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The Human Element in Maritime Law: Jurisdictional Voids and the Enforcement of Seafarer Welfare Standards

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ABSTRACT

The global maritime industry remains structurally dependent on the “human element,” that is, the seafarers who navigate and maintain the vessels that carry most of international trade. Yet despite the existence of robust legal frameworks in the form of the United Nations Convention on the Law of the Sea (UNCLOS) and the Maritime Labour Convention, 2006 (MLC, 2006), seafarers continue to suffer welfare abuses. This article offers a focused commentary on the gap between the established legal protection frameworks and the practical reality of maritime jurisdiction. It argues that the use of flags of convenience (FoC) tends to sever the link required by international law, creating a jurisdictional void that dilutes flag State enforcement. Severe humanitarian crises, most notably seafarer abandonment, arise from this fragmentation and from the dynamics of legal buck-passing. Through a critique of these legal shortcomings, the article proposes a modernisation of the enforcement mechanisms to close the jurisdictional gap and protect maritime workers.

Keywords: UNCLOS, MLC 2006, Seafarers Welfare, Flags of Convenience

I. INTRODUCTION

The global economy is fundamentally dependent on maritime shipping, which carries over 80 per cent of global trade by volume and is therefore the primary artery for the international distribution of goods.¹ Beneath the economic macrostructure of shipping and modern supply chains, however, lies a highly vulnerable demographic: the seafarers, an indispensable resource for the maritime industry. Despite operating in a highly globalised era of international commitments to human rights, the sector still witnesses systemic violations of seafarer welfare.² This paradox forms the crux of a contemporary legal crisis in which the structural realities of international maritime law render the theoretical protections afforded to maritime workers impotent.

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¹ U.N. CONFERENCE ON TRADE & DEVELOPMENT, REVIEW OF MARITIME TRANSPORT 2023: TOWARDS A GREEN AND JUST TRANSITION (2023), <https://unctad.org/publication/review-maritime-transport-2023>.

² Zhipeng Cui, Xingguo Cao & Pengfei Zhang, *Myth and Reality on Human Rights at Sea in the Era of Globalization*, 12 FRONTIERS MARINE SCI., art. 1657709 (2025), <https://doi.org/10.3389/fmars.2025.1657709>.

At the centre of this issue is the fragmentation of maritime jurisdiction. The legal architecture governing the world's oceans is characterised by the concept of flag State sovereignty. The flag State principle entrusts the State of registry with the responsibility of enforcing administrative, technical and social standards on board its vessels.³ However, the evolution of the shipping industry in line with commercial interests has normalised the strategic decoupling of vessel ownership from the flag State through open registries, commonly referred to as flags of convenience (FoC). This has created a systemic disassociation that breeds a pervasive enforcement void.

When shipowners default on their obligations to their crew, whether by non-payment of wages, denial of repatriation or the abandonment of the vessel, the result is a jurisdictional ambiguity that harms seafarers' welfare. In addition, those responsible for this denial of human rights evade accountability through a buck-passing triangle involving the flag State, the port State and the seafarers' State of nationality. This focused commentary accordingly argues that the existing jurisdictional framework of international maritime law is ill-equipped to safeguard seafarers' welfare. By examining the disconnect between the legal baseline and the contemporary realities of the shipping industry, the article highlights the urgency with which jurisdictional voids must be addressed, because a failure to do so will continue to compromise the human rights of seafarers at sea.

II. THE LEGAL BASELINE: THE MLC 2006 AND UNCLOS

To comprehend the contemporary enforcement void, it is necessary first to establish the theoretical legal baseline that should govern seafarer welfare. The foundational instrument of international maritime law is the United Nations Convention on the Law of the Sea (UNCLOS),⁴ which is commonly referred to as the constitution of the oceans.⁵ UNCLOS established an overarching jurisdictional framework for maritime activities and dispute settlement.⁶ Article 94 of UNCLOS sets out the duties and responsibilities of the flag State, requiring every State to exercise effectively its jurisdiction and control in administrative, technical and social matters over ships flying its flag.⁷ This duty includes taking the measures

³ United Nations Convention on the Law of the Sea art. 94(1), Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

⁴ UNCLOS, *supra* note 3.

