted above, in the event of a judicial sale (which cleans a ship of all charges and encumbrances, including maritime liens), a seafarer is entitled to be paid outstanding wages from the proceeds of sale.

Although maritime liens are automatic, their enforcement is not. In order to enforce the lien and get paid, a seafarer must follow a legal procedure. This is explained below.

How to enforce a maritime lien

There are two places where a seafarer can start legal proceedings to assert their maritime lien.

First, if the ship is at a port, they can start proceedings in the local court that has jurisdiction over that port:

- Depending on the country, the seafarer will need either that country's law or the law of the Flag State (see below) to recognise that they have a maritime lien.

²⁰ In Latin, a claim against the 'thing' – here, the ship.

²¹ These rights either arise by operation of law or under the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages 1967 or the International Convention on Maritime Liens and Mortgages 1993.

²² They are usually only outranked in a judicial sale scenario by the sheriff or marshal's costs, the costs incurred by the arresting party in preserving the ship whilst under arrest and, sometimes, possessory liens.

- The procedure of the local court that can hear claims against ships will apply to the claim. For example, in the USA this would be the Federal Maritime Courts and in England, the Admiralty Court.
- For example, if the ship is in Singapore, a seafarer who holds a maritime lien can enforce it in the Singapore courts.
- Generally, this will mean arresting the ship (or joining in an arrest by other creditors) or making a claim against the proceeds of sale of the ship. A claim will have to be issued in the local court.

Second, in the Flag State of the ship:

- For example, where the Flag State of the ship is Hong Kong, unpaid seafarers can enforce their maritime lien in the Hong Kong court.
- Importantly, the court of the Flag State may prohibit changes of ownership or flag until the seafarer claim has been paid. This means the ship cannot be sold or transferred.
- However, where the ship is under arrest in the country she is in, it is probably more practical for the seafarers to claim in the arrest proceedings and/or sale of the ship by the local courts.

The specific requirements for different countries and different courts vary, so it is very important to get local legal advice (see the contact list at the end of the document for who to approach).

When might a seafarer lose their right to a maritime lien?

It is important for seafarers to seek help and advice in order to understand how to protect their rights. This is because different countries have different rules about how to protect and enforce a maritime lien and what needs to be done to pursue a claim.

For example:

- In some countries a seafarer may lose their maritime lien if they are deemed to have 'deserted' the ship. Traditionally, desertion is taken to mean leaving the ship before completion of the voyage or contracted employment period. Therefore, seafarers may not want to leave the ship for fear of losing their maritime lien (and unscrupulous owners may reinforce this fear in a bid to keep the seafarer onboard). To our knowledge this is rarely, if ever, argued by owners in court, let alone having been successful as a defence against a claim for crew wages following an abandonment. However, this should be confirmed with a local lawyer because different jurisdictions have different rules.
- In some countries, a maritime lien for seafarer wages will be lost if the seafarer does not start legal proceedings within one year of the wages being due.
- In some countries, once legal proceedings have been started, the seafarer must remain in that country to continue their claim, even if they are not required to remain on the ship.

Therefore, it is important for seafarers to seek help and advice to understand how to protect their rights. There are organisations that can help seafarers to get advice on the rules for specific countries/jurisdictions. Some are listed at the end of this document.

What are the practical boundaries to asserting a maritime lien?

The most significant boundary to seafarers asserting and enforcing their rights to a maritime lien against the ship for outstanding wages is a lack of the necessary information and resources to facilitate these processes.

Even if seafarers have resources, there are practical hurdles to overcome:

- the seafarer is likely to be onboard the ship and not ashore where assistance can more easily be sought;
- assistance from lawyers can be expensive and it usually costs money to start a claim in court;
- where another creditor has not arrested the ship, it can be difficult to meet with lawyers and effect an arrest while on board;
- the seafarer may face language barriers; and
- there may be other requirements that have to be met before asserting a seafarer claim in court in the jurisdiction where the ship is situated – for example, giving formal notice to the Flag State (where different from the state where the ship is situated).

Sometimes it can be enough for seafarers to understand their rights and assert them to the owners for the owners and, potentially, other interested parties (for example, mortgagees²³) to be put on notice of the seafarers' claims.

