

THE CHALLENGES AND IMPACT OF COVID-19 ON SEAFARER'S RIGHTS AND FREEDOMS

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This article discusses the importance of protection seafarer's rights and freedoms and enforcement of international protocols, which designates seafarers as key worker and learns challenges and experience from the Covid-19 as an important driver for improving international legal instruments. Therefore, it has a crucial importance to focus on seafarers' rights and develop tools, effective, goal-oriented due diligent action plans and mechanism, raise of the global awareness of human rights abuses at sea and deliver the positive changes through the legal and policy development, exchange of views and the best practices for protection seafarer's rights despite of the Covid-19 situations.

For these purposes, the presented article researches a new emerging challenge of global maritime society such as protection, preservation and enforcement of seafarers' rights at sea during Covid-19. In this relation, this article discusses the relevant international legal instruments, such as UNCLOS, 1982, MLC, 2006 and Human Rights Law as well. The present paper also describes the response of the maritime industry to the impact of COVID-19. Lastly, article comes with the conclusion and recommendation.

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The Problem Statement. Seafarers ensure the smooth operation of the maritime industry on daily basis and they are playing a crucial role in the global economy and global trade. Prior to Covid-19 seafarers have been working on board of the vessel for significantly longer than they have originally been contracted. In order to avoid uncontrollable spread of the virus, States enforces different and strict restriction and regulations, therefore seafarers were obliged to stay on board of the ship more than 11 month and lots of them were absolutely prevented to return to ships. Those uncertain and complex legal regulations have gradually faded, altered and infringed seafarers' rights and freedoms, wellbeing, health and safety enforced and secured by the MLC, 2006. Interestingly, it created humanitarian crisis, affected maritime business and economy of State.

The relevance of the issue. In order to address the crisis caused by the Covid-19, various international organizations such as the Office of the UN High Commissioner for Human Rights, the UN Global Compact and the UN Working Group on Business and Human Rights several times stated that seafarers are "collateral victims" of Covid-19. [2] Therefore, the UN General Assembly, International Maritime Organization (IMO) [3], International Labor Organization (ILO) [4], International Chamber of Shipping (ICS) [5] and the International Transport Workers' Federation (ITF) [6] adopted number of legal instruments for protection and preservation of seafarers basic rights and urged States to recognize seafarers as "key workers".

In order to maintain effective and robust maritime system, it has great importance to research the effects of pandemic to the seafarers' rights and freedoms. More importantly, understanding the impacts of the Covid-19 will enable the industry to fill the gap existed in matters of protection and preservation of seafarer's rights and freedoms. Nevertheless, it will contribute supplement the knowledge by examining the impact of COVID-19 pandemic on seafarers' rights to shore leave, repatriation and medical care and their well-being. Beside of it, the raise an awareness regarding international legal instruments that has been developed for protection of seafarer's rights are key element for seafarers to enjoy and address their rights relevantly.

Significantly, protection of seafarers' rights and freedoms are currently one of the most complex and emerge matter that global maritime industry tries to address. Hence, it is important to underline that the protection of seafarer's rights and freedoms requires involvement of the relevant State organs, international organizations, shipowners and relevant stockholders together

in order to develop relevant, clear, visible and accessible action plan. The development of successful protection mechanism requires from maritime industry actors to participate and collaborate with each other in order to balance the business interest and issues of enforcement and enjoyment of basic human rights by the seafarer. Therefore, taking into account the negative impact of the Covid-19 on the protection and preservation of Seafarer's rights and freedoms urges decision makers to focus on this matter and develop effective tools, action plans and mechanism through enforcement of the relevant international legal instruments.

The aim of the article. Overall, this article discusses the importance of protection and preservation of seafarer's rights and freedoms and enforcement of international protocols, guidelines and recommendations which designates seafarers as key worker. It learns challenges and experience from the Covid-19 as an important driver for improving international legal instruments, such as Maritime Labor Convention (MLC), 2006. Additionally, paper tries to raise of the global awareness of human rights abuses at sea and urges global maritime stakeholders that despite Covid-19, positive change through the legal and policy development, harmonization and standardization of international legal instruments, collaboration and exchange of the best practices for protection seafarer's legal interests and rights are the prior step for further development of the maritime business and industry in general.