⁵ Tommy T.B. Koh, *A Constitution for the Oceans*, Remarks by the President of the Third United Nations Conference on the Law of the Sea (Dec. 6 & 11, 1982), https://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf.

⁶ Douglas Guilfoyle & Natalie Klein, *The UN Convention on the Law of the Sea Dispute Settlement System*, Written Evidence (UNC0001) to the House of Lords International Relations and Defence Committee, Inquiry "UNCLOS: Fit for Purpose in the 21st Century?" (2021), <https://committees.parliament.uk/writtenevidence/40605/html/>.

⁷ UNCLOS, *supra* note 3, art. 94(1).

necessary to ensure safety at sea, which encompasses the labour conditions, health and training of the crew.⁸ In addition, Article 91 of UNCLOS demands that a genuine link exist between the ship and the State.⁹

While UNCLOS defines and provides a wide jurisdictional foundation, it lacks granular, prescriptive regulation of specific maritime labour rights, and this creates substantive interpretive gaps.¹⁰ That historical void was theoretically addressed by the International Labour Organization (ILO), which consolidated its maritime instruments into the Maritime Labour Convention, 2006 (MLC, 2006).¹¹ The MLC, 2006 is widely considered the foundation of seafarers' rights, since it represents a substantive effort to establish a level playing field for shipowners while guaranteeing comprehensive labour standards to all seafarers.¹² The framework sets a strict baseline requirement for every aspect of a seafarer's working and living conditions, encompassing employment agreements, timely remuneration, leave entitlement, mandatory repatriation, medical care, and food and catering standards.^{13,14}

The implementation of the MLC, 2006 was designed to serve as an adequate guarantee of seafarers' welfare rights by shifting the industry away from its inherent, systemic labour exploitation towards true institutional reform.¹⁵ Ideally, it would bridge the gap between traditional maritime commerce and fundamental human rights through the formal recognition of seafarers' rights to life, health and decent work, notwithstanding the highly hazardous environment in which they operate.¹⁶ However, achieving the universal application of these rights remains a challenge, since domestic frameworks must continually adapt in order to incorporate and enforce stringent international labour protocols, as Yousefi has highlighted.¹⁷

⁸ *Id.* art. 94(3)(b), (4).

⁹ *Id.* art. 91(1).

¹⁰ Ioannis Chapsos, James Malcolm & Robert McCabe, *Evidence Submission on UNCLOS*, Written Evidence (UNC0002) to the House of Lords International Relations and Defence Committee, Inquiry "UNCLOS: Fit for Purpose in the 21st Century?" (2021).

¹¹ Maritime Labour Convention, 2006, Feb. 23, 2006, 2952 U.N.T.S. 3 (entered into force Aug. 20, 2013) [hereinafter MLC, 2006].

¹² INT'L LABOUR OFFICE, MARITIME LABOUR CONVENTION, 2006, AS AMENDED (MLC, 2006): FREQUENTLY ASKED QUESTIONS (6th ed. 2026), <https://doi.org/10.54394/00034264>.

¹³ LAURA CARBALLO PIÑEIRO, INTERNATIONAL MARITIME LABOUR LAW (Hamburg Studies on Maritime Affairs vol. 34, 2015), <https://doi.org/10.1007/978-3-662-47032-9>.

¹⁴ MLC, 2006, *supra* note 11, regs. 2.1 (seafarers' employment agreements), 2.2 (wages), 2.4 (entitlement to leave), 2.5 (repatriation), 3.2 (food and catering), 4.1 (medical care on board ship and ashore).

¹⁵ Paul J. Bauer, *The Maritime Labour Convention: An Adequate Guarantee of Seafarer Rights, or an Impediment to True Reforms?*, 8 CHI. J. INT'L L. 643 (2008), <https://chicagounbound.uchicago.edu/cjil/vol8/iss2/12>.

¹⁶ Pengfei Zhang, Desai Shan, Minghua Zhao & Nicola Pryce-Roberts, *Navigating Seafarer's Right to Life Across the Shipping Industry*, 99 MARINE POL'Y 80 (2019), <https://doi.org/10.1016/j.marpol.2018.10.002>.

¹⁷ Homayoun Yousefi, *Recognizing the Challenges of the Maritime Labor Convention 2006 (MLC 2006) in Iran*, 14 TRANSACTIONS ON MAR. SCI., no. 1, 2025, <https://doi.org/10.7225/toms.v14.n01.013>.

