

The Impact of the Covid-19 Pandemic on Human Rights

Collective Research Project –
Frederick University

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λογος

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Logos Verlag Berlin



Bibliographic information published by Die Deutsche Bibliothek
Die Deutsche Bibliothek lists this publication in the Deutsche
Nationalbibliografie; detailed bibliographic data is available in the
Internet at <http://dnb.ddb.de>.

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ISBN 978-3-8325-5665-5

Logos Verlag Berlin GmbH
Georg-Knorr-Str. 4, Geb³äude 10
D-12681 Berlin
Tel.: +49 (0)30 42 85 10 90
Fax: +49 (0)30 42 85 10 92
<https://www.logos-verlag.de>

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The impact of COVID-19 pandemic on ship operations, ports, and the rights of seafarers

IOANNIS VOUDOURIS, NICHOLAS G. BERKETIS

Abstract: In December 2019, coronavirus disease 2019 (COVID-19), associated with severe acute respiratory syndrome, first appeared in Wuhan, China. This quickly led to a pandemic that caught the World Health Organization off guard. The virus spread rapidly from China to Japan, South Korea, Europe, and the United States, taking on global proportions. As a result, governments worldwide imposed progressive restrictions on various sectors of the economy and society, including mandatory lockdowns and border closures, in an effort to isolate cases and limit the spread of virus transmission.

The COVID-19 pandemic had a significant impact on all sectors, particularly in international shipping. The logistical and ashore support for seafarers were severely affected. This study focuses on two main chapters: (1) the impact of the pandemic on shipping operations and ports and (2) the impact on individual seafarers' rights, with a particular focus on employment (crew change, leave, and repatriation), health (including mental well-being), and economic freedom (underpayment or nonpayment of salary and family aspects). Special references are also made to marine insurance covers.

Keywords: COVID-19, maritime industry, human rights, seafarers, ports, shipping operations, crew changes, frustration, force majeure, hardship, stranded seafarers, health, economic status, free pratique, Maritime Labor Convention, MLC, International Labor Organization, ILO, World Health Organization, WHO, International Health Regulations, IHR, Marine Insurance, Protection and Indemnity Clubs (P&I) Clubs.

Background

The practice of quarantine dates back to ancient times, when societies recognized the imperative to segregate the healthy from the infirm. This age-old custom has been employed throughout history

as a means of preventing the spread of disease and safeguarding public health.¹ In the course of the 21st century, humanity has been beset by three perilous epidemics, each stemming from the emergence of pathogens belonging to the coronavirus family. The first was SARS (severe acute respiratory syndrome) and was limited relatively quickly until the pathogen disappeared. The second matter pertains to the coronary artery disease resulting from MERS (Middle-East respiratory syndrome), which continues to be reported in predominantly Middle-Eastern nations. The third ailment, known as coronavirus disease 2019 (COVID-19), which is attributed to the coronavirus strain named severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), was first detected toward the end of 2019 in the People's Republic of China.² All three diseases cause acute respiratory infections, have high transmissibility, and are associated with high morbidity and mortality.³ Due to the ferocity of the disease, governments resorted to quarantines and similar emergency measures. The state of emergency allows a government to take extraordinary measures to protect its citizens and maintain public order during times of crisis. In such situations, the government is granted additional powers and resources to respond to the emergency and mitigate its impact on society. This principle is based on the idea that in exceptional circumstances, the normal rules and procedures of law may not be

¹The contemporary name 'quarantine' derives from the Italian-venetian word of 'quarantena', i.e., the forty-days isolation of ships and seafarers, as a preventative measure against the spread of disease. The Old Testament evidences how individuals affected by diseases were separated from others, and people with leprosy, as Leviticus informs, had to live isolated all their lives. In the 5th century B.C., Hippocratic teaching had established that an acute illness only manifested itself within forty days. See Hippocrates, *Aphorismi* (trsl. Francis Adams) Section V, 15 reads: "Persons who become affected with empyema after pleurisy, if they get clear of it in forty days from the breaking of it, escape the disease; but if not, it passes into phthisis" (text in Greek: «ὀκόσοι ἐκ πλευρίτιδος ἐμπυοὶ γίνονται, ἢν ἀνακαθαρθῶσιν ἐν τεσσαράκοντα ἡμέρησιν, ἀφ' ἧς ἂν ἡ Π' ἤξις γένηται, παύονται: ἢν δὲ μὴ, ἐς φθίσιν μεθίστανται»). See G. F. Gensini, M. H. Yacoub, A. A. Conti, 'The concept of quarantine in history: from plague to SARS' (2004) 49(4), *Journal of Infection* 258. See P. Frati, 'Quarantine, trade and health policies in Ragusa-Dubrovnik until the age of George Armmenius-Baglivi' (2020) 12(1) *Medicina Nei Secoli* 103–127.

²Fan Wu *et al.*, 'A new coronavirus associated with human respiratory disease in China.' (2020) 580(7803) *Nature* 266.

³Mujeeb Khan *et al.*, 'COVID-19: a global challenge with old history, epidemiology and progress so far'. (2021) 26(31) *Molecules* 10.

sufficient to address the situation at hand. The doctrine of necessity is used in various contexts, including during times of war, civil unrest, epidemics, and other emergencies. The declaration of a state of emergency is typically made by the executive branch of government and is subject to legal and constitutional constraints. It is invoked by governments to justify actions such as the temporary suspension of civil liberties, the imposition of curfews, and the use of military force to maintain order or to defend another public good. Under the state of emergency, freedoms are precluded, particularly the freedom of choice, as it pertains to that which cannot be avoided. Necessity, *ipso facto*, stifles freedoms as that which is necessary is not only imperative but also indisputable. In many respects, this is how the law initially apprehends necessity: as an urgent reality to which legal rules must conform. The maxims ‘no one is held to the impossible’⁴ and ‘necessity overrules the law’ express the notion that necessity erodes or even sacrifices the demands of the law, at least those that are accepted in ‘normal’ times. Its use, however, must be carefully balanced against the need to protect individual rights and freedoms and to ensure that the rule of law is upheld.⁵ From the fiduciary theory of human rights perspective, states of the western world have a duty to protect their citizens’ equal freedom during emergencies, even if it means derogating from certain human rights norms such as freedom of expression, movement, and peaceful assembly.⁶ In accordance with the treaties, the decision of a state to temporarily declare a *state of emergency*, due to extraordinary circumstances, must briefly adhere

