Risks Posed by the covid-19 Pandemic Regarding the Carriage of Goods and Passengers by Sea – Considerations on Seafarers’ Rights and Health Protection

Risks Posed by the COVID-19 Pandemic and Carriage by Sea

Fernández

Jonatan Echebarria Fernández

1 Introduction

Governments and international organisations were slow to implement travel restrictions or declare covid-19 as a health emergency. As a result, covid-19 has evolved into a pandemic that has impacted global trade, supply chains, and the shipping and maritime industry. The pandemic has hindered global trade, with the World Trade Organization (wto) expecting global trade to fall between 13% and 32%.[[1]](#footnote-1) Factory shutdowns, port and border closures, as well as the inability for seafarers to disembark from vessels have resulted in delays for non-essential and essential goods. As governments enacted travel restrictions, goods carried by sea and their relative seafarers were stranded, unable to repatriate to their home countries or change crews. The International Maritime Organization (imo) estimated the reduction of “freight transport volumes […] by up to a half by the end of 2020 in […] Asia” and the contraction of the “value of regional exports and import […] by 23 and 25 per cent” respectively “in Latin America and the Caribbean”.[[2]](#footnote-2) However, a paradigm shift has been observed since June 2021, translating into a boost of 11% in calls at European Union (EU) ports, accounting for 86,865 compared to 78,559 in August 2019.[[3]](#footnote-3)

In March 2020, the International Maritime Organization (imo) addressed government travel restrictions affecting trade and goods transport by the pandemic. The Secretary-General stressed the urgency of commencing the carriage of goods by sea to ensure the maintenance of the global trade, while maintaining safety at sea and marine protection a priority as well.[[4]](#footnote-4) As of 23 April 2020, eighty countries enacted export restrictions, but only thirteen adapted their restrictions to wto rules.[[5]](#footnote-5)

The EU enacted non-essential travel restrictions to its external borders on 17 March 2020 for 30 days.[[6]](#footnote-6) Later, it extended the 30-day restriction from 8 May 2020 to 15 June 2020.[[7]](#footnote-7) In China, factories limited the number of workers or closed altogether in January, causing a decline in port calls at Shanghai and Yangshan by as much as 17%.[[8]](#footnote-8) Seaborne trade has fallen by an estimated 10.6% by May 2020 and is expected to decline by 5.6% overall by the end of 2020.[[9]](#footnote-9) The EU territorial gdp was down by 12%.[[10]](#footnote-10) With China as the world’s leading shipping exporter,[[11]](#footnote-11) global trade and those transporting it are experiencing harsh effects of the covid-19 pandemic, the United States (US)-China trade agreement may be postponed due to covid-19. Currently, Phase 1 of the trade agreement has been postponed to discuss ending US-China tariffs.[[12]](#footnote-12) However, travel and crew change restrictions may have had added further delay to the commencement of the trade agreement. As the US has minor restrictions on crew changes and has maintained the functioning of its ports, China has strict crew change restrictions which only applies to Chinese nationals.[[13]](#footnote-13) Until China loosens their port restrictions, the US-China trade agreement will encounter on-set and heavy delays.

Seafarers were also affected by travel restrictions and port congestions. Travel restrictions jeopardised crews and their health and safety as some were unable to disembark for medical attention, including non-covid-19 related medical attention. Travel restrictions and governments did not recognise seafarers as key workers, preventing seafarers from repatriating to their home countries and crew changes. To provide relief to seafarers, the imo released a statement to its Member States to recognise seafarers as key workers.[[14]](#footnote-14) However, hundreds of thousands of seafarers are still in need of repatriation and are stranded at ports.[[15]](#footnote-15)

The impact created by travel restrictions, port closures, and the virus itself has caused legal and administrative problems in the shipping industry. As charterparties are contract-driven, accounting for every possible event that could arise while carrying goods by sea, some events did not explicitly account for covid-19, while others impliedly accounted for it. The interpretation or inclusion of covid-19 in the contracts could either void or continue the contract, as well as divide the liability for covid-19 related incidents. The imo along with other United Nations (UN) agencies has urged its Member States “to maximise the contribution of international trade and supply chains to a sustainable socio-economic recovery in post-covid-19 times through greater use of international legal instruments and standards, as well as strengthened regional and sectoral cooperation” and to implement UN “legal instruments on transport, in particular, those relating to transport facilitation and paperless trade”.[[16]](#footnote-16)

This chapter will focus on the covid-19 pandemic’s effect on the shipping and maritime industry, including its effect on contracts, seafarers and crew members, as well as its overall effect on global trade. Legal effects of these responses are varied, ranging from contract law, soft law and hard law. The actors involved in such responses are also varied, international organisations, trade organizations and States. Their interaction, legitimacy and effectiveness vary between them as their powers and binding effect of their decisions. There are different levels of compliance by the shipping industry from the international or State regulations as well as the level of voluntary compliance with industry’s self-regulations stemming from the maritime *Lex Mercatoria*.

An analysis of the effectiveness of the documents and guidelines from both the imo and the EU used to combat the covid-19 effect on the trade industry and its workers will be provided.

2 The Effect of covid-19 On Contracts for the Carriage of Goods By Sea

The shipping and maritime industry are subject to public regulations and private law via shipping contracts that range from charterparties (whether these are bareboat, for a period of time or a voyage)[[17]](#footnote-17) that proportions the rights and liabilities of shipowners and charterers.[[18]](#footnote-18)

2.1 Brief Introduction to Contracts of Affreightment

The carriage of goods by sea is represented by a contract of affreightment and detailed in the bill of lading (B/L), which acknowledges the receipt of cargo to be shipped upon signature.[[19]](#footnote-19) This is signed by the carrier or an agent of the carrier, then delivered to the shipper in exchange for the mate’s receipt of the cargo.[[20]](#footnote-20) Any erroneous information contained in the B/L (e.g., an incorrect shipping date) after its issuance by the master within a reasonable time[[21]](#footnote-21) may be corrected by the shipowner, provided that the shipper keeps the B/L.[[22]](#footnote-22)

The B/L is a separate legal document that does not form part of the charterparty contract.[[23]](#footnote-23) The B/L is not a contract, but it is an excellent representation of the terms of the contract.[[24]](#footnote-24) Charterer’s contractual obligations in a voyage charterparty can be extended to the B/L by incorporating contractual terms or a ‘cesser’ clause (which relieves the charterer of liability once the cargo is unloaded from the vessel) into the B/L.[[25]](#footnote-25)

Charterparties are not governed by international rules, unlike the B/L.[[26]](#footnote-26) In international contracts, it is essential to include protection clauses to divide risks amongst the parties.[[27]](#footnote-27) Although the B/L is not legally regarded as a contract, the transfer of the B/L between different parties assumes liability for the goods to the party accepting and relieves liability from the party transferring.

Prima facie, the regulation and conventions surrounding contract law for shipping and maritime contracts seem cut and dry. covid-19 has tested these conventions. Clauses are now being implemented or changed in order to conform to the issues caused by the pandemic, have remained constant and unchanged, or have returned to its pre-covid-19 state, especially after mid-2021. However, covid-19 may change contract drafting forever in the modernised world.[[28]](#footnote-28)

2.2 Lack of Frustration of the Charterparty Due to the Outbreak

The delays caused by covid-19 travel restrictions can cause a contract to become frustrated and create health and safety dangers for the vessel’s crew. A contract is frustrated when unforeseen events happen which render the performance of the contract illegal, impossible, or something radically different from the original agreement. Frustration only takes place if the unforeseen events occur after the contract has been formed and are not the results of either parties’ actions. If a contract becomes frustrated, it is voided and future obligations for both parties are therefore released. What will not be void are any and all performances and payments already executed before frustration occurs.[[29]](#footnote-29)

Many maritime legal issues arising from the covid-19 pandemic were centred around delays at port, resulting in higher costs. However, parties cannot rely on frustration to void the higher costs because a contract is not legally frustrated due to the high costs of performing a contract.[[30]](#footnote-30) While it does make it more difficult, higher costs do not make a contract impossible or illegal to perform. Likewise, continuing to perform a contract after costs have risen does not create a radically different outcome from the original agreement.