Materials and methods. In course of research, exhaustive list of relevant leading materials was identified. For comprehensive and complex understanding of subject matter, various databases were explored, researched and analyzed. This article is developed through the analysis of primary and secondary resources. In course of research, various mandatory international legal instruments and legislation was researched. In case of subsidiary sources different books, journals, articles, electronic resources were used.

The main focus of the article is legal regulating regimes that had been adopted to solve the crisis caused by Covid-19. Additionally, article defines all efforts made by international organizations do address the matters of protection and preservation of seafarer's rights. Aside of the international regulatory framework, State legislation and regulations of the crisis caused of Covid-19 is also examined. Overall, for this article qualitative research method is used and conclusions and final recommendations are drawn based on literature review.

Conclusions. It is doubtless that the results of Covid-19 creates comprehensible and essential conditions to develop a new human rights code of conduct, the effective, goal-oriented action plan and due diligence guidance on seafarers' rights in order to fix the gap existed in labor and human rights policy and practice and to raise the bar of seafarers' working conditions, well-being, mental health and welfare.

The main body of the text. During Covid-19, the labor rights and freedoms unforced by the MLC, 2006 had been hindered. The MLC, 2006 is an international legal instrument which *inter alia* guarantees equal access to basic human rights. [7] MLC is known as a "Seafarer Bill of Rights" which, by virtue of Article 4 and 5 obliges all Member States of the convention, to adopt, implement and enforce laws, regulations and measures to protect seafarers' legal rights [7]. The rights endorsed by MLC, 2006 can be constituted as Human Rights and remains applicable for everyone and everywhere.

During Covid 19, a few sensitive and key rights and obligations had been suspended and violated, namely rights of shore leave, medical assistance, and contractual relationship. Those rights are governed by the virtue of Regulation 2.1, 2.4, 2.5 and 4.1 of MLC, 2006.

The Regulation of 2.1 of MLC, 2006 states that seafarer must be provided with relevant and sufficient information about the working employment contract before signature and defines that the largest scale of maximum contract extension has to be less than 12 months [7] The provisions of the contract shall meet standards enforced by the convention.

Under the section 2 of Regulation 2.4 and Guideline B2.4.2 of the MLC, 2006 Seafarer are granted rights of shore leave which guarantees well-being, welfare, protection of personal and social rights, and consistency with the operational requirement relevant to the position [7]. In case of *Aguilar v. Standard Oil Company Case*, Supreme Court ruled that this right is elemental

necessity for seafarers [8]. Therefore, each Member State are obliged to adopt the relevant legislation to regulate matters of shore leave.

The regime of repatriation is regulated by the Regulation 2.5. which states that seafarers have a right to be repatriated at no cost to themselves. Additionally, in accordance with subsection b of section 2 of the Standard A.2.7, the maximum duration of service periods onboard of the vessel which a seafarer is entitled to repatriate shall be less than 12 months [7]. In this respect, Standard A 2.5 states that each Member State has cumulative obligations, such as to ensure that rights of repatriation are prescribed by the relevant laws [7] and financial security are provided to seafarers based on Regulation 2.5 of the MLC, 2006, if shipowner fails to make arrangements for or to meet the cost of repatriation [7].

In accordance with section 1 of the Guideline B2.5.2 and Article 5 of the Vienna Convention on Consular Relations, 1963 [9] the rights on consular assistance are guaranteed for seafarers stranded in a foreign port. In this respect, competent authority in the foreign port, local representative of the Flag State, seafarer's State of nationality or State of residence shall be informed and they have to facilitate and provide the access to relevant consular assistance immediately [7].

Regulation 4.1 of MLC, 2006 addresses matter of health and medical cares and states that Member State is obliged to ensure that seafarers are covered by adequate measures for the protection of their health, they have access to prompt and adequate medical care and health protection system with no coast of seafarer [7]. The Standard A4.1. of MLC, 2006 improves Member State's obligation to enforce relevant laws regulating requirements for hospital and medical care facilities on-board and measures for health protection and medical care [7].

The right to the health is a fundamental part of human right and is recognized by various international human rights instruments [10] and involves access of all to the relevant health care system and assistance equally without any forms of discrimination [11]. Therefore, seafarers' right to medical assistance is human right law [12] and shall be enforced respectfully.