⁴See Thomas Aquinas, *Summa Theologiae IIa-IIae*, q. 1–91 (Paris: 1271, 1272, trsl. by Fr. Laurence Shapcote) q62-a5 (in chapter: ‘Whether restitution must always be made to the person from whom a thing has been taken?’) reads: *nullus tenetur ad impossibile. Sed quandoque aliquis non potest statim restituere. Ergo nullus tenetur ad statim restituendum.* (No man is bound to do what is impossible. But it is sometimes impossible to make restitution at once. Therefore, no man is bound to immediate restitution). The justification for the doctrine of necessity can be traced back to the writings of T. Aquinas and Henry de Bracton. Bracton, a medieval jurist, argued that in certain situations the law must yield to the demands of necessity. This idea was later developed by legal authorities such as W. Blackstone, who suggests on various occasions that the preservation of order and stability was a paramount concern that could justify extra-legal actions by the authorities. See William Blackstone, *Commentaries on the Laws of England, vol I: The rights of persons* (Portland 1807).

⁵*Necessitas vincit legem.*

⁶Criddle Evan J., Fox-Decent Evan, ‘Human Rights, Emergencies, and the Rule of Law’ (2012) 34(39) *Human Rights Quarterly* 40.

to the following essential requirements.⁷ Firstly, there must be a “clear and present danger to public safety”. Secondly, the state must follow the designated procedural steps, as described by law; this means to comply with all relevant legal requirements justifying its proclamation, including the demonstration of those exceptional circumstances and the warranty that such action is necessary. Thirdly, the state must establish credible safeguards and control agencies that monitor the prevailing circumstances and provide the administration with advice on possible amendments and changes in the applied policy. Fourthly the state must exercise its taken action in a *proportional* manner to the threat posed and motivated the emergency. The same were emphasized during the COVID-19 pandemic by multiple competent sides.⁸ It is clear that even in the midst of a crisis, the judiciary and the parliament play a decisive role in preventing the excessive use of emergency powers and ensuring the adequacy and proportionality of the special measures adopted. Judiciary oversight remains crucial to ensuring the legality, necessity, and proportionality of the measures adopted as the ensuing decisions are characterized by the independence and impartiality of those called to resolve the dispute (the judges) and the fact that the decisions possess legal authority.

Thus, by early 2020, the effects of COVID-19 were felt across all sectors, particularly in international shipping, which caused a disruption to the main pillars of logistical and ashore support for seafarers. Gradually, the Chinese ports started to be affected and supply chain back-

⁷Article 4 International Covenant on Civil and Political Rights; Article 15 European Convention on Human Rights.

⁸See European Parliament, *Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences* 2020/2616 (RSP) para. 46, where it was stressed the need for measures to be fair and reasonable, directly linked to the current health crisis, time-limited, and regularly reviewed. See Venice Commission, ‘Report on Respect for Democracy, Human Rights and the Rule of Law during States of Emergency’ (19 June 2020) CDL-AD(2020)014, where it was likewise stressed that extreme measures must be only taken in unique situations. These measures must be reasonable and time-defined and their effectiveness should be proper oversight from the courts and the parliament. See Maria Diaz Crego, Silvia Kotanidis, ‘States of emergency in response to the coronavirus crisis. Normative response and parliamentary oversight in EU Member States during the first wave of the pandemic’ (Dec. 2020) *European Parliamentary Research Service* 2–3. See Jan Petrov, ‘The COVID-19 emergency in the age of executive aggrandizement: what role for legislative and judicial checks?’ (2020) 8(1–2) *The Theory and Practice of Legislation* 5, where he analyses the factors of independent justice and the judicial oversight.

logs grew increasingly severe. The dysfunction in the supply chain has made contractual performance very difficult to observe as all parties could not deliver their promises on time because circumstances became radically different from that originally contemplated by the parties. A first notable example of this was the mobile quarantine zones established on large cruise ships, which carry thousands of passengers. Rapidly increasing protection measures (such as port entry bans, strict quarantine restrictions, COVID-19 sampling tests, communication restrictions, isolation requirements, anti-epidemic measures, continuous disinfection of premises, morbidity and mortality due to COVID-19) were the reality for the shipping sector in 2020 for all types of maritime transport. However, airports were closed and international travel was prohibited, and seaports were kept open to facilitate the continuity of global supply chains.⁹ During the course of the pandemic, the shipping industry has consistently facilitated the carriage of approximately 90% of goods, including vital supplies such as food, fuel, and various other commodities. This achievement has been accomplished despite the difficult circumstances faced by a significant population of 1.5 million seafarers who have been deployed on vessels during this challenging period. Voyages and operations have been carried out at the expense of compromising both economic and labour rights afforded to these aforementioned seafarers.¹⁰ Many seafarers have been left stranded in remote locations, with no means of repatriation, and have been forced to wait for repatriation for extended periods of time. This has not only had a negative impact on the well-being of seafarers but also caused a breakdown in trust between all parties involved.

Impact on shipping and port operations

Due to the perilous nature of the maritime business, it is imperative for owners and charterers to anticipate contractual provisions in the event of time loss resulting from unforeseeable circumstances beyond human control.¹¹ For instance, charterparties typically contain pro-

⁹Christiaan De Beukelaer, 'COVID-19 border closures cause humanitarian crew change crisis at sea' (2007) 132 *Marine Policy* 104661.

¹⁰ibid.