At **Appendix 3**, there is an example letter that can be sent to owners, operators, managers (technical and seafarer), the Flag State and PSC informing them that a seafarer intends to assert a maritime lien.

Sometimes owners and managers will try and put off seafarers from (or get in the way of them) asserting their rights. This is because the owners and managers know seafarers can be financially distressed and owners know that keeping to their obligation – paying crew wages, arranging repatriation and new crew to come on board, etc. – will cost them money.

For example, it is not unheard of for owners or managers to threaten claims or to put further pressure on the seafarer by depriving them of necessities and supplies in an effort to have them continue to serve in the absence of payment (although it should be noted that the vast majority of owners and managers do not operate in this way). As noted in Part A of this Publication, these tactics often succeed in causing seafarers to settle claims for wages at a substantial discount or dissuading them from claiming at all.

Seafarers knowing their rights and knowing where to seek help and advice can make all the difference to responding to pressure to settle or drop claims for contractually due amounts.

Priority of liens generally

Seafarer wage claims are high-ranking claims. This means they will have priority over almost all other claims against the proceeds of sale of a ship. Precisely which claims for seafarer wages take priority will depend on the jurisdiction.

Maritime liens (including seafarer wage claims, but also other claims, such as for salvage) generally rank very highly²⁴. This means that seafarers are given priority over almost all other creditors and are much more likely to be paid in full when a ship is sold by a court.

In some jurisdictions, the priority of seafarer wage claims is lost if they do not claim within one year of the wages being overdue for payment. For example, in the UAE, priority is lost if the ship is not arrested within one year of the wages being overdue for payment, or three years if there is a good reason why an arrest could not happen within that first year.

Generally, the value of a ship will be sufficient to meet seafarer wages claims. The exception to that would be during a prolonged arrest in a country where judicial sales are not carried out efficiently. In very rare cases, the costs of maintaining the ship over such a period could exceed her value, in which case there may be no money left over to pay the seafarer (or any other creditor).



²³ Who may step in and pay crew wages as they enforce their mortgages.

²⁴ See fn. 22 above.

Key Information

What should a seafarer do before leaving the ship or jurisdiction?

As explained above, in some countries/jurisdictions there are risks to leaving the ship or the country the ship is in and it may be necessary to start legal proceedings within a certain period of time to protect rights.

Seafarers should follow these 4 steps:

STEP
1

Understand their rights, both in the country they are in and under the Flag State of the ship. This means getting help and advice. Be sure to ask these questions as a starting point:

- Will leaving the ship mean I lose my maritime lien? Will I be deemed to have deserted the ship? (Generally, the answer to this will be “no”, but seafarers should seek confirmation of the position under the law of the Flag State and Port State.)
- Should I be arresting or joining an arrest of the ship to enforce my maritime lien for wages?
- Do legal proceedings have to be started within a certain period of time from when my wages became overdue?
- Will contacting the Flag State and/or Port State administration affect the law or jurisdiction of my claim and is this likely to improve or prejudice the claim?

STEP
2

Before leaving, send a letter to the owners, technical managers and seafarer managers asserting their right to a maritime lien.

An example letter is at the end of this document. Email a copy of the letter to administrators²⁵ of the Flag State and, where in national territorial waters, the local Port State, with a brief explanation that it was sent to the owners and managers.

STEP
3

Understand rights to be repatriated.

Check on board for the financial security document for repatriation under the MLC. This document includes information about who is responsible for flights home if the owner is unable to pay.

STEP
4

Once they have left the ship, try to stay informed about what is happening with the ship.

This can be very difficult, particularly where the seafarer has left the country the ship is in. If the ship is arrested and likely to be sold by judicial sale, they may need to file a claim in the arrest proceedings. Seafarers should discuss this with their contact in the country they were in when they requested help.

²⁵ These email addresses should be available online. A useful list of organisations which seafarers can contact to seek assistance is provided in **Appendix 4**.

