

# Maritime transport for sustainable development: key insights and projections from the UNCTAD Review of Maritime Transport 2022

Geneva, 9 February 2023

## Legal Issues and Regulatory Developments

### Chapter 7

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#### Regina Asariotis

Chief, Policy and Legislation Section,  
Trade Logistics Branch/DTL, UNCTAD

<https://unctad.org/ttl/legal>

[Regina.Asariotis@unctad.org/legal](mailto:Regina.Asariotis@unctad.org/legal)



# REVIEW OF MARITIME TRANSPORT 2022

Navigating stormy waters



UNITED NATIONS  
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- **Commercial Law implications of the COVID-19 pandemic**
- **COVID-19: Seafarers and crew change crisis**
- **Developments on climate change mitigation and adaptation for maritime transport**
- **Developments at IMO relating to liability for bunker oil pollution**
- **Other legal and regulatory developments affecting transportation**

# Commercial Law Implications of the COVID-19 Pandemic

**Unprecedented disruptions** associated with the pandemic and its socioeconomic consequences giving rise to a plethora of **legal issues affecting traders** across the globe

- In all cases where performance is disrupted, delayed or impossible, legal consequences arise, increasing need for (costly) dispute resolution/litigation; jurisdictional issues in a globalized context.
- Effects may lead to further disruption, business losses and bankruptcies and overwhelm courts and legal systems; with implications for international trade, and governance/rule of law

**Common and collaborative approaches needed to ensure business continuity, reduce incidence of disputes and facilitate their resolution, including**

- contractual extensions; restraint in pursuing legal rights and claims; efforts at mediation and informal dispute resolution
- commercial risk-allocation: standard form clauses drafted to address contractual rights/obligations in light of the circumstances associated with the pandemic

**Relevant implications and considerations vary depending on the type of contract concerned**

- With over 80% of the volume of world trade carried by sea and much of global commodity trade sold on CIF/FOB terms – important to understand and address implications for the key contracts concerned

# COVID-19: key international commercial law implications – UNCTAD Research and Analysis, Training and Capacity Building:



**COVID-19 implications for commercial contracts: International sale of goods on CIF and FOB terms**



**COVID-19 implications for commercial contracts: Carriage of goods by sea and related cargo claims**



**Contracts for the carriage of goods by sea and multimodal transport**

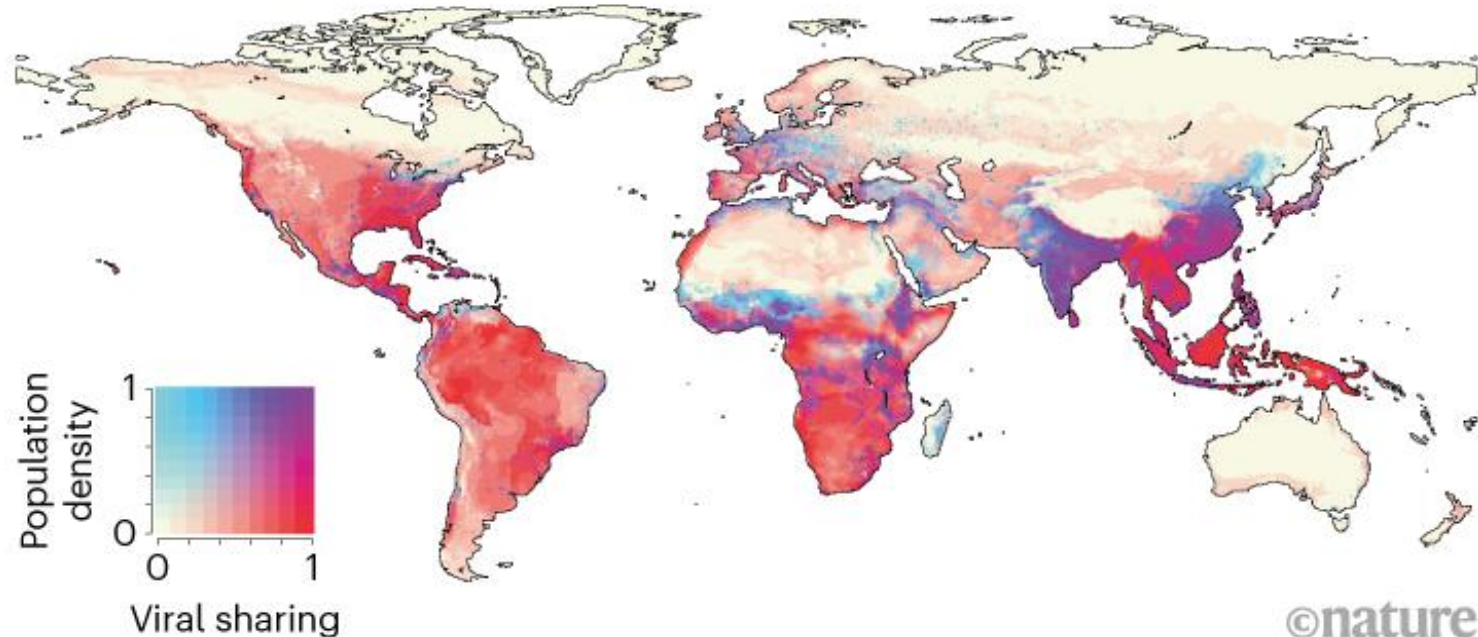


**COVID-19 and International Sale of Goods: Contractual devices for commercial risk allocation and loss prevention**

- **4 Training courses** on 'Implications of the COVID-19 pandemic for commercial contracts - International Sale of Goods on Shipment Terms and Carriage of Goods by Sea' (May-June 2022)
- **Webinar** with focus on considerations for policymakers (June 2022)

## Future pandemics risk: Climate change could lead to new pandemics

Models suggest that by 2070, climate change will be driving many mammal species to cooler regions, where they will meet for the first time and could exchange viruses. If Earth warms by 2 °C, they say, the regions with the highest chance of virus sharing will overlap with areas of dense human population, including parts of India and Indonesia. That will increase the risk of pathogens transferring to people.



# Commercial Law Implications of the COVID-19 Pandemic

## Recommendations for commercial actors

- Integrate balanced commercial risk allocation clauses into contracts
- Review of force majeure and off hire clauses
- Consider pandemic/infectious disease clauses
- Allow deviation to ensure crew changes and health care for the seafarers
- Choice of jurisdiction or arbitration in a forum that enables hearings online
- Opt for use of electronic alternatives where appropriate

## Considerations for policymakers

- Priority access to vaccination for seafarers and recognition of key worker status
- Facilitation of crew changes
- Consider mandatory controls on container demurrage
- Reduce cross-border checks in transit of goods by road
- Strengthen formal and informal dispute resolution mechanisms and institutions
- Legislation regulating the use of electronic documentation

## Regulatory developments on electronic trade documents

Key issue/obstacle: legal recognition of e-bills of lading as equivalent to paper documentation (document of title)

UK: Law Commission of England and Wales [Report and draft Electronic Trade Documents Bill \(2022\)](#)

[Singapore](#) has enacted relevant legislation in 2021, based on [UNCITRAL Model Law on Negotiable Transferable Records](#)

Collaboration of industry associations (incl. BIMCO, FIATA, ICC) to facilitate use of electronic b/l

## Multimodal transport: discussions at UNCITRAL and UNESCAP

UNESCAP – [guidelines](#) to harmonize key common provisions for multimodal transport

UNCITRAL - preparatory work on [negotiable multimodal transport document/record](#); formal work towards a possible legal instrument started in 2022 (WG VI)