¹¹At times, unforeseen circumstances such as pandemics, natural disasters, government policies, and other external factors can also lead to business emer-

visions for allocating the risk of certain types of delay, which may be specified, general, or even more unusual, such as the disease, risk of war, or industrial action; hence, parties are usually deterred from easily invoking force majeure.¹² It is noteworthy that the declaration of a state of emergency constitutes an additional ground for the sus-

gencies. As these emergencies have a direct effect on contractual and tortious liabilities, judges began to consider that *vis major* could excuse (temporarily at least) a failed obligation. The Roman concept of *vis major*, similar to the French force majeure and the Scottish *damnum fatale*, was not limited to natural disasters. Hence, an Act of God is judicially construed as a defense, in the context of the law of obligations against a breach. For example, a tenant would not have to pay rent if the crops were destroyed by *vis major*; violent storms and pirates exempted a captain from responsibility for his cargo. However, maritime business is well familiar with the circumstances causing impossibilities and hardships. Again, calamities occurring at sea through the violence of the elements (*ex marinae tempestatis discrimine*), such as winds, waves, tempests and lightning are clearly acts of God but are normally subsumed under the wider concept of a 'peril of the sea' in charterparties, bills of lading and policies of marine insurance. See Loimer Hermann, 'Accidents and Acts of God: A History of the Terms' (1996) 86(1) *American Journal of Public Health* 104. See C.G. Hall, 'An unsearchable providence: The lawyer's concept of act of God' (1993) 13(2) *Oxford Journal of Legal Studies* 228. See e.g., *Pandorf & Co v Hamilton, Fraser & Co* [1886] 17 QBD 670.

¹²In order to arrive at a mutual understanding that an event constitutes an Act of God, all parties involved, namely the charterer and the carrier—in consultation with the port—must provide substantiating evidence and reach a consensus that the event was beyond human control and could not have been prevented. This process necessitates the involvement of the relevant authority, ideally the court, the port state, or any other competent public agency, which would issue an order/decreed affirming that the event falls within the purview of an Act of God, See. *Tsakiroglou and Co Ltd v Noble Thorl GmbH* [1962] AC 93, where the Suez Canal was closed to navigation due to the military operations by the British and French armed forces against Egypt, and the alternative route via the Cape of Good hope was almost twice as long and respectively the freightage was more costly. The case became subject to arbitration proceedings and the umpire held that the sellers were in default. His decision was later confirmed and the House of Lords held that the shipping via the Cape of Good Hope did not render the contract fundamentally different and therefore, did not present a frustration of the contract. See Ewan McKendrick, *Force Majeure and Frustration of Contract* (2nd edn. Informa Law from Routledge 2013) 129–130. Lack of clarity may be extremely frustrating for parties who are trying to ensure that their contractual obligations are met. The test for frustration was defined in *Davis Contractors Ltd v Fareham Urban District Council* [1956] UKHL 3 as follows: a) a supervening event, b) that would render it radically different from what was anticipated under the contract. Because there is no litmus test to determine if the entire benefit of the contract has been lost, when it becomes impossible to perform, the persevered impossibility (due to radically different circumstances) is a standalone criterion.

pension of an obligation, in the framework of private and business law. For example, during a state of emergency, businesses may be allowed to temporarily suspend their operations or delay the payment of taxes or other financial obligations. Similarly, individuals may be exempted from certain legal requirements or obligations, such as paying rent or fulfilling contractual obligations, if they are unable to do so due to the emergency situation. Overall, the declaration of a state of emergency provides an additional legal basis for the suspension of legal obligations, which can help to alleviate some of the burdens and challenges faced by individuals and organizations during times of crisis.

The effects of the outbreak of the pandemic on ship and port operations are chronologically divided into two distinct time phases: ‘pre-’ and ‘post-’ the official characterization of the outbreak as a pandemic by the World Health Organization (WHO).¹³

During the first two months of the crisis, there was no official declaration by the port states that would have taken the initiative and activated ‘hardship’ or ‘force majeure’ clauses or allowed excused redirection of chartered vessels perhaps to safer alternative ports. At the early stages of the outbreak (from November 2019 to March 2020), delays and congestion steadily increased, yet port and flag states, as well as international organizations, were slow to respond to the impending crisis. This failure to anticipate and mitigate the effects of the outbreak is evident. Had an epidemic notice, for instance, been issued by the competent port authorities at an earlier stage, it would have provided carriers, charterers, and ports with the opportunity to deviate from their usual routes and make alternative arrangements. However, in the absence of an official announcement from either the WHO or the port states – or even the involved flag states – carriers

¹³On the 30th of January 2020, in light of the escalating disease, the World Health Organization (WHO) declared a ‘Public Health Emergency of International Concern’. The WHO took approximately three months to officially classify the COVID-19 outbreak as a pandemic on the 11th of March 2020. As anticipated, the WHO’s decision had a substantial impact on the global economy and trade, with a demand shock following the initial supply shock experienced by China. See Catrin Sohrabi *et al.*, ‘World Health Organization declares global emergency: A review of the 2019 novel coronavirus (COVID-19)’ (2020) 76 *International Journal of Surgery* 74–75.

See WHO, ‘Coronavirus disease (COVID-19) pandemic: Overview’. Accessed 10 Sept 2022. <https://www.who.int/europe/emergencies/situations/covid-19>

continued to exercise reasonable dispatch in performing the agreed voyages to and from major international loading/discharging ports for a period of three months.¹⁴ As the port services became increasingly inefficient, the disruption of the supply chain was inevitable.

As early as January 2020, legal advisors and marine insurers had warned about the worsening of the problem. They noted that the shipping industry should be prepared for the same problems that arose during outbreaks of other diseases, such as the Ebola virus.¹⁵ The majority of experts also stressed that in the context of charterparties, charterers have an obligation to designate a safe port, an order that shipowners must comply with, unless there is an excessive risk or the port is known to be unsafe.¹⁶ Risks for the crew may make the port unsafe even when there is no real risk of damage to the boat. As a result, a contagious disease may legally make a port to be unsafe.¹⁷ The security of a port depends to a large extent on whether there are appropriate precautions and protection measures to ensure that a ship can approach the port without risking contamination of her crew.¹⁸ Starting in the spring of 2020, international, regional, and national regulators have begun issuing acts of obligation and compliance to create a corresponding legal framework for tackling the COVID-19 pandemic on port security.

