

LEGAL COMMITTEE
107th session
Agenda item 4

LEG 107/4/1
13 December 2019
Original: ENGLISH
Pre-session public release:

**PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS,
AND SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF CONTRACTUAL CLAIMS
FOR PERSONAL INJURY TO, OR DEATH OF SEAFARERS, IN LIGHT OF THE
PROGRESS OF AMENDMENTS TO THE ILO MARITIME LABOUR CONVENTION, 2006**

Analysis of incidents of abandonment for the period 1 January to 13 December 2019

Submitted by the International Transport Workers' Federation

SUMMARY

Executive summary: This document focuses on reporting of incidents of abandonment for the period 1 January 2019 to 10 December 2019

Strategic direction, if applicable: Other work

Output: OW 45

Action to be taken: Paragraph 27

Related documents: LEG 106/4/2 and LEG 106/4/3

Introduction

1 The Legal Committee, during its 104th session, committed to considering reports on the issue of financial security in the case of abandonment of seafarers and shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, in light of the progress of the amendments to the International Labour Organization (ILO) Maritime Labour Convention (MLC), 2006, as amended.

2 As the organization which reports the majority of cases to the Joint IMO/ILO database on reported incidents of abandonment of seafarers, the International Transport Workers' Federation (ITF) offers this analysis of the experience of the third year since the financial security requirements have been in force. Details reported are correct as per those reported to ITF at the date of writing.

3 During the period referred to, ITF reported the abandonment of 231 seafarers on 19 vessels. Of these cases, two are now considered resolved, five are disputed (the seafarers are no longer on board, but wage claims are ongoing), and 12 cases were ongoing at the time of

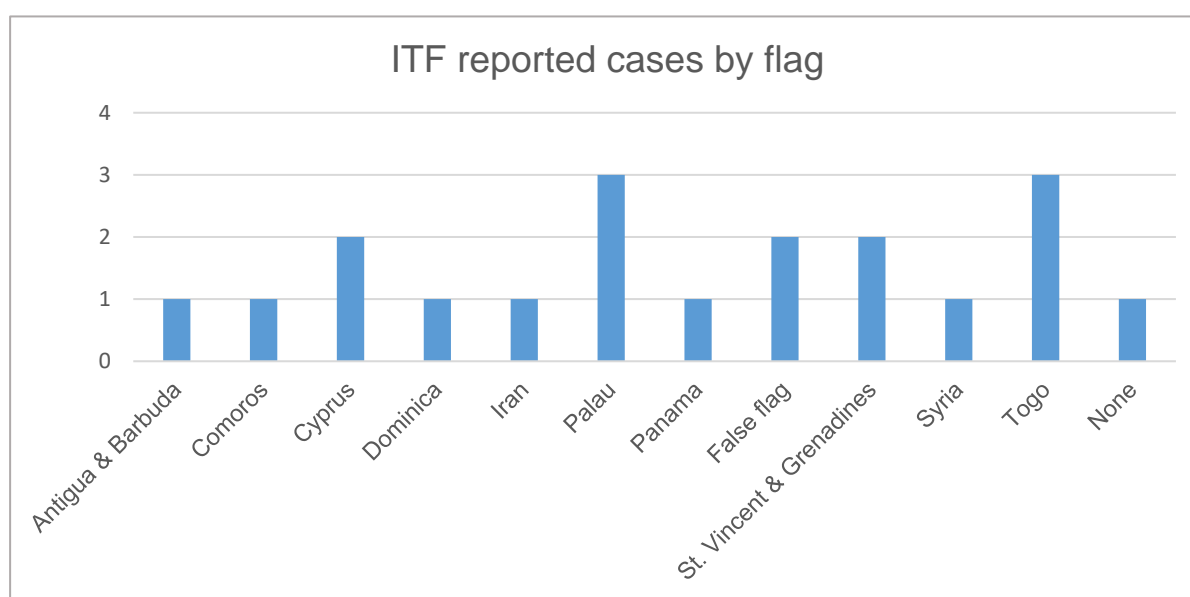
writing this report. Of the unresolved cases, one is very close to resolution, and two are subject to legal action by the crew to recover wages.