Summary:

Practical Advice for Seafarers



- Abandoned seafarers have rights under the law of the Flag State, the Port State and their own home country.
- They may also have rights under the MLC. A list of countries that have signed up to the MLC is at **Appendix 2**.
- Those rights include the right to be repatriated.
- Under the MLC, owners and Flag States have financial obligations to abandoned seafarers. Those include the costs of essential provisions and expenses, repatriation and certain rights as to wages due.
- Claims for wages and other sums due are likely to give rise to a maritime lien – rights against the ship itself, not just against the contractual employer of the seafarers. Those rights survive the voluntary transfer of a ship by her owners. An example letter that can be sent to the owners, managers, Flag State and Port State explaining that a seafarer is asserting a right to a maritime lien is at **Appendix 3**.
- Different countries have different rules. There are organisations that can provide help and support to seafarers, including advice on the particular laws of a Flag State, Port State or home country. A list of contacts is at **Appendix 4**.

The content of this Publication has been published by Human Rights at Sea following instructed desk-top research by lawyers at Reed Smith LLP. The contents have been checked as best as possible for accuracy by the authors at the time of writing. Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Neither Human Rights at Sea nor Reed Smith LLP is liable in any way whatsoever in any jurisdiction for the contents of this Publication, which has been published in good faith in support of the charity's objectives. All text and images have been acknowledged where able. Any stated opinions, perspectives and comments are solely those of the authors. Any omissions or factual inaccuracies should be immediately alerted to Human Rights at Sea by writing to: enquiries@humanrightsatsea.org.

Appendix 1:

Legal Status of Seafarers in Common Home States

Jurisdiction	Legal Status of Seafarer	Protection for Seafarer
Philippines	Applies to any person employed or engaged or working in any capacity on board Philippine-registered commercial ships engaged in international voyages, where they are an employee ²⁶ .	Owners are required to comply with the MLC with regard to abandoned seafarers. The seafarer, if discharged at a port abroad for any reason, shall be repatriated to the Philippines via sea or air or as may otherwise be directed by the principal/employer/company. They shall be provided with accommodation and food, allowances and medical treatment, if necessary, until they arrive at the point of hire ²⁷ .
Indonesia	Under Indonesian law, individuals “hired or employed on board the ship [by the] owner or operator to perform duties on board in accordance with the position set forth in the Certificate of books” are legally protected ²⁸ .	Owners are required to comply with the MLC with regard to abandoned seafarers. If a legal action is commenced against the ship, the seafarer’s employer (owner, charterer or operator) will need to prioritise the payment of seafarer wages and other monies due in respect of employment, including repatriation costs and national insurance contributions ²⁹ .
Russian Federation	Under Russian law, the crew of a ship consists of “the ship master and other commanding officers and the ship’s company. The commanding officers of a ship include, besides the ship master, the mates, mechanics, electric mechanics, radio specialists and physicians. The federal executive body responsible for the transport, the federal executive body responsible for fishing and the federal executive bodies may also assign other specialists to the commanding officers of a ship. The ship’s company consists of persons who do not belong to its commanding staff.” ³⁰	Owners are required to comply with the MLC with regard to abandoned seafarers. Seafarers have the right of repatriation in a vast range of cases, including where one of the following events apply: “impossibility of the discharge by the owner of his duties in respect of the ship crew members... due to bankruptcy, sale of a ship or the change of the State of registration of a ship” ³¹ . Repatriation must be “quick and proper” ³² . The seafarer’s expenses must be borne by the owner, including food and medical treatment from the time the seafarer leaves the ship until they arrive at the place of repatriation ³³ . A shipowner shall be obliged to insure: wages, salaries and other payments due to seafarer members, including repatriation charges ³⁴ .

26 Rules and Regulations on the Employment of Filipino Seafarers On Board Philippine Registered Ships Engaged in International Voyage – (Department Order No. 130), Rules I and II(o) – Department of Labour and Employment.

27 Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, Section 19 (D) – Repatriation.

28 Law on Shipping (Law No. 17/2008), Article I(40).

29 This is the ‘receivables-shipping precedence’ referred to in Law on Shipping (Law No. 17/2008), Article 65 (1),(2)(a).