In a number of countries, the issue of force majeure caused by disease has been resolved at the legislative level. In reality, however, the pandemic led to extremely unprecedented conditions in the first quarter of 2020, with a severe global shutdown of production processes and logistics. Closed factories, stricter border controls, and restrictions on the freedom of movement of individuals have disrupted the daily lives of people around the world. Among other unfavourable trends, we mention the growing demand for port fee discounts from ship operators and cargo owners on the occasion of the pandemic. At that

¹⁴About the pressing obligation (condition) of the shipowner to reach the destination (as per the charterer's orders), see Evi Plomaritou and Papadopoulos Anthony, *Shipbroking and Chartering Practice* (8th edn Oxford & NY: Informa Law from Routledge 2014) 134.

¹⁵Beth Bradley, 'Shipping needs to prepare for coronavirus restrictions, warns' (2020) *Hill Dickinson Insights*.

¹⁶Julian Cooke *et al.*, *Voyage Charters* (4th edn, Informa Law from Routledge 2014) 5.65.

¹⁷Coghlin *et al.*, *Time Charters* (7th edn Informa Law 2014) 10.1 *et seq.*

¹⁸Bradley *op. cit.*

same time, every week, there were reports of rising freight rates with a huge drop in fuel prices.¹⁹ Cargo operators use methods to combat cost reductions in the event of bookings falling, such as empty routes, that is, cancelled shipments, in which freight shipments are consolidated but port revenues are reduced accordingly. At the same time, the cost of services in ports is increasing due to protection measures, while a percentage of the workforce is being treated or quarantined and the total administrative cost due to COVID-19 prevention measures had almost doubled.²⁰

In the midst of this unprecedented situation, port security, international trade supply hubs, and ship crew replacement points became a major impedance for modern global shipping. Overall, the ability of port countries to provide reliable conditions for stable operation during a pandemic has now been an important requisite for economic stability, in addition to the key issue of health and human life.²¹ The conservative approach taken by the states to ensure these conditions has gradually begun to protect the world's largest ports from epidemic crises. Accordingly, they have led to the creation and continuous updating of effective protocols and the best practices to ensure the protection of ports and ships and their crews from the pandemic.

As regards the matter of carriage obligations among shipowners and charterers, that port congestion made performance difficult as parties were unable to observe their promises in a timely manner. In light of these unforeseen and unprecedented circumstances, the legal norms of the dispatch, arrived ship, laytime, delivery and redelivery of vessel, and the calculation of hire, demurrage, and despatch were rendered uncertain. In accordance with the standard terms of a charterparty, if circumstances become drastically different from what was originally agreed upon, the parties should assess and discuss the situation and make any necessary changes to the agreement that are reasonable and justified. This could include changes to the timeline, payment terms, or other aspects of the agreement. The purpose is to ensure that all parties are able to fulfil their obligations, even if

¹⁹Olha Prokopenko, Radoslaw Miśkiewicz, 'Perception of "Green Shipping" in the contemporary conditions' (2020) 8(2) *Entrepreneurship and Sustainability Issues* 271.

²⁰Ibid.

²¹Cleopatra Doumbia-Henry, 'Shipping and COVID-19: protecting seafarers as frontline workers' (2020) 19(3) *WMU Journal of Maritime Affairs* 286.

the circumstances have changed drastically from what was originally agreed upon. For example, in the first three months, because circumstances became radically different from those originally contemplated by the parties, contractual performance was consequently made very hard; as a result, parties could not deliver on promises. Theoretically, in light of the changed circumstances (that could not have reasonably been foreseen at the time of entering into the agreement), the parties could have used the legal tools they were equipped with, to engage in mutual consultation and demonstrate mutual understanding in order to make any necessary adjustments and revisions that may be justified.²² In practice however, the power of the extended period of uncertainty and shock prevailed, thus affecting legal integrity. As a consequence, hardship, congestion, and disruption to the supply chain reached unprecedented levels, ultimately culminating in its collapse.

From the marine insurance perspective, many cargo issues arising out of this pandemic may involve the insurers' discretion. Overall, the marine insurance association - pools [i.e., Protection & Indemnity Clubs (P&I Clubs)] appeared to be largely pragmatic to shipowners' difficulties. In particular, the majority of cover under the quarantine rules involves several requirements, such as to demonstrate a proximate and predicable (non-remote) causation between the outbreak of a contagious disease and the reported damage (e.g. cargo delivery, health issues among crew and passengers, or loss/damage to the cargo) that cannot be attributed to any other cause. Potential recoverable losses encompass the costs associated with disinfecting both the vessel and her cargo, providing necessary care for individuals on board, as well as compensating for any expenses and revenue loss resulting from quarantine measures.²³

²²For instance, the theory relating to the nomination of a safe port and alternative port. See *ibid.* 134 et seq.

²³Patrick Donner, 'Insurance Perspective on Places of Refuge' in Aldo Chircop, Olof Linden, *Places of Refuge for Ships. Emerging Environmental Concerns of a Maritime Custom* (Leiden and Boston, Martinus Nijhoff 2006) 331.

Impact on seafarers

Compared to the majority of land-based workers, seafarers are a genuine example of a weak party, in the context of labour law.²⁴ They have to rely solely on the shipowner for their safety and well-being. Essentially, a seafarer lacks options as he has to reside, live, and work on a limited space, onboard, cut off from any kind of convenience and daily options that a worker ashore may have. This establishes the core of the contractual obligation of the shipowner who undertakes, within the framework of labour law, the obligation to provide all the necessary resources for the dignified and safe living of the seafarer (i.e., the weak party). However, the problem arises when, due to restrictions such as lockdowns or other difficulties, the shipowner is rendered practically unable to observe these obligations toward the seafarer. Therefore, it is necessary to examine the impact of quarantine on both the seafarer and the shipowner, assuming that the latter is also being restricted from performing his duties. In such circumstances, shipowners may still face legal liability for breach of contract and/or negligence if they fail to provide the necessary resources for the seafarers' safety and well-being, unless they prove force majeure. It is therefore imperative for shipowners to anticipate situations and take all necessary measures to protect the sea, even in the face of quarantine restrictions. This may include providing adequate medical care, food, and other essential resources to seafarers onboard. Failure to do so may result in legal consequences and harm to the seafarer's health and well-being.