2.3 The Applicable Charterparty Clauses in Case of an Outbreak on Board a Vessel

Traditionally, some charterparty clauses have provided different solutions when any infectious disease has affected crew or passengers sailing in a ship. However, the following subsections provide an outlook of the applicability of different specific charterparty clauses in case of detecting any covid-19 case on board a vessel.

2.3.1 The Application of the Force Majeure Cause on Charterparties in the Light of the Pandemic

Conventionally, frustration of the contract may be prevented by a force majeure event. The force majeure clause is a solution included in the contract, which accounts for unexpected events that could frustrate the contract and removes liability from the party delivering the performance affected by the frustration.[[31]](#footnote-31) Force majeures excuses a party from continuing to perform a contract in exceptional and unforeseeable circumstances.

According to the Baltic and International Maritime Council (bimco) provisions, a force majeure will not disrupt a laytime or demurrage unless expressly stated in the contract.[[32]](#footnote-32) The performance may be unable to be completed in full or part, or the performance encounters a significant delay, which may result in a right to terminate the contract.[[33]](#footnote-33) In the early stages of the pandemic, parties could rely on frustration and force majeures due to port closures and quarantines enacted while the vessel was at sea or waiting to come into port.

As previously stated, regulatory responses can be divided into both soft and hard according to the political, social, and economic values. Some questions could be posed: Is economy better safeguarded than health? Does the public discourse reflect the actual regulatory response? The answer is that the shipping industry has provided balanced responses to these questions.

For instance, the International Association of Independent Tanker Owners (intertanko) has issued a Coronavirus Clause on 21 February 2020 aimed at introducing protection for both time and voyage charterparties during the uncertainty of the pandemic. A previous example is found in bimco’s Infectious or Contagious Diseases Clause for Time Charter Parties 2015 as a response to the Ebola virus outbreak, following the Severe Acute Respiratory Syndrome (sars) cases reported in 2005.

In order for parties to achieve common ground and avoid liability, negotiations and contracts should include covid-19 in the contract and account for any mutated strains; list the vessel’s ports of call; and utilisation of proactive thought. It also provides that covid-19 is not considered a frustrating event or a force majeure.[[34]](#footnote-34) Charterers have opposed shipowners attempting to implement intertanko’s Coronavirus Clause.[[35]](#footnote-35) Force majeures are reserved for unforeseeable circumstances, such as acts of God, war, terrorism, acts of government, or plagues, which are out of the control of either party.[[36]](#footnote-36) Travel restrictions during the pandemic are acts of government that prevent the contract from being fulfilled, which would be allowed to continue with a force majeure at the cost of a delay. However, intertanko has detailed in its standard clause that parties may no longer rely on a force majeure for covid-19 restrictions.

In order to rely on a force majeure, the performance must have been utterly prevented, hindered, or affected by delays that are making it substantially more difficult to perform the contract, in addition to proving that the pandemic was at fault and that no reasonable steps could have been taken to avoid it.[[37]](#footnote-37) Furthermore, English courts and other jurisdictions would presume, covid-19 pandemic is now a reasonably foreseeable issue and, therefore, a force majeure will not apply as easily as it did during the early stages of the pandemic.[[38]](#footnote-38) If parties wish for a force majeure to apply, intertanko recommends negotiating these provisions in the contract.[[39]](#footnote-39)

bimco’s new Force Majeure Clause, defined as a “bolt-on provision”, is expected to be formally approved in 2021.[[40]](#footnote-40) Shipowners normally bear any associated costs of discharge of the goods as bailees, without any “contractual rights *vis á vis* the charterers” when a contract is terminated.[[41]](#footnote-41) However, a list of liberties will be provided in the clause if “force majeure prevents the completion of loading, or the departure from the load port, or discharge, for more than 21 days from when a/the force majeure notice was declared”.[[42]](#footnote-42) The underlying contract and its terms will determine how any additional costs are allocated between the parties. The party alleging the force majeure event will need to prove it to terminate a time charterparty, and termination of the contract differs from frustration since the first will be available since the moment the party invokes the force majeure event or a contractually agreed period of time has passed.[[43]](#footnote-43)

bimco may also approve a new Clause 2 for the gencon 94 standard voyage charterparty form in May 2021, under which shipowners’ responsibilities (“due diligence”) are clarified (a seaworthy and cargo worthy vessel, “properly manned, equipped and supplied for loading […] “with cargo safely stowed, trimmed and secured, for the intended voyage” must be supplied; moreover, the shipowner must “keep and care for the cargo” since its loading until discharge).[[44]](#footnote-44) The Clause, informally known as the “Owner’s No-responsibility Clause”, relieves them from “liability for loss, damage, delay or failure in performance” and entitles them to rely on the “rights, defences, immunities and limitations of liability that are available to a “Carrier” under the Hague-Visby Rules”.[[45]](#footnote-45) The new Clause may play a key role in relieving shipowners’, as bailees of the cargo, from the costs of discharging it once a force majeure event takes place.

2.3.2 covid-19 and the Off-Hire Clause in Time Charterparties

The shipowner hires the seafaring crew unless the charterparty is a demise charter, which puts the employment responsibility on the charter.[[46]](#footnote-46) Many time charterparties include off-hire clauses, which exempts charterers from withholding payment from hires if a vessel is unable to perform the charter service. This allows for charterers to refuse to pay their seafaring crew during periods of unprecedented delay and susceptibility to an inadequate crew or a defective ship that results in a delay or loss of time rather than a breach of contract.[[47]](#footnote-47) However, whether the vessel’s full or efficient working has been prevented from fulfilling the next operation must be determined.[[48]](#footnote-48)

Efficient working concerns the vessel’s physical condition and the causal link, while full working concerns prevention by physical conditions or sometimes legal means. Off-hire clauses in standard charterparty forms, like Shelltime’s Clause 21 and New York Produce Exchange’s (nype) 1946 and 1993 time charter party form (Clauses 15 and 17, respectively), contains a catch-all phrase that would extend to a deficiency of men by means of a pandemic.[[49]](#footnote-49)

This would constitute an insufficient number of crew members resulting from a covid-19 outbreak on board a vessel or a quarantine, which prevents the vessel from a full, efficient working. It follows that a deficiency of men causes the ship to be off-hire. Under bimco’s and nype’s provisions for off-hire clauses, labelling the vessel as an off-hire is difficult if a crew member exhibits covid-19 symptoms causing an on-board quarantine, but test negative. However, an amendment to the nype accounts for ‘any other clause whatsoever’, which broadens the off-hire definition, allowing it to apply to general covid-19 related concerns unrelated to a confirmed covid-19 case.[[50]](#footnote-50)

Executing an off-hire clause seems to be flexible, but it is likely more rigid than it appears. An off-hire clause can be safely described as ‘if crew members cannot work, then the ship cannot work’, and ‘crew members do not get paid’. Charterparties can be problematised *vis-à-vis* labour rights: contractual clauses relate to international labour law depending on the ratification of different instruments by the flag State that set minimum standards, being the Maritime Labour Convention 2006 (mlc)[[51]](#footnote-51) the most prominent one. General concerns of covid-19 may trigger the off-hire clause, but the off-hire clause cannot be triggered unless the concern of covid-19 on the vessel halts the full performance and working on the vessel. Shipowners making the decision to trigger the off-hire clause during a contract can prove to be a problematic solution.

2.3.3 Health and Safety Standard Clauses in Charterparty Forms

The shipping and maritime industries are no strangers to illness, pandemics, and plagues on board the vessel. Seafarers were forced to quarantine for 40 days during the Bubonic Plague of the Middle Ages. Due to the uncertainty of diseases, maritime and shipping industries have included disease and illness in their contracts for quite some time.[[52]](#footnote-52) Although the inclusion of disease and illness clauses have not been a mandatory provision, charterparties have created expressed provisions for epidemics and pandemics, directly and indirectly.