4 While this is a reduction in reporting, it should be noted that the number of cases reported by other organizations rose dramatically in 2019. Sixteen cases were reported by flag States, the International Chamber of Shipping and other parties, compared to two cases in 2018.

5 A similar document analysing the first year was submitted to LEG 105 and LEG 106.

Vessels by flag

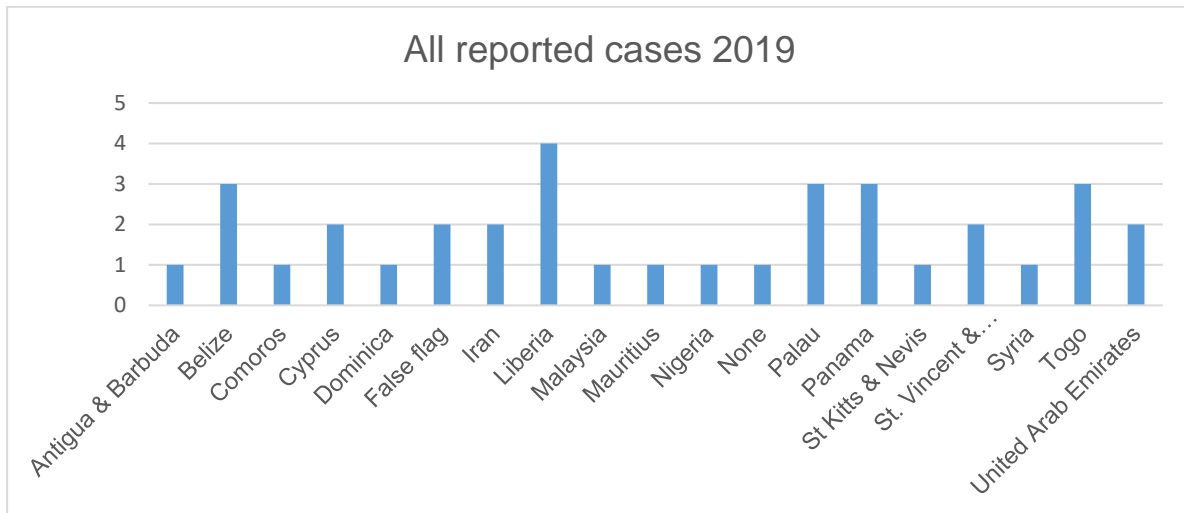
6 In cases reported by ITF, there is a spread of flags, with Palau and Togo having three cases.



