



# The COVID-19 Pandemic and Maritime Law: Selected Issues

**Dr Aref Fakhry, Associate Professor, WMU, Advocate**  
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# Inestimable disruption by COVID-19





# Focus on IMO conventions' application and enforcement at crunch time

**Did we weather the  
storm of the nearby  
collapse of the maritime  
regulatory framework?**

# Outline

1. Key facts and figures
2. Maritime regulations in the dock
3. Suggested directions and stress points

# Key facts and figures

COVID-19 Impact on  
IMO Conventions

- Human cost
  - Crew suicides
  - Infected ships
- Global trade
- Shipping activity
- Port restrictions
- Ship emissions
- Marine insurance

# 4 crew suicides

Distress from stranding

Source: ITF, 'ITF Expresses Sadness at the Death of Two More Cruise Ship Workers as Seafarers Continue to Remain Stranded Abroad' (13 May 2020) <https://www.itfseafarers.org/en/news/itf-expresses-sadness-death-two-more-cruise-ship-workers-seafarers-continue-remain-stranded>

# 50 infected cruise ships

100,000 seafarers stranded as a result on board—'floating castaways'

17 crewmembers died from COVID-19

Scores of passengers repatriated

Source: Jan van der Made, 'Cruise Ships - 100,000 Crew Trapped on Cruise Ships by Covid-19 Crisis - Guardian' (*RFI (English)*, 1 May 2020)

<https://advance-lexis-com.proxy3.library.mcgill.ca/document/?pdmfid=1516831&crd=37c547d3-a2bb-4dd3-99d2-339a64e702c9&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A5YT4-9VR1-JDJN-62X2-00000->



# -20%

Global merchandise trade drop in 2020

Source: UNCTAD, 'COVID-19 and maritime transport: Impact and responses' (Transport and Trade Facilitation Series No 15, 2021)

[https://unctad.org/system/files/official-document/dtltlb2021d1\\_en.pdf](https://unctad.org/system/files/official-document/dtltlb2021d1_en.pdf)

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# 350,000 cancellations

‘As of February 13, 2020, over 350,000 cancellations were registered in global container shipping traffic since the beginning of the coronavirus outbreak became apparent in January 2020.’

Source: ‘Year-to-date number of container cancellations in global maritime traffic as of February 13, 2020, by major route’ (*Statista*, 18 March 2020) <https://www.statista.com/statistics/1104532/container-cancellations-due-to-covid-19/>

# 188 blank sailings

Worldwide container ship blank sailings for February/March 2020

Blank sailings refer to idled vessels.

Source: 'COVID-19 Transport Brief: Global Container Shipping and the Coronavirus Crisis' (*International Transport Forum*, 29 April 2020)

<https://www.itf-oecd.org/sites/default/files/global-container-shipping-covid-19.pdf>

**-6%**

Volume drop in the main global container ports for February/March 2020

Source: 'COVID-19 Transport Brief: Global Container Shipping and the Coronavirus Crisis' (*International Transport Forum*, 29 April 2020)

<https://www.itf-oecd.org/sites/default/files/global-container-shipping-covid-19.pdf>

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# COVID-19 Port Restrictions

- Updated in the last 24 hours
- Locations with potential port restrictions
- Locations which do not allow crew change
- Locations which allow crew change
- Locations which allow crew change with conditions

COVID-19 VACCINATION IN THE US

- Updated regulation for vessels and crews from India
- COVID-19 Crew Testing Map
- Crew Change Requirements
- Not all heroes wear capes
- Subscribe for daily updates



Source: 'COVID-19 Global Port Restrictions Map' (Wilhelmsen, 10 September 2021, 8:36 CEST)

# The general picture for ports

‘Fully operational for cargo business’

‘Closed or restricted operations for passenger vessels, especially cruise ships’

‘Safety regulations and restrictions ... related to the movement of ship’s crews, truck drivers and other people needing access to port facilities’

Source: ‘World Ports COVID-19 Information Portal’ (World Ports Sustainability Program) <https://sustainableworldports.org/world-ports-covid19-information-portal/> accessed 28 May 2020

# +21.5%

Increase of 'good quality air days' in China for February 2020

Not shipping-specific

But the danger lies with 'revenge pollution'.