Modern international shipping rules, like article iv of the Hague Visby Rules, exempts the responsibility of a carrier for the delay or deterioration of the cargo due to quarantine restrictions, partial or general labour restraints, stoppage, or lockouts, or other causes outside of the privity or fault of the carrier.[[53]](#footnote-53) Relying on article iv of the Hague-Visby Rules may relieve the carrier of liability.[[54]](#footnote-54) Shipowners may also rely on the Hague Visby Rules in the charterparty and the owner’s B/L when disembarking a crew member to receive medical care.[[55]](#footnote-55)

Seafarers are constantly exposed to unsafe and hazardous working conditions during voyages. Therefore, workplace safety is critical for the shipping industry.[[56]](#footnote-56) Expressed or implied port warranties are usually contained in charterparties to prevent docking at ports determined to be unsafe.[[57]](#footnote-57) In the UK, the Supreme Court held that an unsafe port is one that is unreachable, unusable, or unreturnable without unavoidable exposure to danger unless there is an “abnormal occurrence”.[[58]](#footnote-58) These dangers generally apply to dangerous currents or extreme weather conditions but can extend to dangers to the seafarers, unreasonable delays which could frustrate the contract or the risk of quarantine or isolation.

The intertanko covid-19 Clause was originally created for the Ebola pandemic, but intertanko extended it to covid-19 in February 2020. Clause 1 details that a shipowner using their discretion, may refuse the charter’s procedure to port if the shipowner believes the port to be unsafe due to covid-19. Clause 2 protects this subjective test and allows for the master to request new direction or return to a safe area and issue a Notice of Readiness (nor) until the port is deemed safe. Despite these provisions of the intertanko covid-19 Clause, the covid-19 outbreak is unlikely to render a port unsafe since the covid-19 outbreak has become a foreseeable event and is no longer regarded as an abnormal occurrence. Deeming a port unsafe due to covid-19 may breach the charterparty if the parties rely on a force majeure alone.[[59]](#footnote-59) Clause 3 of the intertanko covid-19 Clause also provides that charterers will compensate owners for time and direct losses as well as expenses and damages in the event the vessel is refused to port, quarantined, or boycotted.[[60]](#footnote-60) Shipowners’ discretions are protected by this provision and the charterer must support their discretion. Furthermore, the intertanko covid-19 Clause also protects the health and safety of the crew.

The intertanko covid-19 Clause may be complemented by the Infectious or Contagious Disease Clause created by bimco in 2015 for voyage charters and time charters, which is a solution to provide a pre-set allocation of liabilities and costs between owners and charterers and allowed for shipowners or masters to refuse or leave a port if they reasonably believe there is a serious risk of exposing the vessel and its crew of disease.[[61]](#footnote-61) In case an event constitutes the Infectious or Contagious Disease Clause, all additional costs are apportioned to the charterer while the crew’s safety is prioritised.[[62]](#footnote-62) For it to apply to the covid-19 pandemic, covid-19 must be determined to be “seriously harmful to humans” and the specific cause of the vessel’s restrictions.[[63]](#footnote-63)

Requirements for the Infectious or Contagious Disease Clause may, in fact, apply to covid-19, as it is harmful to humans and it is responsible for government-implemented travel and border restrictions at port. bimco must also acknowledge the danger of covid-19 as a disease for the clause to apply. Typically, under bimco’s charterparty form, a disease will be acknowledged as a threat if recognised by a public health authority. Even though the requirements are set high to avoid misuse, the Infections or Contagious Disease requirements respond to ‘extreme outbreaks’.[[64]](#footnote-64) Furthermore, voyage charterparties are limited to the application of the Infectious or Contagious Disease Clause. Since covid-19 is a foreseeable circumstance, if measures were already included at the port loading or destination at the time the voyage charterparty was entered into, then the shipowners cannot rely on the Infectious or Contagious Disease Clause.[[65]](#footnote-65) Shipowners relying on the Infectious or Contagious Disease Clause gives them rights to refuse to port where they deem unsafe, and it may even extend to the termination of the charterparty.[[66]](#footnote-66)

3 Measures Adopted to Alleviate the Restrictions Imposed on Seafarers and Passengers Due to the Pandemic

Seafarers have endured stressful travel restrictions and neglect from governments worldwide. Some have enacted protocols to recognise seafarers as key workers, but others have refused to open ports or recognise seafarers as key workers in order to curb the spread of covid-19. This has come at a cost of seafarers’ physical and mental health and further hindrances to global trade.

3.1 An International Outlook on the Effects on Passengers and Seafarers

The UK has made multiple efforts to aid in seafarer repatriation and crew changes. In addition to making exceptions in travel restrictions and border closures, the UK held an international Maritime Summit in July to discuss how to help the thousands of seafarers stranded on ships.[[67]](#footnote-67) In addition to rescuing stranded seafarers, the Maritime Summit created a joint commitment amongst a multitude of countries, including the USA, Denmark, Greece, uae, and Saudi Arabia, to finally recognise seafarers as key workers.[[68]](#footnote-68) It should be noted that the Maritime Summit commitment was made four months after the first imo circular letter asking governments to recognise seafarers as key workers.[[69]](#footnote-69)

As of 19 July 2020, there were estimated to be around 600,000 seafarers stranded on ships desperate for crew changes.[[70]](#footnote-70) As of 11 September 2020, Germany, Gibraltar, Canada, Kenya, Bangladesh, Australia, and the USA (subject to State restrictions) have little to no restrictions for crew changes. Crew change restrictions are subject to travel history in some countries, such as Japan, Saudi Arabia, and Trinidad & Tobago.[[71]](#footnote-71) Conversely, crew changes are still prohibited in China, the Middle East, Vietnam, Central, and South America.[[72]](#footnote-72)

Currently, seafarers who are stranded on vessels unable to disembark are experiencing mental health issues, such as depression and anxiety, in addition to a shortage of on-board supplies.[[73]](#footnote-73) While closing ports and factories are key contributors to the decrease in the global trade and the carriage of goods by sea affected by the covid-19 pandemic, the inability for seafarers and crew members to disembark, repatriate, and change crews was also a contributing factor. Governments and relevant authorities have been slow to address these maritime and shipping issues and it has come at the cost of seafarer health.

3.2 Effects of covid-19 on Cruise Ships

Cruise ships have been widely affected by the pandemic and a notorious example is provided next. On 25 January 2020, a passenger disembarked in Hong Kong from the British flagged cruise vessel, the *Diamond Princess*, after exhibiting covid-19 symptoms to receive medical care. A week later, on 3 February 2020, the Diamond Princess was quarantined at the port of Yokohama until 27 February 2020.[[74]](#footnote-74) Between 16 and 23 February, passengers disembarked from the *Diamond Princess* and were repatriated to their home countries. However, crew members completed an additional 14-day quarantine on the *Diamond Princess*.[[75]](#footnote-75)

Unlike cargo vessels, cruise ships have a large number of people living in close quarters, making cruise ships more prone to spreading viral diseases.[[76]](#footnote-76) However, the repatriation of passengers has not been complementary with the repatriation of seafarers. The UK was swift and supportive in the repatriation of British nationals on the *Diamond Princess*, but the UK government was much slower to respond to seafarers’ repatriation and crew changes.[[77]](#footnote-77) It is questionable up to what extent this is a breach of their international obligations as a flag State. According to Article 94 of unclos, ship registers are not only obliged to maintain a register but also to assume jurisdiction. Despite Princess Cruise Lines being obliged to comply with the minimum requirements in relation to the ship’s classification, survey history, construction, equipment and seaworthiness, there is an obligation to comply with the several imo instruments containing provisions that may be relevant to the impact of covid-19 on ship travel. These international instruments will be further explained in section 3 (Disruptions caused by the pandemic on seafarers and passengers), subsection 3.4.1 (Health and safety regulations adopted by imo, ilo and who). Moreover, most insurance commercial premiums do not cover epidemic outbreaks and the premiums are very high. The costs will have to be absorbed by the P&I Clubs, the UK P&I Club, and in this case, Steamship Mutual.

