

Damage to Seafarers' Health and Labor Rights and Interests: Reflections on Seafarer Changes Hindered by COVID-19

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Abstract: *The outbreak of COVID-19 in early 2020 seriously hindered the normal and orderly shift of international seafarers. The accident of international seafarers' change reflects the lack of governing of various countries in the protection and management of the human rights of international seafarers, behind which lies legal problems such as the poor operation of the international cooperation system for epidemic prevention and control onboard, and the lack of protection of seafarers' basic rights and interests. Considering seafarers as the maintainer of global freight & supply chain, the international community and governments of various countries should take the protection of international human rights as the basic principle, actively implement the specific requirements of international cooperation, accelerate the improvement of social assistance system for international seafarers, protect the life and health rights of the seafarers from damage, optimize the system for international seafarers change. In the context of normalization of the epidemic, safeguard the labor rights and interests of seafarers such as the right for rest and vacation, pay attention to safe manning of ships and overfatigue of seafarers and effectively improve the capacity for global marine security governance under special circumstances.*

Keywords: *COVID-19· Seafarers' change, Rights protection, Public health safety at sea*

1. Introduction

Seafarers is the core labor force for maritime industry developing. International seafarers work and live at sea for a long time. It is the characteristics that far away from land and crowds determine the particularity of the labor group, seafarers. The start of seafarers' work period means that the ship's going to be the main living place in several months or even one whole year. The cyclical work period and the monotonous scene of life become quite a physiological even psychological test for the seafarers, which is asking requirements for the work environment. In fact, while attaching importance to the development of shipping industry, countries have realized it's important to protect seafarers' rights and interests, and have provided legal protection for seafarers through domestic legislation. Many countries have also acceded to the *Maritime Labour Convention 2006*, drafted by the International Labor Convention (ILO), which vigorously promote the implementation of labor rights and interests of international seafarers in terms of salary, intensity, vacation, social insurance and other aspects. The 2020 COVID-19 has caused serious damage to human lives, health, and property around the world. Considering nearly 90% of the worldwide cargo transportation relies on seaway, the shipping industry is playing an important role in promoting development of international trade, maintaining and promoting the development of the global economy. The unexpected epidemic brought great challenges to the normal operation of shipping industry. The *Annual Review 2020* issued by the International Chamber of Shipping (ICS) indicated that "The continuing inability of ship operators to conduct crew changes has been the single greatest operational challenge confronting the global shipping industry since the Second World War". According to statistics, there are as many as 150,000 international seafarers who need to change shifts every month. ICS reported in May 2022 that more than 600 seafarers who had been trapped by the epidemic for almost two years were recently repatriated by international coalition. Many countries and regions have implemented port blockade measures to prohibit ships from entering and docking, so as to control the epidemic. In terms of cruise liners for marine tourism, "Diamond Princess" and "MS Westerdam" were both refused for docking by many governments, resulting in the onboard passengers and seafarers being stranded at sea for many days. In the case of merchant ships, overdue service confronts many international seafarers cause they were unable to change shifts normally. Continuous updating of the policy for crew changes has also aggravated the dilemma. The epidemic has highlighted great neglect of seafarers' rights and interests when facing major public health emergencies, and the inadequate

implementation of protection for seafarers' rights and interests, such as their rights of life and health and welfare etc., which has caused serious damages to the crew's physical and mental health, and revealed worldwide serious lack of humanism further intensifying the crisis of the development for crew. According to the *Seafarer Workforce Report 2021* issued by The Baltic and International Maritime Council (BIMCO) and ICS, for now, the total shortage of seafarers in the global merchant fleet has reached 26,000. The report predicts that if there isn't going to be any improvement, the global merchant fleet will face a vacancy of 89,510 in 2026.