Nonetheless, the legal issue at hand pertains to the obligation of shipowners to observe their legal obligations to seafarers despite being deprived of the means to do so due to quarantine measures. It raises the question of whether shipowners are still bound by their legal duties toward seafarers even in situations where compliance is hindered by external factors such as quarantine, or they are exempted from liability.

²⁴See ECJ cases: C-383/95 *Petrus Wilhelmus Rutten v Cross Medical Ltd* [1997] ECLI:EU:C:1997:7, p. I-70. C37/00 *Herbert Weber v Universal Ogen Services* [2002] ECLI:EU:C:2002:122, p. I-2032. C-384/10 *Jan Voogsgeerd v Navimer* [2011] ECLI:EU:C:2011:842, p. I-13309.

Impact on crew change

The basic rule as regards the annual leaves of the seafarers derives from the provisions of the Maritime Labor Convention (MLC) 2006. Accordingly, seafarers' paid shore-leave is calculated based on at least two and a half (2.5) days for every thirty (30) days of service onboard. Moreover, for every year of work, seafarers earn ten (10) public holidays that are awarded proportionally. It is also important to stress that the maximum period of service on board ship for seafarers following which they are entitled to repatriation, in accordance, must be less than twelve (12) months.²⁵ The pandemic has created an unprecedented crew change crisis, which has left hundreds of thousands of seafarers affected and, in many cases, stranded onboard ships after their contracts expired, with no prospect of termination or repatriation, causing a humanitarian crisis at sea. Due to the global curfew, almost the entirety of seafarers was stranded at sea or abandoned to remote locations, unable to repatriate even to resign. During 2021, an equivalent number of people had been stuck at home, unable to replace the 1.5 million stranded crews and commence work, preventing them from entering into new onboard contracts.²⁶ By October 2020, 400,000 seafarers remained stranded aboard ships (ITF - JND, 2020);²⁷ by May 2021, this number had reduced to (the non-negligible) 200,000.

It is worth mentioning that in the wake of the pandemic, the WHO suggested that a risk assessment should be made carefully, while restrictive measures that interfere with the international movement of people and goods were justified only at the beginning of a pandemic, giving the necessary time to various countries to take effective preparedness measures.²⁸ Contrary to WHO proposals, countries had imposed restrictions on the exchange of seafarers, by merely implementing quarantine. In the wake of growing concerns over disease

²⁵Maritime Labour Convention (MLC) 2006, as amended (incl. 2018 amendments), Regulation 2.4, in particular Standard A2.4 and Regulation 2.5, in particular Standard A2.5.1(2b).

²⁶Beukelaer op. cit.

²⁷International Transport Workers Federation (ITF) and Joint Negotiation Group (JNT), 'Joint Statement: On Seafarers' Rights and the Present Crew Change Crisis'. [5 Oct. 2020].

²⁸World Health Organization (WHO), 'Updated WHO recommendations for international traffic in relation to COVID-19 outbreak' (29 February 2020).

transmission, the United States Coast Guard has asked entire crews to remain on board “except for certain activities”. Likewise, the Singapore Maritime and Port Authority announced precautionary measures that explicitly prohibit the exchange of crews and licenses. In due course, China took swift action by implementing restrictions on foreign seafarers’ ability to make crew changes at ports. This proactive approach was soon followed by other countries as well.²⁹ We assert that the aforementioned measures appear disproportionate in light of the fact that the average complement of crew members present on board does not exceed two dozen individuals. Consequently, targeted testing and quarantine protocols would have been equally effective without resorting to such extreme measures. In essence, the implementation of quarantine was lacking; in fact, the policy, driven by the agony of the moment, resulted in a prolonged abandonment that resembled imprisonment rather than a genuine 40-day quarantine period.

Another exacerbating factor was the prevalent use of air travel for crew changes, resulting in a significant number of seafarers relying on airplanes for transportation to and from ships. The fact that it was not possible for seafarers to travel to board ships made crew changes difficult, or impossible, causing a vicious circle in the crew change crisis.³⁰ Thus, the limited availability of commercial and international flights caused by the pandemic significantly reduced seafarers’ travel options and resulted in higher fares for ship operators and manning agents, further exacerbating the challenges of changing crews and repatriation of seafarers. Closing the border meant that some could not cross through foreign countries or travel to airports to return home.³¹ However, closed borders were not the only

²⁹Shan & Neis op. cit. See Bill Chappell, “Coast Guard Tells Cruise Ships With COVID-19 Cases to Stay Away From U.S. Ports,” *NPR*, 1 April 2020 (accessed 20 Sept 2022) <https://www.npr.org/sections/coronavirus-live-updates/2020/04/01/825205607/coast-guard-tells-cruise-ships-with-covid-19-cases-to-stay-away-from-u-s-ports>

³⁰International Maritime Organization (IMO), ‘IMO resolution calls for Government action on crew change crisis’ (22 Sept. 2020).

³¹International Labour Organization (ILO), ‘Information note on maritime labour issues and coronavirus (COVID-19), Including the General Observation of the Committee of Experts on the Application of Conventions and recommendations and joint statements of the Officers of the Special Tripartite Committee

obstacle that kept seafarers stranded at sea.³² Thus, many seafarers were still unable to return to their homes because they could not be replaced by much-needed crews. As a result, seafarers reported that their contracts were extended for months beyond their original expiration date, forcing them to remain on board instead of being reunited with their families. Travel restrictions and border closures caused significant problems for crew changes, resulting in the seafarers' time being extended several times beyond the legally permissible limit.³³ The continuing global dependence on maritime trade caused considerable hardship to seafarers whose employment contracts had been breached, forcing them to work at sea for far longer periods than expected.

The sheer number of marooned seafarers and congested anchorages denoted the weakness of the system to adequately anticipate and respond against major crises. In fact, crisis as such may occur at any time. The war in Ukraine could be another reminder of a possible disaster. A nuclear incident, for instance, could further jeopardize the safety and well-being of seafarers and erode the trust among the partners, mainly built upon the MLC 2006. Multinational crews, the international nature of companies, and the need to ensure a steady supply of large missions of crews had proved to be the Achilles' heel, in this regard. Maritime business, in theory, assumes that hiring multinational crews, mainly from underdeveloped countries, is an important cost saving factor. Yet, what would be our future stance toward those crews, should a similar crisis arise? Will they again be treated as second-class citizens?

of the Maritime Labour Convention, 2006, as amended'. Revised version 3.0, Geneva, (3 February 2021).