It has been argued that the *Diamond Princess* should have enacted its own guidelines for its crew to abide by strict hygiene and cleaning measures before leaving the Yokohama port. This is true to an extent. The first case confirmed outside of Wuhan was recorded on 13 January 2020, and the *Diamond Princess* left port a week later on 20 January 2020.[[78]](#footnote-78) Safety and hygiene guidelines outside of hand sanitation and quarantine measures were not released from the World Health Organization (who), which did not offer effective guidance for Princess Cruise Lines to issue their own safety proceedings. Furthermore, the who did not declare a public health emergency until 30 January 2020.[[79]](#footnote-79) While companies do owe a duty of care to customers and patrons, the gravity of the virus did not have weight until the who declared the public health emergency.

3.3 Travel Restrictions, Repatriations, and Crew Changes

From the early stages of the pandemic and its subsequent restrictions, workers in medicine, road transportation, public transportation, emergency services, and essential goods were recognised globally as key workers. Seafarers and shipping crews, however, were not recognised as key workers and were subjected to travel restrictions enacted at ports and borders worldwide, causing congestion at ports along with seafarers and crew members stranded on ships, unable to return to land.[[80]](#footnote-80)

3.3.1 Measures Adopted by the International Maritime Organization and the International Labour Organization for Repatriation and Crew Changes

The International Labour Organization (ilo) globally promotes the interest of workers and consists of government, worker, and employer representatives.[[81]](#footnote-81) In 2006, the ilo adopted the Maritime Labour Convention 2006 (mlc),[[82]](#footnote-82) which provides, improves, and ensures safe and decent working conditions for seafarers and vessel crew members.[[83]](#footnote-83) The mlc has also set the standard for a seafarer’s time working at sea, dictating that eleven months is the maximum time a seafarer shall serve on board a vessel with no leave. Although, this may be extended in situations involving a force majeure under the contract.[[84]](#footnote-84) Seafarers who were denied repatriation at ports after an eleven-month contract may have had their contract extended under force majeure terms. Since ports were closed and governments enacted travel restrictions, seafarers and port workers were legally prevented from allowing anyone to disembark.

In February 2020, the imo, in conjunction with the ilo, released a circular letter detailing that companies, masters, and authorities should cooperate in embarking and disembarking passengers and vessel crew members, loading and reloading cargo, supplies, and stores, as well as entrance and exit from ports. The purpose of this cooperation is to prevent unnecessary delays or restrictions at ports embodied in the Convention on Facilitation of International Maritime Traffic (fal Convention)[[85]](#footnote-85) in addition to maintaining the global supply chain and provide for the safety and wellbeing of seafarers.[[86]](#footnote-86)

The imo released a circular letter on 30 March 2020, stressing for governments to recognise seafarers as key workers who maintain and contribute to an open and flowing global supply chain.[[87]](#footnote-87) This recognition was critical for seafarers and shipping crews. For some, their working contract was ending after their eleven months at sea and they were to repatriate to their home countries, while others had to change crews and board other vessels. Moreover, the imo issued guidelines to ensure “a safe shipboard interface between ship and shore-based personnel” during port calls of 6 May 2020 to implement “practical, risk-based measures” in the light of the pandemic to take the necessary measures and communicate in advance any port call to avoid practical problems pragmatically.[[88]](#footnote-88)

In order to maintain the global supply chain and the wellbeing of seafarers, the imo issued guidance to ensure safe crew changes during the covid-19 pandemic, including guidance and recommendations on assessing risks and the utilisation of personal protective equipment (ppe) for seafarers on 5 May 2020.[[89]](#footnote-89) The imo estimated that 150,000 seafarers would need to change vessels or repatriate each month and that compliance from maritime and government entities was essential to achieve this objective in a timely manner.[[90]](#footnote-90)

The International Chamber of Shipping (ics) and the International Transport Workers’ Federation (itf) backed imo’s guidance urging Ministers with Responsibility for Maritime Transport and Commercial Aviation “to help facilitate the movement of seafarers, via aircraft, for the purpose of conducting ship crew changes”.[[91]](#footnote-91) The document acknowledges the contribution of seafarers as “key workers that provide an essential service to the world economy” and requests Governments to repatriate seafarers, arrange commercial flights to repatriate them, and facilitate ship crew changes worldwide.[[92]](#footnote-92)

However, since the imo’s circular letter in March calls for governments to allow crew changes and repatriation of seafarers at ports amongst its member states, many governments have offered little to no action. The imo made an additional effort to urge governments to recognise seafarers and launched the Day of the Seafarer 2020 campaign on 25 June 2020. The campaign highlighted the essential role of the seafarer and the impact they have on the global supply chain.[[93]](#footnote-93) They also held a webinar on 29 June 2020 centred on the disembarking of seafarers.[[94]](#footnote-94)

imo’s joint statement along with other UN agencies of 11 September 2020 urged Member State’s “competent health, immigration, border control and maritime authorities, at both national and local levels, as well as all other parties concerned, in particular ports and airports” to “recognise seafarers as key workers, and to take swift and effective action to eliminate obstacles to crew changes”.[[95]](#footnote-95) imo’s Circular Letter of 5 February 2021 has urged its Member States to recognise seafarers as key workers.[[96]](#footnote-96)

3.3.2 Travel Restrictions and Repatriations in the European Union

Disruptions have not only affected cruise ships but the trade and economy within the EU. Travel restrictions due to border closures and quarantine restrictions have prevented vessels from having a full crew which causes labour shortages at shipyards and ports, thus hindering an effective delivery of goods worldwide. Delivery delays may also result in delayed medical screenings at ports; port congestion due to labour shortage; and pilots unwilling to steward or board a vessel.[[97]](#footnote-97)

While covid-19 restrictions were enacted throughout the EU Member States, the EU aspired to continue and improve the functionality of the internal market. In order to maintain economic activity, covid-19 restrictions were not to impact, hinder, or bar the free movement of goods, workers or cause disruptions in supply chains or essential services.[[98]](#footnote-98) Essential workers, goods, and services were streamlined into the EU territory and throughout the internal market while simultaneously upholding the fundamental freedoms of the EU.[[99]](#footnote-99) The EU issued guidelines following the plea of the imo for Member States to acknowledge seafarers as key workers and allow them passage for repatriation as of 16 April 2020.[[100]](#footnote-100) These guidelines were an extension of the EU’s Green Lanes, which upheld the EU fundamental freedoms and allowed for a consistent circulation of essential goods and key workers in the internal market during the pandemic.[[101]](#footnote-101)

EU Member States were directed to facilitate transit of EU citizens and third-country nationals with a residence permit or long-stay visa returning to their State of nationality or residence and apply the Communication on Guidelines concerning the exercise of the free movement of workers during covid-19 outbreak.[[102]](#footnote-102) Under the Green Lanes, seafarers and crew, regardless of nationality, third-country nationals who operate cargo vessels in European waters were permitted to travel to ports to embark on a passage home with minimal interruption.[[103]](#footnote-103) Thus, EU Member States conducting health screenings for all entering the country are not to cause a significant delay in the seafarer’s disembarking, embarking, or repatriation.[[104]](#footnote-104)

3.4 Health and Safety on Board Ships

Charterparties are subjected to commercial employment and State employment regulations for their seafaring crew, and therefore, they are subjected to the same health and safety regulations of any other workplace.[[105]](#footnote-105)

3.4.1 Health and Safety Regulations Adopted by imo, ilo and who

Since the beginnings of the pandemic in China, the imo and the ilo advised that maintaining the health and safety of seafarers must remain a priority.[[106]](#footnote-106) It has been stressed prior to the pandemic that seafarers are subjected to the same health and safety standards as that of the country in which the ship is registered. The ilo reiterated this, who added that the health and safety standards for seafarers are the same, if not more, amongst the covid-19 pandemic.[[107]](#footnote-107)

3.4.1.1 General Requirements Including Health and Safety for the Issuance of Ship Certificates

Flag State and Port State Authorities must comply with health and safety standards of the ship and the administration.[[108]](#footnote-108) The shipowner is responsible for the health of its crew, and its flag State is responsible for the supply of medical equipment and supplies as requested by the master. The imo issued a circular letter on 6 May 2020 to use ppe for seafarers backed by recommendations by the who, urging Member States to relay the information to relevant authorities to supply adequate ppe to vessels registered in their State.[[109]](#footnote-109)