7 Another three cases were more troublesome in that the vessels had either no flag, or were flying a false flag:

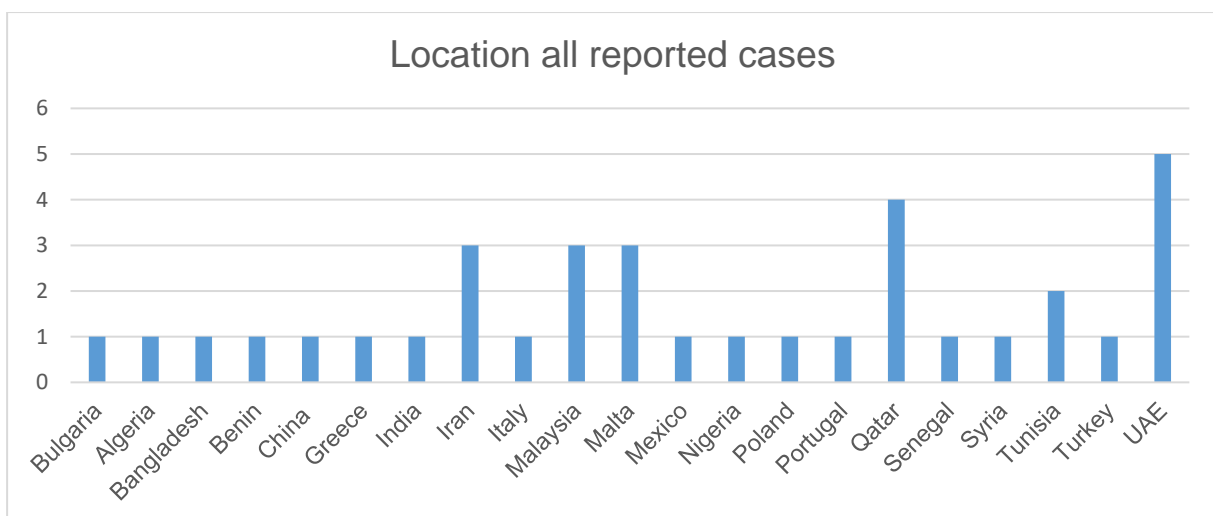
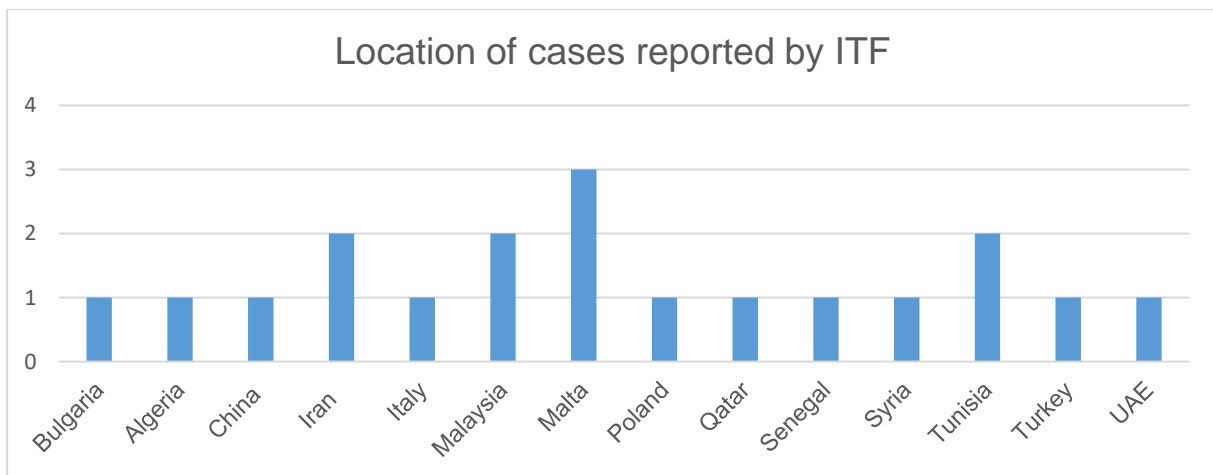
- .1 The **Shang Yuan Bao** had its flag withdrawn by Panama following alleged breaches of international sanctions. This led to great difficulties in arranging the repatriation of the crew, who received none of their outstanding wages.
- .2 The crews of the **Tazihiri** and the **Maraya** both reported non-payment of wages while outside the territorial waters of Malta. The vessels, owned by the same company, both fly the Samoan flag, despite the Samoan registry insisting that they are not registered in Samoa. This raises concerns of criminal behaviour on the part of the owner. The reports of the crew also led ITF to have concerns about human trafficking and forced labour.

8 When all reported cases are considered, it can be seen that four vessels registered in Liberia were reported and that Belize and Panama both had three vessels reported.



Location of abandonments

9 When considering the locations of all reported cases, the United Arab Emirates continues to record the highest number of reported cases. Adding the number of cases reported in Qatar, it is clear that abandonment in the Gulf States remains a concern.