³²With the opening of the borders, the shipping companies subsequently faced costly crew changes due to the limited availability of flights for most of 2020.

³³On 14 April 2020, the European Commission adopted the "*Guidelines on the protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board*". The Guidelines stress (paragraph 3) that "measures must be taken in EU ports to protect maritime transport staff and port workers, as well as seafarers and other persons on board of the ship during their embarkation and disembarkation. In order to ensure their health and safety, in accordance with EU legislation on health and safety at work, all risks must be assessed and appropriate preventive and protective measures implemented". European Commission, 2020/C 119/01, 'Communication from the Commission Guidelines on protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships' (14.4.2020) OJ C 119, p. 1–8.

Impact on the overall health of seafarers

Naturally, the challenges to the health and safety of seafarers existed even before the pandemic outbreak.³⁴ The demanding nature of maritime work, adverse weather conditions at sea, psychosocial risks, prolonged separation from family and stable social environments, barriers to communication between crews of different nationalities, sleep, and rest disorders are some of the challenges that are faced by workers in the shipping industry, while an important factor that poses a real risk is fatigue.³⁵ In general, work at sea remains one of the most dangerous occupations, and several studies show that seafarers face complex risks to their health and safety. Repeated extensions of their contracts have shown that their contracts cannot be maintained without serious consequences for their health and safety and consequently for the safety of the ships they operate and operate on. As regards the marine insurance covers, if a seafarer, sick with COVID-19, must be repatriated or substituted, normal cover applies. Similarly, if a ship must deviate to land a seafarer who has had (or may have) COVID-19, the usual costs should be recoverable, provided the deviation is reasonable. Although there is an ambiguity as regards the effectiveness of the cover,³⁶ it is admitted that most clubs provide good advice

³⁴See Birgit Pauksztat, Michelle R. Grech, Momoko Kitada, 'The impact of the COVID-19 pandemic on seafarers' mental health and chronic fatigue: Beneficial effects of onboard peer support, external support and Internet access' (2022) 137 *Marine Policy* 104942: pp. 1–9. Birgit Pauksztat, Daniela M. Andrei, Michelle R. Grech, 'Effects of the COVID-19 pandemic on the mental health of seafarers: A comparison using matched samples' (2022) 146 *Safety Science* 105542: pp. 1–11.

³⁵In the case "The Eurasian Dream" (*Papera Traders Co. Ltd. and Others v Hyundai Merchant Marine Co. Ltd. and another* [2002] 1 Lloyd's Rep. 719), the ruling judge held that a determinative element impacting the seaworthiness of a vessel, with respect to its crew, is their receipt of adequate training and instruction, coupled with their physical and mental fitness as well as their willingness to competently execute their duties. See the study of Shan & Neis op. cit 169, conducted on Canada's Great Lakes and St Lawrence River, whereby is established that fatigue by the seafarers gives rise to particular safety concerns. See also *William C. Skye v Maersk Line Limited Corporation*, No. 12-164331 (11th Cir. 2014).

³⁶See Human Rights at Sea, 'COVID-19, P&I Insurance Coverage and Safarers' Rights' Insight Briefing Note (2020).

about how to deal with difficult cargo-related issues, yet there is no uniform policy as regards the crew quarantine costs.³⁷

We indicatively refer to the case of the “PS Diamond Princess” that was prelude of the seafarers’ crisis:³⁸ In Yokohama port, during February 2020, the highest number of cases occurred on the passenger (cruise) ship “Diamond Princess”, when the outbreak of a case inside the cruise ship evolved into a total quarantine of about 3,700 crew members and passengers.³⁹ Most of the media and public attention was focused on unfortunate passengers who were isolated on ships or had fallen ill, cruise ship workers, and often carriers of the virus on ships. After the quarantine of the ship began, the crew members continued to perform their duties. Seafarers were unable to maintain social distance in communal living and dining areas, while at the same time, there was a lack of personal protective equipment and a limited right to refuse hazardous work. The quarantine process for the crew was impossible due to a lack of resources and special circumstances. In addition, limited training and insufficient information about the new virus had led ISM officers and crew managers to deal with unprecedented occupational hazards at sea.⁴⁰ Basically, the existing legal framework gives a right to a port state to ban foreign cruise ships from docking at its port in favour to its domestic public health safety.⁴¹ From the port state’s perspective, the Japanese government undertook pandemic preventive measures upon passengers on board the ship and complied with its domestic laws.⁴² Moreover, the Japanese government had to comply with the latest version of the WHO regulations relating to ‘free pratique’ (i.e., the International

³⁷Michelle Wiese Bockmann, ‘Crew quarantine costs not covered by P&I’ (2020) *Lloyd’s List*.

³⁸‘Passenger Ship Diamond Princess’, IMO: 9228198.

³⁹Sun Siqi, Lijun Liz Zhao, ‘Legal issues and challenges in addressing the coronavirus outbreak on large cruise ships: A critical examination of port state measures’ (2022) 217 *Ocean Coast Management* 1–2.

⁴⁰Desai Shan, Barbara Neis, ‘Employment-related mobility, regulatory weakness and potential fatigue-related safety concerns in short-sea seafaring on Canada’s Great Lakes and St. Lawrence Seaway: Canadian seafarers’ experiences’ (2020) 121 *Safety Science* 165.

⁴¹Andrew Tirrell, Elizabeth Mendenhall, ‘Cruise Ships, COVID-19, and Port/Flag State Obligations’ (2021) 52(3) *Ocean Development & International Law* 225–227.

⁴²See article 4 of Japan’s Quarantine Act No. 201 of 1956.

Health Regulations 2005 - IHR)⁴³ and the UNCLOS's 'innocent passage'⁴⁴ as Japan is a member state in the IHR and party to UNCLOS.