General requirements set out by international conventions must be observed. Shipowners, operators, flag States, and port states are required to comply with the regulations of international shipping conventions. The Flag State Administration (or Flag State Control), where the vessel is registered, issues certifications and inspections to ensure a vessel’s compliance with the requirements set out by the International Convention on the Safety of Life at Sea (solas),[[110]](#footnote-110) the International Convention for the Prevention of Pollution from Ships (marpol 73/78)[[111]](#footnote-111) and their associated Codes as well as the International Convention on Load Lines (cll 66/88),[[112]](#footnote-112) the International Convention on the Control and Management of Ship’s Ballast Water and Sediment (bwm) (2004),[[113]](#footnote-113) the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers as amended in 1995 (stcw95)[[114]](#footnote-114) and the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (stcw-f) (1995).[[115]](#footnote-115) The Port State (or Port State Control) applies imo rules to further enforcement of convention regulation compliance.[[116]](#footnote-116)

The flag State under which the vessel is registered sets the legal jurisdiction of the vessel. Laws pertaining to the vessel’s registered State also pertain to the vessel and its crew, according to the United Nations Convention on the Law of the Sea (unclos).[[117]](#footnote-117) Ship certificates are issued by a recognised organisation, security organisations or nominated surveyors on behalf of national maritime administrations. The aforementioned conventions set out certain requirements on the period to survey ships. However, that period is normally no longer than three months to allow a vessel to arrive to a port where it can be surveyed and avoid the certificate’s expiry.[[118]](#footnote-118)

Moreover, there are specific obligations in relation to seafarers’ medical,[[119]](#footnote-119) training and qualifications,[[120]](#footnote-120) and maritime labour and inspection certificates,[[121]](#footnote-121) as well as vessel sanitation ones.[[122]](#footnote-122) The imo, the ilo and the who have issued some guidance on the conditions to issue these certificates[[123]](#footnote-123) and on periodic examinations on lifting appliances or items of loose gear.[[124]](#footnote-124)

The International Association of Classification Societies (iacs) has provided some guidance on the issuance of short-term certificates or their extension beyond three months in compliance with conventions during the pandemic.[[125]](#footnote-125) The imo has urged to justify these extraordinary measures when alternative arrangements or a survey are not possible by carrying a risk-based survey on a case-by-case basis only in relation to disruptions caused by the pandemic.[[126]](#footnote-126)

3.4.1.2 Health and Safety Requirements under the Maritime Labour Convention

The mlc provides an international standard occupational safety and health programme (osh) for seafarers,[[127]](#footnote-127) such as the basic requirements for seafarers to work on a ship; working conditions; accommodation; food; facilities; health and medical care; welfare; social security; and enforcement procedures. Title 4 of the mlc details that the health of the seafarers must be protected by satisfactory measures and seafarers must have access to sufficient and prompt medical care aimed to improve medical assistance at sea and determined that a vessel is a workplace that can endure many risks.[[128]](#footnote-128) State parties offer seafarers support and material assistance for financial recovery caused by injury, illness or death during employment and the health protection and medical care of the seafarers during their employment is the shipowner’s responsibility.[[129]](#footnote-129)

Regulation 4.2 of the mlc also imposes liability on the shipowners to pay seafarers full or part wages in the event the seafarer is incapable of work due to illness. Meanwhile, Regulation 4.3 of the mlc dictates that a hygienic environment and occupational health protections must be provided to seafarers and regulated by the States.[[130]](#footnote-130) The owners of a ship must prioritise the health of their workers. In order to do so, owners must implement health and hygiene measures on board, monitor crew members’ mental health, and limit non-essential interaction.[[131]](#footnote-131)

3.4.1.3 Other Obligations on Health and Safety under imo Conventions

The pandemic has had a deep effect on how health and safety regulations must be prioritised in the current scenario.[[132]](#footnote-132) In addition to the inability for seafarers to disembark for repatriation or crew changes, seafarers have also been unable to receive medical care ashore while awaiting permission for crew changes and repatriation. According to article iv of the mlc, seafarers must have access to adequate medical care comparable to medical care available on land, in addition to swift access to medicine, treatment, and information for any health condition.[[133]](#footnote-133) Additionally, article 43 of the who’s International Health Regulations (ihr) 2005 provides that States cannot refuse to grant ships from entering port and disembarking for medical or public health reasons.[[134]](#footnote-134) The ihr aims to “prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade”.[[135]](#footnote-135) Non-contracting States “shall endeavour to apply the relevant provisions” of ihr “to international shipping” according to the fal Convention. Public authorities must cooperate with shipowners “to put ashore sick or injured crew members, passengers, persons rescued at sea or other persons for emergency medical treatment” without any restrictions or delays in case of emergency.[[136]](#footnote-136)

Despite the health and safety regulations provided by the imo and ilo conventions, solas is the only convention that promotes safety in favour of the passenger.[[137]](#footnote-137) Although the safety standards detailed in solas, do not extend to health safety of passengers,[[138]](#footnote-138) the who provides guidelines and warning signs of infectious diseases that can be recognised by crew members.[[139]](#footnote-139) Furthermore, in the event of a public health threat on board ships, the imo recommends using the who Handbook for management of public health events on board ships to ensure safety for all on board.[[140]](#footnote-140) As shown in with the *Diamond Princess*, passengers can also disembark to seek emergency medical care.

The who’s interim guidance on promoting “public health measures in response to covid-19 on cargo ships and fishing vessels” addresses the lack of medical doctors in these ships in contrast to passenger ones.[[141]](#footnote-141) Moreover, it focuses on the lack of specific plans to prevent the pandemic on board ships, the lack of access for seafarers to protective measures or ppe, the lack of protocol and guidance for environmental measures that include covid-19 to clean and disinfect the vessel (an obligation of seafarers) and the lack of uniformity on public health policies on ships and ports worldwide. States are required to designate ports to provide medical assistance and treatment.[[142]](#footnote-142) Flag States must ensure to provide medical facilities onshore to sick seafarers on board their ships without any excuse such as exceptional measures related to the pandemic.[[143]](#footnote-143)

The master should provide assistance to persons in distress at sea[[144]](#footnote-144) while contracting governments have the obligation to make the necessary arrangements in that case under solas and the International Convention on Maritime Search and Rescue (sar Convention).[[145]](#footnote-145) Moreover, the master must, “so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea”.[[146]](#footnote-146) Moreover, “the master or the skipper must inform the competent health authority at the next port of call about any suspected case of covid-19” on behalf of the shipowner in compliance with ihr.[[147]](#footnote-147) A Maritime Declaration on Health must be submitted to the competent authority subject to local conditions at the port of call in case of international voyages. At the same time, ship operators should check if the crew develops any symptoms to inform the relevant authority at such port.[[148]](#footnote-148)

Inability to receive onshore medical care jeopardises the health of all seafarers, crew, and passengers on board the ship. According to the ics Secretary-General, reports of seafarers unable to disembark but in urgent medical attention for non-covid-19 conditions were “alarming”. Seafarers encountered medical emergencies like strokes but were unable to receive medical evacuation or assistance for at least four days.[[149]](#footnote-149) ics issued covid-19 Guidelines with consultation and guidance from the who, ilo, and the imo, reiterating article 43 of the ihr as well as providing guidance for the management of suspected cases covid-19.[[150]](#footnote-150) The imo issued a circular letter in response to this, asking for government and port authority support in addressing this issue to maintain the functionality of the global supply chain and continue to protect the health and safety of seafarers.[[151]](#footnote-151)

3.4.2 Health, Safety, Crew Changes, Repatriations and Access to Medical Care for Seafarers and Crew Members in the European Union

Article 31 of the Charter of Fundamental Rights of the European Union (cfreu) provides that EU citizens have a right to safe and healthy working environments and conditions.[[152]](#footnote-152) Shipping vessels were recognised as a workplace in Article 118(a) teu.

