

# The changing economic structure of the maritime industry and its adverse effects on seafarers' health care rights

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## ABSTRACT

**Background:** This review seeks to understand whether and how seafarers can exercise their human right to health care and the factors that facilitate or impede that exercise. The general focus is on a critical policy analysis of labour policies from the mid-twentieth century through today, with a specific focus on how Filipino seafarers access their health care rights.

**Materials and methods:** The methodology includes a critical policy analysis of seafaring, focusing on mid-twentieth century political shifts in the recognition and regulation of health care rights. The analysis of international and United States policy provides the backbone for understanding the health care experiences of seafarers by laying the ideological, theoretical, and political foundations of labour rights and precarious employment.

**Results:** Policy analysis shows that there are numerous laws, regulations, and human rights norms that have been established to protect seafarers, but uncertain and limited recourse to lay claim to such laws, regulations, and norms while at sea. Lack of recourse to policies and regulations, taken together with the changed conditions of labour and worker protections through technology and neoliberal policies, create the conditions that may increase the health inequity among seafarers'.

**Conclusions:** Health policy discussions in the United States and internationally must not solely focus on the health of seafarers as an interruption to travel and trade, but policy makers should consider that their decisions may contribute to how seafarers can exercise their rights to health care. In this context, health is more than disease and access to care – economic and governance structures come to not only matter, but play an integral role in the facilitation or impediment of health care and to the health arrangements/conditions of workers.

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**Key words:** health policy, medical humanities, seafarers, neoliberalism, labour practices

## INTRODUCTION

In November 2013, a Filipino crew member boarded a cargo ship, flying an open registry flag, traveling in international waters, and headed from Africa to the United States. Two days after leaving the port, he contracted malaria. No crewmembers were given anti-malaria pills, even though pills were found on board the ship. The other crewmembers, also Filipino, brought the dying man food and water for days. The port chaplain, who works for an organisation

that assists men and women who work at sea, described these seafarers' experience of watching their fellow seaman die as, "The straw." When they arrived at the port, they also began telling her their stories of food shortages, withheld pay, and lack of medical care. The captain, working on ships since the 1970s, explained to her the changing pressures he has endured since he began his work as a seafarer and especially since post-September 11<sup>th</sup> regulations have been enacted [Author interview with port chaplain; 2013].

Securitisating seafarers has put more economic pressure on companies, and by default, on the captains of their ships, and finally, on the seafarers themselves. He also explained that instead of being able to trace responsibility to one person or company, the unjust practices are part of larger, global economic and political systems that help to create layers of exploitation.

Xavier, a seafarer who regularly docks in a southeast Texas port explains most poignantly how seafarer's experiences are marginalised within the United States imagination. He stated that, "The people on land have no idea the sufferings that the people who make their living at sea endure. The world's consumers often do not care how the products get to their countries; only that they are there (...). Sacrifice is a word that is the mainstay of a seafarers' life. The world economy would not survive without the sacrifice of hundreds of thousands of people who work at sea" [1]. The seafaring industry is hidden in plain sight. Seafarer's lives are entangled in the lives of non-seafaring citizens, yet the two rarely meet. Seafarers travel in spaces many will never go and interact with systems and people many will never encounter, yet the spaces, systems, and people are what keep the global economy moving and functioning. This review seeks to understand the recourse seafarers have to justice based on the relevant international and national conventions and regulations, thereby understanding whether and how seafarers can exercise their right to health care and the factors that facilitate or impede this.

## MATERIALS AND METHODS

The methodology includes a critical policy analysis of seafaring, focusing on mid-twentieth century political shifts in the recognition and regulation of health care rights. Focusing on the globalisation of seafaring and then moving to an analysis of international and United States regulatory policy related to seafarers and their access to health care provides the backbone for understanding the ideological, theoretical, and political foundations of precarious employment within the seafaring industry. With a focus on Filipino seafarers', who total a quarter of a million people in the seafaring industry, I argue that the Philippine/United States seafaring relationship is a microcosm of the changes happening through labour brokerage movements and precarious employment. The changes to regulatory policy within the Philippines, and the lack of ratified conventions within the United States, are important legal and historical relationships and help to uncover how regulations and laws affect employers and their health. Although I argue that the Philippine/United States relationship is an important one to understand if those in the maritime industry want to positively affect seafarers' health, I also acknowledge that limiting the analysis to these two nations is not entirely

representative of the relationships between countries that are the sources of crews and those who own, manage, and service ships.