During Covid-19, all above mentioned rights and regulations were violated. Seafarers were experienced denial of their rights, inclusive shore leave rights, they were stranded onboard of the vessel, other in shore were not permitted to enter on board of the ship due to the restriction imposed by States, ports, shipowners, and maritime companies [13]. After Covid-19, non all seafarers were compensated with a bonus or full wages, namely just 41% seafarers had got compensation, whilst 32% were not being given. One of the difficult problems for seafarers was a limited availability of medical assistance and insufficient medical abilities to deal with the Covid-19 as well [13].

Due to above mentioned reasons seafarers experienced troubles of mental health, work-related stress, extension, and fatigue [13, 14, 15], which no doubt damages the quality, sustainability, efficiency and effectiveness of work performance, safety of ship and environment [14].

Circumstance that had been created during the COVID-19 on board of the ship, namely denial or refusal to shore leave, abandonment of seafarer, denial of medical care and assistance, refusal of compensation for service provided beyond 12 months may be interpreted as forced labor [16], which is violation of international legal instruments [13, 14] and Human Rights Law.

Additionally, the regulation which was imposed to guarantee safety and security of society and avoid spread of Covid-19 was not in balance with the international regulations, in the sense that those rights have not be just suspended, but it was impossible to enforce and implement them even through protection of all the safety rules given by World Health Organization.

May Covid-19 be constituted as a force majeure where States are incapable to enforce standards derived by MCL, 2006 convention? There is different position of scholars in this respect. [13, 14] It is not a doubt that enforcement of the minimal standards of MLC was complicated to the reason of the Covid-19. The Pandemic created the circumstances where it was objectively impossible for States to perform their obligations, however Covid-19 does not

terminated or suspend obligation for State to resume the compliance with the MLC, 2006. While admitting that, international organizations developed different measures and mechanism for States and shipowners to resume non-compliance with MLC, 2006 even it is challenging or difficult.

When it comes to protection, enforceability and preservation of human rights, there are not direct regulations in UNCLOS, 1982 for those specific matters. However, articles 146 and 94 of the UNCLOS, 1982 states that Member State shall impose measures for protection human life [17] and exercise effective jurisdiction on administrative, technical and social matters over ships flying its flag. [17] In this respect, UNCLOS just provide the starting point and makes a reference to the international regulations and organizations having mandate to regulate working and social conditions of seafarers. [18] The systematic interpretation of the articles 146 and 94 makes it clear that Member State are obliged to adopt proper mechanism for effective protection, enforcement and preservation of international human rights law in accordance with the standards derived from international legal instruments.

Therefore, the responsibilities of State in relation of adoption or protection of human rights are drawn from international human rights conventions, declarations, treaties and covenants. There are lot of discussions about universality of human rights, and if States jurisdiction and responsibility for protection of those rights are applicable in maritime zones in general. However, different maritime zones do not question the matters of full application of basic human rights and there is not a doubt that States bears the responsibility to the vessel flagged to this certain State.

Taking into account all above said, the protection and preservation of human rights falls within the State jurisdiction. Therefore, when it comes to the applicability of human rights, it shall be said that human rights are *jus cogens*, universal, and it is applicable to anyone without any discrimination and everywhere to the land, sea and air. [19] States shall adapt relevant laws and impose effective jurisdiction in respect of preservation and protection of human rights. [10] In this respect, the European Court of Human Rights in *Hirsi v Italy* case [20] underlined that State shall ensure effective exercise of jurisdiction and control over its vessels [20].

International legal instruments do not clarify or provides special rules whether flag State or port State is obliged to protect, enforce and preserve human rights law, however it does not release States from the obligation to protect general Human Rights Law which is applicable to anyone, everywhere in all maritime zones and areas despite of force-majeure situation. [30] In this respect, the article 2 of the Universal Declaration of Human Rights states that everyone, without any kind of discrimination or distinction, are granted and entitled all rights and freedoms and nothing shall preclude to enjoy the basic human rights and freedoms. [10] Nevertheless, by the virtue of the Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, contracting party has an obligation to act within their jurisdiction in order to ensure that the protection of rights and freedoms are guaranteed respectfully [10].