As with road transportation workers, physical interaction and contact between the vessel crew and port workers were to remain at a minimum in EU Member States according to the Green Lanes guidelines to prevent the spread of covid-19. If physical contact was necessary, ppe should be worn, and port workers and crew should practice social distancing measures.[[153]](#footnote-153) While this practice has proven to be a swifter method for the passage of essential goods, electronic B/Ls are being used with the same objective at ports worldwide. It is theorised that the effect of the covid-19 pandemic will prompt the permanent adoption of the electronic B/L.[[154]](#footnote-154)

3.4.2.1 Health and Safety Regulations in the EU

The EU implemented the health and safety standards for crew members and seafarers of shipping vessels under Council Directive 92/29. The Directive outlines requirements to equip vessels with adequate medical equipment and medicines at all times in a detailed checklist, with the amount of such supplies dependent on the amount of crew members and seafarers on board the ship. It is the responsibility of the Member State under which the vessel is registered to make the medical supplies available to shipping vessels, in addition to their expiration, correct storage, meet the minimum requirements of the Directive, and provide documentation detailing the medical supplies to comply with the requirements.[[155]](#footnote-155) EU guidelines implemented an increase in the availability of ppe equipment on ships for ill crew members, interactions amongst the crew members, or shore leave. Conversely, it is the responsibility of the shipowner and the captain to manage these supplies and timely replenishments.[[156]](#footnote-156) While the Member State provides the supplies and ensures supplies are up to standard, captains and shipowners would likely be liable for negligently managing medical supplies needed during a pandemic.

In order to ensure the health and safety of persons on board a ship in accordance with EU law on health and safety at work, the appropriate preventive and protective measures are put in place following a risk assessment.[[157]](#footnote-157) Specific information on worker safety and health concerning protection from exposure of covid-19 was provided by the European Agency for Safety and Health at Work as well as the European Commission Guidelines on protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships.[[158]](#footnote-158)

3.4.2.2 Repatriation, Crew Changes and Access to Medical Care of Seafarers and Crew Members on Board Ships Entering EU Ports

Well-connected ports to operational airports and rail stations have been designated across the EU to allow for fast-track crew changes and repatriations according to the Commission’s Guidelines on this matter.[[159]](#footnote-159) Designated ports are close to an accommodation suitable for isolating crew members for a 14 days quarantine prior to embarking and after disembarking if testing is not available, subject to the Member State requirements. This requirement may be waived following the crew member’s covid-19 negative test.[[160]](#footnote-160) A requirement to communicate the vessel’s occupants and their destination to Member State authorities,[[161]](#footnote-161) which will contact diplomatic representations, assists in arranging repatriations.

Should a seafarer be a suspected case of covid-19, the owner should disclose the suspected case to the vessel’s next port, take immediate steps to isolate the infected person and contact their insurer to ensure coverage. Failure to do so may result in the owner’s liability for the crew members who contract covid-19.[[162]](#footnote-162) The master of any vessel flying an EU or non-EU Member State flag is required to report a Maritime Declaration of Health to EU Member State Authorities at least 24 hours before entering EU ports.[[163]](#footnote-163) This allowed relevant authorities to limit the spread of the virus with quarantines and provide medical care for suspected covid-19 cases. Quarantines, on the other hand, are not necessary for crews who endured a two-week port call wait following the concerned port authority’s risk assessment. However, if one person is suspected of being infected on board, all crew members should quarantine, on board or land.[[164]](#footnote-164) Disembarking passengers and crew must fill in a Locator Form before leaving the vessel.

Seafarers, maritime transport personnel and fishermen are recognised as “workers in essential functions”.[[165]](#footnote-165) They have the right to be repatriated at no cost, according to Regulation 2.5(1) mlc. Furthermore, cruise ship operators and shipowners should bear the costs of repatriation regardless of the place of disembarkation, including non-EU Member State ports. This obligation is set out in Standard A2.5(1) mlc when: (a) “seafarers’ employment agreement expires while they are abroad”; (b) “seafarers’ employment agreement is terminated [sic] by the shipowner or [sic] by the seafarer for justified reasons; and (c) “seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances”. In the latter two scenarios, shipowners have to bear the cost of repatriation “in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel” according to Guideline B2.5.1(1)(b) mlc.

The freedom of movement has allowed citizen mobility and workers to obtain work in other Member States.[[166]](#footnote-166) To protect the interest and exercise of this freedom, EU Member States must provide and guarantee access to healthcare for all EU citizens and protect human health.[[167]](#footnote-167) The EU guarantees access to healthcare for all EU citizens and workers, including seafarers.

Seafarers are widely protected by international conventions, such as mlc, under which the Contracting Parties should provide assistance for their repatriation[[168]](#footnote-168) and “should have regard to whether proper provision is made [sic] for medical care and maintenance of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port in consequence of sickness or injury incurred in the service of the ship and not due to their own wilful misconduct”.[[169]](#footnote-169)

EU Member States are required to accommodate vessels flying a third country flag for humanitarian reasons.[[170]](#footnote-170) Moreover, healthcare and accommodation are provided to third-country nationals working in EU ships by the Member State authorities, although the ship’s operator may be required for compensation.[[171]](#footnote-171) Furthermore, EU citizens must have access to quality healthcare wherever they roam amongst the EU’s territory,[[172]](#footnote-172) and Member States must guarantee access to healthcare to all EU citizens under Directive 2011/24.[[173]](#footnote-173)

3.4.2.3 Health and Safety Standards on Cruise Ships

The European Maritime Safety Agency (emsa) ensures effective and systematic levels of maritime safety and security as well as the prevention and response to ship-caused pollution. The emsa has released guidance for cruise ship operations to safely resume cruise ship operations for vessels registered in an EU flag State. Cruise ship companies are required to provide a safe environment for their crew and passengers. In order to maintain this, it is recommended that safeguards are put in place as well as risk assessments.[[174]](#footnote-174) In addition to cruise ship crew members receiving training and certification under solas, stcw95 and the ism Code, the emsa recommendations also listed covid-19 training for cruise ship crews. These implementations should be guided by who guidance for covid-19 management on board ships.[[175]](#footnote-175) These guidelines offer a jumpstart to the travel, tourism, and shipping industry. The effectiveness of these guidelines is unknown, but they are an attempt at tourism and shipping industry revitalisation.

In addition to the guidance issued for cruise ships, the European Agency for Safety and Health at Work (osha) has issued guidelines to prepare workplaces for covid-19 safety. The Occupational Health and Safety (osh) Directive 89/391/ecc established a framework that guaranteed the improvement of health and safety standards in the EU. It provided that adequate protection must be available for workers in the work environment.[[176]](#footnote-176) The Directive and the covid-19 workplace guidance would include provisions for the availability of hand sanitiser or soap and water and ppe to decrease the spread of covid-19 amongst employees.

4 Conclusion

Government-issued travel restrictions and border closures caused significant delays for the shipping industry and global trade. The shipping industry encountered legal issues in the agreements negotiated for the carriage of goods by sea. Countries were not swift enough to implement these border restrictions to prevent or slow the spread of covid-19. They were also not quick enough to address the issues of the seafarer.

The uncertainty of the pandemic created delays that questioned the fulfilment of the contract and the completion of the performance. Frustration and force majeures threatened the fulfilment of the contract, while off-hire clauses threatened the payment of the vessel crew members. Yet, both of these issues are strict in their application. A force majeure which accounts for unforeseeable events may not include covid-19 as it is now foreseeable. Relying on the basic functions of clauses like a force majeure is not enough to armour the contract from covid-19 related provisions.

The same can be said for the activation of the off-hire clause, which accounts for preventing the vessel’s full-working. Seafarer payment has also been an issue which can be resolved under force majeure if a seafarer’s contract has expired. In the event the contract is still in motion, most charterparties contains the off-hire clause, pardoning the charterers from issuing payment to seafarers in the event of a deficiency of men which prevents the full-working of the vessel. However, activating an off-hire clause is difficult and charterers should execute it with caution. This is not a plausible solution since unless there is a full quarantine on the ship, the vessel may still be able to work at a full capacity. However, intertanko and bimco have provided clauses to account for covid-19 in contracts for the carriage of goods by sea.

