Legal Analysis of Impact of Revised BIMCO Clauses on Crew Health and Safety During COVID-19 Era

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This paper evaluates how the revised BIMCO Crew Change Clause 2020 affected crew health during this period. To satisfy the need for specific clauses, regulating the contractual relationships during the COVID-19 period, BIMCO created sets of clauses, such as the BIMCO Crew Change Clauses for Time Charter Parties (2020). The rationale of those clauses was based upon the pre-existing BIMCO Infectious or Contagious Diseases Clause for Voyage and Time Charter Parties 2015, but it was evidenced that the COVID-19 virus had many intricacies. Thus, new sets of rules are presently emerging to eliminate the gaps created. The basic downside of this legislation and the focus of this paper is to prove that these clauses are focused only on regulating the contractual relationship, without actually taking into consideration the crews' health and safety.

The analysis is focused on the impact of a COVID-19 incident on four specific legal aspects, i.e. i) vessels' seaworthiness, ii) charter parties, iii) port safety, and iv) refusal of orders. There is also an analysis of the imminent Decease Clause 2021 and its actual impact upon the shipping industry. The analysis of the relevant legislation is based on legal doctrine, dominant form in legal research, aiming to provide a systematic exposition of the legal and regulatory principles. It analyzes the relationship between those principles to provide clarifications, utilizing legislation and relevant case law as the primary source of data. This research method is qualitative and is very similar to critical analysis, whose application is performed through (a) research and description of the existing legislation, (b) prescription, whose essence is to explore the statutory framework, locate the critical points, and assess the effectiveness of legislation on protecting the crew health and safety, and (c) evaluation of possible amendments or additions.

The majority of studies conclude that shipping companies will be able to protect crew health and safety only through proactive measures and due diligence. The revised BIMCO terms on crew changes during Covid-19 and the new Disease Clause 2021 sadly did not have crew protection as their top priority. In most parts they tried to allocate and even mitigate the risk of the contracting parties, providing "windows" of opportunity for both sides to be excepted from any liability. Based on the analysis of resources, the new clause is not engaging the concept of proactive measures, unquestionably the most important method for the preservation of crew health usually referred to as "exercising due diligence". It is a fact that BIMCO protects the clients' interests, with the clients being the charter parties. It is also valid that the shipping industry supported the nations during the COVID-19 outbreak, but the BIMCO clauses were concentrated on the preservation of contractual relationships, leaving the concept of crew health and safety uncharted.

KEY WORDS

~ BIMCO decease clause
~ COVID-19
~ Charter parties
~ Seaworthiness
~ Safe ports
~ Due diligence

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1. INTRODUCTION

The new coronavirus disease, or COVID-19, was first detected in December 2019 in Wuhan, China, and then rapidly spread around the world (Huang et al., 2020). As of January 5, 2021, over 85 million cases were reported, including 1.86 million deaths (Johns Hopkins Coronavirus Resource Center, 2021). The European Union and the whole of humanity have adopted a wide range of measures in many areas (health, economy, research, borders, mobility, etc.) to respond to the pandemic due to COVID-19 (EMSA, 2021).

The protection and prevention measures taken by shipping companies for COVID-19 should be of utmost importance, not only for the sea voyages of cruise ships but also because >90% of international trade (including medicines, raw materials, essential foods and industrialised products), depends on seafarers (ILO, 2021). The International Maritime Organization (IMO) has published a survey which proves that seafarers are victims of the safety of the pandemic emergency, as a large number of seafarers were "abandoned" onboard ships due to the travel restrictions that were set or were deemed unfit to join ships (IMO, 2021). In addition, as commercial fishing is the primary source of food worldwide, a large volume of workers is required, as to maintain a strategic distance from one crew member to another, the workers have to change constantl, so the required number reaches 100,000 sailors per month (Battineri and Amenta, 2020; Sagaro et al., 2020).

Therefore, in addition to the preventive measures needed to prevent the transmission of the virus on board among passengers, there is a need to prevent its transmission both among passengers and working seafarers, but also among the sea personnel themselves (WHO, 2021).