Under this dual framework the legal expectation is unequivocal: the flag State remains responsible under UNCLOS for ensuring that its vessels comply fully with the rigorous social and labour standards detailed in the MLC, 2006. In addition, as Payoyo observes, the MLC, 2006 addresses historical enforcement failures and enhances the compliance mechanism by incorporating robust provisions for port State control (PSC).¹⁸ The State in which a vessel docks is therefore legally empowered to inspect the ship and, where necessary, to detain it if conditions on board are found to be hazardous to seafarers.^{19,20} In theory, this deliberately creates a robust and overlapping protective network of jurisdiction that encompasses both the vessel's registry and its physical location. As the following sections demonstrate, however, the continuous commercial exploitation of State sovereignty critically undermines this well-intentioned international legal baseline.

III. THE JURISDICTIONAL VOID: FLAGS OF CONVENIENCE

Both UNCLOS and the MLC, 2006 collapse in practice because of a systemic practice that eliminates the genuine link requirement. Under the arrangement known as flags of convenience (FoC), shipowners are permitted to register their vessels in another country, one that typically offers lower taxation, reduced regulatory oversight and relaxed enforcement of labour welfare standards.²¹ This allows shipowners lawfully to subject their vessels to the jurisdiction of a flag State with which they have a limited or reduced substantive economic or administrative connection.

The practice actively hollows out and erodes Article 91 of UNCLOS. The concept of the genuine link was originally conceived on the assumption that a flag State would have the actual capacity to govern the vessels flying its flag. Instead, the enforcement of international maritime labour law is substantively fragmented, because it is outsourced to States that lack the capacity and resources required to support comprehensive enforcement. According to Carballo Piñeiro, limited political will, dispersed fleets and a lack of adequate institutional resources characterise the context of certain flag States, and this limits their overall ability to ensure that proper enforcement is achieved.²² The flag State thus becomes an administrative façade, leaving the seafarers' welfare unattended. When shipowners default on remuneration schedules or fail to

¹⁸ Peter B. Payoyo, *Seafarers' Human Rights: Compliance and Enforcement*, in THE FUTURE OF OCEAN GOVERNANCE AND CAPACITY DEVELOPMENT: ESSAYS IN HONOR OF ELISABETH MANN BORGESE (1918–2002) 468 (Dirk Werle et al. eds., 2018), <https://brill.com/display/book/edcoll/9789004380271/BP000089.xml>.

¹⁹ INT'L LABOUR OFFICE, *supra* note 12.

²⁰ MLC, 2006, *supra* note 11, reg. 5.2.1 & std. A5.2.1, ¶ 6 (inspection in port; detention where conditions on board are clearly hazardous to the safety, health or security of seafarers, or where the deficiency constitutes a serious or repeated breach of the Convention's requirements).

²¹ Cui, Cao & Zhang, *supra* note 2.

²² CARBALLO PIÑEIRO, *supra* note 13.

provide a safe working environment as required by law, the FoC State abdicates its duties, and a substantive jurisdictional void results.

In a bid to compensate for the negligence that FoC registries present, the international community has shifted its reliance to port State jurisdiction (PSJ) as a collective mechanism. Through PSC regimes, coastal States have the ability and the legal mandate to use their sovereignty to implement the MLC, 2006 whenever foreign vessels dock in their harbours.²³ Payoyo further notes that this shift also attempts to compel low-cost shipowners to behave by leveraging market pressure in the form of potential detention of the vessel, which is a more persuasive sanction than a diplomatic reprimand.²⁴ PSC thus effectively weaponises port access to foster compliance with labour standards and human rights requirements.

However, while PSC remains a vital tool, it does not comprehensively address the jurisdictional void. PSC is inherently reactive and, at the same time, geographically limited, since it assists only those seafarers whose vessels enter the ports of proactive port States. On the high seas, the jurisdictional void and regulatory vacuum persist. In addition, reliance on PSC produces a complex buck-passing triangle: in the event of an emergency, the flag State points to the shipowner, while the port State hesitates to assume financial responsibility for foreign nationals aboard a foreign vessel. This confusion is further exacerbated by the continued use of non-binding informal agreements, and of presumed “gentlemen’s agreements” between States, in maritime governance, which can be substantively flexible as regards the implementation and enforcement of UNCLOS and the MLC, 2006.²⁵ Klein also notes that such non-binding informal agreements allow bad actors to escape any repercussions, thereby voiding the mechanisms of legal accountability.²⁶ The resulting legal labyrinth permits the further exploitation of seafarers by shipowners, who can use shell companies and jurisdictional loopholes to evade liability. Consequently, seafarers are left in a space where legal protection exists in theory but is poorly implemented.