The intertanko and bimco covid-19 Clauses are provisions that may be incorporated into the contract to prevent frustration, force majeures, and off-hire issues as well as protect crew health and safety in the events of unsafe ports, port closures or travel restrictions. This protects the rights of shipowners and masters making subjective decisions on whether a port is unsafe and relieving them of liability, and at the cost of accumulating compensation owed to the shipowner by the charterer.

A force majeure clause on its own can no longer recognise covid-19 as an unforeseeable event, but the intertanko covid-19 Clause allows for this provision when a shipowner or master decides that a port is unsafe to dock. This provision protects the shipowner’s discretion, which also protects the health and safety of the crew that the shipowner is responsible for and reallocates liabilities and compensation among the charterer and the owner. Likewise, bimco’s Infectious or Contagious Disease Clause protects the discretion of the shipowner to dock at a port depending on its safety, but it also accounts for the ability to terminate the charterparty under certain conditions.

Since covid-19 is a foreseeable issue, contracts should account for the delays and border restrictions that are likely to be imposed by governments to off-set covid-19. Although some provisions seem to still have some clout, it is unlikely that covid-19 will affect shipping contracts beyond the pandemic’s start. Therefore, shipping parties should also negotiate the intertanko or bimco clauses into the contract.

Travel restrictions and border closures have impacted the seafarers’ wellbeing as much as it has affected the fulfilment of shipping industry charterparties. International organisations and regulations that were adopted and in force prior to covid-19 were unintentionally neglected by governments who prioritised the maintenance and regulation of covid-19 within its borders, which came at the cost of seafarer health and safety. Understandably, governments were prompt to issue travel restrictions and border closures to curb the spread of the virus and contain citizens and individuals. However, these measures had devastating effects on key workers at these borders.

With the carriage of goods by sea moving 80% of the world’s goods, seafarers fit the description of key workers. Cruise ship passengers’ health is not guaranteed by conventions, but it may be prioritised amongst private company policy. Cruise ship passengers were prioritised over the crew members, who had to quarantine for two more weeks after passengers disembarked. However, cargo ships have hardly had authorisation to disembark at most ports. This has disrupted seafarers who are repatriating after fulfilling their working contract and prevented crew changes, further disrupting the global supply chain. The imo urged governments for the first time in March 2020 to recognise seafarers as key workers, but this recognition took a global summit and over four months to mobilise.

Unfortunately, governments did not recognise them as such until July 2020 – a mere four to five months after travel restrictions were enacted worldwide. This caused delays and congestion at ports but also prevented seafarers from disembarking to repatriate or change crews. Subsequently, these delays strained global trade. Seafarers were also jeopardised in the process. Unable to disembark for employment reasons, seafarers were also unable to disembark for medical reasons or receive off-shore medical care for non-covid-19 related medical issues or illnesses, which was a breach of article 43 of the ihr.

It seems as though the health and safety of passengers are prioritised on shipping vessels. International conventions provide the safety of passengers but do not include health. Yet, as illustrated in the disembarking of passengers from the *Diamond Princess*, these conventions may impliedly include the health of passengers. On the other hand, companies may prioritise the health of passengers since they owe a duty of care and governments may prioritise passenger repatriation due to the pressure of the media reporting on these instances. As with the *Diamond Princess*, the crew was to undergo an additional 14-day quarantine before disembarking and repatriating.

With non-leisure shipping, seafarers and vessel crews have been stranded for months, unable to disembark at ports, which has inflicted mental unrest at a cost of the 600,000 stranded seafarers’ health as of July 2020. It is internationally agreed that seafarers are allowed to disembark at ports in the event of a medical emergency. Many seafarers were even denied this access due to travel and border restrictions, which delayed the emergency medical care by days at a time. Seafarers have also shown signs of depression as they are still stranded on ships months after they were supposed to disembark to repatriate. The government restrictions which were supposed to slow the spread of covid-19 were not implemented in a timely manner, which resulted in longer travel and border restrictions. Even with the imo’s plea for seafarer recognition, governments were slow to resolve these issues and it further hindered the supply chain and jeopardised seafarer health and safety.

Despite these issues, control of the pandemic has been underway. Guidelines and training have been released for companies and organisations to keep workplaces safe for employees to return to work, including covid-19 safety guidelines and training for cruise ship companies to revitalise the tourism industry. Modern medicine is more advanced since the last pandemic in the early 20th century. Vaccine trials were ongoing during several months[[177]](#footnote-177) and successful jabs were developed in a record time. Vaccination campaigns have proved to be monumental in preventing infection and the spread of the virus.[[178]](#footnote-178)

Not all Governments have provided a uniform response and solutions to seafarers looking to disembark, change crews and repatriate. However, the pandemic has shown that the laws related to the carriage of goods by sea have adapted to the disruptive pandemic scenario since 2020. The impacts and travel restrictions are almost over since record numbers of calls at ports have been registered worldwide and the global economy has been boosted since mid-2021. Charterers and owners must account for covid-19 and other pandemics in future contracts since it is a foreseeable issue that causes multiple issues for shipping companies and seafarers. The shipping industry has shown that it was possible to keep the global supply chain running in 2020, assisting the economy to recover the pre-covid-19 levels in 2021.