Due to limited medical resources, physical exposure to crowded and closed environments, make high the risk of the pandemic spreading to many cruise ships (Sawano et al., 2020), as happened in early February 2020, with the Diamond Princess, registered in the UK, in which many COVID-19 cases were found, resulting in it being quarantined for about a month, in Yokohama, Japan. The number of cases reached 700 people, while 14 people died (Mizumoto et al., 2020). Many sea transport routes were suspended in order to prevent the spread of the epidemic (Fernandes et al.,2020), as more than 40 cruise ships confirmed the existence of cases positive for COVID-19 on board. For this reason, both governments and port authorities recommended avoiding travel by cruise ships, while preventing the docking of ships (Malone,2020). The example of the Diamond Princess and of other cruise ships affected directly the other shipping sectors which, despite having fewer seafarers onboard, recognized the threat of having multiple crew members unfit for service and indisposed for a long term.

It was concluded that a breakout of COVID-19 epidemic onboard ship can be mitigated with proactive measures through active monitoring and timely self-reporting, removal of suspected cases, strict compliance of all passengers and personnel with regard to hand hygiene, measures and etiquettes during COVID-19 crisis, and the improvement of disinfection. Health education is also essential, as this is a new situation that the planet is experiencing, and it is natural that there is fear and ignorance about the unknown. In this study, we explore how revised COVID-19-related clauses approach the above-mentioned statement and if they in fact benefit and promote the crew's health and safety.

2. MATERIALS AND METHODS

This paper is a research study, initially extracting primary data and information from the relevant International Legal Framework and Case Law. (Stebbins, 2001; Carr & Ramezani, 2020)

The analysis of the relevant legislation is based on legal doctrine, dominant form in legal research, aiming to provide a systematic exposition of the legal and regulatory principles and analyse the relationship between those principles to provide clarifications, utilizing international legislation and relevant case law as the primary source of data (Tiller & Cross, 2006; Van Hoecke & Warrington, 1998).

This research method is qualitative and is very similar to critical analysis, the application of which is performed through: (a) research and description of the existing legislation, (b) prescription, whose essence is to explore the statutory

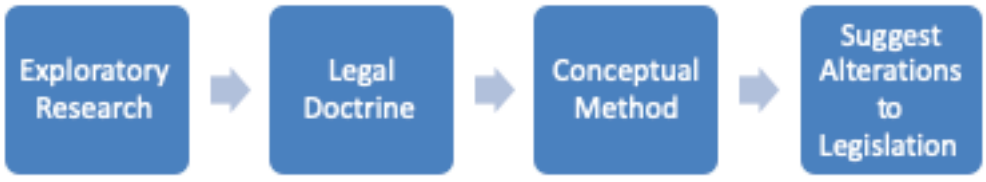

Figure 1.
Research methodology.

framework, locate the critical points and assess the effectiveness of legislation on protecting the crew health and safety, and (c) evaluation of possible amendments or additions. The concluding remarks are based on the conceptual method and legal doctrine of assessing International Legislation and relevant Case Law to extract conclusions and propose alterations to the existing legislation (Wilkins, 1967; Ivanov, 2021).

3. DISCUSSION

The analysis of this paper will be centered upon three major points of discussion, i.e., i) seaworthiness, ii) off-hire, laytime and demurrage, iii) port safety, which are all vital for the successful execution of a contract of carriage and, at the same time, directly affected by the spread of COVID-19 onboard ship. The analysis of those milestones will help us extract useful outcomes from the legal implications of COVID-19 and evaluate the need for further regulation of the issue of crew health and safety (Carr & Ramezani, 2020).

3.1. Vessel Seaworthiness in Case of COVID-19 Incident

Seaworthiness is a broad concept, indicating that a ship is perfectly equipped for an intended voyage. It must not only be in a condition that enables it to cope with the risks it may normally encounter, but must also be able to ensure the transport of its cargo in complete safety. This is a question of fact and not of law. Seaworthiness is a narrower term in relation to maritime safety and refers to a ship and its equipment, cargo, crew, and other passengers on board, according to Franchina (2017). In more detail, it covers various aspects, such as the good condition of the hull and deck, means of propulsion and steering, installations and equipment, manning (by a large enough competent crew), fitness of the ship to carry the cargo (loading and unloading gear, good condition of holds), and preservation of merchandise (e.g. ventilation, cargo battens, dunnage, refrigerating installations) (Aladwani, 2016).