Source: Rebecca Wright, 'There's an Unlikely Beneficiary of Coronavirus: The Planet' (CTV News, 18 March 2020)

<https://www.ctvnews.ca/health/coronavirus/there-s-an-unlikely-beneficiary-of-coronavirus-the-planet-1.4857908>



### *English Channel*

- *Busiest shipping lane*
- *Over 55,000 ships per year or ¼ of global traffic*

Source: OpenStreetMap capture of 24 April 2020, published in Antoine Mora, 'Confinement: la pollution du transport maritime scrutée depuis l'espace' (*France Info Régions*, 3 May 2020) <https://france3-regions.francetvinfo.fr/confinement-pollution-du-transport-maritime-scrutee-espace-1821048.html>



# The view from marine insurance

- Less premium overall
- Lower investment returns for insurers
- Disruption and fragility in supply chain
- Delays in port
- People related claims
- Economic exposures:
  - Deviation
  - FD&D (Freight, Demurrage & Defence)
  - Fines
  - Liability to Cargo

Source: Richard Turner, 'COVID-19 and the Impact on Marine Insurance' (presentation, 6 May 2020)

[https://iumi.com/uploads/Webinar/Richard\\_Turner\\_Keynote\\_6\\_May\\_Concirrus\\_-\\_Final.pdf](https://iumi.com/uploads/Webinar/Richard_Turner_Keynote_6_May_Concirrus_-_Final.pdf)

# Maritime regulations in the dock

COVID-19 Impact on  
IMO Conventions

- State of emergency
- Health inspections
- Pratique
- Disembarkation of sick persons
- Shore leave
- Quarantine
- Ship certification

**‘The spread of the coronavirus has placed the entire world in an unprecedented situation. To slow the spread of the disease and mitigate its impacts, travel is being curtailed and borders are being closed. Transport hubs are being affected. Ports are being closed and ships denied entry.**

**In these difficult times, the ability for shipping services and seafarers to deliver vital goods, including medical supplies and foodstuffs, will be central to responding to, and eventually overcoming, this pandemic.’**

Source: Kitack Lim in ‘Tackling COVID-19 – A Voyage Together’ (*IMO*, 19 March 2020)  
<http://www.imo.org/en/MediaCentre/PressBriefings/Pages/08-IMO-SG-message.aspx>

# State of emergency in IMO conventions: force majeure

SOLAS art IV(1): Deviation from the intended voyage due to any cause of *force majeure* will not render a ship subject to the Convention if it was not so at the time of the voyage departure.

Force majeure is defined:

An event or effect that can be neither anticipated nor controlled; esp., an unexpected event that prevents someone from doing or completing something that he or she had agreed or officially planned to do. The term includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes, and wars). (*Black's Law Dictionary* (11th edn 2019).)

COVID-19 may have been *unexpected* on first occurrence, but it is arguably no longer so. The concept is unlikely to apply here.

# State of emergency in IMO conventions: carriage of persons in emergency

SOLAS art V(1):

When evacuating persons in order to avoid a threat to the security of their lives a Contracting Government may permit the carriage of a larger number of persons in its ships than is otherwise permissible under the present Convention.