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21. The master is obliged to sign the B/L within a reasonable time and must not purposefully delay the signing until the cargo has shipped as stated in *Halcyon SS Co v Continental Grain Co* [1943] kb 355. [↑](#footnote-ref-21)
22. Foxton and others (n 19). [↑](#footnote-ref-22)
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24. As per Lord Bramwell in *Sewell v Burdick (The Zoe)*(1884) 10 App. Cas. 74 [105] (hl); For instance, the terms of bailment are detailed in the B/L, which can enforce the doctrine of bailment on terms against a third party; Foxton and others (n 18). [↑](#footnote-ref-24)
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126. imo (n 123). [↑](#footnote-ref-126)
127. Margareta Lützhöft and Viet Dung Vu, ‘Design for safety’, in Helen A. Oltedal and Margareta Lützhöft (ed.) *Managing Maritime Safety* (Routledge 2018), 118. [↑](#footnote-ref-127)
128. mlc, reg 4.1; The EU enacted this mlc requirement with Council Directive 2009/13/ec implementing the Agreement concluded by the European Community Shipowners’ Associations (ecsa) and the European Transport Workers’ Federation (etf) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/ec [2009] oj L 124. [↑](#footnote-ref-128)
129. mlc, reg 4.2; Directive 2009/13/ec, reg 4.2. [↑](#footnote-ref-129)
130. Lorenzon (n 116). [↑](#footnote-ref-130)
131. Underhill and Austin (n 28). [↑](#footnote-ref-131)
132. The imo’s solas and stcw95 conventions impose safety duties for all shipping vessels. Regulation iii/10.4 of solas requires crew members to be certified in safety and security; where Chapters ii and iii of solas concern the ship’s construction, availability of safety equipment, and operating standards, human safety and its qualification are the objectives of the International Safety Management (ism) Code as well as stcw95; the ism Code dictates that a ship’s crew must be certified, medically fit, and qualified seafarers who conform to national and international standards; likewise, stcw95 dictates that seafarers must trained, certified, and competent by consistent standards; the international requirements of the ism Code are detailed in the stcw95, and therefore, a breach or non-conformity of the ism Code could result from a failure to comply with stcw95 requirements, according to Lorenzon (n 116); imo, ‘Operational considerations for managing COVID-19 cases/outbreak on board ships’ (2 March 2020) Circular Letter No 4204/Add.3. [↑](#footnote-ref-132)
133. The EU implemented the standards of article iv of the mlc in Council Directive 92/29/eec (n 107). [↑](#footnote-ref-133)
134. International Health Regulations (ihr) 2005 (adopted 23 May 2005, entered into force 15 June 2007) Resolution wha58.3 (3rd ed, *who* 2016) <https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf?sequence=1&isAllowed=y> accessed 18 September 2020. The ihr were preceded by the International Health Regulations (ihr) 1969, Official Records, No 176, 1969, Resolution wha22.46 and Annex I, amended in 1973 by Resolution wha26.55 (who Official Records, No 209), and 1981 by Resolution wha34.13 (Document wha34/1981/rec/1, who Official Records, No 217, 1974), document eb67/1981/rec/1, as well as Resolutions wha27.45 and eb67.R13. [↑](#footnote-ref-134)
135. ihr, article 2. [↑](#footnote-ref-135)
136. fal Convention, Annex Section 7(H) 2.20–2.27; who (n 116). [↑](#footnote-ref-136)
137. imo, ‘Passenger Ships’ (*imo,* 2020) <www.imo.org/en/OurWork/Safety/Regulations/Pages/PassengerShips.aspx> accessed 9 September 2020. [↑](#footnote-ref-137)
138. imo, ‘List of contents of the emergency medical kit/bag and medical consideration for its use on ro-ro passenger ships not normally carrying a medical doctor’ (28 May 2002) msc/Circ. 1042 Ref. T2/6.01. [↑](#footnote-ref-138)
139. who, *International Medical Guide for Ships* (3rd edn, who 2007). [↑](#footnote-ref-139)
140. imo, ‘Novel Coronavirus (2019-nCoV)’ (12 February 2020) Circular Letter No 4203/Add. 1; see also who, Interim guidance on ‘Operational considerations for managing COVID-19 cases and outbreaks on board ships’ (24 February 2020) <https://apps.who.int/iris/bitstream/handle/10665/331164/WHO-2019-nCov-IHR\_Ship\_outbreak-2020.1-eng.pdf?sequence=1&isAllowed=y> accessed 20 September 2020. [↑](#footnote-ref-140)
141. who (n 116). [↑](#footnote-ref-141)
142. ihr, Articles 19, 20 and Annex 1B. [↑](#footnote-ref-142)
143. mlc, reg 4.1(3). [↑](#footnote-ref-143)
144. Article 98 unclos. [↑](#footnote-ref-144)
145. International Convention on Maritime Search and Rescue (sar Convention) (adopted 27 April 1979, entered into force 22 June 1985) 1405 unts 97. [↑](#footnote-ref-145)
146. Article 10(1) of the International Convention on Salvage (1989 Salvage Convention) (adopted 28 April 1989, entered into force 14 July 1996) 1953 unts 165; who (n 116). [↑](#footnote-ref-146)
147. who (n 116). [↑](#footnote-ref-147)
148. ibid. [↑](#footnote-ref-148)
149. International Chamber of Shipping (ics) Press Release, ‘Global Shipping Body Addresses The Health Concerns Of Seafarers During The COVID-19 Pandemic’ (28 May 2020) < www.ics-shipping.org/news/press-releases/2020/05/28/global-shipping-body-addresses-the-health-concerns-of-seafarers-during-the-covid-19-pandemic> accessed 11 September 2020. [↑](#footnote-ref-149)
150. ics (n 106); see also ics (n 149). [↑](#footnote-ref-150)
151. imo, ‘Coronavirus (covid-19) – Recommendations for port and coastal States on the prompt disembarkation of seafarers for medical care ashore during the covid-19 pandemic’(1 July 2020) Circular Letter No 4204/Add.23. [↑](#footnote-ref-151)
152. European Union Charter of Fundamental Rights, art. 31 [2007] oj C326. [↑](#footnote-ref-152)
153. European Commission (n 98). [↑](#footnote-ref-153)
154. Max Schwerdtfeger, ‘PTI Webinar: COVID-19 Could Accelerate Adoption Of Electronic Bill Of Lading’ (*Port Technology,* 28 May 2020) <www.porttechnology.org/news/pti-webinar-covid-19-could-accelerate-adoption-of-electronic-bill-of-lading/> accessed 10 September 2020. [↑](#footnote-ref-154)
155. Power (n 56). [↑](#footnote-ref-155)
156. Underhill and Austin (n 28). [↑](#footnote-ref-156)
157. Council Directive 89/391/eec on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] oj l 183. [↑](#footnote-ref-157)
158. European Commission (n 98); see also European Agency for Safety and Health at Work (osha), ‘COVID-19: guidance for the workplace’ (6 April 2020) <https://osha.europa.eu/en/highlights/covid-19-guidance-workplace> accessed 5 June 2020. [↑](#footnote-ref-158)
159. European Commission (n 98). [↑](#footnote-ref-159)
160. ibid at [31]. [↑](#footnote-ref-160)
161. ibid at [16]. [↑](#footnote-ref-161)
162. Underhill and Austin (n 28). [↑](#footnote-ref-162)
163. European Commission (n 98) at [44]; this requirement is mandatory since the approval of Directive 2010/65/EU on reporting formalities for ships arriving in and/or departing from ports of the Member States [2010] oj l 283. [↑](#footnote-ref-163)
164. European Commission (n 98) at [9]. [↑](#footnote-ref-164)
165. ibid, see Summary. [↑](#footnote-ref-165)
166. Treaty for the Functioning of the European Union, art. 45 [2016] oj C202. [↑](#footnote-ref-166)
167. European Committee of Social Rights, ‘Statement of interpretation on the right to protection of health in times of pandemic’ (21 April 2020), <https://rm.coe.int/statement-of-interpretation-on-the-right-to-protection-of-health-in-ti/16809e3640> accessed 14 August 2020. [↑](#footnote-ref-167)
168. mlc Guideline B2.5.2(1). [↑](#footnote-ref-168)
169. mlc Guideline B2.5.2(2)(b). [↑](#footnote-ref-169)
170. ibid at [8]. [↑](#footnote-ref-170)
171. European Commission (n 99) at 18; the Commission’s Guidelines (n 98) complete the requirements set out by mlc; however, a parallelism can be brought here as to what Ringbom and Argüello define as “horizontal environmental requirements” regarding the limited applicability of express provisions of environmental law to ships; the authors argue that “the rationale behind the adoption of these ‘horizontal measures’ may not always consider the particular features of maritime transport”; however, this author believes that general EU law on provision of healthcare across the EU is complemented by the Commission’s Guidelines that bridge the gap between International Law provisions, i.e. mlc, concerning medical care and assistance to seafarers and crew members on board ships reaching EU ports; see Gabriela Argüello, ‘Environmentally sound Management of Ship Wastes: challenges and opportunities for European ports’ 5(1) *Journal of Shipping and Trade*  (2020) 1–21, at 19; Henrik Ringbom, *The EU Maritime Safety Policy and International Law* (Martinus Nijhoff Publishers 2008). [↑](#footnote-ref-171)
172. Treaty for the Functioning of the European Union, art. 35 [2016] oj C202. [↑](#footnote-ref-172)
173. Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare [2011] OJ L 88/45. [↑](#footnote-ref-173)
174. emsa, ‘COVID-19: EU Guidance for cruise ship operations – Guidance on the gradual and safe resumption of operations of cruise ships in the European Union in relation to the COVID-19 pandemic’ (27 July 2020) <www.ecdc.europa.eu/sites/default/files/documents/COVID-19-cruise-guidance-27-07-2020.pdf> accessed 15 September 2020. [↑](#footnote-ref-174)
175. ibid; see also who (n 139). [↑](#footnote-ref-175)
176. Council Directive 89/391/eec (n 157). [↑](#footnote-ref-176)
177. Francis Kokoroko, ‘The push for a COVID-19 vaccine’ (*who,* 2020) <www.who.int/emergencies/diseases/novel-coronavirus-2019/covid-19-vaccines?gclid=CjwKCAjwkoz7BRBPEiwAeKw3q21NuJD3F-mkWQ1La7VpPp7B3hYcjwbcKA35AZTPA5cn5ZKOsk6m5BoCf0oQAvD\_BwE> accessed 17 September 2020. [↑](#footnote-ref-177)
178. who, ‘Vaccine efficacy, effectiveness and protection’ (*who*, 2021) <www.who.int/news-room/feature-stories/detail/vaccine-efficacy-effectiveness-and-protection> accessed 3 October 2021. [↑](#footnote-ref-178)