Basically, free pratique is the authorisation granted by a port authority to a vessel allowing her to enter once it has been certified as disease-free by the competent health authorities. In accordance with articles 1(1) and 28 of the IHR, *free pratique* means "permission for a ship to enter a port, embark or disembark, discharge or load cargo or stores."

The term of free pratique should not be conflated with the provisions on *innocent passage* as described in articles 17–19 of the UNCLOS. Nonetheless, when considered alongside the term of the *place of refuge* for ships requiring assistance,⁴⁵ these legal concepts mutually complement each other in terms of ensuring freedom and reinforcing protection for vessels and international shipping in general. In any event, free pratique forms an integral part of the law of carriage by sea as this authorization is part of the necessary formalities for establishing that a vessel has the legal readiness to load or discharge cargo, thereby finalising the paperwork required, for tendering –in theory at least– the vessel's Notice of Readiness (NOR). In practice however, the permission of free pratique is generally considered a mere formality as relatively recent case law established that this particular permission may not serve as an obstacle to the issuance of the notice of readiness (NOR) that is a necessary step for the commencement of laytime and thereafter calculation of possible demurrage,⁴⁶ although in practice, charterparties typically contain provisions that

⁴³International Health Regulations (IHR) (3rd edn 2005), Part III articles 21–27, whereby a ship should not be stopped from getting free access and being able to dock at any part of a port for health reasons. This means the ship should still be allowed to conduct cargo, bunkering and supply operations, as well as embark or disembark passengers without any issues.

⁴⁴United Nations Convention on the Law of the Sea 1982, Section 3, subsection A, articles 17–19 et seq.

⁴⁵IMO Resolution A. 949(23) Guidelines on Places of Refuge for Ships in Need of Assistance. See Anthony P. Morrison, *Places of Refuge for Ships in Distress. Problems and Methods of Resolution* (Leiden & Boston, Martinus Nijhoff 2012) 250–251, where he analyses the provisions relating to the protocols implemented by the US authorities.

⁴⁶See *AET Inc. Ltd v Arcadia Petroleum Ltd (The Eagle Valencia)* [2010] EWCA Civ 713; *Odffjell Seachem A/S v Continentale des Petroles et d'Investissements (The Bow Cedar)* [2004] EWHC 2929.

grant owners a certain degree of flexibility.⁴⁷ Thus, according to the International Health Regulations (IHR), the default principle is that a foreign vessel must be granted free pratique by a port state and should not have her right to dock denied. This should be done while also balancing the protection of the public against health risks or international public health emergencies. At the same time, such a refusal must be made on the grounds of the available scientific evidence of a risk to human health.⁴⁸ When the available evidence is inadequate, it may be necessary to consult with the World Health Organization (WHO) and other relevant organizations, depending on the severity of the situation. In the case of “Diamond Princess”, the Japanese authorities acted accordingly, duly received guidance from the WHO to address the fact that the ship was already an affected conveyance.⁴⁹ Despite being a port state, Japan had the discretion to ban passengers and crew affected by COVID-19 from disembarking, the government chose not to exercise this right and allowed the ship to dock at Yokohama port and also ensured that thousands of passengers and crew were treated during this time.⁵⁰ From the marine insurance perspective, if seafarers are infected by a contagious disease, such as COVID-19, they will have the same medical cover afforded for any other illness.

In order to facilitate the movement of the seafarers ashore, the ILO adopted a convention establishing a unique identity (travel) document, the Seafarer’s Identity (SID).⁵¹ One of the main objectives of the SID is to make it easier and faster for them to have a short break

⁴⁷For instance, the requirement for the owner to protest themselves –in case free pratique is not granted– can be seen in clauses 6.3 and 7.3 of the BPVOY4 (tanker voyage charterparty). It is important to note that even if a ship has been granted free pratique, it may still be subject to control directions. In such cases, these control directions will take precedence over the previously granted free pratique, with due consideration for the vessel’s and/or port facility’s safety. See Rupert Herbert-Burns, Sam Bateman, Peter Lehr (eds), *Lloyd’s MIU Handbook of Maritime Security* (CRC Press, Boca Raton, London, NY 2009) 332–333.

⁴⁸John Schofield, *Laytime and Demurrage* (6th edn London & NY: Routledge 2011) 3.179 et seq.

⁴⁹David P. Fidler, Lawrence O. Gostin, ‘The new international health regulations: an historic development for international law and public health’ (2006) 34(1) *Journal of Law, Medicine and Ethics* 86.

⁵⁰Siqi & Zhao op. cit. 6.

⁵¹International Labour Organization, *Seafarers’ Identity Documents Convention* (Revised 2003), as amended (No. 185).

ashore,⁵² being exempted from the regular entry visa (lengthy) procedures; something that is really important for their well-being and health. Technically, shore leave is a part of the sailor's work time on the vessel. During the shore leave, the seafarers get the chance to explore the port city for a brief amount of time. The change in the physical environment that comes with it is much needed for the well-being of the crew who work under severe conditions onboard. Seafaring is an occupation of considerable rigor, necessitating individuals to labour for extended periods, confront adverse weather conditions, and endure prolonged separation from their loved ones. The persistent exposure to these stress-inducing circumstances can adversely impact one's mental well-being if not duly addressed. In this context, shore leaves serve as a vital means of respite for seafarers from the exigencies encountered at sea. They furnish crew members with an opportunity to disembark and partake in activities that bring them pleasure or simply afford them relaxation away from their occupational milieu,⁵³ i.e. the confined spaces and monotonous routine offshore that consequently lead to acute weariness, indifference and apathy on ships.⁵⁴ Observing repetitive goals (such as observing time schedule) constantly under such circumstances results in stress, depression, and home sickness, symptoms that infect the psychological balance of a person and lead to personality disorders and diminish or nullify criminal and tortious liability. As land clearance was restricted or not allowed at all in many ports, it was made more difficult to obtain medical and psychological care and assistance.⁵⁵ The above-mentioned challenges were further exacerbated by the heightened fear of infection, increased job insecurity, and pervasive uncertainty.

In this context, the long absence from their families was hard and difficult for seafarers. Despite the big contracts they have signed in the past, the COVID-19 season was something very different and had

⁵²Shore leave means when sailors are allowed some time off from the ship while she docked or anchored in the port area.