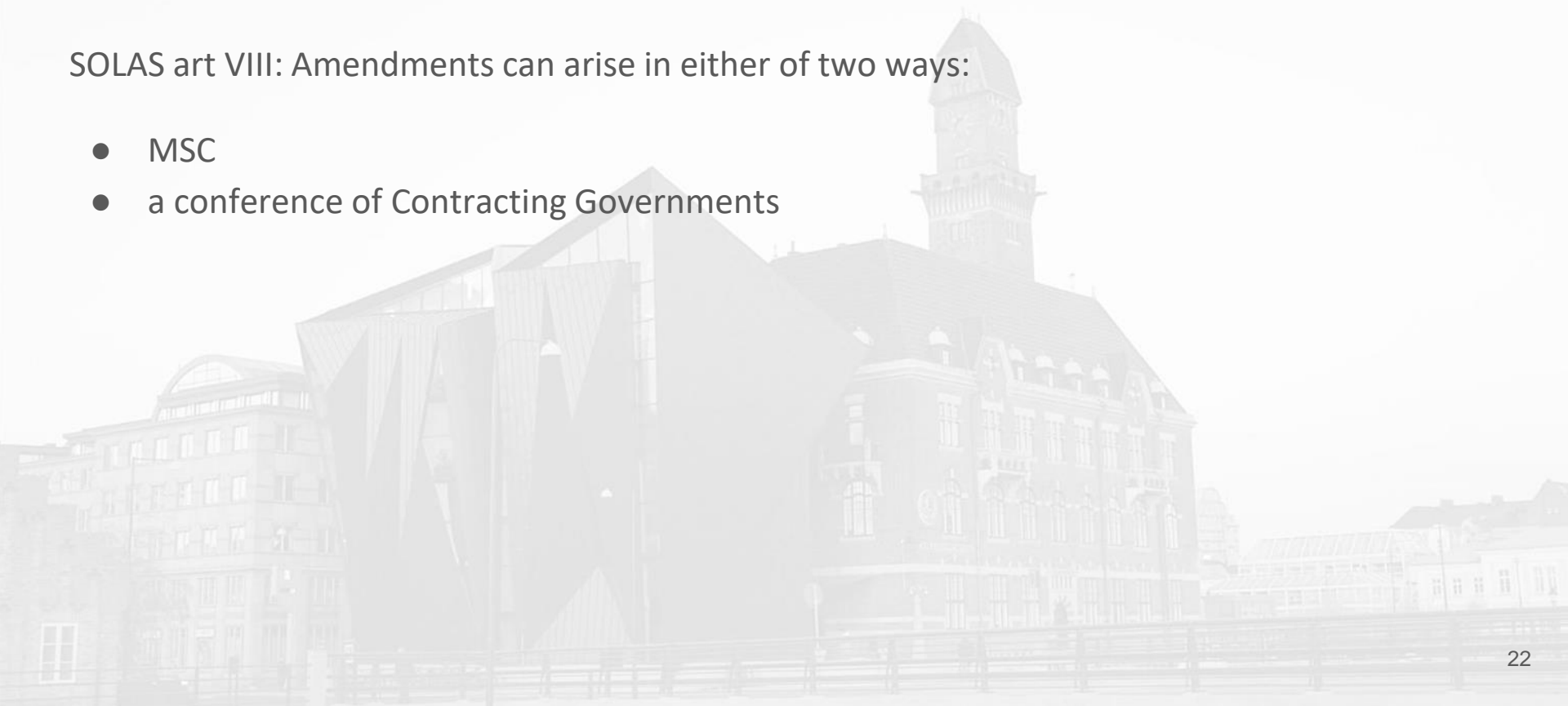
This is not an unfettered discretion, as it remains subject to port state control (art V(2)).

Article V(1) could have been used in the early instances of evacuations of infected passenger ships.