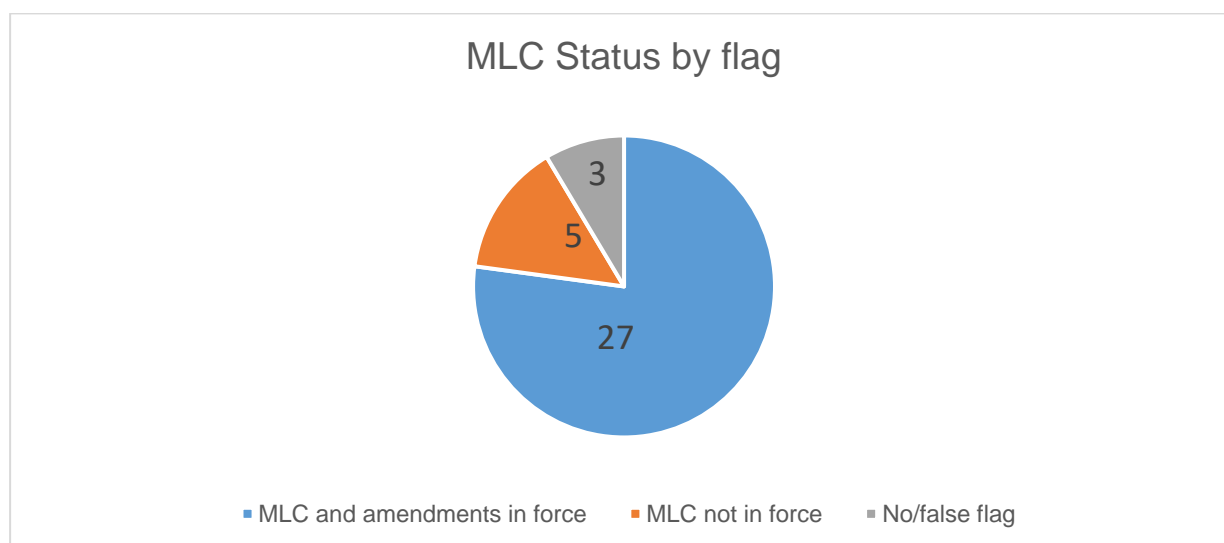


Maritime Labour Convention, 2006

10 Of the cases reported by ITF during the period, 13 (68%) involved vessels flying flags of States that have ratified MLC, 2006 and have accepted the entry into force of the 2014 amendments. Three were flying flags that have not ratified MLC, 2006; one had no flag; and three were flying a false flag.

11 Of the cases in which insurance was required, only eight had valid cover.

12 For cases not reported by ITF, 14 involved vessels flying flags of States that have ratified MLC, 2006 and have accepted the entry into force of the 2014 amendments, while two were flying flags that have not ratified MLC, 2006. The table below shows the combined figures.



Cases with valid insurance

13 Of the cases in which valid insurance was in place, only one case resulted in the insurer paying the four months wages and repatriation as per the requirements of Standard A2.5.2 of MLC, 2006. Of the remaining seven cases with valid insurance, two resulted in the crew being fully paid by the owner; one resulted in the crew being partly paid by the owner; two resulted in the crew taking legal action to recover their wages (only one of these cases has concluded); one resulted in the crew being repatriated without wages; and one was reported recently and is well on the way to being resolved with the owner paying outstanding wages.

