



June 22, 2020

To all Flag States

Re: *States Must Act Now to End Forced Labor at Sea*

The International Lawyers Assisting Workers (ILAW) Network, which unites over 400 workers' rights lawyers from over 55 countries, writes to demand the immediate release and repatriation of the roughly 200,000 seafarers who have been trapped aboard ships due to the measures imposed to contain the spread of COVID-19. Compelled to extend their contracts months ago, many seafarers have been at sea now for well over a year and are mentally and physically exhausted and distressed. As such, they pose a great risk both to themselves and to others. This situation is another stark reminder as to how workers, whose labor is necessary for global trade - including the transportation of essential goods such as food, personal protective equipment and medical supplies - are often the least protected in a crisis. Despite repeated calls from the ILO, the UN, the International Transport Workers Federation (ITF) and trade unions around the world, these workers are no closer to freedom today. Indeed, their situation constitutes forced labor in violation of international law.

Flag states have an obligation to protect the crew working aboard vessels bearing their flag. We call on flag states to act immediately to repatriate all seafarers who have been working beyond the terms of their original contracts. Until such time, we believe that seafarers have the right to refuse any further work as such work is contrary to human rights law. Indeed, they may certainly refuse any further contract extensions prolonging their untenable and unsafe situation. Given the extraordinary length of service at sea without rest, seafarers likely have an additional basis to refuse further work, namely the right to remove themselves from a work situation where there is a reasonable basis to believe it presents an imminent and serious danger to life or health. As many seafarers have now served in excess of one year on board, their circumstances increase the risk of accident, injury and illness on board.¹

¹ The Maritime Labour Convention (MLC) places a maximum limit of continuous service on board a vessel at 11 months (12 months with one month of leave). One important reason for this is to manage stress, fatigue, exhaustion and mental health among seafarers. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_554767.pdf

Forced Labor

ILO Convention 29, Article 2, defines forced labor as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*”² There is no question that seafarers are performing a work or service. The menace of a penalty refers to a wide range of acts, from physical violence to psychological coercion to retention of papers, among others.³ Here, seafarers were told that they would be abandoned in a foreign port without the possibility of repatriation if they did not agree to a contract extension.⁴ Additionally, seafarers faced the additional risk of loss of future job prospects for not signing an extension. Clearly, these significant threats constitute a penalty for purposes of Convention 29. Further, where consent to work was given under *the menace of a penalty*, there can be no voluntary offer.⁵ Here, seafarers were provided no effective choice but to sign the contract extension.

Even if a seafarer initially consented, it may still be considered forced labor if they cannot withdraw their consent without fear of suffering a penalty - starting from the moment they have been denied the right to stop working. The initial consent may be rendered irrelevant where the voluntary nature of an offer is negated by subsequent events, such as going back on a promise to be sent home on a specified date.⁶

In addition to Convention 29, Regulation 2.1, paragraph 2, of the Maritime Labor Convention states that seafarers’ employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and *freely accepts them before signing*. Whether a seafarer actually had the time and capacity to review, seek advice and make an informed decision to extend their contract will be an indicator of the *voluntariness* of their offer to work. Thus, contract extensions *even* with crew consent can give rise to forced labor concerns.

Flag states may attempt to argue that the pandemic constitutes a case of *force majeure*. However, flag States would need to meet the very high threshold for material impossibility to avail themselves of this argument. However, it does not appear at all impossible for flag States to facilitate crew repatriations, particularly in light of previous government action to secure the repatriation of its own citizens. The fact that the same level of diplomatic pressure has not been applied to secure crew repatriations demonstrates that further material steps could, and *should*, be taken to avoid or mitigate the current situation and its consequences.

² ILO Forced Labor Convention (29), available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

³ ILO, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization (Geneva, 2012), para. 270, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf.

⁴ The MLC requires employers and shipowners to repatriate their crew. When they do fail to do so, the MLC considers this to be abandonment.

⁵ ILO General Survey, para 271.

⁶ Ibid.

The world's governments have abandoned seafarers by refusing to take steps to allow them to return home. We once again urge governments to take immediate steps release and repatriate all seafarers trapped at sea.

Sincerely,

The ILAW Network
Jeffrey Vogt, Chair