Various international human rights mandatory legal instruments also secure rights of work, enjoyment of just and favorable conditions of work, social security, adequate standard of living, rights of physical and mental health [10]. Additionally, the International Covenant on Civil and Political Rights forbids performance of forced or compulsory labor by the virtue of article 8 and 10 [10]. In this respect, all human rights legal acts impose the main principle, that contracting parties bares the responsibility of protection and preservation of rights and freedoms, and has the primary obligation to impose relevant laws and regulation to give full effect of application of guaranteed rights.

All above mentioned legal instruments are addressing matters of applicability of rights and freedoms as well as. Those instruments also approach the framework of regulation and enforceability regimes of specific rights. Nothing shall jeopardize the applicability, implementation and enforceability of secured, granted and guaranteed rights. However, very basic and key rights that had been triggered and infringed in course of the Covid-19. Most of

rights had been suspended and infringed by the way that fools outside of scope of above-mentioned human rights legal instruments.

In general, enforcement, enjoyment, preservation and protection of those rights definitely are applicable at seas, therefore State's responsibility to enforce its jurisdiction over these matters are enshrined and derived not only from the international human rights treaties but also are defined by the MLC, 2006 as well. Therefore, regulations to avoid spread of Covid-19 were not in line with MLC, Human Rights Law and UNCLOS. From that point, it becomes crucial for whole maritime industry to develop relevant legal and policy for addressing the explicit application, protection, and enforcement of human rights at sea especially during these uncertain times. In this respect, all State, whether it is Port States, Coastal States or Flag States has an obligation to implement and exercises relevant jurisdiction over human rights matters in accordance with international human rights compulsory legal instruments.

As it was mentioned, the crisis caused by Covid-19 was significant on shipping industry. However, the governance and collective measures undertaken by the international organizations was exceptional and valuable. Measures, limitations, restrictions, bans and lockdowns that had been enforced by States to safeguard citizens made almost impossible for seafarers to enter into ports and enjoy rights of shore leave and repatriation. More importantly, those measures created serious "humanitarian crisis" and hindered the safety and economic interests that affected maritime business, shipowners, States, societies and seafarers. In addition, the problem caused by Covid-19 was directly damaging the mental health, wellbeing and safety of the seafarer as they were completely exhausted, unable to perform their duties and unfortunately demoralized as well. The consequences of restrictions and Covid-19 became global and emerging concern. Therefore, as the interests of the different actors had been hindered, international maritime organizations step in and called to States and governments to act in order to avoid collapse of the industry. It was clear that States needed to adopt effective, measurable and time-bounded strategy to govern the situation and facilitate the recovery of the industry.

It is obvious that due to the lack of capacities, social and economic challenges, unpreparedness of health care system, troubles of health care facilities and equipment, the crisis caused by Covid-19 were governed differently. It is perhaps not whole list of the challenges that complicated the governance of the crisis for States.

In order to provide relevant assistance and help, international organizations developed several protocols, guidelines, recommendations and resolutions for Member States, shipowners and maritime companies. It has great importance, to discuss the measures that had been adopted for the purposes to fill the gap existed into the international legal instruments and maritime industry as well. The Covid-19 clearly showed the weak sides of the maritime industry that was considered as a robust before outbreak of the pandemic. It has a great importance to discuss, collective and protective measures adopted by international organizations and enforced by State in order to inform readers and interested seafarers as well, that there are already international mandatory legal instruments which enables them to protect their rights and interest in case of any abuse or violation of basic and/or labor rights.

In order to minimize the effects of the Covid-19 on the maritime industry, seafarer's and shipowners, international organization, such as IMO, ILO, WHO and ITF adopted complex, systematic and comprehensive protocols and guidelines. [21] In their framework of competence and mandate, organizations addressed matters of crew change, resupply, certification of the seafarers, labor and social security rights.

IMO within the framework of its mandate developed various circulars and protocols which provided measures to govern the crisis caused by Covid-19. Beside of the uniform recommendations, guidelines, circular letters, IMO also created the Seafarers Crisis Team in order to provide relevant assistance to seafarers together with the ILO and ITF. [22] In relation to seafarers, IMO also adopted the term such as "Key worker" which underlines important role of seafarers in social functions. Moreover, IMO together with United Nations Conference on Trade and Development (UNCTAD) urged Member States of the organization to perform effective,

pragmatic and practical actions for smooth repatriation and crew change. All above mentioned organizations collectively called States to make an exception for seafarers to travel and return at home [22].

