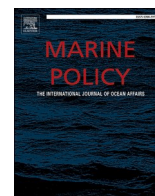




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Short communication

COVID-19 border closures cause humanitarian crew change crisis at sea

Christiaan De Beukelaer¹

School of Culture and Communication, University of Melbourne, Melbourne, Australia



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ABSTRACT

The COVID-19 pandemic has caused many countries to close their borders to travellers, in an attempt to contain the spread of the virus. Given the initially indiscriminate travel restrictions adopted in March 2020, many seafarers have been stranded on their ships, well beyond their initial labour contracts. Notwithstanding repeated calls by the United Nations, the shipping industry, and maritime unions to designate seafarers as “key workers” in all jurisdictions, many countries still do not allow crew change. While crew change is however generally possible in many ports, the number of people stranded at sea remains unacceptably high, which signals wide-spread breaches of the United Nations 2006 Maritime Labour Convention (MLC, 2006). This humanitarian crisis needs to be resolved soon, as its continuation risks eroding the hard-won Maritime Labour Convention.

1. Introduction

In 2020 and 2021, most countries have at some point closed their territorial borders to contain the spread of COVID-19. However, throughout the pandemic, maritime ports have remained open for trade. This is necessary, as virtually every country relies on the shipping industry to ensure the integrity of global supply chains. In doing so, they rely on seafarers, some 1.5 million of whom are at sea at any given time, to ship 90% of global trade, including food, fuel, goods, and commodities.

While the spread of COVID-19 may have been limited by border closures [1], shipping has continued despite an initial reduction in trade [2], at the cost of seafarers' health and safety [3–6]. The continued global reliance on maritime trade while some countries' borders remained closed caused significant difficulties for seafarers to travel to and from their ships. This has resulted in a humanitarian “crew change crisis” at sea. This crisis involves the systematic breaching of labour contracts, which results in forced labour at sea. This has, in turn, caused great mental strain on seafarers, which led to decreased wellbeing and mental health and increased risk of accidents.

The Wakashio, an oil tanker that broke in half after running aground of the Mauritius coast on 25 July 2020 [7] is a case in point: the vessel was understaffed and two of its twenty crew had been at sea for more than twelve months [8].

This article analyses the responses of international organizations to the global “crew change crisis.” The analysis includes the responses of the International Maritime Organization (IMO); the International

Labour Organization (ILO); the International Transport Workers' Federation (ITF), the International Chamber of Shipping (ICS), The United Nations Conference on Trade and Development (UNCTAD); and the United Nations (UN). The data analysed include press releases, news articles, and personal interviews and correspondence with representatives of ITF, IMO, ILO, and UNCTAD. The article also builds on the author's personal experience of being stuck at sea on a commercial cargo ship for five months (March–July 2020) due to COVID-19 border closures [9–11] while conducting fieldwork for a project on the revival of sailing vessels for zero-emission cargo transport [12].

2. Crew change crisis deepens

At the peak of the crew change crisis in October 2020, some 400,000 seafarers were stranded at sea due to COVID-19 border closures [13]. Meanwhile, the equivalent number of people were stuck at home, unable to replace the stranded crews and commence work. By May 2021, this number had reduced to some 200,000; which remains unacceptably high. Throughout the pandemic, media outlets have covered the issue early on [14–16] and in great detail [3,17,18]. Key industry bodies ITF [19], IMO [5,20,21], ILO [22–25], and ICS [26,27] have repeatedly called for action. Despite persistent efforts to facilitate crew change, the global humanitarian crew change crisis hit the six-month mark on World Maritime Day (September 24th), at which point the number of stranded seafarers added up to 400,000 people [4,5], a steady increase on the 300,000 reported on September 7th [28], the 200,000 on July 9th [29], and the 150,000 on June 8th [23].

E-mail address: Christiaan.DeBeukelaer@unimelb.edu.au.

¹ The University of Melbourne, John Medley Building Room X351, 3010 Parkville, VIC, Australia.

The failure to resolve this protracted crisis signals that far more is at risk. Labour conditions at sea have been strenuous throughout history. The recent Maritime Labour Convention (MLC, 2006) should ensure a basic level of protection is guaranteed for all [30]. The “crew change crisis” has numerically lessened, but the structural threat has deepened: employing crew past their original contracts and often past the eleven-month statutory maximum under MLC, 2006, risks eroding this hard-won set of rules that should protect the seafarers most at risk of exploitation.