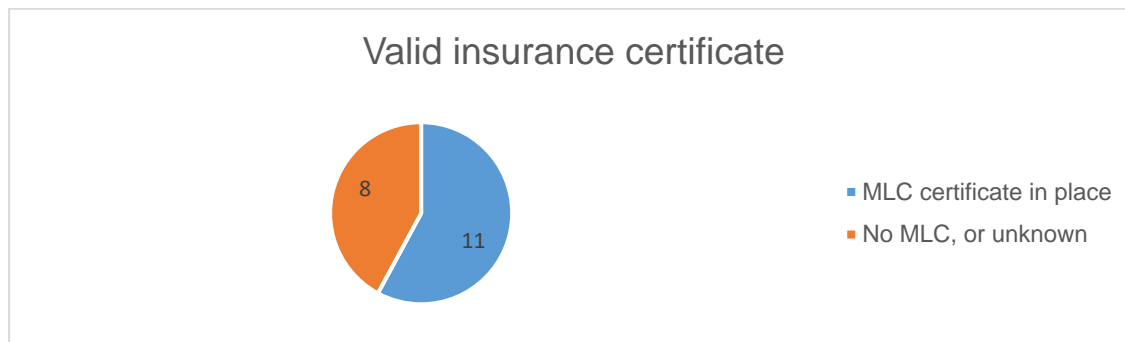
14 It is worth noting that all cases in which insurance was present led to some form of resolution. While it is disappointing that wages were not always recovered, situations in which the crew remained on board with little hope were largely avoided. No cases in which no insurance was present have been resolved in any positive manner.

15 ITF has anecdotal evidence that suggests a number of other cases in which valid insurance was present were also resolved without being reported to the database.

16 From the cases reported by ITF, it appears that insurers continue to see forcing the owner to pay as the preferable option when confronted with a claim under the MLC certificate. This often results in delays as owners' promises to pay are broken. Such delays mean that

crew are more likely to be owed more than four months wages and are more likely to run out of supplies before the situation can be resolved.

17 The vessels **Maraya** and **Tazihiri** (both flying the Samoan flag despite not being registered) carried MLC certificates from an insurer named Levant Maritime Services. When contacted, Levant responded only to claim that the insurance had been cancelled. Given the lack of flag, it is unclear whether the crew was aware of the cancellation.



Insurer contacted but did not pay or repatriate crew

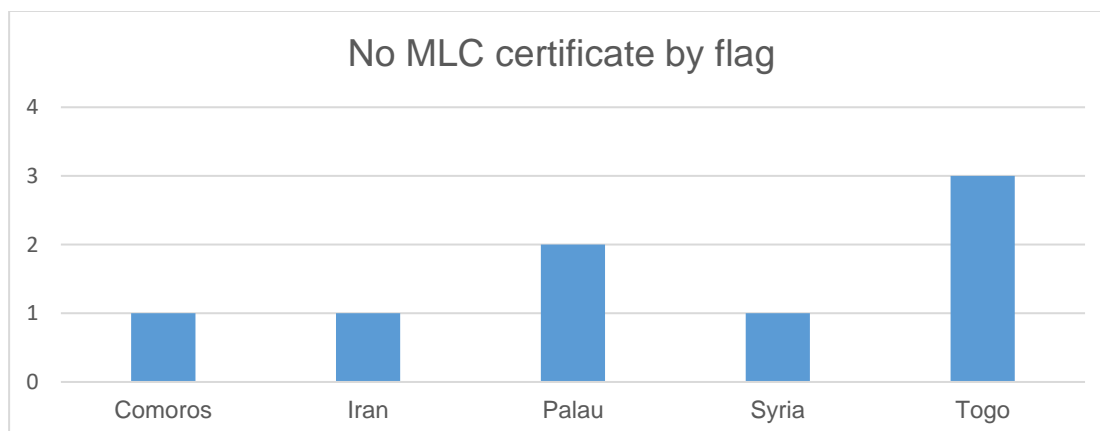
18 In seven cases, the insurer was contacted but did not pay the four months wages or repatriation. There are varying degrees of involvement from insurers across these cases. One of the cases have been resolved, and the others are listed as disputed. In some of the cases, the shipowner has paid in response to pressure applied by the P & I club.

Cases without valid insurance

19 Eleven cases were reported in which there was no insurance, or the insurance was recently cancelled. The only case to reach any kind of resolution without insurance is that of the **Shang Yuan Bao**, in which the crew were sent home without payment.