30 Merchant Shipping Code of the Russian Federation No. 81-FZ of 30 April 1999, Article 52.

31 Merchant Shipping Code of the Russian Federation No. 81-FZ of 30 April 1999, Article 58(1)(5).

32 Merchant Shipping Code of the Russian Federation No. 81-FZ of 30 April 1999, Article 58(1)(3).

33 Merchant Shipping Code of the Russian Federation No. 81-FZ of 30 April 1999, Article 58(1)(4).

34 Merchant Shipping Code of the Russian Federation No. 81-FZ of 30 April 1999, Article 60(1).

Jurisdiction	Legal Status of Seafarer	Protection for Seafarer
Ukraine	<p><i>“The crew of a vessel shall consist of the Master, other officers and crew (members). The officers of a vessel, other than the Master, shall include: Master’s mates, engineers, electrical engineers, radio officers, ship’s doctor and boatswain. The shipowner may include other marine specialists in the complement of officers. Ship’s crew consists of persons performing their duties on board and not included in the complement of officers.”</i></p> <p><i>“A legal position of the crew of a ship flying the State Flag of Ukraine as well as the relations between crew members engaged in ship’s operation between crew members and the shipowners, shall be determined by legislation of Ukraine in force.”³⁵</i></p>	<p>Since Ukraine has not ratified the MLC, the position of Ukrainian seafarers within the maritime labour market is, in general, more complicated³⁶.</p> <p>Ukrainian seafarers are entitled to turn to the Ukrainian courts for protection of their rights. Under Ukrainian employment law, a seafarer may claim the full amount of wages due, remuneration for any period of non-payment of wages, and compensation for any personal injury. A seafarer’s relatives (and not only the closest living ones) are entitled to claim compensation in the event of the death of a seafarer or for any moral damage suffered by the seafarer³⁷.</p>
United Kingdom	<p>Under UK law, the legal status of a ‘seafarer’ is afforded to <i>“any person, including the master of a ship, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on board a ship”³⁸</i>.</p>	<p>Owners are required to comply with the MLC with regard to abandoned seafarers.</p> <p>The owner must repatriate the seafarer where the latter is <i>“no longer able to carry out the seafarer’s duties under the seafarer’s employment agreement or cannot be expected to carry them out in the specific circumstances”</i> (including where the owner is not able to fulfil its legal or contractual obligations to the seafarer following insolvency, the sale of the ship or a change in the ship’s registration³⁹).</p>

35 Merchant Shipping Code of Ukraine, Section III, Clause 48.

36 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::NO::P11210_COUNTRY_ID:102867

37 <https://thelawreviews.co.uk/title/the-shipping-law-review/ukraine>

38 Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014, Part 1, Article 2(i)(b)(a).

39 Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014, Part 6, Article 19 (i)(d).

Appendix 2:

List of States that have ratified the MLC

Albania;
Algeria;
Antigua and Barbuda;
Argentina;
Australia;
Bahamas;
Bangladesh;
Barbados;
Belgium;
Belize; Benin;
Bosnia and Herzegovina;
Brazil*;
Bulgaria;
Cabo Verde;
Canada;
Chile;
China;
China – Hong Kong Special Administrative Region*;
Congo;
Cook Islands*;
Croatia;
Cyprus;
Denmark;
Faroe Islands;
Djibouti*;
Estonia*;
Ethiopia*;
Fiji;
Finland;
France*;
New Caledonia*;
Gabon;
Gambia*;
Germany;
Ghana;
Greece;

Grenada*;
Honduras;
Hungary;
Iceland*;
India;
Indonesia;
Islamic Republic of Iran;
Ireland;
Italy;
Jamaica;
Japan;
Jordan;
Kenya;
Kiribati;
Latvia;
Lebanon;
Liberia;
Lithuania;
Luxembourg;
Malaysia;
Maldives;
Malta;
Marshall Islands;
Mauritius;
Mongolia;
Montenegro;
Morocco;
Myanmar;
Netherlands*;
Curaçao*;
New Zealand;
Tokelau*;
Nicaragua;
Nigeria;
Norway;
Palau;
Panama;

Philippines;
Poland;
Portugal*;
Republic of Korea;
Romania;
Russian Federation;
Saint Kitts and Nevis;
Saint Vincent and the Grenadines;
Samoa;
Senegal*;
Serbia;
Seychelles;
Singapore;
Slovakia;
Slovenia*;
South Africa;
Spain;
Sri Lanka;
Sudan*;
Sweden;
Switzerland;
Thailand;
Togo;
Tunisia;
Tuvalu;
United Kingdom of Great Britain and Northern Ireland;
Bermuda;
British Virgin Islands*;
Cayman Islands;
Falkland Islands (Malvinas)*;
Gibraltar;
Isle of Man;
United Republic of Tanzania*;
Vietnam

*Countries/regions that have not yet adopted the latest 2018 amendments, which entered into force on 26 December 2020.