Additionally, IMO, together with ILO provided consultations to Port State Control regimes asked for collaboration in the matters of crew change and repatriation of seafarers. On the other hand, organizations agreed with the Port State Control to collaborate in matters of the documentations and certifications of the seafarers. In this respect, through the inspections of vessels and relevant documentations, Port State Control was asked to play important role to maintain and monitor applicability of the international standards on board of the vessel, especially in cases where the labor contract was extended more than allowed, maximum accepted period defined by the MLC, 2006 [22].

In accordance with the statistical information provided by the IMO 400,000 seafarers were trapped on board of ships and were not able to repatriate during the Covid-19. IMO underlined that another 400,000 seafarers were not able to perform their duties and join the vessel. In addition, IMO expressed that those restrictions had negative implications on seafarers' welfare, mental health and well – being. During Covid-19 seafarers were working on board of the vessel for 12 hours every day, and it became obvious that they were exhausted. Therefore, IMO urged Member State to take statistical information into account and developed the 12 steps protocol to facilitate the crew change issues as well [22].

In this respect, it is significant to mention that, during Covid-19, the crew change crisis was one of the painful issues to regulate for international organizations, shipowners or States. Based on statistical information revealed by IMO, ILO, ITF, UN General Assembly adopted the Neptune Declaration on Seafarer Wellbeing and Crew Change in order to protect and preserve seafarers' rights. The declaration acts together with numerous remodulations, recommendations and protocols. Currently, more than 850 organizations signed the declaration. More importantly, this document constates basic action which shall be undertaken for crew change. The act was issued for purposes to address and resolve the crew change crisis caused by Covid-19 for the purposes to facilitate maritime industry and supply chain. Later, the Neptune Declaration Crew Change Indicator was developed in order to maintain, monitor and control data regarding crew change situation [23].

Moreover, IMO also expressed its concerns regarding access on medical assistance and medical care which were not provided to the seafarer's strand on board of the vessel, and constituted it as an abandonment of the vessel in distress and infringement of human rights. Lastly, for the appreciation and recognition of the service provided by the seafarers in course of Covid-19, IMO nominated 2021 as a «year of action for seafarers» [22].

Whereas ILO adopted an Information Note on Maritime Labor issues which encourages Member State to improve existing standards given by MLC, 2006 and stated that Covid-19 does not annul or terminate those obligations, therefore Member State is responsible to resume the compliance as soon as the circumstances justifying non- performance will no longer present. In the Information notes on maritime labor issues and coronavirus (COVID-19). Revised version 3.0, ILO discusses that provisions of MLC, 2006 were suspended in light of the Covid-19 [24]. More importantly, the documents come with the recommendation for Member States, that despite the Covid-19, which makes materially impossible to perform the obligation, it is vital to enforce measures which will be meet requirements given by MLC, 2006. In this respect, above mention document develops following recommendations for Member State:

1. to remove regulations which complicates travel of seafarers;
2. to collaborate in matters of repatriation of Seafarer;
3. to provide medical help to the ship without any further delays or complications;
4. underlines that shipowner is responsible to cover all financial expenses if seafarer got infected on board of the ship;
5. that rights of repatriation shall be granted without increasing of the risks of infection.

[24]

On the other hand, the WHO adopted International Medical Guide for Ships to manage the Covid-19 cases on board of the vessel in order to ensure that seafarers have access on relevant health protection, medical care, medicine, medical equipment, treatment, information and expertise, safe and effective use of personal protective equipment [25]. In addition, WHO also developed “the guidance on the safe and effective use of personal protective equipment” which provides relevant safety rules for minimizing the risks of infection on board of the ship. [26] In this respect WHO urges seafarers and shipowners to use specific personal protection equipment. Above mentioned protocol together with International Medical Guide act applies to all types of ships, to passengers and crew members, all personnel of the ship.