Based on a wide range of case law decisions, unseaworthiness is not sufficient in itself to prove that a ship is substandard. This remains a variable concept: the due care required of the ship-owner in a charter contract depends on the voyage to be performed and goods to be carried. It is governed by professional practice and the normal means available (Cha et al, 2021).

Under the English law, the shipowner's obligation to provide a seaworthy ship is vital and mandatory for all Carriage of Goods by Sea contracts. The most important aspect of seaworthiness is the exercise of due diligence. Due diligence is not a stable condition, is not expected and implemented on the same level on all ships, rather it depends on the facts of each specific case. There are many variables that can alter the extent of due diligence required, such as the ship's type, size, age, operational area, etc. Nevertheless, in reality, most of the variables are known to the shipowner beforehand, and proactive measures have been implemented. The issue starts with unpredicted conditions, such as a crew accident, collision, technical failure that may erupt at any moment and affect the standard operational processes. Even in those cases, the accumulated experience on shipping-related disasters has created processes initially to avoid the occurrence of those incidents and then to minimize any damages caused (Zhang & Sun, 2021).

As it was proved, the COVID-19 incident was not one of those cases. The real issue arises with the failure of the required proactive measures and the infection of the crew. Based on BIMCO Terms on Crew Changes (Time CP, 2020) the affected person should be regarded as permanently indisposed, and the company is charged with the removal and repatriation from the nearest port of call. It is also stated that "the Vessel shall have the liberty to deviate for crew changes if COVID-19-related restrictions prevent crew changes from being conducted at the ports or places to which the Vessel has been ordered or within the scheduled period of call". The issue with this clause is that the shipowner has "the liberty" to deviate for the shipping route, without this liberty being regarded as an obligation under due diligence. Additionally, there is no actual evidence on the state of the crew; thus it remains upon the shipowners' discretion to exercise this "liberty" and elect to deviate in case of COVID-19 incidents. It can be stated that this "liberty" can be used by the shipowners as a strategic tool to avoid off-hires or to rely on in case of delays or other occurrences. Furthermore, sub-clause (b) of BIMCO Terms (Time CP, 2020) states: "Owners shall exercise the right under subclause (a) above with due regard to Charterers' interests and shall notify Charterers in writing as soon as reasonably possible of any intended deviation for crew changes purposes". The reasoning behind this clause doesn't seem to focus upon contractual obligation for the vessel to immediately deviate, in case of an onboard Covid-19 incident, or will be liable for any damages, rather than creating "windows of exemption" for the shipowner to avoid contractual obligations while exercising due diligence at his discretion (Coish & MacNeil, 2020)

3.2. Off-hire, Laytime and Demurrage in Case of COVID-19 Incident

Under time charter parties, there are certain clauses that may put a vessel off-hire. In many cases, those clauses refer to "deficiencies of men or any other causes stalling the full working of the vessel". In the case where COVID-19 has infected a substantial number of crew members, with evident delays and operational failures and with the active personnel being under the required standards and manning requirements, then the vessel is surely considered off-hire.

After the ship is considered off-hire, the issue continues with the hire payment. There are clauses embedded in all modern Charter Parties excusing the payment of hire while the ship cannot perform the charter service, but two basic principles have to be proven: 1) The burden of proof is initially on the charterers, and they will pay hire unless they can prove they can be excepted; 2) The off-hire clause operates independently of any breach of the owners (Russel, 2015).