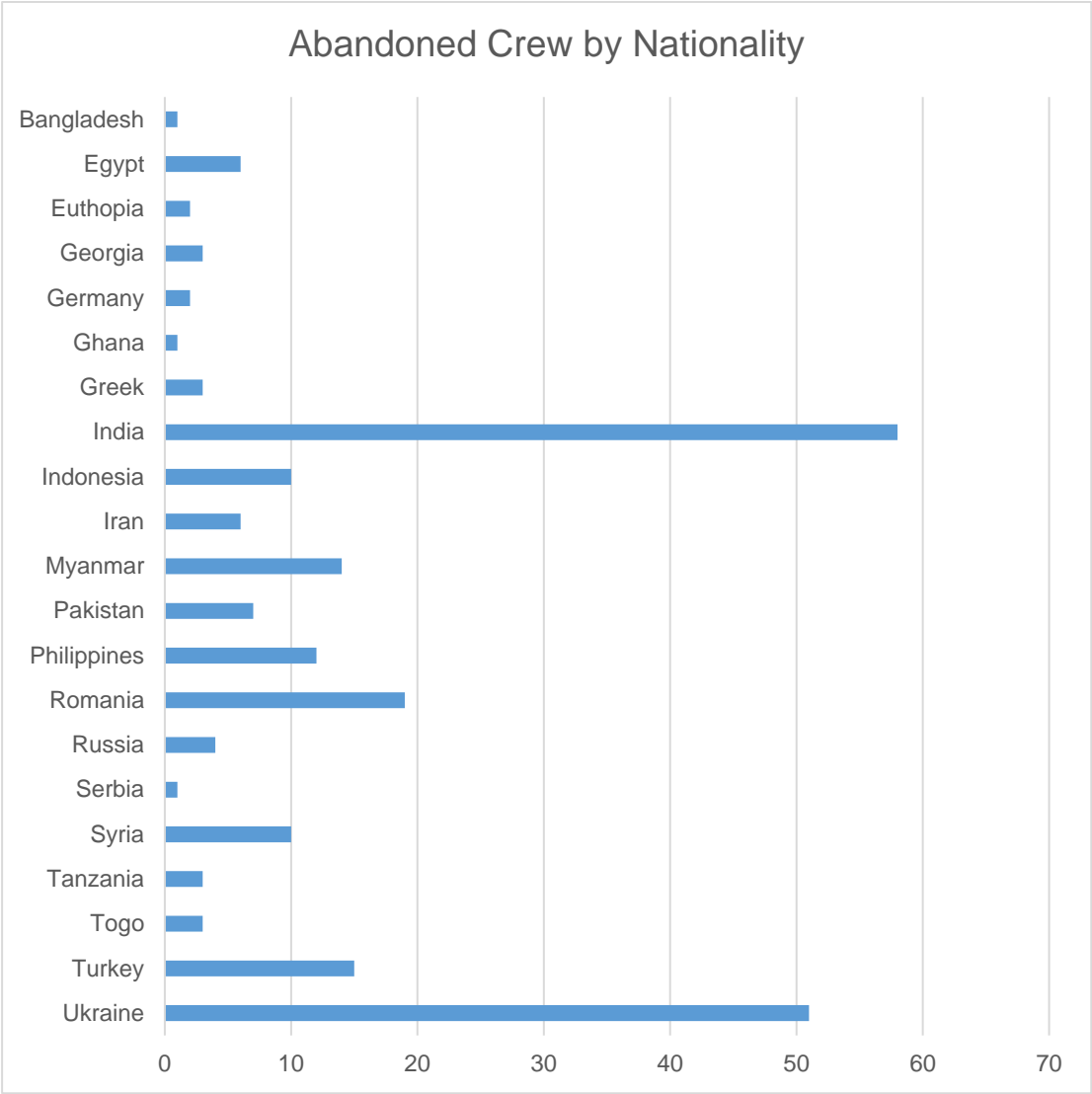
Vessels without abandonment insurance by flag