ITF assisted seafarers to get off from ship. ITF was fully engaged into the process of repatriation from board of the ship and safe return of seafarers at home. More importantly, organization inspected the vessel and inspected all potential cases where rights of seafarers were violated or infringed. Additionally, in order to provide relevant help to vulnerable seafarers, ITF developed relevant guidance to protect seafarers right during the COVID-19 [6]. The guidelines contain list of practical and pragmatistical recommendations for shipowners or States to facilitate protection, informants and preservation of basic human rights of seafarers. Guidelines was basically adopted to facilitate and enables shipping industry keep moving and working without any delays and complications. ITF also urged States to communicate with Port State, Coastal State, shipowner and maritime companies in matters of shore leave and repatriation of seafarer [6].

International organization developed various circulars, guidelines, protocols and guidelines for Member States and for shipowners as well, as they remain responsible to implements and enforce above mentioned mandatory instruments on board of the ship. In order to avoid collapse of the maritime trade and maritime supply chain, shipowners were urged to facilitate the repatriation of seafarers after the completion of the labor contract at the nearest port without hindering safety and security of seafarers. Shipowners were encouraged communicate on matters of crew change, health care needs or shore leave with relevant ports and States.

During Covid-19, States adopted restrictions and bans which had negative impacts on rights and freedoms of seafarers at sea. It is also understandable, that regulations were enforced to avoid widespread of Covid-19, but on the other hand it violated seafarers’ basic rights and interests as those regulations were not proportionate, fair, predictable, accessible and stable. Due to this reason, international organizations encouraged States to remove all possible and hindering rules which was complicating operation of maritime industry as well. In this respect it is more than obvious that open and smooth operation of maritime industry safeguards not only business interests, but increases prospects of economic prosperity of the State and society as well as. Therefore, it is important for State and for Port States to follow the international standards and framework, without violating a Basic Human rights and Freedoms. It is also understandable, that regulations were enforced to avoid widespread of Covid-19, but on the other hand it violated seafarers’ basic rights and interests.

The crisis caused by the Covid-19 and matters of adoption mechanism for seafarers’ protection was different. In case of Republic of Georgia different measures was adopted to govern the crisis. In order to address the results of Covid-19 and provide relevant help and assistance to the seafarers, the Republic of Georgia categorized seafarers as «Key workers» [27] and adopted relevant legal instruments in accordance with the guidelines, resolutions and protocols issued by the international organizations.

The Maritime Transport Agency of Georgia (MTA) [28] is the national regulator of the maritime transport field in Georgia. MTA is responsible to implement, harmonize and enforce all the maritime legal instruments derived from national and international legislation. In MTA is authorized body which has full competence to maintain, improve, coordinate, perform, develop and monitor, adopt and enforce relevant measures in maritime field [28].

In order to implement standards which were developed by the international organizations to promptly address crisis caused by the Covid-19, MTA adopted measures regarding seafarer's certification and training system [29].

The Director of Maritime Transport Agency under the under the auspices of the Ministry of Economy and Sustainable Development issued Order N5 dated April 6 2020 «On certain measures to be taken in the Georgian seafarers' certification and training system in Connection of the spread of the novel coronavirus COVID-19», which was addressing matters of certifications and training opportunities [29].

Due to the challenges caused by COVID-19, MTA also expressed readiness to issue relevant certifications for seafarers to fulfill and meet other prescriptions and regulations derived from acting legislation of Georgia. Based on the Circular No. 18/CIRC/STCW, the validity of seafarers' certificate of competency, certificate of proficiency and seamen's book were automatically extended for 6 months [29].

It is important to underline here, that the above-mentioned Circular also was regulating matters of the validity of the medical certificates. During Covid-19, all the medical certifications of the seafarers who were serving on board of the vessel were automatically extended by 6 months by the virtue of the Order N5 and the Circular Letters of International Maritime Organization. In this respect, seafarers were not asked to make any application for extension the validity of all above indicated certificate as it was extended without any additional procedural requirements [29].

During Covid-19 educational institutions were also working in order to provide relevant assistance and help in their scope of competences. The relevant training and certification centers in collaboration with MTA were providing the access to the relevant training courses. The educational institutions and authorized maritime training centers enabled seafarers to submit their application and register the courses where the lectures were provided as face-to-face principle but also remotely [28].