# State of emergency in IMO conventions: amendments

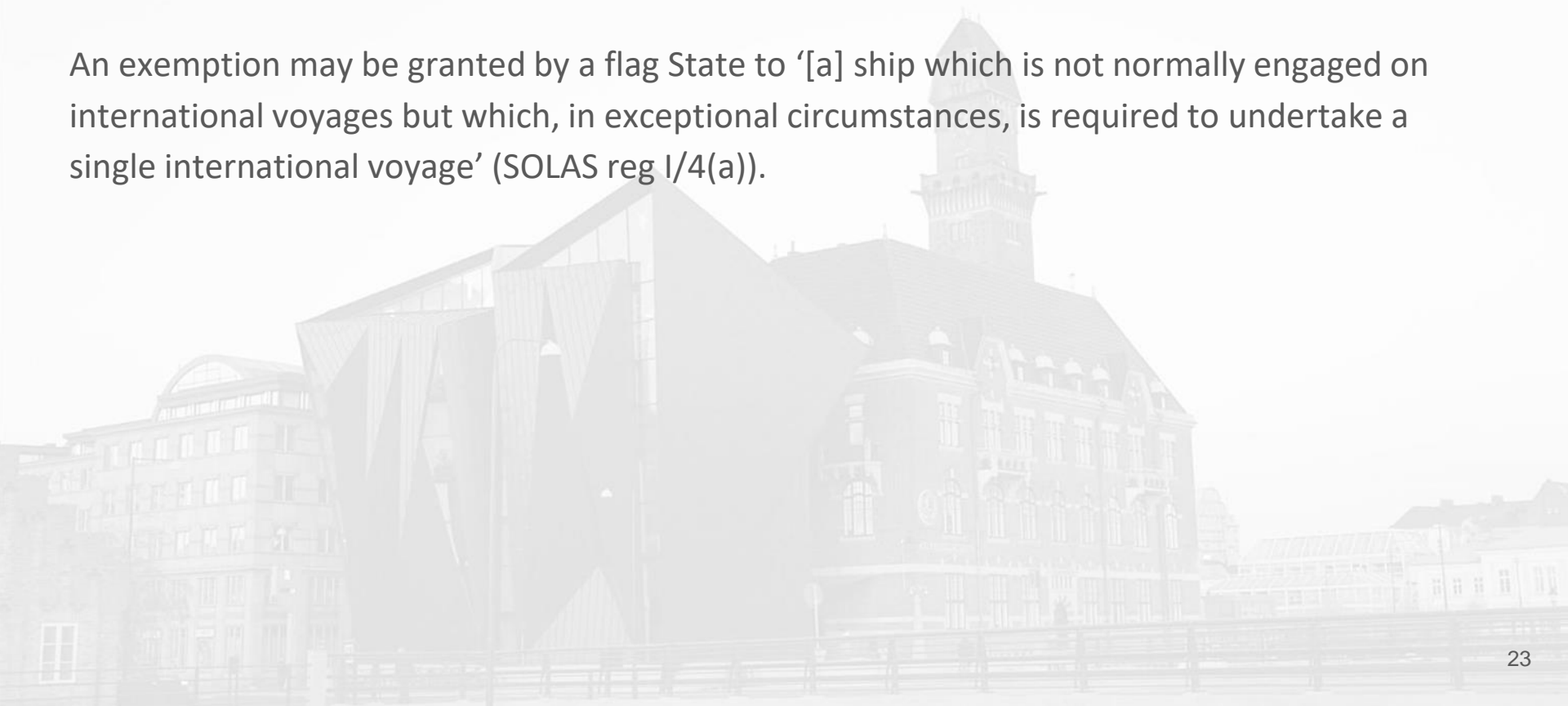
SOLAS art VIII: Amendments can arise in either of two ways:

- MSC
- a conference of Contracting Governments



# State of emergency in IMO conventions: exemptions

An exemption may be granted by a flag State to '[a] ship which is not normally engaged on international voyages but which, in exceptional circumstances, is required to undertake a single international voyage' (SOLAS reg I/4(a)).



# State of emergency in IMO conventions: equivalents

A flag administration 'may allow any ... fitting, material, appliance or apparatus, or type thereof, to be fitted or carried, or any other provision to be made in [a] ship, if it is satisfied by trial thereof or otherwise that such fitting, material, appliance or apparatus, or type thereof, or provision, is at least as effective as that required by the present [Convention]' (SOLAS reg I/5(a)).



# State of emergency in Vienna Convention on the Law of Treaties: supervening impossibility of performance

Vienna Convention on the Law of Treaties 1969, art 61:

A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

**‘Some [cruise] ships have struggled to find safe harbor, with authorities at destinations turning them away because of fears the disease would spread. Other vessels have been subjected to controversial quarantines.’**

Source: ‘Last Ship Belonging to a Major Cruise Line Finally Reaches Port’ (CBS58, 22 April 2020)  
<https://www.cbs58.com/news/last-ship-belonging-to-a-major-cruise-line-finally-reaches-port>

# Health inspections

Health inspections are not a matter that is regulated in IMO conventions!

FAL, art V(2):

Nothing in the present Convention or its Annex shall be interpreted as precluding a Contracting Government from applying temporary measures considered by that Government to be necessary to preserve public morality, order and security or to prevent the introduction or spread of diseases or pests affecting public health, animals or plants.