2. Reflection on the reasons why the international seafarers' changes is hindered

During the epidemic, the normal seafarers change is premised on orderly prevention and control of the epidemic onboard. The living space onboard is relatively small, which is easy for the virus spread rapidly, and it is difficult for onshore medical resources to quickly deal with the epidemic onboard, which has raised the difficulty in preventing and controlling epidemic onboard. More importantly, the maintenance of public health security by governments of various countries and the risk of imported epidemics are a pair of contradictions in reality. The essence of public health security is the implementation of public policies in the public health field, so as to protect the rights and interests of public health, which determines that the government should undertake the main responsibility in maintaining national public health security. At the outbreak of COVID-19, in order to control the risk of the epidemic being imported through commercial ports, countries tend to control the docking of ocean ships strictly, which make the ships couldn't berth so that the seafarers change being hindered. It is just due to such conflict, it was difficult for countries, under the circumstance of maintaining public health security, to take special measures for the epidemic without going against some personal interests.

The international seafarers change event during the COVID-19 has directly led to the long-latent problems of seafarers' rights protection. To see through the appearance to perceive the essence, the underlying reason why seafarers change hindered lies in the balance between the values of sovereignty and human rights in public health and safety at sea, the collective interests of seafarers are largely ignored in maintaining public health safety at sea. The seafarers live and work onboard and away from other working communities on land, so that the lower social familiarity confronts seafarers and the protection of "humanistic care" for seafarers is not in place. Parties to international conventions on the protection of human rights, to a certain extent, are sacrificing the human rights of foreign citizens for their own public security interests, and fail to actively perform their obligations as parties to the conventions.

Articles 91 and 94 of *United Nations Convention on the Law of the Sea* respectively stipulates the nationality of ships and the obligations of the flag state, while the obligations of coastal states are clarified in Articles 24, 25 and 98 of the Convention. Articles 25 and 43 of *the International Health Regulations (2005)* specify that the coastal state should accept ships to call at the entry port, and the exceptions under certain conditions. In short, regardless of the sea area where the ship is located, the flag state has jurisdiction over the ship. The flag state has strict obligations on management and response to the ship during this epidemic, and should try its best to protect the lives and health of people at sea. In principle, the coastal state does not have the compulsory obligation to receive foreign ships to dock, but based on the fact that it is relatively close to the accident site and the humanitarian principle, the coastal state should consult and cooperate with the flag state and neighboring countries to ensure that the ships affected by the public health security could berth successfully. However, according to Article 43 of *the International Health Regulations (2005)*, the current coastal states have taken additional measures under the public health emergency of international concern beyond what they should have done, which has stimulated the conflict between the principle of national sovereignty and the principle of international human rights protection. The operation system of preventing and controlling risk on epidemic onboard highlights that under the fragmented international rules system from the perspective of international law, the joint efforts of all countries are insufficient, the willingness to perform the contract is deficient, and the realistic and complex international situation makes it difficult to implement the legal principles of human rights protection such as international labor protection, it is difficult to implement punitive remedies against responsible subjects under international law.

3. The seafarer's right of life and health are seriously damaged by hindered seafarers change

The Idea of human rights is spreading rapidly and has got widely used around the world, and more and more attention are attracted to human rights theory and related issues. The right of life originates from the theory of human rights, and it can be said that "the right of life is a basic right of human rights".

The International Covenant on Civil and Political Rights grants citizens equal rights and fully guarantees the safety of citizens' lives. *The International Covenant on Economic, Social and Cultural Rights* guarantees everyone the right of physical and mental health, as well as the right of medical care. In terms of international law of the sea, *the United Nations Convention on the Law of the Sea* clarifies the obligations of flag states and coastal states to rescue life at sea under different circumstances. A series of international conventions, such as the SOLAS Convention, which was facilitated by the International Maritime Organization (IMO) as a platform, also provide legal protection for the safety of personnel at sea. In domestic law, article 1002 of the *Civil Code of the People's Republic of China* specifies the two basic contents of the right of life, including the right to maintain safety and dignity of life. During the COVID-19 epidemic, international seafarers were incapable of changing the environment while they knew that the environment they were in was a threat to their life safety, which indicated that the protection of seafarers' right of life and health was flawed in the event of an emergency public health event. Due to the limited medical conditions and medical skills of the ship, it is difficult to treat the injured and sick seafarers. Meanwhile, considering the risk of imported epidemics and strict control of commercial ports, countries refuse foreign seafarers to come ashore. Coastal states have failed to provide adequate medical services to ensure seafarers getting timely disembarkation for treatment.