- Important to consider implications for liability of carrier to final consignee

## COVID-19: Seafarers and crew change crisis

- To ensure food security, medical supplies, provisioning of populations, and harness economic benefits from growth in e-commerce, **physical supply chains need to be secured** in a coordinated way across the globe
- Border closures, lockdowns/preventative measures have resulted in hundreds of thousands of **seafarers stranded at sea**, far beyond expiration of their contracts, often beyond the maximum 11-month period envisaged under the MLC 2006. An estimated 125-150.000 seafarers are currently still affected.
- Other challenges included **access to vaccination** (less than half of the seafarers globally were fully vaccinated), **access to testing** (crew change required a negative test), and the **increase in the number of cases of abandoned seafarers** (more than 90 as of 22 September 2022).
- Calls by international organizations, industry bodies and governments, to address the humanitarian crew change crisis, urging action to **designate seafarers as key workers**; **accept seafarers' ID documents**; allow flexibility to divert ships/**call in ports where crew change is possible, without imposing penalties**.



For related UNCTAD work, key issues, developments, recommendations (2020-2021), see also: [Facilitating crew changes and repatriation of seafarers during the COVID-19 pandemic and beyond, 2021](#); [Chapter 5 RMT 2021](#)



- **Seafarers' rights and welfare Code of Conduct**, October 2021 - focuses on the full spectrum of seafarers' rights and welfare, from fair terms of employment and crew protection, to availability and appropriate management of grievance mechanisms.
- Updated WHO sector-specific guidance for the management of COVID-19 on board cargo ships and fishing vessels, December 2021
- IMO – Assembly Resolution (A.1160(32)) on Comprehensive action required to address seafarers' challenges during the COVID-19 pandemic, December 2021. Issues relate to **crew change, access to medical care, "key worker" designation** and seafarers' **prioritization for COVID-19 vaccination**.
- Strengthening international response and cooperation to address the seafarer crisis and keep global supply chains open during the ongoing COVID-19 pandemic | UNCTAD Policy Brief (December 2021)
- ILO, IMO, UNCTAD, WHO Joint Statement, February 2022 urging authorities to take a range of **measures to safeguard seafarer health and safety and avoid supply chain disruptions**
- ILO Tripartite Committee, agreed on **new amendments to strengthen MLC 2006**, May 2022. Aim: help seafarers access medical care ashore; **strengthen health & safety policies on board ships to protect against accidents**; facilitate seafarers' communication with families ashore.
- Ad hoc virtual **UN inter-agency Task Force on the impact of COVID-19 on seafarers (2022)**
- WHO negotiation/drafting of international instrument on pandemic preparedness and response

# Developments on Climate Change Mitigation and Adaptation for Maritime Transport

## *Reducing greenhouse gas emissions from international shipping*

International shipping accounts for around 3% of global GHG emissions

- COP 26: Getting to Zero Coalition (200 Industry organizations) urging the adoption of a sector-wide goal of zero emissions by 2050 and the commercial deployment of zero-emission vessels by 2030
- DHAKA-GLASGOW DECLARATION of the Climate Vulnerable Forum calls for mandatory GHG levy on international shipping
- Clydebank Declaration (19 States) – establish six zero-emission “green corridors” – entirely decarbonized maritime routes between two or more ports - by 2025
- Preparation of a revised IMO GHG Strategy - for consideration in 2023
- Proposals for further mid-term GHG reduction measures, including Market Based Measures
- Proposals to establish an International Maritime Research and Development Board (IMRDB) funded by a specifically designed Fund (IMRF)
- Inclusion of the shipping sector under the EU ETS system
- New BIMCO clauses on the contractual allocation of commercial risks associated to GHG emissions (EEXI Transition Clause/CII Clause)

# Developments on Climate Change Mitigation and Adaptation for Maritime Transport

## *Adaptation of ports and other coastal transport infrastructure to climate change*

Climate change adaptation for global ports and other key transport infrastructure remains a **major and increasingly urgent challenge** - in light of high/growing risks ([IPCC AR 6](#)): see [Climate change impacts on seaports: a growing threat to sustainable trade and development](#); see also [UNCTAD's related work](#) since 2008