3. Initial contract extensions well-intended but controversial

On March 19th 2020, IMO Secretary-General Kitack Lim stressed the “vital need to maintain commerce by sea and protect seafarers’ welfare in face of coronavirus shut down” because “shipping services and seafarers to deliver vital goods, including medical supplies and foodstuffs, [which] will be central to responding to, and eventually overcoming, this pandemic.” He also pointed out that seafarers, “unwittingly, on the front line of this global calamity,” are “people, usually far from home and family” whose “own health and welfare is as important as that of anyone else.” In response, he urged for a “practical and pragmatic approach, in these unusual times, to issues like crew changeovers, resupply, repairs, survey and certification and licensing of seafarers” [31].

On May 5th, 2020, the IMO endorsed a “recommended Framework of Protocols for ensuring safe ship crew changes and travel during the Coronavirus (COVID-19) pandemic”, drawn up in consultation with the shipping industry and maritime labour unions [32,33], which was updated on October 5th 2020 [34].

Initially, this pragmatism involved acceptance that COVID-19 was a case of “force majeure” beyond anyone’s power. The ILO clarified in a widely circulated “information note” that specified under which conditions MLC, 2006 regulations could temporarily be broken, without breaching the convention. That is, during “the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation [of the MLC, 2006]” [35].

Border closures were necessary measures to contain the spread of the virus, and seafarers accepted that this would result in contract extensions and delays in scheduled crew changes. On March 19th 2020, ITF’s Jacqueline Smith communicated that their organisation had “agreed to the extension of Seafarer Employment Agreements for up to one month in order to mitigate problems surrounding the replacement of crew” and indicated it will not challenge contract extensions in the period from 17 March to 16 April 2020. Smith stressed, however, that “extension will only be provided when individual seafarers consent to such extensions” [36]. Consent is however a largely moot point when no one is allowed to step off their ship and workers risk blacklisting by manning agencies for complaining or refusing to extend their contracts [4,37].

The Republic of Panama, home to the world largest open shipping registry, is one of many flag states that allowed extensions to seafarers contracts. It issued a notice on March 23rd 2020, permitting the extension of “crew licenses, contracts, endorsements for a period of 90 days” [38]. This meant that this flag state would not challenge workers’ contract extensions for up to three months beyond their initial duration, thereby allowing seafarers to work uninterrupted for up to 14 months. In June, Panama allowed further extensions of an additional three months, extending the maximum duration of seafarer’s contracts to maximum 17 months [39]. This was an emergency measure due to force majeure that was broadly approved by stakeholders in the shipping industry. But how much longer should contracts last? And when did the “force majeure” come to an end?

While the ITF agreed to temporarily suspend challenging contract extensions beyond the maximum 11-month contract length under the MLC, 2006 during one month, Panama allowed for extensions of up to six months. It was not until August that the flag state withdrew this

decision, by announcing it would require compliance with MLC, 2006 from September 14th 2020 [40]. These permitted extensions have, despite their best intentions, sent mixed messages to the shipping industry, for want of specific conditions or (except in the case of ITF) a clear end date. This created tensions, as the lack of uniform rules and limited enforcement of workers’ rights under the MLC, 2006 has caused the number of stranded seafarers to rise.

4. Key worker status crucial, but often lacking

International organisations, such as IMO [5,20,21,28], ILO [23,25,35], ICS [6,26,27,41], and ITF [4,13,19], have repeatedly insisted that seafarers must be designated as “key workers,” in order to facilitate their international travel to and from work. In October 2020, when the number of stranded seafarers peaked at 400,000 43 states and territories were closed for crew change [42]. By June 2021, this number had decreased to 24 [43].

On July 9th, 2020 the United Kingdom government hosted a virtual International Maritime Summit on Crew Changes with 15 participating countries (United Kingdom, Cyprus, Denmark, France, Germany, Georgia, Greece, Indonesia, Netherlands, Norway, Philippines, Saudi Arabia, Singapore, United Arab Emirates, United States of America). In a joint announcement, they stressed that in order to protect the “continued functioning of global supply chains to ensure the resilience of our national economies, and the importance of facilitating the safe and efficient operation of the maritime transportation system” it is critical to make sure “shipping companies [can] continue conducting crew changes throughout the world, notwithstanding the restrictions applied by many national authorities in response to the pandemic” [29].

The pledges by 13 of these governments (the fifteen listed above, minus Cyprus and Georgia) to designate seafarers as “key workers” [44] while working with the IMO and the International Civil Aviation Organization to facilitate crew change, were welcomed by the IMO [45] and led to some improvement. Thanks to the commitment of these 13 countries, and a growing number of others including Hong Kong, Singapore, Malaysia, Brazil [46] and China [47], crew change is now possible in several major ports.

