

EDITORIAL

Covid-19 and maritime law – lives, laws and lessons

Disease is no stranger to the maritime world.¹ The word ‘quarantine’ has its origins in the 14th and 15th centuries, when those on board vessels arriving in Venice during the Black Death had to wait offshore for 40 days (‘quarantena’) before being permitted to disembark. Scurvy and other illnesses were known to sailors centuries ago. Indeed, new diseases arrived in various parts of the world solely because of maritime travel. Contracts and agreements used in the maritime world have long included references to illnesses, epidemics, pandemics and almost every form of ailment known to humanity. Legislation has been adopted at national, regional and, in a limited way, international levels to deal with disease, sickness and injuries in the maritime world.

Turning to the illness which is currently dominating headlines, namely Covid-19 (Coronavirus), the vast majority of maritime nations around the world have individually adopted laws and practices in recent weeks to deal with the situation.² They have each adopted their own rules on issues as diverse as extending the certificates of masters, prolonging visas, limiting crew members from going ashore, passenger rights and inspections. What is very notable is that there are many individualistic and independent initiatives rather than any form of joined up or comprehensive coordination.

A survey of the legislation adopted to deal with Covid-19 shows that much of it is rushed and piecemeal. Equally, much of it is inconsistent and adopted to suit particular national, local, political and even populist considerations. The International Maritime Organization (IMO) has tabulated each of the responses by its various member states and the circular letters³ which have been issued. Even regional organisations such as the European Union (EU) have faced great challenges in trying to adopt a regional approach, let alone a universal one. It is clear that the EU has worked speedily to address many of the issues. Nonetheless, even the EU has no power to deal with many topics that remain national competences; it has to ‘invite’ the Member States to take steps in certain areas and then has to consult with and involve various institutions to adopt legislation in those areas where it has competence but where EU legislation is needed urgently. Even the EU must recognise that its Member States have taken their own individual actions.⁴

It is surprising, given that disease is such a long-standing and regular feature of the maritime world, that nations and international organisations have had to scramble in recent weeks to adopt new regimes and procedures. New rules have been adopted to deal with the current crisis and, while the lessons learned from the current crisis will be useful later, yet more new rules will have to be adopted to deal with the next epidemic, pandemic or comparable crisis. It seems as if new rules and regimes have to be adopted for each new crisis. It is a shame that legislation and rules were being hastily drafted while ships were at anchor in the bay with sick crew and passengers on board. At the time of writing, ships (particularly, cruise liners) are being quarantined with seafarers and passengers on board not able to go ashore – even to their own countries. One of the most difficult sights of the crisis has been to witness ships with sick people on board being turned away from ports. The notion that support and refuge would be given to all those in distress has not been honoured. This is humanity not at its best.

¹ See eg L Paine *The Sea and Civilization: A Maritime History of the World* (Atlantic Books 2013) 439, 489 and 500.

² <http://www.imo.org/en/MediaCentre/HotTopics/Pages/COVID-19-Member-States-Communications.aspx>.

³ <http://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

⁴ See https://ec.europa.eu/transport/coronavirus-response_en.

Perhaps the lesson in all of this is simple: when the current crisis abates, knowledge generated by the crisis should be collated and then a new international legally binding instrument and regime should be devised, adopted and *implemented* to deal with the maritime response to pandemics and epidemics generally. It could have aspects which are flexible but it must have a solid core.

We need to be ready the next time. A global pre-packed response will be necessary, rather than a national or regional one assembled on the hoof. The rules will need to be precise and predictable, and there should be no doubt as to their interpretation. The politics and populism of the moment should have no place when compared with the needs of humanity in a crisis. There could be room for adaptation and flexibility, although most of the key features should be in place and ready to be used at a moment's notice. It will probably be a United Nations-led initiative because it will need to be applied globally. However, an organisation such as the EU could have a role in stimulating and encouraging such an initiative. Large states – whether shipowning, seafarer, passenger or trading – must participate actively along with every other state. The new regime will need a maritime dimension and so the IMO is indeed a relevant body that will need to participate. The organisation will equally need to have a health dimension, so the UN's World Health Organization will have to be placed at centre-stage. This new body will have to bring together coastal, flag, seafarer and passenger states, including landlocked states. Even though there are various customary rules of law, it is now time to place all of these issues on the level of a convention. In the next crisis, we need precise rules which we can apply readily and easily.

Instead of doubt, there ought to be clarity and certainty. Instead of chance, there ought to be predictability and precision. Instead of parochialism and subjectivity, there ought to be a global response and an objectively valid regime. It is clear that, in the light of the lives lost and the lessons learned, then there ought to be a new law adopted at an international level. Anything less would be an insult to the families and friends of the 333,000,000 people who have died so far, including the many connected with the sea. In order to honour and pay tribute to those who have lost their lives we have a duty to learn from this crisis and to ensure that appropriate global legislation is generated and put in place as soon as possible.

Vincent J G Power
A & L Goodbody, Dublin
Adjunct Professor of Law, University College Cork;
Visiting Professor of European Union Law, Dalhousie University, Canada