⁵³Eg. Australian Maritime Safety Authority 'Access to shore leave for seafarers' (Aug. 2022).

⁵⁴Giulio Nittari, Filippo Gibelli, Paolo Bailo, Ascanio Sirignano, Giovanna Ricci, 'Factors affecting mental health of seafarers on board merchant ships: a systematic review' (2022) *Reviews on Environmental Health* 1-10.

⁵⁵Anish Arvind Hebbar, Nitin Mukesh, 'COVID-19 and seafarers' rights to shore leave, repatriation and medical assistance: a pilot study' (2020) 71(4) *International Maritime Health* 220.

a greater impact on mental health and consequently on family life. A study found that 25% of seafarers surveyed showed signs of depression, 17% had high levels of anxiety, and 20% had suicidal ideation.⁵⁶ In addition, it has been found that on average, suicides accounted for 5.9% of total deaths among seafarers. Another study, it established that isolation, loneliness, and lack of land clearance led seafarers to a predisposition to mental illness.⁵⁷ Seafarers with longer working periods experience significantly higher levels of depression and anxiety during the pandemic but not before it.⁵⁸

For example, Matt, a 35-year-old Chief Engineer from the United Kingdom, could not explain to his children, who always ask him when he will return home (IMO, 2020). The situation at home was cited as a key challenge by interviewed seafarers. This included concerns about family matters, health and financial situation at home, and the situation in their country of origin in general. Reports of limited or impossible communication with family members were important due to expensive or nonexistent available media.⁵⁹ It was obvious that the COVID-19 pandemic, in combination with the measures aimed at its reduction, intensified and increased the demanding aspects of maritime work, with negative consequences for the mental and physical health of seafarers.⁶⁰

Impact on the economic situation of seafarers

The COVID-19 pandemic brought also to light inefficiencies in the way the shipping industry manages and protects seafarers and their families. For example, as seafarers were unable to visit the shore (shore leave), remittances to their families were also restricted. In addition

⁵⁶Rafael Y. Lefkowitz, Martin D. Slade, 'Seafarer Mental Health Study' (Final Report, London ITF Seafarers' Oct. 2019) *Trust & Yale University* 13.

⁵⁷Helen Sampson, Neil Ellis, 'Seafarers' mental health and wellbeing.' (2019) Seafarers International Research Centre, School of Social Sciences, Cardiff University & Institution of Occupational Safety and Health.

⁵⁸Pauksztat *et al.* op. cit. See Fereshteh Baygi *et al.*, 'Prevalence and associated factors of psychosocial distress among seafarers during COVID-19 pandemic' (2021) 21(222) *BMC Psychiatry* 3 et seq.

⁵⁹Pauksztat op. cit.

⁶⁰Desai Shan, 'Occupational health and safety challenges for maritime key workers in the global COVID-19 pandemic' (2022) 161 (2) *International Labour Review* 267-287.

to the numerous reports of isolated workers, there were also workers unable to join the ship because the charterer, in order to find an alternative port, was forced to change the course of the ship and seafarers waiting in the area to join the ship finally failed, with significant financial consequences for themselves and their families.

For example, a 33-year-old Indian father of two tried to board a ship to earn a living for his family but failed. He explained that the pandemic brought financial uncertainty. At the same time, a 26-year-old low-ranking seaman was at home without pay for 10 months because the lack of international commercial flights did not allow him to travel to join the ship. As a result, he found it increasingly difficult to support his parents and younger brother.⁶¹ This caused significant financial problems for themselves and their families.⁶²

The events have attracted the attention of all private stakeholders involved in global shipping as well as the WHO and national administrations; yet, it remains a duty for the national administrations (which eventually support shipowners' or charterers' interests) that remain sceptical towards the adoption of improved legislative initiatives. In addition, the question arises as to how the future careers of seafarers will be affected and whether this sector is at risk of limited recruitment of land (office) staff in the worst affected areas, such as cruise, car transport companies, and ferry boats. National measures for the employment of seafarers and land staff are also ineffective. The main challenges are initially related to the fact that the support measures apply only to a part of the seafarers, for example, only for nationals. In terms of office staff, companies can turn to general support programs that are available nationwide, but most of them involve rules that allow them to temporarily suspend employee contracts. Thus, while staff in western countries received financial support, the salary loss in crews was not adequately covered. Additional measures are related to suspensions of social contributions for such staff. It is clear that different parts of the shipping industry need dif-

⁶¹See International Maritime Organization (IMO), '400,000 seafarers stuck at sea as crew change crisis deepens' (25 Sept. 2020). International Maritime Organization (IMO), 'IMO formally endorses industry COVID-19 crew change protocols' (12 Nov. 2020).

⁶²International Labour Organization, 'Independent High-Level Evaluation of ILO's COVID-19 response 2020–22' (2022). 107–108.

ferent ways of supporting themselves. In general, both national and European Union support are sought.

In view of the above, some further issues need to be addressed, for instance: What happens with the unusable annual leaves and the repatriation costs borne by seafarers? In accordance with the MLC, seafarers are given paid annual leave and be granted shore leave for their health and well-being, as well as repatriation.⁶³ Evidently, seafarers, who are among the workers most affected by the pandemic, faced a long-term erosion of their rights under the MLC. Extended periods on board undoubtedly pose a greater risk of adverse effects on seafarers' health, including physical and mental health problems. A physically and mentally exhausted seafarer is much more likely to be involved in an incident that causes a maritime accident.⁶⁴ Therefore, seaworthiness of a ship is a crucial factor in determining the liability of an insurer in the event of an incident. If a ship is found to be unsafe prior to an incident, the insurer shall not be liable to pay any damage compensations.⁶⁵ Compliance with the ILO's regulations is subject to port state control and is in accordance with the relevant laws and regulations governing maritime safety.⁶⁶

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⁶³Op. cit. 24.

⁶⁴See Lefkowitz & Slade op. cit. See Sampson & Ellis 2019 op. cit.

⁶⁵Dunt John, *Marine Insurance* (London & NY: Routledge 2009). 8.63 et seq.

⁶⁶ILO, 'Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006' (2009) 49–62, 62.

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