(See also FAL, annex, section 1(B), introductory para.

What is regulated is the kind and extent of documentation that is required of ships.

# Health inspections

FAL, Recommended Practice 3.8:

Medical examination of persons on board or of persons disembarking from ships should normally be limited to those persons arriving from an area infected with quarantinable diseases within the incubation period of the disease concerned (as stated in the International Health Regulations). Additional medical examination may, however, be required in accordance with the International Health Regulations.

# Pratique

FAL Standard 3.20:

Public authorities shall authorize granting of pratique by electronic means to a cruise ship when, on the basis of information received from it prior to its arrival, the health authority for the intended port of arrival is of the opinion that its arrival will not result in the introduction or spread of a quarantinable disease.

A pratique is 'permission granted to a ship to have dealings with a port, given after quarantine or on showing a clean bill of health' (Oxford Dictionary of English (2010)).

# FAL special measures of facilitation for ships calling at ports in order to put ashore sick crew members, passengers or other persons for emergency medical treatment

## Standard 2.21:

Public authorities shall, by the fastest channels available, inform the master, before the arrival of the ship, of the documentation and the procedures necessary to put the sick or injured persons ashore expeditiously and to clear the ship without delay.

## Standard 2.22:

With regard to ships calling at ports for this purpose and intending to leave again immediately, public authorities shall give priority in berthing if the state of the sick person or the sea conditions do not allow a safe disembarkation in the roads or harbour approaches.

The matter remains subject to the State's sovereignty and FAL, art V(2).

# Shore leave

## FAL Standard 3.44:

Crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order. Shore leave shall be allowed in a manner which excludes discrimination such as on the grounds of nationality, race, colour, sex, religion, political opinion, or social origin and irrespective of the flag State of the ship on which they are employed, engaged or work.

# Quarantine

FAL does not mandate or prohibit quarantining in ports or off the coastline!

But FAL Contracting Parties must act without discrimination on prohibited grounds (FAL Standard 6.7).

Note also FAL Standard 6.9:

To ensure, inter alia, efficient maritime traffic, public authorities should maintain at as many ports as feasible adequate facilities for the administration of public health, animal and agricultural quarantine measures.

FAL Standard 7.8:

Public authorities shall facilitate the arrival and departure of ships engaged in:

- disaster relief work;
- the rescue of persons in distress at sea in order to provide a place of safety for such persons;



# Ship certificate extension for voyage completion

SOLAS reg I/14:

(d) If the ship at the time when a certificate ... expires is not in a port of the State whose flag it is entitled to fly or in which it is to be surveyed, the Administration may extend the certificate, but such extension shall be granted only for the purpose of allowing the ship to complete its voyage to the State whose flag it is entitled to fly or in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so.

(e) No certificate shall be extended under the provisions of paragraph (d) of this regulation for a longer period than five months, and a ship to which an extension is granted shall not, on its arrival in the State whose flag it is entitled to fly or the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port or State without having obtained a new certificate.

# Ship certificate extension for period of grace

SOLAS reg I/14:

(f) A certificate ... which has not been extended under the foregoing provisions of this regulation, may be extended by the Administration for a period of grace up to one month from the date of expiry stated on it.

# No other ways of extending ship certificate

SOLAS reg I/14:

(g) A certificate shall cease to be valid:

(i) if the inspections and surveys are not carried out within the periods specified under regulations 7(a), 8, 9 and 10(a) of this chapter or as they may have been extended in accordance with paragraphs (d), (e) or (f) of this regulation, or ....

# IMO good offices

IMO Circular Letter No.4204/Add.8 (14 April 2020) - Coronavirus (COVID-19) – Video meeting with port State control (PSC) regimes (includes joint statement and statements and/or relevant temporary guidance issued by the United States, the Acuerdo de Viña del Mar and the Caribbean, Indian Ocean, Mediterranean, Paris and Tokyo MOUs:

A ‘pragmatic, practical and flexible’ approach is being recommended, recognizing that exemptions, waivers and extensions to certificates have been granted by many flag States and information thereon has been circulated by IMO. PSC regimes urged that such practices be standardized and harmonized and called on IMO to support the development of related guidance.