Effective adaptation requires multifaceted approaches, including **strong legal and regulatory frameworks**, along with **strategies, policies and plans** to reduce vulnerability. Also required are appropriate **standards, guidance and tools** to facilitate stakeholder action on the ground

Recent developments include important technical guidance by the European Commission on climate-proofing infrastructure ([2021](#)) and industry guidance by [PIANC \(2022\)](#) on decision making under uncertainty



Key issues for developing countries: **acceleration of capacity building and finance**

## UNCTAD Policy Brief 103: Climate-resilience of seaports: Adequate finance is critical for developing countries but remains a major challenge - Key messages

- **Seaports are critical facilitators of global trade and development and vital for access to the blue economy**
- For SIDS, ports and coastal airports are lifelines for trade, tourism, food and energy security, as well as DRR
- These assets are at considerable **risk of climate change impacts**, which is growing
- Significant economic **costs of inaction and threat to sustainable development** prospects of the most vulnerable, including SIDS. Much is at stake - **Failure to adapt is not an option and time is of the essence**
- **Major scaling up of capacity building and infrastructure finance for developing countries**, including in the form of grants rather than loans, **will be critical**.
- **Investment in energy efficiency/renewables/decarbonization may bring important co-benefits for adaptation**, e.g in response to impacts of extreme heat, as well as **reduce related energy needs and costs, and enhance energy security**

# Liability and Compensation for Bunker Oil Pollution

**Bunker oil pollution:** devastating consequences for ecosystems, biodiversity, tourism/economies and sustainable development of coastal developing countries – **Adequate compensation is critical** (e.g. [The Wakashio, 2020](#), Mauritius)

Different international liability regimes:

- (Bunker) oil pollution from **tankers** (CLC-IOPC FUND regime, 1992) – three tiers of liability/compensation – maximum approx. 1 billion USD
- **Bunker oil pollution from other types of vessel** (Bunker Oil Pollution Convention, 2001 and LLMC 1976/1996) – **liability much lower and dependent on vessel size**

## Developments at IMO

- 3 resolutions providing for a unified interpretation of the statutory test for **breaking the owner's right to limitation of liability under the CLC 1992, LLMC 1976 and LLMC 1996**, adopted at the IMO Assembly (December 2021).
- **Claims Manual for the Bunkers Convention** in preparation by the IMO Legal Committee
  - Important to ensure rights of claimants are not eroded but are strengthened
- Ongoing work on development of **methodologies to amend liability limits** in various Maritime Conventions, including the LLMC

## Other legal and regulatory developments affecting transportation

### Reducing Pollution from Shipping

- IMO 0.5% sulphur limit (since 1/2020): use of compliant fuels or fitting exhaust gas cleaning systems (EGCS)
  - **Guidelines for EGCS (2021)**; **Black Carbon emissions** – [MEPC Resolution](#) calling for voluntary use of cleaner alternative fuels/methods of propulsion when operating in or near the Arctic
- **Ballast Water Management Convention 2004** - Review Plan agreed by IMO (MEPC, June 2022)
- [IMO Strategy to address marine plastic litter from ships](#) (MEPC, November 2021)
- UNEP/UNEA resolution [End plastic pollution: Towards an international legally binding instrument](#) (May 2022)

**2010 HNS Convention** – 6 further ratifications needed for entry into force, to address an important regulatory gap  
<https://www.hnsconvention.org/>

**Negotiations for a BBNJ legal instrument under UNCLOS** – 5<sup>th</sup> session to be resumed 20 February 2023; latest [revised draft agreement](#) (August 2022, edited version available since December 2022)

**Status of conventions** – [International Convention on Arrest of Ships, 1999](#): Accession by Peru (2022)



**Regulating Maritime Autonomous Surface Ships (MASS)** – Non-mandatory MASS Code to be adopted at IMO by 2024; mandatory Mass Code might follow, to enter into force in 2028.



**Thank you!**

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