Appendix 3:

Draft Letter for Seafarers to send

To: Owners, Operators, Managers, Flag State, Port State Control

Subject: M/V *[insert name of ship]* (the “Ship”) – notification of a maritime lien arising from unpaid wages owed to a seafarer member

Dear Sirs,

Please be informed that in breach of the terms of my contract of employment with *[insert name of your employer]* (my “Employer”) dated *[insert date of your contract of employment]* (my “Contract”) my Employer has failed to pay my wages and/or any other amounts duly owed to me pursuant to my Contract, and so those amounts are outstanding to me (my “Wages”).

As of the date of this Letter, my Wages amount to the sum of *[insert currency and amount]*, and continue to accrue.

For the sake of good order, my Wages include, but are by no means limited to, any: irregular payments, bonuses, gratuities obtained in the course of service, deductions for health insurance, paid leave, sick leave, social benefits in the nature of national health insurance contributions, pensions and provident fund contributions, income tax deductions, stamp duties, trade union dues, damages for wrongful dismissal, repatriation costs and any and all other sums rightfully owed to me pursuant to my Contract and/or any internationally recognised conventions.

Please treat this Letter as my formal notification to you, and to all parties who may be concerned, that a maritime lien for my unpaid Wages has now come into existence by automatic operation of the law.

I hereby reserve all of my rights regarding the maritime lien in relation to my Wages, accrued interest and any legal costs I may be forced to incur in protecting my rights.

Yours sincerely,

[Insert full name]

[Insert signature]

[Insert date]

Appendix 4:

Helpful Contact Information for Seafarers

The Seafarers' Charity (formerly Seafarers UK)

The Seafarers' Charity is a charity that helps people in the maritime community by providing funding to support seafarers and their families and to those in education or training who are preparing to work or serve at sea.

Phone: +44 (0)20 7932 0000

Email: contact@theseafarerscharity.org



<https://www.facebook.com/SeafarersKGFS>



https://twitter.com/Seafarers_KGFS



<https://www.theseafarerscharity.org/>

Stella Maris (Formerly Apostleship of the Sea)

Stella Maris is the largest ship-visiting network in the world, and the official maritime charity of the Catholic Church.

Phone: +44 (0) 020 7901 1931

Email: info@stellamarismail.org



<https://www.facebook.com/StellaMarisOrg/>



<https://twitter.com/StellaMarisOrg>



<https://www.stellamaris.org.uk>

International Seafarers' Welfare and Assistance Network ("ISWAN")

ISWAN is an international organisation that promotes the welfare of seafarers worldwide. The organisation provides a free and confidential 24 hour helpline service.

Phone: +44 (0)300 012 4279

Email: iswan@iswan.org.uk



<https://www.facebook.com/welfareofseafarers/>



https://twitter.com/iswan_org



<https://www.seafarerswelfare.org/contact-us>

Sailors' Society

The Sailors' Society is an international seafarer welfare society based in the UK, offering support to seafarers and their families.

Phone: Emergency 24/7 Line +1 938 222 8181

Email: crisis@sailors-society.org

Helpline Instant Chat: www.wellnessatsea.org/helpline



<https://www.facebook.com/SailorsSociety/>



<https://twitter.com/sailorssociety>



<https://www.sailors-society.org/support-for-seafarers#helpline>

International Transport Workers' Federation (“ITF”) for Seafarers

The ITF is a global union of a variety of trade unions with respect to the transport associated with different industries (including shipping). Help by the ITF is rendered irrespective of nationality and/or the flag of the seafarer's ship.