4. The protection of international seafarers' labor rights of was not in position

International seafarers' overdue service violates their rights of change and repatriation. Rule 2.1 of *The Maritime Labour Convention 2006* provides that member states are required to adopt laws and regulations to ensure that in all cases seafarers' employment agreements should specify the period of termination of the agreement and other conditions; Rule 2.4 gives seafarers the right of adequate rest and vacation. *The Maritime Labour Convention 2006* does not set specific limit but ILO responded in C2.4.c of the 2015 edition of *the Maritime Labour Convention, 2006* Frequently Asked Questions ("FAQ"): "Paid annual vacation should be a normal continuous vacation for every year. The maximum period of service for a seafarers should be 11 months. Ultimately, whether the seafarers have right to waive the vacation or request non-repatriation shall be adjusted by the domestic laws of each member state." According to Article 26 of the *Regulations of the People's Republic of China on Seafarers* (Revised in 2020): "In addition to the national holidays, the seafarers should be also entitled to have an annual leave of not less than 5 days for every 2 months of work onboard." Therefore, the maximum period of seafarers' service on board should be 11 months. In order to meet the requirements of port state control (PSC) during the COVID-19, some countries and regions have made rule adjustments, including the seafarers' voluntariness to extend the contract, PSC's exemption from responsibility for compliance with the Convention, etc., but it cannot fundamentally protect the seafarers' right of change. In July 2020, more than 102 countries were surveyed, of which 45 countries allow international seafarers change, while 57 countries still prohibit it. It is extremely difficult for countries to implement international legal rules on seafarers' change, and the issue of the protection of seafarers' rights and interests about changes still has long held back about global ocean governance.

The right of repatriation is a basic right of seafarers and an important legal interest related to the labor protection of seafarers. Regulation 2.5 of *the Maritime Labour Convention, 2006* provides that seafarers have the right to be repatriated at no cost in specific circumstances and conditions, member states are required to seek financial guarantees from ships flying their flags to ensure seafarers repatriation. Affected by the downturn of the world shipping market in the past decade, it happened occasionally that seafarers got abandoned by ship owners, maliciously back paid, and unfair treatment in many countries and regions. To address the problem of seafarers' abandonment, the Joint Seafarers Abandonment Database was created by IMO and ILO in 2004, up to October 9, 2020, the database has tracked information about 424 cases relating to seafarers' abandonment, involving 5,635 international seafarers. Due to the epidemic, many countries have implemented travel restrictions, international flights have been suspended, and international seafarers' repatriation channels have been cut off. Despite repeated prohibitions, shipowners would abandon seafarers cause they cannot afford the high cost of repatriation. Seafarers' right of repatriation has been ignored in the fight against epidemic.

The crisis of seafarers change revealed the actual situation of seafarers' pressure due to long-period fatigue work, which raised the discussion on insufficient ship manning. On the one hand, hindrance of seafarers change caused fatigue work, threatening to the safety of ships and personnel. Under normal conditions, the responsibilities of each seafarer on the ship are clearly divided. In order to ensure the safety of navigation and the performance of the freight contract as scheduled, the seafarers need to be on standby 24 hours per day and work under high load for a long time. During the epidemic, the daily and extra work onboard (such as epidemic prevention work) has caused great pressure, fatigue, and