Despite of the Covid-19, all the matters were governed in accordance with acting legislation of Georgia, STCW Convention, and international mandatory legal instruments, standards and requirement. In addition, MTA also fully adopted all the international legal instruments that were enforced by the relevant international organizations such as UN, IMO, ILO, ITF in course of the Covid-19 [28].

MTA started collaboration with the relevant shipowners and facilitated to the repatriation of the seafarers. In this respect, all the decisions undertaken by the MTA, inclusive guidelines, protocols or resolutions were open, visible and transparent for interested third parties and persons [28].

In respect of shipowners, port operations, maritime companies or operators, pilots and masters of Georgia flagged ships were obliged to fulfill regulations prescribed by the above mention Circuit. MTA also implemented a wide range of precautionary measures and different solutions, to ensure the smooth operation of the maritime supply chain and port sector in the country in response of the pandemic taking into consideration the relevant recommendations issued by the IMO, WHO, ILO and the Government of Georgia [28].

In course of the research, based on available materials and information, it can be concluded that the measures adopted by MTA remained effective and shall be constituted as the best practice.

This article researched the best practice that has been promptly developed by the international organizations. Based on above mentioned legal instruments, it is recommended for Flag State to ensure that seafarers rights and freedoms are protected and measures undertaken on board of the ship meets standards provided by the international organizations. State shall ensure that comprehensive, coherent, practical, pragmatism and effective measures are undertaken by the shipowner on board of the ship and maritime companies as well. In this respect, it is important to communicate, monitor and control if shipowners fulfill and performs obligations derived from the protocols, guidelines and recommendations. Article comes with the

recommendation that Flag State and Port State shall collaborate to effectively solve any issues concerning crew change, repatriation of seafarers, renewal of the relevant certificates and any documentation. Last, but not least, in order to govern the causes of Covid-19 and deal with the rights of seafarers Member States has an obligation to adopt legislative measures which are proportional to the protected interest, transparent, fair, predictable, equal accessible and stable without hindering and damaging basic human rights and freedoms.

It clearly shown in this article, restrictions and bans, lockdowns and measures adopted by States had been disproportionate and were not in comply with international standards. As the result, it had a negative impact on seafarer's health, well-being, safety and security. The results of this research is that despite the fact how emerged or desperate situation is, emergency and restrictive measures shall fully comply international human rights law and fundamental principles of the rule of law. The standards endorsed under the international law shall prevail and measures shall be in balanced with the protected interest.

This research paper provided relevant facts and statistical information about seafarers whose basic rights had been violated. The results of Covid-19 makes crystally clear that there is high need to create comprehensible and essential conditions where full application of basic human rights will be possible for seafarers. Nevertheless, the effective, comprehensible, goal-oriented action plan, the new human rights code of conduct, and due diligence guidance on for preservation and protection of seafarers' rights are highly crucial to be adopted.

The Covid-19 showed to the maritime industry, stakeholders, international organizations and States gaps and flaws existed in labor and human rights policy and practice. Therefore, it is vital to undertake steps in order to raise the bar of seafarers' working conditions, well-being, mental health and welfare.

However, implementation and adoption of the international legal instruments is not enough. The shipowner and State shall take responsibility to improve, enforce and meet international standards and the best practice regarding seafarer's repatriation, working condition, medical assistance and mental health. It is considered that the positive impact and success of the maritime chain shall be interpreted in line with the protection, respect, preservation, enforcement and implementation of seafarers' rights into practice, which definitely goes beyond legal and regulatory compliance, but also requires proper engagement of relevant decision makers, States, international organizations, interested parties and maritime stakeholders. This article recommends for actors of maritime industry to collaborate, monitor, perform and enforce its duties and obligations respectfully.

The effects of Covid-19 are an experience that educational institutions and training centers shall take into consideration in order to enhance the awareness and build relevant capacities among seafarers to deal with the virus effectively and efficiently. On other hand, they also need to educate seafarers and provide relevant knowledge about measures of protection of their rights and freedoms. In this respect, rules, protocols, resolutions and guidelines adopted by the international organizations shall be visible, accessible and deliberated to seafarers immediately.