Phone: +44 (0)7523 515097

Email: seafarers@itf.org.uk; seafsupport@itf.org.uk



<https://www.facebook.com/itfseafarerssupport>



<https://twitter.com/itfseafsupport?lang=en>



<http://www.itfseafarers.org/>

Seafarer Support

Seafarer Support is a free, confidential referral service for serving and former Merchant Navy, Royal Navy, Royal Marines & Fishing Fleet (UK) seafarers and their families.

Phone: 0800 121 4765

Online Request Platform:

<https://seafarersupport.zendesk.com/hc/en-gb/requests/new>C:\Users\nwright\AppData\Roaming\IW\NRPortbl\EME_ACTIVE\NWRIGHT\iswan@iswan.org.uk



<https://www.facebook.com/seafarerssupport/>



<https://twitter.com/seafarerssupport>



Webpage: <http://www.seafarerssupport.org/>

Seafarers' Advice & Information Line (“SAIL”)

SAIL is a Citizens Advice service dedicated to providing free and confidential advice to seafarers across the UK.

Phone: 0800 160 1842

Email: advice@sailine.org.uk

Online Request Platform: <http://sailine.org.uk/contact-us#contactform>



<https://www.facebook.com/Seafarers.Advice>



<https://twitter.com/seafarersadvice>



<http://sailine.org.uk/contact-us>

Mission to Seafarers

The Mission to Seafarers is a charitable organisation supporting merchant seafarers worldwide through a network of Seafarer Centres spread across 50 countries.

Phone: +44(0)20 7248 5202

Online Request Platform: <https://www.missiontoseafarers.org/contact>



<https://www.facebook.com/themissiontoseafarers/>



<https://twitter.com/FlyingAngelNews>

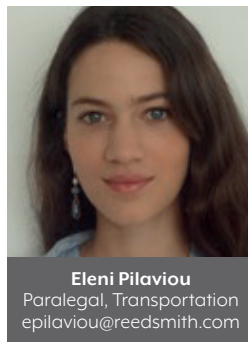
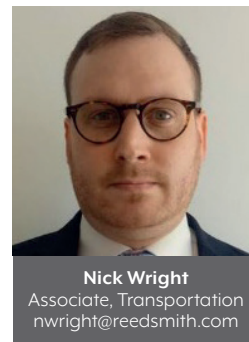
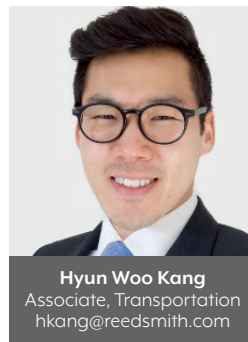
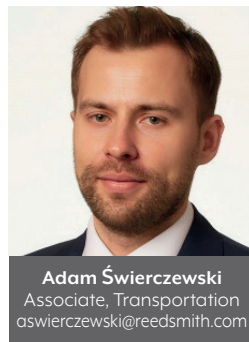
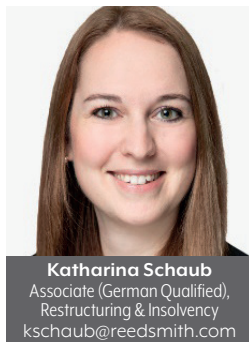
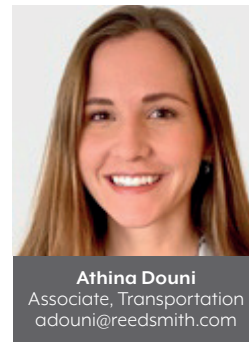
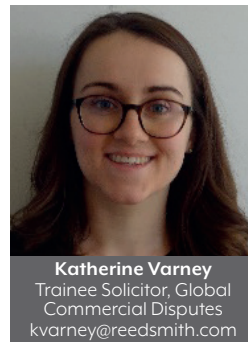
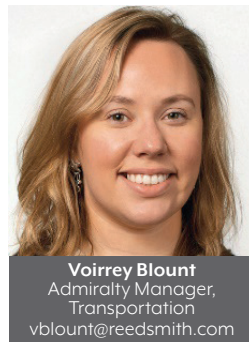
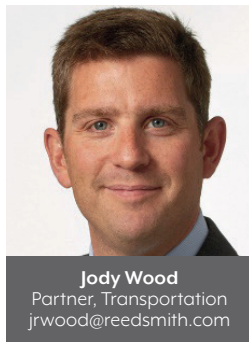