exhaustion to the seafarers. They have to face the intense pressure from work, and suffer the physical and psychological pressure caused from the living environment at sea. Such conditions not only damage seafarers' psychological and physical health, infringing their health rights and interests, but also raise the risk of navigation safety. On the other hand, seafarers fatigue work has existed for a long time in practice, and the underlying cause is insufficient ship manning. The fatigue work conditions not only infringe seafarers' reasonable right of rest, but also blow the vision of decent work with human rights concerns in the International Maritime Labor Convention. According to a research report *A Culture of Adjustment* issued by World Maritime University (WMU), it has become "normal" for seafarers to work overtime on board. In order not to violate relating international conventions and domestic laws and regulations, the seafarers' work records have been manipulated, actual working hours far exceeded recorded hours. Due to the normalized of the epidemic, in order to ensure that the seafarers' working hours, intensity and fatigue levels are in a reasonable context, it is worth to consider how to timely adjust the seafarers manning to balance the workload of seafarers, preventing seafarers from being over-fatigued, and to protect their health rights and interests under the combination of ship daily operation and anti-epidemic operation.

5. Responses

The long-term development of shipping industry undoubtedly depends on the labor input of excellent seafarers. A good work environment should not only meet the workers' need of living and job, but also give workers professional self-identity. The voluntary love and self-identity for occupation play a crucial role in the development of an industry, such as the shipping industry. Taking China as an example, according to *the 2020 China Seafarers Development Report*, for now, there are more than 1.716 million registered seafarers, making it a veritable seafarer's country. Actually the registered number cannot be equal to the actual number of employees. Considering the two aspects of long-term service onboard and holding qualification certificates, only half of the registered seafarers are engaged in seafarers' work. The development of the young seafarer's team is not ideal, and there is a sign of brain drain. The third officer of the deck department and the third engineer of the engine department are usually made up of young seafarers, averagely aging 29. Taking the third officer as an example, up to the end of 2019, the number of certified third officers fell 18% year-on-year, and the number of active people dropped 20.7% year-on-year. In terms of marine education and training, the proportion of graduates who are going to serve onboard has also decreased year by year, currently hovering around 30%.

The shipping industry tends to be little attractive for young professionals, resulting from the mismatch between the work environment of seafarers and the improving living conditions. The normal change and repatriation is one of many criteria to consider the work environment. The seafarers' overdue service and high-intensity workload have existed for long, the crisis of safe navigation is also increasingly emerging, which just intensified by the outbreak of the epidemic, successfully catching eyes worldwide. Therefore, from a long-term perspective, solving the problem of seafarers change in the event of major public health emergencies is not only to enhance the protection of seafarers' rights and interests such as working hours and welfares, but also to attach great importance to the development of the seafarers crew, strengthen self-identity for shipping industry, and effectively and fairly maintain the healthy development of industry.

5.1 Improve the social assistance system for international seafarers

In view of insufficient work on protection of international seafarers' life and health rights and interests during the COVID-19, governments of all countries shall adhere to the concept of international cooperation and improve the social assistance system for international seafarers. In line with the development trend of global governance, Chinese President Xi Jinping put forward the concept of "A Maritime community with a Shared Future" and the proposal of "A global community of Health for All", both of which have rich connotations of shared destiny, health and equality, openness and inclusiveness, and put forward specific requirements for the implementation of the principles of international cooperation. The abovementioned concept and proposal the guiding ideology for studying the difficulty of international seafarers change under major maritime public health events, it is of great significance to optimize the environment for domestic and foreign seafarers to perform their duties, to fairly maintain the healthy and sustainable development of shipping industry, and to effectively promote China's "Marine Power" and other marine strategies.