The above-mentioned BIMCO COVID-19 Crew Change Clause for Time CP gives two options in case of deviation: i) the ship shall remain on hire, but at a reduced and clearly stated rate of hire per day. In the absence of an agreed amount, fifty percent (50%) of the hire rate shall apply and the cost of bunkers consumed shall be shared equally between Owners and Charterers, or (ii) the ship shall be off-hire and the cost of bunkers consumed shall be shared equally between Owners and Charterers. This election of clauses is a technical clause and it is not meant for obliging the shipowner for deviation, nor to alter the burden of proof or enact independently in case of any breach. In the analysis that follows, we will investigate the effect of the above-mentioned clauses on the usual process of investigating an off-hire case.

Initially, pursuant to the Aquacharm (1982), it has to be proven whether the "full working of the vessel" has been prevented. Once this is proven, we turn to the cause. The Berge Sund (1993) suggests that "Full working vessel" is prevented when the ship is unable to perform the next operation that the charter requires. Thus, if the next operation is berthing and the ship is unable to sail, there is no prevention. As stated above, the infected crew is indisposed; consecutively, it is likely that the ship is understaffed, thus it cannot operate in "full working" conditions (Thomas, 2020).

Lastly, the ship is usually off-hire only if there has been a loss of time. This could be either the loss of a period of service, for the time the ship wasn't fully working or to the delay caused to the adventure. In the case of COVID-19, the loss of time starts with the deviation from the course to disembark the infected crew members and may continue with delays into manning the vessel (Weale, 2002)

Initially, in voyage charter parties, in order to have a valid notice of readiness (NOR) and for the consecutive commencement of laytime, the vessel should be fit to receive cargo. The granting of official permission from port authorities to load the vessel should not be possible when it is known that a portion of crew members is infected or suspected to be infected by COVID-19. Consecutively, the vessel should not issue a valid NOR, thus preventing the commencement of laytime (Ogwu, 2020)

In the situation of a valid NOR to be issued, laytime will commence and run unless there is an exception in the laytime clauses, embedded in the charter party, related to the vessel's operational issues due to pandemic. Consecutively, should a vessel enter demurrage, this should be interrupted by an express exception of the charter party. The only way for this exception to take place is when it is 'clearly worded to that effect' as by "The Lefthero" (1992) case. Regarding voyage charter parties, BIMCO hasn't issued any specialized contractual terms, similar to time charter parties. This can further prove the above-mentioned opinion that COVID-19-related clauses of BIMCO only aim to support the charterer's – shipowner's contractual relationships by offering "liberties" and windows to exempt liability instead of imposing strict liabilities in cases of non-compliance with the relevant COVID-19 measures and protocols. This opinion is based on the fact that there are much lesser contractual obligations in the charterer - shipowner relationship in voyage charter parties, with the shipowner undertaking the whole responsibility for the voyage and the charterer being liable only for the payment of freight.

Regarding voyage charter parties, it can be stated that the present case-law legislations apply normally in COVID-19 incidents. Regarding the commencement of laytime, the charterer and the shipowner are permitted to use all the time that they are entitled to, and there is no obligation to act quickly. In the Argobec (1949), even though loading has finished by 13:00 hrs, the stevedores bagged all the loose grain until 15:00 hrs. The CoA held that loading is not complete until the cargo is so placed in the ship that the ship can proceed on her voyage with safety, and that bagging is a part of loading. Thus, it is immaterial that the work carried out by the owner is the one that caused the exceeding of laydays. However, there is a distinction between a) when the owner is, beyond his control, unable to provide sufficient stevedores, and b) when he provides stevedores and they are negligent. In b) he will be liable for the delay by their negligence. If the owner self-inflicted the delay, the fault itself does not have to be actionable. Thus, in the Union Amsterdam (1982), the owner was not liable for negligent navigation under the charter, but laytime was not running due to this negligence. In case of the COVID-19 occurrence, if it is proved that the shipowner and the charterer exercised due diligence, then the crew infection can be considered as being beyond their control whereas, in case of negligence, the inflicting party should be liable for damages and even for contractual termination (Ahokas, 2019).