<https://www.missiontoseafarers.org/contact>

Reed Smith LLP is a dynamic international law firm dedicated to helping clients move their businesses forward. Our belief is that by delivering smarter and more creative legal services, we will not only enrich our clients' experiences with us, but also support them in achieving their business goals. Our long-standing relationships, international outlook and collaborative structure, make us the go-to partner for the speedy resolution of complex disputes, transactions and regulatory matters.

This insight briefing was prepared by lawyers in Reed Smith's Transportation Industry Group with help from lawyers in Restructuring & Insolvency and Global Commercial Disputes.

Reed Smith's transportation practice has advised the industry for nearly a century and covers the full spectrum of legal needs for transportation companies, including financing, re-financing or restructuring, dealing with marine casualties, navigating cargo claims or charter problems, dealing with all aspects of ship arrest in ports around the world (often involving issues of seafarer abandonment), and managing shipbuilding disputes or other shipping related roadblocks, such as sanctions violations or regulatory/competitive issues.



Disclaimer

This Publication has been published by Human Rights at Sea following instructed desk-top research by lawyers at Reed Smith LLP. The contents have been checked as thoroughly as possible for accuracy by the authors at the time of writing. Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Neither Human Rights at Sea nor Reed Smith LLP is liable in any way whatsoever in any jurisdiction for the contents of this Publication, which has been published in good faith in support of the charity's objectives. All text and images have been acknowledged where possible. Any stated opinions, perspectives and comments are solely those of the authors. Any omissions or factual inaccuracies should be immediately alerted to Human Rights at Sea by writing to: enquiries@humanrightsatsea.org.

Who We Are

BACKGROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **R**esearch, **A**dvocacy, **I**nvestigation and **L**obbying specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.


The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.


OUR MISSION


To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.




STAY IN CONTACT

 We welcome any questions, comments or suggestions. Please send your feedback to:
Human Rights at Sea, VBS Langstone Technology Park, Langstone Road, Havant. PO9 1SA. UK

 Email: enquiries@humanrightsatsea.org


 www.humanrightsatsea.org

 As an independent charity, Human Rights at Sea relies on public donations, commercial philanthropy and grant support to continue delivering its work globally. Was this publication of use to you? Would you have paid a consultant to provide the same information? If so, please consider a donation to us, or engage directly with us.

 www.justgiving.com/hras/donate

 **ONLINE DEDICATED NEWS**
www.humanrightsatsea.org/news/

 **CASE STUDIES**
www.humanrightsatsea.org/case-studies/

 **PUBLICATIONS**
www.humanrightsatsea.org/publications/

OUR CONSULTANCY. INSTRUCT US



www.hrasi.org
International Maritime
Human Rights Consultancy

We are promoting and supporting:



Proud to be 'Green'

All of our publications are printed on FSC certified paper so you can be confident that we aren't harming the world's forests. The Forest Stewardship Council (FSC) is an international non-profit organisation dedicated to promoting responsible forestry all over the world to ensure they meet the highest environmental and social standards by protecting wildlife habitat and respecting the rights of indigenous local communities.

Human Rights at Sea PUBLICATION

ABANDONMENT OF SEAFARERS: BACKGROUND, LEGAL STATUS, REMEDIES & PRACTICAL ADVICE



Photo Credit: Shutterstock.com








HUMAN RIGHTS AT SEA

Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment.

Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

© April 2021 Human Rights at Sea All Rights Reserved.

-  enquiries@humanrightsatsea.org
-  www.facebook.com/humanrightsatsea/
-  twitter.com/hratsea
-  <https://www.linkedin.com/company/human-rights-at-sea/>
-  Human Rights at Sea

www.humanrightsatsea.org
www.humanrightsatsea.org/publications/

VBS Langstone Technology Park, Langstone Road,
HAVANT PO9 1SA, United Kingdom

ISBN 978-1-913252-33-5