Border closures are not the only obstacle that kept seafarers stranded at sea. Once borders opened, shipping companies were faced with costly crew changes, due to the limited availability of flights through much of 2020 [48]. Meanwhile, some charterers have turned to using “no crew change” clauses, particularly with bulk carriers, for fear that crew change may lead to bringing COVID-19 aboard [49]. These are examples of some industry stakeholders using the pandemic as an excuse to violate MLC, 2006 regulations. If cost is the only obstacle, the issue cannot be deemed “force majeure”.

However, BIMCO, the Baltic and International Maritime Council, expressed concern about the limited “number of participants [at the 9th July 2020 meeting] and the lack of timescales [of their pledges] for concrete actions” at the meeting [50] and *Lloyd’s List* opined that “pledges, platitudes and protocols won’t repatriate seafarers” [51]. Given the continued deepening crew change crisis, their concerns were sensible.

The initial “force majeure” caused by strict border closures around the world, which resulted in contract extensions beyond the 11-months MLC, 2006 maximum, no longer exists. Crew change is now possible, even if it remains difficult, as it may require re-routing vessels, lengthy quarantine arrangements for incoming and outgoing crews, and irregular international flights at high cost. In this context, the number of seafarers who remain stranded constitutes a truly humanitarian crisis, because extended contracts are not only a labour and safety issue; they risk causing great harm to the mental health and well-being of seafarers [52,53].

5. Crew change crisis turns into humanitarian crisis

On September 4th 2020, IMO Secretary-General Kitack Lim pointed out that the “numerous restrictions and obstacles that prevent crew changes have created a humanitarian crisis at sea” in a circular letter ahead of the United Nations General Assembly (22–26 September 2020) [54]. He stressed that:

Seafarers cannot remain at sea indefinitely. In addition to the humanitarian crisis that has been caused by keeping seafarers effectively trapped on their vessels, the safety issues that arise from requiring overly fatigued and mentally exhausted seafarers to continue operating vessels are a matter of great concern. If the crew change crisis is not resolved, ships will no longer be able to operate safely pursuant to the Organization’s regulations and guidelines, further exacerbating the economic impacts of the COVID-19 pandemic. [54].

He further reiterated his “call to all Member States” to:

1. Designate all seafarers and marine personnel (not only nationals) within their jurisdiction as key workers providing an essential service.
2. Implement the protocols and guidance in the Circular Letter No.4204 series and allow for safe and secure crew changes.
3. Remove other barriers to crew changes, such as visa restrictions, flight restrictions, national travel and movement restrictions, access to medical care and testing, etc. [54].

His call resulted in a high-level event on September 24th, 2020 convened by the UN Global Compact, IMO and ILO, in collaboration with ICS and ITF in the virtual fringes of the United Nations General Assembly, which took place 22–26th September 2020 [5].

Despite repeated calls for action, commitments from numerous countries, and real efforts by many flag states, port state authorities, workers’ unions, shipping companies, and international organisations, the “crew change crisis” continues, despite the increased possibility to facilitate crew change in many key ports. The escalation of this humanitarian crisis has caused tensions between seafarers and their unions on the one hand and shipping companies on the other hand [10], which risk undermining the hard-fought MLC, 2006 [30]. Unions have always been instrumental in forcing the shipping industry to uphold the MLC, 2006. Given the exceptions granted (and claimed) during the pandemic, there is a real and persistent risk that the blurring boundaries of “force majeure” and cost will give employers in the shipping industry greater possibilities to break these rules, which are comparatively weak in the first place.

6. Forced labour risks erosion of Maritime Labour Convention

On September 23rd 2020, the day before the high-level UN event, the Consumer Goods Forum sent an open letter to António Guterres, the UN Secretary-General. In this letter, they stress the need to resolve the “crew change crisis” in order to maintain the integrity of the “global supply chains, which are vital to manufacturers and retailers and their ability to produce and offer essential consumer goods.” Though they also point out that the crew change crisis, caused by extraordinary limitations on crew mobility, “has also inadvertently created a modern form of forced labour” [55].

They are not alone in suggesting that the current situation is bordering on forced labour, as Jan de Boer, a Senior Legal Officer at IMO (in a personal interview), Stephen Cotton, ITF General Secretary [4], and Brandt Wagner, Head of the Transport and Maritime Sectors Unit at ILO [3] have also voiced this concern.