China should make use of its good reputation in the international community and its status as a major country for seafarers to call on other countries to work together to improve the social assistance system

for international seafarers, to perform obligation and legal responsibilities as a state party to protect seafarers' rights and interests. The content of regulation 4.1 of *the Maritime Labor Convention, 2006* should be incorporated into the domestic laws of States parties to the Convention, and the state parties should accelerate the construction of onshore medical care centers for seafarers in legislation way. At the same time, state parties should implement the risk management system of the social security for seafarers, provide necessary economic support to the subject that provide social security for seafarers (labor and social security departments, maritime departments, seafarers unions, etc.). actively offers courses or lectures on improving the emergency response capability of seafarers in public health incidents in conjunction with ports, customs, and health departments to supports the improvement of other social security system for seafarers, such as counting repatriation expenses into commercial insurance or social insurance coverage. Whether the social assistance system for international seafarers would finally implemented or not depends on the willingness to cooperate and the degree of implementation between countries, and international organizations. Countries should focus on breaking through the barriers to port operations in various countries under the maritime public health event, strengthen the construction of a joint platform for port health and epidemic prevention, and organize relevant domestic administrative forces to ensure the operation of the rescue and medical mechanism for injured and sick seafarers.

5.2 Strictly implement ship manning and working hours requirements

Affected by the COVID-19, seafarers who need to take leave and those who are about to board the ship cannot be handed over. At the same time, it has to meet the minimum manning requirements of the ship. The seafarers onboard who cannot change can only choose to continue to work. "Difficulty in seafarers change" and ship manning are a pair of symbiotic reality contradictions under the COVID-19 context. Therefore, strict ship manning requirements and reasonable on-board serving hours should be highly valued.

Under a major public health emergency context, it is feasible to reasonably extend the seafarers' working hours onboard according to the actual period. It is necessary to comprehensively consider and judge each seafarer's physical condition, mental condition, ship transportation cycle, and port call time. The most important thing is to follow the seafarers' own will, extend the seafarers' service period in a timely manner, and make up for the corresponding allowances and welfare guarantees. Fundamentally, reasonably extend the seafarers' working period shall be a temporary measure to deal with emergencies, and it is not enough to effectively prevent the occurrence of ship safety accidents. Improve the ship's manning requirements from the source, and at the same time reasonably allocate the seafarers' working hours onboard in accordance with the labor convention, and avoid fatigue driving the ship to improve the safe driving ability of the ship. First, the flag state is required to establish mandatory laws and regulations on ship manning and working hours. Shipping companies are responsible for refining the specific implementation path to ensure that the number and quality of ship manning meet ship safety requirements. At the same time, in order to avoid fatigue work, it is suggested that shipping companies and seafarers' unions join hands with port staff to build an activity center for international seafarer to improve the port's seafarer service level. In addition, in the event of a major public health emergency, the Chinese government should optimize the entry and exit management policies for international seafarers, grant the seafarers the status of "key worker", and implement appropriate travel restrictions exemptions for the entry and exit links of international seafarers to avoid hinderance to international seafarers' changes, to ensure that the legitimate rights and interests of the seafarers were effectively guaranteed.

6. Conclusion

The continued raging of COVID-19 has triggered a severe crisis of seafarers change around the world, exposing the flaws and deficiencies of the international community and countries in responding to major public health emergencies in marine safety and human rights protection. The legal system related to the maintenance of marine health and safety built by the international community appears "vulnerable" when facing actual epidemic, and the international cooperation system for epidemic prevention and control at sea is not effectively operated. The long-latent problem on the protection of seafarers' rights and interests has been intensified during the epidemic, and seafarers' rights of life and health and labor rights have been damaged. In order to safeguard the common interests of the world, we should adhere to the concept of a healthy community with a shared future, alleviate the conflict between maritime sovereignty and human rights with values such as fairness, freedom, democracy, and justice, and deepen the implementation of the international maritime cooperation system, improving the social assistance system

for international seafarers, and strictly manage the problem of insufficient seafarers manning and “manipulation” of working hours. Based on the in-depth advancement of global marine public health governance, the marine public health governance system can only proceed from the common interests of all mankind, and promote the close cooperation between the international community and various countries to prevent and control the epidemic, and work together to protect seafarers’ human rights, then we can achieve the great goal of a healthy community with a shared future for mankind.

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