IV. CONTEMPORARY MANIFESTATION: THE CRISIS OF CREW ABANDONMENT

The lethal consequences of this jurisdictional void manifest themselves in the contemporary crisis of crew abandonment. Theoretical debates about international law are often abstract, but the practical failure of the maritime legal system plays out on stranded vessels worldwide. The

²³ Erik J. Molenaar, *Port State Jurisdiction*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2021), <https://dspace.library.uu.nl/handle/1874/414911>.

²⁴ Payoyo, *supra* note 18.

²⁵ Natalie Klein, *Informal Agreements and UNCLOS*, Written Evidence (UNC0047) to the House of Lords International Relations and Defence Committee, Inquiry “UNCLOS: Fit for Purpose in the 21st Century?” (2021).

²⁶ Klein, *supra* note 25.

structural vulnerabilities were exposed during the COVID-19 pandemic, when seafarers could not access services because of border closures and travel restrictions. These measures led to the suspension of the crew change process, trapping seafarers on vessels long beyond the expiry of their contracts.²⁷ Although global trade continued, seafarers became the forgotten key workers, subjected to conditions of forced labour. This situation persisted while flag States and port States argued about jurisdictional responsibility for repatriation.²⁸ In addition, the prolonged agony of being stranded at sea affected the psychological and physical well-being of seafarers, resulting in anxiety and depression, as Wong has shown.²⁹ This systemic failure also had lasting effects, since it severely damaged seafarers' morale and sparked a retention crisis as seafarers opted for shore-based employment to escape the uncertainty and poor employment conditions that characterised the maritime industry.³⁰

Yet although the pandemic magnified the pre-existing and pernicious phenomenon of ship abandonment, the phenomenon continues to occur. Abandonment occurs when shipowners sever their financial and operational ties to a vessel, cutting off the resources on which crew members depend, such as wages, fuel, food and fresh water.^{31,32} These scenarios arise when shipowners vanish behind the corporate veil of an FoC registry. The crew are left stranded on a vessel and unable to disembark, owing to strict migration regulations in the port State and indifference from the flag State. Such acute crises demonstrate that the theoretical protections of the MLC, 2006 often prove practically useless without the deliberate and intentional intervention of non-State actors. Since States often pass the buck, organisations such as the International Transport Workers' Federation (ITF) are forced to step into the legal vacuum to provide emergency assistance and to represent the crew in legal proceedings, including the arrest of the vessel, to recover unpaid wages.³³

The persistence of abandonment highlights institutional decay. Scholars and lawmakers alike increasingly question whether the 1982 UNCLOS framework is fit to address the challenges of

²⁷ Aishwarya Kalyappen, *A Study on the Impact of the COVID-19 Pandemic Towards Seafarers' Sign-On and Sign-Off Process*, 4 J. MAR. LOGISTICS 23 (2024), <https://doi.org/10.46754/jml.2024.12.002>.

²⁸ Helen Devereux & Emma Wadsworth, *Forgotten Keyworkers: The Experiences of British Seafarers During the COVID-19 Pandemic*, 33 ECON. & LAB. REL. REV. 272 (2022), <https://doi.org/10.1177/10353046221079136>.

²⁹ Chun Pong Wong, *Impact of the COVID-19 Pandemic on the Well-Being of the Stranded Seafarers*, 8 MAR. BUS. REV. 156 (2023), <https://doi.org/10.1108/MABR-07-2021-0049>.

³⁰ Maria Carrera-Arce, Raphael Baumler, Harinder Singh & Johan Hollander, *COVID-19 Crisis: Lasting Effects on Seafarers' Well-Being and Its Potential Impact on Retention*, 62 INQUIRY: J. HEALTH CARE ORG., PROVISION & FIN., art. 00469580251375264 (2025), <https://doi.org/10.1177/00469580251375264>.