Regarding laytime calculation, the period of laytime is calculated usually in i) "running hours" = both day and night irrespective of normal working hours, ii) "weather working days"/ "Working days of 24 hours" = Working days, with weather that does not prohibit work. These expressions are held to be part of the definition of laytime and not an exception from it. (The Vorras, 1982), or iii) "tons per hatch per day" = laytime allowed can be known after calculating the cargo loaded.

All exceptions clauses, reducing liabilities must be clearly expressed in order to have an effect. A general exceptions clause will not be held to apply in laytime or demurrage unless

specifically clear. In the Solon (2001) case, there was an exception clause that expressly referred to the delay in loading. Where the excepted cause covered by such clause begins after laytime has expired, the charterer can rely on the exception as the rule "once on demurrage always on demurrage" is short-circuited by the clause. In the COVID-19 occurrence, the safest option would be evaluating if due diligence regarding the protective measures was kept and i) if due diligence is proven, then no valid NoR should be issued and consecutively demurrage is inexistent, or ii) if the parties failed to exercise due diligence, then the demurrage should commence from the moment the inflicting party failed to exercise its contractual obligations.

If the parties failed to exercise the due diligence and it becomes evident while a port state control is executed, then the ship will most likely be detained by the local authorities. If the vessel is detained for more laydays than the ones stipulated in the contract as laytime, the charterer is liable to pay demurrage. Laydays run ordinarily and continuously unless an exception is applicable, and the rule is "once on demurrage, always on demurrage". A common exception that laytime and demurrage share is the implied exception of delay caused by the fault of the owner or his servants.

Demurrage is liquidated damages, and there can be no duty to mitigate damages. The owner has an obligation not to unnecessarily prolong the period of detention. However, where the owner takes steps further to his obligations, to diminish the demurrage time, he is entitled to recover any costs (Leeds v. Duncan, 1932). All case law should be ordinarily enforced in the COVID-19 crew infections, when due diligence is not fulfilled and the affected party should be entitled to demurrages along with option of further claims and contractual termination.

In the Inverkip (1917) case, the owner claimed damages for detention for a delay in obtaining a substitute cargo on the grounds that the agreed demurrage applied for a reasonable period and that it applied strictly to delay in loading and not to a separate obligation to provide cargo. CoA held that the charterer's sole liability was to pay demurrage at the agreed rate, and since there was no clause to the contrary, this applied without limit of time until delay would frustrate the contract. The second important point was that demurrage provisions apply to all situations where the loss suffered by the owner is a detention, and it does not matter that the charter may have been in breach of some other obligation as long as it did not result in any other kind of loss. The same obligation should be applied to the charterer when a COVID-19 incident erupts.

3.3. Port Safety and Refusal of Orders in Case of an Outbreak in a Port

Port safety has been a predominant issue even before the COVID-19 outbreak. Initially, the concept of port safety is given in Eastern City (1958), where it is stated that "in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship".

By the interpretation of the above-mentioned, we can safely conclude that an outbreak of COVID-19 in a port facility cannot outrightly characterize a port as unsafe if proactive measures have been taken. In modern shipping, the port operation requires minimum and, in some cases, no physical contact with the ship, thus it requires a major COVID-19 outbreak in order to classify a port being under "abnormal occurrences". If a port is classified as "under abnormal occurrence", it can be safely stated that the port authorities failed to exercise due diligence and this should exempt the charter parties from any liability (Faqiang & Abliakimova, 2020).

In case of vessel's deviation, should the port of deviation be deemed unsafe, then "all port charges, pilotage and other expenses arising out of such crew changes shall be for the Owners' account", as stated in BIMCO Time CP 2020 on Crew Changes. The most important aspect of port safety, especially in the COVID-19 incidents, is the obligation on the charterers to order the ships to ports that are prospectively safe at the time the order is given. This does not mean that the owners must proceed to a port that has become unsafe just because it was prospectively safe when the order was given. The Eastern City (1958) defines a safe port by implying that a port is safe if a vessel can only be exposed to danger through negligence. However, a more correct test is to examine whether there is still a risk of collision by applying ordinary care and skill. Should there never be a risk like this, the port is safe. In this case, the port was unsafe because during the winter it was exposed to sudden unpredictable gales, which could cause damage to ships. The fact the ship may have to wait does not render a port unsafe. In the Hermine (1978), there was an exception to this rule, i.e., the "inordinate delay", which is such a period of delay as to frustrate the charter. In the Evia (No.2) (1982) and the Greek Fighter (2006), safety was also extended to political safety. However, as the Saga Cob (1991) suggests, guerilla attacks have to be a normal characteristic of the port in order to find a breach, and only if the reasonable shipowner would decline to send his vessel there, the port is unsafe. It can safely be stated that if a port is in fact prospectively safe at the time of the order, then the charterer succeeded to exercise due diligence and even if abnormal occurrences erupt, he should be exempted from liability (Luchenko & Georgiievskyi, 2021).