There is no doubt, that the Covid-19 has a negative implication on fundamental, personal, social and other rights. The restriction, bans, strict regulations and measures were not proportional. High level of the safety and security rules shall take into account other objectives circumstances and shall not open the possibility for disproportionate infringement into the protected *jus cogens* rights. The results of Covid-19 gives ground to come to the conclusion that emergency and restrictive measures shall fully respect international human rights law. Therefore, despite the fact how desperate and urgent the situation is, the fundamental principles and fundamental rights have to prevail, every protective measure shall be in balanced with the protective interest. In this respect, the measures adopted by the States failed to satisfy the standards enshrined and shaped in international compulsory legal instruments.

The article researched that, based on factual evidences ships and seafarers did not have a proper access to the medical service and infrastructure in general. In this respect, it has to be

said, that the health rights are human rights and human rights are seafarers' rights. Restriction and delays to provide relevant assistance to the ship where protentional risk that wellbeing of seafarers will be affected is high, can be constituted as an ignorance and failure to perform obligations derived not only from international law, but also from a national law as well.

The Covid-19 also revealed gaps and limitations in the maritime employment contracts, and seafarers' social protection systems. It also appears that capacity to protect the rights of those more vulnerable is very low and shall be addressed immanently. Therefore, there is high need to adopt proper mechanism and due diligence tool for provision relevant medical help and assistance to the ships during pandemic period.

Final Remarks and Conclusion. It is without doubt, that seafarers make significant contribution to global maritime business and it remains important to safeguard full package of their rights and freedoms.

The outcome of this research paper is that, it is vital to consider seafarer as «Key workers», and grant them exceptions taking into consideration existence of their special, objective, exceptional circumstances, reasons and situation. Therefore, it is recommended and suggested that regulations, policies and measures which will be undertaken for safety and security purposes shall not violate and hinder the Basic Human rights of Seafarers, because everyone shall be treated equally without any forms of discrimination and violation of rights and freedoms enforced by Human Rights Law.

Finally, it is obvious, that the Covid-19 brought new reality in maritime sector. The effects of Covid-19 makes clear that maritime sector need to renew standards to create a strong, effective, efficient, suitable, robust system where all rights and freedoms are protected and safeguarded despite the fact how desperate the situation is in accordance with the standards shaped by the international human rights.

The results of this paper may be used for teaching, academic, theoretical and practical purposes. Paper also encourages academia to take active participation to raise a bar and play an important role in protection and preservation of seafarer's rights and freedoms. More importantly, the results of paper may be used for further research and development as the issues of protection and preservation of seafarers right is current, emerging challenge of global maritime industry.

The virus Covid-19 showed how fragile the whole system could be and where are gaps of whole legal instruments as well, however there is one question left – is maritime industry ready for new challenges or force – majeure situation to come in nearest future – at this stage, all is known is that collaboration between the decision makers, safeguard, proper interpretation and protection of relevant legal instrument and adequate action are highly needed for seafarers which run and make possible maritime business to work for the service of the society.

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Мгеладзе М., Сурманідзе Г. ПРОБЛЕМИ І ВПЛИВ COVID-19 НА ПРАВА І СВОБОДИ МОРЯКІВ
У цій статті обговорюється важливість захисту прав і свобод моряків і забезпечення дотримання міжнародних протоколів, в яких моряки визначаються в якості ключових працівників і розглядаються проблеми і досвід, накопичений в рамках Covid-19, в якості важливого фактора вдосконалення міжнародно-правових документів. Тому вкрай важливо зосередити увагу на правах моряків і розробити відповідні інструменти, ефективні, орієнтовані на досягнення цілей належним чином, продумані плани дій і механізми, підвищення глобальної обізнаності про порушення прав людини на морі і забезпечення позитивних змін за допомогою розробки законодавства і політики, обмін думками і передовою практикою в галузі захисту прав моряків, незважаючи на ситуації COVID-19.

Для цих цілей у представленій статті досліджується нова виникаюча проблема світового морського суспільства, така як захист, збереження і забезпечення прав моряків на під час COVID-19. У цьому зв'язку, в цій статті розглядаються відповідні міжнародно-правові документи, такі, як UNCLOS, 1982, MLC, 2006 і права людини. У цій статті також описано реакцію морської промисловості на наслідки спричинені COVID-19. У кінці статті містяться висновки та рекомендації.

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