³¹ Avinash S. Nair & Sudhir Kumar, *Ship Abandonment and the Life of Workers on Abandoned Vessels: A Scholarly Journal*, 7 INT'L J. MULTIDISCIPLINARY RSCH., no. 6, 2025, <https://doi.org/10.36948/ijfmr.2025.v07i06.62088>.

³² MLC, 2006, *supra* note 11, std. A2.5.2, ¶ 2 (a seafarer is deemed abandoned where the shipowner fails to cover the cost of repatriation, has left the seafarer without the necessary maintenance and support, or has otherwise unilaterally severed ties with the seafarer, including a failure to pay contractual wages for at least two months).

³³ Nair & Kumar, *supra* note 31.

the twenty-first century.³⁴ The Convention's antiquated assumptions about State responsibility do not account for modern corporate obfuscation and human rights violations at sea, as Chapsos and his co-authors have observed.³⁵ The failure of the legal framework allows shipowners to abandon seafarers without immediate criminal or financial liability, which indicates a desperate need to reform a jurisdictional order that prioritises the sovereignty of States at the expense of human rights.

V. CONCLUSION AND RECOMMENDATIONS

The existing paradigm of international maritime law features a substantive disconnect between the comprehensive rights detailed in the MLC, 2006 and the jurisdictional realities. The widespread use of FoC effectively circumvents the intent of UNCLOS, producing enforcement voids that facilitate substantive abuses, including vessel abandonment. Seafarers' rights are thus continuously sacrificed in favour of corporate cost-cutting and State-level jurisdictional buck-passing. To rectify this situation, the existing maritime legal framework requires urgent and modernised solutions that address the enforcement gap.

First, the international community needs to strengthen PSJ aggressively and to make its exercise mandatory. As Payoyo notes, port States need to be legally empowered and encouraged to act decisively against vessels whose flag States abdicate their responsibilities.³⁶ Measures such as the detention of vessels connected to shipowners with a history of abandonment could boost compliance.³⁷ In addition, UNCLOS may require further supplementary agreements to define and enforce the genuine link principle, moving beyond mere administrative registry to demand actual proof of financial and operational accountability.

Second, the financial security certificates currently mandated by the MLC, 2006 to cover abandonment are inadequate, since they expire before prolonged legal battles conclude.³⁸ A mandatory, globally administered international repatriation and welfare fund, financed through a compulsory levy on shipowners, should therefore be established. The fund would be triggered to support abandoned crews without waiting for protracted legal battles and jurisdictional disputes to be resolved.

³⁴ HOUSE OF LORDS INT'L RELATIONS & DEFENCE COMMITTEE, UNCLOS: THE LAW OF THE SEA IN THE 21ST CENTURY, 2021–22, HL 159 (UK), <https://publications.parliament.uk/pa/ld5802/ldselect/ldintrel/159/15902.htm>.

³⁵ Chapsos, Malcolm & McCabe, *supra* note 10.

³⁶ Payoyo, *supra* note 18.

³⁷ Molenaar, *supra* note 23.

³⁸ MLC, 2006, *supra* note 11, std. A2.5.2 (financial security in the event of abandonment, inserted by the Amendments of 2014 to the Code of the MLC, 2006, in force Jan. 18, 2017).

In addition, legal enforcement should be paired with corporate accountability. The jurisdictional void thrives in the shadows of the global supply chain. Implementing a mandatory, standardised environmental, social and governance (ESG) reporting principle could therefore enforce transparency and thereby improve seafarers' welfare. For instance, if leading container shipping companies were required to report rigorously on ESG standards, and particularly on seafarers' welfare, corporate charterers would be less likely to hire substandard FoC-flagged vessels.³⁹ Ultimately, resolving the maritime enforcement void in respect of seafarers' welfare requires the dismantling of the legal fictions that currently shield shipowners, so that human rights at sea are guaranteed rather than merely theoretical.

³⁹ Theite Krämer, *The Seafarer Perspective in Social Sustainability Reporting: Do Sustainability Reports of Leading European Container Shipping Companies Reflect the Social Issues of Seafarers?* (2024) (Master's thesis, Novia University of Applied Sciences), <https://www.theseus.fi/handle/10024/858832>.