The abnormal occurrences are distinguished in the Evia (No.2) case by categorizing them in distinct and isolated occurrences and as the unsafety of the port has to arise by one of its own attributes, this case also upheld charterers' secondary obligation an implied duty, which arises if the port has become unsafe. The charterers are obliged to cancel the original order

and nominate an alternative port that is prospectively safe at the time of nomination for the time of arrival. The nomination is not a matter of current safety, but a matter of prospective safety. Refusing to provide an alternative, as per secondary obligation, and keeping refusing (persistence), amounts to a repudiatory breach of the contract. Thus, should a port be deemed to be under "abnormal occurrences" due to a major COVID-19 outbreak, then charterer should be responsible to choose an alternative and prospectively safe port or fail to exercise due diligence and be liable for damages.

The Kanchenjunga (1990) supports that the master should not enter obviously unsafe ports and must try to minimize the damage, and can refuse to enter a port because it is "uncontractual" (unsafe) and the order is "a tender of performance" that does not "conform with the terms of the contract". The mere fact that the owner obeys the order does not mean that he waived the unsafety or the damages, but only the right to object to the order.

In the Evaggelos Th. (1971) a ship was trading in a war zone during its charter, and even though the charterer had no express obligation of safety, the term as to safety was implied by the court. The Evia (No.2) questioned that reasoning and in the APJ Priti (1987) no term was implied. A statement relating to the vessel's current position was held to be a condition in Behn v. Burness (1863) and in Bentsen v. Taylor (1893) (there was a waiver of the breach though), but it is doubtful whether these terms are conditions. The Diana Prosperity (1976) criticized them as relying on the old warranty/condition regime, prior to the Hong Kong Fir (1961). Those facts, significant to port safety, are insignificant during a COVID-19 incident in port. The main facts remain the "prospective" safety of the port and the absence of any "abnormal occurrence".

Pursuant to the new BIMCO COVID-19 clauses, the owner's refusal to call at a port should be an option and in fact a remedy of last resort, when any proactive measures failed to protect the crew's health and wellness. In practice, the vessel delays were dire and the issue was to allocate the responsibility to the contracting parties. In a time charter, the revised clauses relocated the risk to the charterer unless the vessel's owner failed to exercise due diligence. In voyage charters or in the contract of affreightment, the revised BIMCO clauses were more nuanced because the agreement was for a specific port of call; thus, a balance was necessary to promoting shared responsibilities and mutual agreements between both parties (Faqiang & Abliakimova, 2020).

3.4. BIMCO Disease Clause

The ongoing COVID-19 pandemic continues to impact the industry, from the shipping container crisis, ports denying entry, to crew being stuck onboard vessels for months at a time. Many shipping companies have been reluctant to enter certain countries due to the high risk of crew contracting COVID-19, or the potential of the rest of the vessel having to quarantine due to COVID-19 restrictions imposed by the destination country. In addition, delays have been caused due to crew contracting COVID-19, which sees them either having to self-isolate or requiring medical treatment. This, along with testing of the rest of the crew, causes severe delays in ports.

Originally created during the 2015 Ebola outbreak to provide a generic solution for epidemics, the BIMCO Infectious or Contagious Diseases Clause for Time Charter Parties addresses issues faced by shipowners in protecting their crew against disease, infection, and the consequences that may be faced by the ship when trading in certain regions. The sections within the clause focus on shipowners' rights. One of the key points noted within the clause is the definition of disease. According to the clause, "Disease means a highly infectious or contagious disease that is seriously harmful to humans".