# CDC No Sail Order for cruise ships

On 9 April 2020, the US Department of Health and Human Services Centers for Disease Control and Prevention (CDC) issued a No Sail Order and Other Measures Related to Operations for cruise ships that will remain in effect until 24 July 2020, or that could be lifted if the Secretary of Health and Human Services declares that Covid-19 no longer constitutes a public health emergency.

Source: No Sail Order and Suspension of Further Embarkation; Notice of Modification and Extension and Other Measures Related to Operations, 85 FR 21004 (15 April 2020)

## Suggested directions and stress points for maritime law and policy

COVID-19 Impact on  
IMO Conventions

- ‘Sanitation’ and ‘public health’: a poor relation of maritime conventions?
- Digitisation
- Trade facilitation
- Shifting economies/geographies
- Leveraging the crisis

**‘The industry’s working assumptions  
of recent decades are no longer  
givens’**

**David Osler, *Lloyd’s List* (15 May 2020)**

<https://lloydslist.maritimeintelligence.informa.com/LL1132360/Coronavirus-is-the-everything-shock-for-years-to-come>

# More public health in maritime regulations

- Perhaps maritime health should be a new pillar of maritime conventions ... a slightly excessive statement!
- Shipping and ports are subject to the International Health Regulations as they are to FAL too.
- The maritime sector may have '(re)discovered' the International Health Regulations thanks to the pandemic.



# Digitisation

- The crisis provides a new impetus for digitisation in maritime services.
- FAL already mandates the provision of a facility for electronic exchange of information, effective 8 April 2019 (Standard 1.3 bis).

# More trade facilitation

- FAL to be strengthened
- IMO Circular Letter No.4204/Add.6 (27 March 2020) Coronavirus (COVID-19) – Preliminary list of recommendations for Governments and relevant national authorities on the facilitation of maritime trade during the COVID-19 pandemic
- Multimodal and cross-sectoral trade facilitation to be ramped up. Note guidance found at:
  - UNCTAD, 'How Countries Can Leverage Trade Facilitation to Defeat the COVID-19 Pandemic' (2020) [https://unctad.org/en/PublicationsLibrary/dtlinf2020d2\\_en.pdf](https://unctad.org/en/PublicationsLibrary/dtlinf2020d2_en.pdf)
  - 'COVID-19 and World Trade' (WTO) [https://www.wto.org/english/tratop\\_e/covid19\\_e/covid19\\_e.htm](https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm)
- National trade facilitation committees to scale up the work

# Shifting economies/geographies

Adaptation to new patterns of maritime trade requires:

- Perceptiveness
- Time to change
- Technical know-how
- Management of new risks eg 'invisible shipwrecks' (IOM, 'COVID-19 Control Measures, Gap in SaR Capacity Increases Concern About 'Invisible Shipwrecks' (12 May 2020) <https://www.iom.int/news/covid-19-control-measures-gap-sar-capacity-increases-concern-about-invisible-shipwrecks> )

# Leveraging the crisis

‘Governments should use the economic leverage of the Covid-19 crisis to address ... closing tax loopholes, reducing exemptions and introducing carbon pricing for shipping.’

Source: International Transport Forum, ‘COVID-19 Transport Brief: Global Container Shipping and the Coronavirus Crisis’ (29 April 2020) <https://www.itf-oecd.org/sites/default/files/global-container-shipping-covid-19.pdf>

**‘One of the goals of the IMO, as stated in its Convention, is to ensure availability of shipping services to the commerce of the world, for the benefit of humanity. I urge all IMO Member States to bear this in mind when framing their policy decisions with regard to the coronavirus. Defeating the virus must be the first priority, but global trade, in a safe, secure and environmentally friendly manner must be able to continue, too.’**

Source: Kitack Lim in ‘Tackling COVID-19 – A Voyage Together’ (*IMO*, 19 March 2020)  
<http://www.imo.org/en/MediaCentre/PressBriefings/Pages/08-IMO-SG-message.aspx>