20 Palau, Togo and the Islamic Republic of Iran have all ratified MLC, 2006 and the relevant amendments.



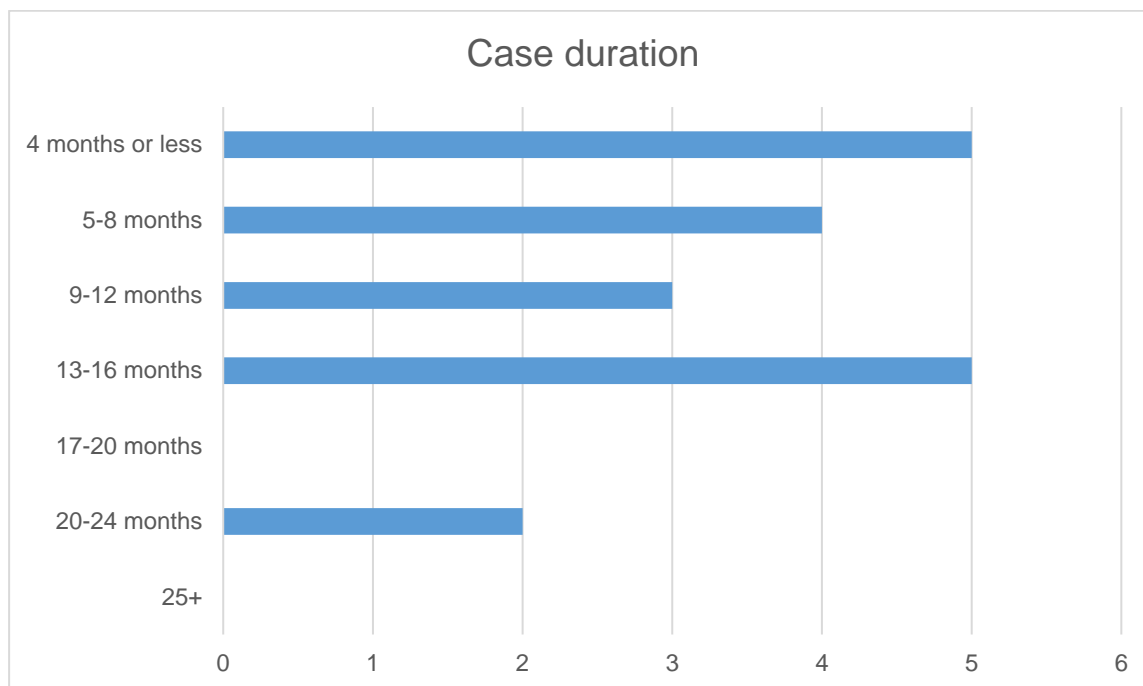
Nationality of abandoned seafarers

21 The largest nationality group of abandoned seafarers is Indian with 58 seafarers out of the 231 (25%), followed by Ukrainian with 51 (22%). There continues to be a clear problem with the abandonment of Indian seafarers. This is the third year running that Indian crew have topped the list of abandoned seafarers.



Duration of abandonment cases

22 It is difficult to give a definitive figure for the duration of abandonment cases. Seafarers do not always seek assistance immediately. A case may start as a wage claim and deteriorate into a situation of abandonment. Some seafarers are on board and/or unpaid for longer than others. In order to give an impression of the lengths of time involved, the following table takes the period of unpaid wages as a starting point for calculating a period of abandonment. The data is correct at the time of writing this report and includes ongoing cases.



23 The number of long running cases remains a problem. The proportion of long running cases reported has increased, but this may be explained by the failure to report more easily solved cases.

Conclusion

24 This is the third year of the requirement and there continues to be problems in the practical implementation of Standard A2.5.2 of MLC, 2006. Vessels continue to operate without valid insurance in place. While the definition of abandonment, as set out in MLC, 2006, is quite clear, the circumstances surrounding abandonment and the relationships between flag States, shipowners, their insurers and other entities with a commercial interest in the vessel are extremely varied.