In addition, another definition that is essential when discussing impacts of the COVID-19 pandemic is the "affected area". According to the clause, "Affected area means any port or place where there is a risk of exposure to the vessel, crew or other persons on board to the disease and/or to a risk of quarantine or other restrictions being imposed in connection with the disease".

In order to assist vessel owners to decide if docking at a port within an affected area should proceed or not, the clause states that once a decision has been made, ship owners should immediately notify the charterers. Upon notifying if the vessel is at anywhere that is considered, with reasonable judgement, to be an affected area, then the vessel can leave immediately. Charterers are obligated to issue alternative voyage orders within a 48-hour time period, which if not adhered to allows owners to discharge any cargo already onboard at any port or place. In this case, charterers are responsible for all additional costs, expenses, and liabilities incurred.

Although providing clarity and grounds for vessel owners who find themselves in uncertain waters when considering if docking is a safe option, the clause does have its setbacks. One key issue surrounds the use of the term "affected area". The outbreak of the COVID-19 pandemic has been unpredictable and dynamic in nature, which has presented a number of challenges for the clause, mainly when it comes to labelling an "affected area", due to the entire world being affected.

Along with the issue of "affected area", another concern raised was that of the original COVID-19 clause being intended to apply to the novel, original COVID-19 variant. BIMCO stated that these clauses and guidelines for charter parties and owners could be applied not solely to the novel COVID-19 strain, but also to other similar viruses in the future. However, due to the dynamic, ever-changing nature of COVID-19, the virus no longer fits into a single category.

4. CONCLUSION

The protection and health of seafarers should be the absolute priority for shipping companies, and they should be constantly informed of any eventuality and information that occurs regarding some kind of threat and danger, such as the outbreak of this pandemic, and how to protect themselves.

The revised BIMCO terms upon crew changes during COVID-19 and the new Disease Clause of 2021 sadly did not have crew protection as their top priority. In most parts, they tried to allocate and even mitigate the risk of the contracting parties, providing "windows" of opportunity for both sides to be excepted from any liability. Firstly, they do not engage the concept of proactive measure, unquestionably the most important method for the preservation of crew health; they refer to them as "exercising due diligence".

Regarding the issue of seaworthiness, instead of promoting severe obligations to both charter parties, there create opportunities for the exception of liability when a COVID-19 incident erupts, without providing clarification on how the company's due diligence will be evidenced and specific countermeasures enforced.

Regarding the necessary deviations when a COVID-19 incident is evidenced, in time charter parties there is an election on covering the expenses of this deviation for the disembarkation of the infected crew without promoting any further measures such as disinfection, mandatory quarantine, and severe proactive measures (e.g., total crew disembarkation) to practically and efficiently protect the crew health. In voyage charter parties, the main focus is on tendering a valid NOR in case of a COVID-19 incident, without providing any further measures in case of an incident during the voyage. The only solution is again the "right" to deviate.

Regarding port safety, the clauses focus on the port's failure to exercise due diligence, prospective safety of the port and the classification of "abnormal occurrences" during a COVID-19 incident. There was no mention of enforcement, no actual charter party liability or obligations at all for contracting parties to protect and preserve crew health and safety.

It is a fact that BIMCO protects the clients' interests, with the clients being the charter parties. It is also valid that the shipping industry supported the nations during the COVID-19 eruption. However, those two facts are not adequate to exempt the contractual parties from any liabilities, to provide revised terms only for preserving the rights of the contractual parties, leaving the issues of crew health, safety, due diligence and enforcement completely "*unchartered*".

CONFLICT OF INTEREST:

The authors declares there is no conflict of interest regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed consent, misconduct, data fabrication and falsification, double publication and submission, and redundancies, have been ultimately observed by the authors.

DATA AVAILABILITY STATEMENT:

Publicly available datasets were analyzed in this study.

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