Worse, these issues do not come as a surprise, as labour conditions in the shipping industry are a longstanding issue [30]. Moreover, early in

the pandemic, the treatment of cruise liner crew which were often left aboard after passengers had disembarked led to reports of their deteriorating mental health. One hundred thousand unemployed cruise ship crew were stranded at sea, leading to hunger strikes while anchored offshore and unable to travel home [56]. Cruise liner crew are relatively visible, and merchant marine crew are relatively few, but travel restrictions also affected fishing vessel crews [57], in an industry that is far less regulated than the merchant marine [58].

In the shipping industry, where workers risk being “blacklisted” by manning agencies that act as intermediaries between seafarers and shipping companies, refusing to have one’s employment contract extended could mean the end of a maritime career [37]. Indeed, the ITF reports that “many seafarers have expressed concerns about the consequences if they raised their voices about their personal fatigue and the impact of the safety of the crew, ship and cargo – for fear of losing future job opportunities, commonly known as blacklisting” [4].

As a result, seafarers rely on port authorities to arrest vessels that refuse compliance and keep crew on board longer than the permitted 11 months under the MLC, 2006 [59,60]. Meanwhile, the ILO has stressed, in their “information note on maritime labour issues and coronavirus” that:

There must be a causal link between material impossibility and the unforeseen circumstances. In short, the parties involved should make every attempt to comply with their obligations under the MLC, 2006, non-compliance only being excused when compliance is materially and objectively impossible by reason of the occurrence of an irresistible event. While authorities are encouraged to be pragmatic in their approach when confronted with such exceptional circumstances, they should also ensure that the COVID-19 pandemic is not used as an excuse to breach the MLC, 2006. [35].

As many countries now allow crew change, there is no longer any excuse to voluntarily or involuntarily violate MLC, 2006 regulations. While “force majeure” – in this case the sudden blanket closure of territorial borders for all travellers – allows temporary operations in violation of standard MLC, 2006 regulations, as soon as this “material impossibility” resolves – as it has – non-compliance indicates a breach of the MLC, 2006, because the “factors causing and justifying the non-performance are no longer present” [35]. The growing number of stranded seafarers signals that the humanitarian “crew change crisis” risks eroding the MLC, 2006, which would harm the safety and well-being of seafarers as well as the integrity of global supply chains, and thereby the global economy.

Politicians gladly repeat the “build back better” mantra. But seafarers, who are among the hardest-hit workers, face structural neglect during the pandemic and long-term erosion of their hard-won minimum rights under the MLC, 2006. Whatever has happened during the pandemic, the temporary relaxation of labour regulation enforcement at sea should not result in a return of forced labour as a norm in shipping. Building back better should also count for the largely invisible workforce that make the global economy work.

7. Conclusion

Sudden and general border closure in an attempt to contain the spread of COVID-19 caused immediate challenges to change shipping crews. This issue was widely recognised as “force majeure”, allowing temporary violations of MLC, 2006 rules through voluntary extensions of labour contracts.

I only fully realised the extent of the “crew change crisis” once I returned to shore at the end of July 2020. My five months at sea were comparatively pleasant. I was aboard a commercial cargo vessel the entire time. But ours was a sailing ship, that serves as an activist intervention in the shipping industry. By returning to sail, some shipping companies argue, the industry will be able to decarbonise [61]. While

we were at sea we had limited contact with the world [9,62], so the shock of what had happened to the world sunk in during my fourteen-day quarantine in Sydney, homebound to Melbourne [63].

At the time of writing, well over a year into the pandemic, 200,000 seafarers remain stranded at sea beyond their contracts. While this is a significant reduction from the 400,000 at the peak of the crew change crisis, there is no excuse for this. Merely recognising seafarers as “key workers” will not resolve this crisis, as crew change is now possible in most ports. Given the deepening of this humanitarian crisis, it is time to admit trade cannot safely continue without timely crew change, as per workers’ contracts. The remaining challenges to make crew change happen are rooted in the historical imbalances in labour conditions at sea, which now resurface. The remaining risk is that open shipping registries, employers, and manning agencies might be tempted to use the pandemic as an excuse to advance their regulatory race to the bottom even further.

To protect seafarers and the integrity of global supply chains, and thereby the world economy, all countries urgently need to recognise seafarers as key workers and facilitate crew change. Any more delay risks eroding the Maritime Labour Convention and thereby the working conditions of all seafarers well into the future.

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Christiaan De Beukelaer: Conceptualization, Data curation, Formal analysis, Funding acquisition, Investigation, Methodology, Project administration, Resources, Software, Validation, Writing - original draft, Writing - review & editing.

Conflict of interest

The author has no conflict of interest to report.

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