25 This year has seen a decrease in the number of cases reported by ITF and an increase in the number of cases reported by other entities. ITF is pleased to see the interest shown by States and NGOs in assisting to bring this problem to an end. ITF believes that there continues to be a number of cases which meet the MLC definition of abandonment which are not reported and would ask all States to report cases of which they become aware so that an accurate picture of this continuing problem can be collated.

26 ITF has identified three continuing problems:

- .1 The failure of some shipowners to carry insurance and the failure of flag and coastal States to hold these owners responsible. The requirements of MLC, 2006 are clear, yet several vessels seem to be able to trade internationally despite non-compliance without encountering problems.
- .2 The difficulties involved in solving long-running cases. More support is required from flags and port States to bring these cases to a close. Flag States in particular should consider what sanctions can be applied to owners who fail to resolve cases over a long period.

- .3 Port States continue to refuse to allow the repatriation of abandoned seafarers when that would result in the vessel being unmanned due to safety concerns. Since last year's report, there have been no apparent steps by any State to allow for this problem. This problem is of particular concern as it increases the likelihood of seafarers being owed more than four months' wages, running out of fuel or food, and developing health problems. More steps need to be taken to allow for temporary breaches of safe manning requirements, something flag States appear willing to allow, in order to facilitate repatriation of abandoned seafarers.

Action requested of the Committee

27 The Legal Committee is invited to:

- .1 take note of the information provided;
- .2 encourage discussions relating to a solution to the problem of repatriation of abandoned seafarers;
- .3 use its influence to encourage Member States to ratify and effectively implement the relevant international instruments and amendments thereto;
- .4 remind Member States of the importance of IMO resolution A.930(22) on *Guidelines on the provision of financial security in the case of abandonment of seafarers* and the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers, both of which highlight the vulnerability of seafarers and the suffering caused by abandonment; and
- .5 highlight the existence of the Joint IMO/ILO Database on reported incidents of abandonment of seafarers and encourage Member States to report incidents of abandonment to the database when incidents of abandonment occur in their ports, or on vessels flying their flag.

ANNEX

LIST OF ABANDONMENT CASES REPORTED TO THE ITF IN 2019

Vessel	Flag	IMO	Abandoned	Date ITF Notified	Status	P&I
Nika Fortune	PLW	8933095	Bulgaria	29.10.2018	Unresolved	Arsenal Insurance
Bonnie B	CYP	6810055	Malta	15.11.2018	Disputed	MS Amlin
Sarem	VCT	9415363	United Arab Emirate	12.2.2019	Disputed	QBE insurance
Noble Breeze	VCT	9126871	Malaysia	7.2.2019	Resolved	British Marine
Shang Yuan Bao	None	8003620	China	21.2.2019	Disputed	None
Borhan 3	IRN	None	Islamic Republic of Iran	22.2.2019	Unresolved	None
Lady Caroline	SYR	7909619	Syria	20.5.2019	Unresolved	Unknown
Grand Ferry	PLW	8003620	Qatar	21.5.2019	Unresolved	Unknown
Freya	ATG	9239288	Poland	6.6.2019	Resolved	MS Amlin
Abo Alyssa	TGO	7724019	Turkey	26.3.2019	Unresolved	Unknown
ULA	PLW	8102414	Islamic Republic of Iran	27.7.2019	Unresolved	Unknown
Freedom	TGO	8943533	Algeria	1.7.2019	Unresolved	Unknown
HL Osaka	PAN	9252826	Malaysia	8.10.2019	Disputed	London P&I
Tazahiri	FALSE	9046758	Malta	16.10.2019	Unresolved	Levant Maritime Services
Pearl Coast	DMA	8112380	Senegal	18.10.2019	Disputed	Ingosstrakh
Maraya	FALSE	7514517	Malta	9.11.2019	Unresolved	Levant Maritime Services
Mariam	TGO	9005326	Tunisia	9.11.2019	Unresolved	Unknown
The Transporter	CYP	8619003	Italy	6.11.2019	Unresolved	Shipowners
Akasya	COM	8218380	Tunisia	28.10.2019	Unresolved	Unknown