## RESULTS

### NEOLIBERAL GLOBALISATION

Seafarers have been working and living on the sea throughout recorded history, but since the mid-twentieth century there have been dramatic changes in the economic viability of international sea transport, technological advances, worker protections, and the trajectory of globalisation in the United States [2, 3]. The shifts in mindset of the 1970s that goods should be delivered "cheaply, safely, and on time" [4], in tandem with deregulation of the United States Interstate Commerce Commission [3], helped shift the conceptualisation of how United States trade and economics could work differently and more lucratively. Marc Levinson, an economist and author of 'The Box', writes that containerisation "made shipping cheap, and by doing so changed the shape of the world economy" [3]. Containerisation not only had impacts on the amount of goods that would be shipped across the world, but it changed the make-up of how goods were delivered and who delivered them. Containerisation allows for outsourcing labour, and thereby taking advantage of cheaper labour abroad.

Shipping, and the goods and people involved in shipping, were changed through containerisation and its ability to shift the economics of trade, but containerisation did not become a force in the United States without government and corporate policies that helped to create such a shift. President Gerald Ford's elimination of the Interstate Commerce Commission [3], the dissolution of railroad regulation by Congress in 1995 [3], and the Shipping Act of 1984 that promoted "a greater reliance on the marketplace" [5] were products of neoliberalism and helped propel the engines of global trade that reduced costs as well as worker protections. On paper, worker protections were not eliminated, but the economisation of global goods and the movement of goods across global spaces reshaped global labour relations, creating the possibility of disposable worker protections, and subsequently, a disposable workforce [6].

Today, the transport of almost 90% of goods and employment of 1,500,000 seafarers are features of the shipping industrial-complex [1, 7]. As Rose George reminds readers in her book 'Ninety Percent of Everything', seafaring is not an inherently bad life; in theory "seafaring can be a good life" but "it can go wrong with the speed of a wave" [7]. George is not only talking about what can go wrong mechanically with a ship or naturally with a storm, but how policies and regulations can create little to no recourse for the people they are meant to protect. In other words, poli-

cies, regulations, and laws of the seas are meant to protect the seabed and seafarers, but policies, regulations, and laws are not free from economic and political pressures. The policies that regulate or deregulate transportation, the environment, and health care nationally and internationally come to affect the sociopolitical structures that affect the people working in those industries, even if in indirect ways, and those sociopolitical structures facilitate or impede how health risks are managed at sea and in port.

## INTERNATIONAL POLICY

There are numerous policies and laws that are meant to directly protect seafarers from occupational health risks, such as Conventions of the United Nations' International Maritime Organisation (IMO) and the International Labour Organisation (ILO). However, such regulatory frameworks can be contested in practice by companies. The IMO is the global standard-setting authority for safety [8] and the ILO was created as a direct result of industrialisation and the subsequent exploitation of workers [9], but the use of open registries or flags of convenience beginning in the 1920's has had dramatic effects on the protection of seafarers even in spite of IMO and ILO regulations [7]. For instance, the flag state is ultimately responsible for maintaining ship registers; the jurisdiction over the ship, the master, officers, and crew; taking measures regarding safety; ensuring the ships conform to international rules and practices; carrying out investigations; carrying out or cooperating with other state investigations; and some anti-pollution measures [10]. Today, 68% of ships are known to sail under flags of convenience [7].

Organisations like the IMO and ILO have regulatory guidelines that explicitly outline how seafarers should be able to access medical and health care at sea and while in port [11], such as the "International Medical Guide for Ships" [12] and the "Medical First Aid Guide for Use in Accidents Involving Dangerous Goods" [13], as well as the updated World Health Organisation (WHO) International Health Regulations (IHR) [14] and the Maritime Labour Convention, 2006 (MLC, 2006) [15]. The purpose of the updated IHR are "to prevent, protect against, control and provide a public health response to the international spread of diseases in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary, interference with international traffic and trade" [14]. The IHR is not focused on protecting seafarers who are sick or injured, but some of the provisions can create a safer environment for seafarers. The updated IHR requires that those travelling by sea be treated "with courtesy and respect, taking into consideration their gender, sociocultural, ethnic and religious concerns" [16] as well as providing guidance on "safe water and food, on vector and rodent control, and on waste disposal" [17].

Although the updated IHR has potential benefits for seafarers, the main concerns that led to the IHR being updated were economic in nature: infectious disease control decreases the interruption of travel and trade [18].

The MLC, 2006, which addresses employment, environment, and health conditions, requires signatories to follow Title 4 of the Convention – "Health Protection, Medical Care and Social Security Protection" – which places responsibility for health protection and health care costs on nation-states, flag states, and shipping companies. According to the MLC, 2006 flag states are responsible for the health protection of seafarers while they are on board the vessel; states that have signed the MLC, 2006 must provide medical care free of charge to seafarers when they are in their territory; and shipowners are responsible for the costs of sickness, injury and/or death while the seafarers are in their employment [19]. In theory and similar to other IMO and ILO Conventions, these protections seem adequate to cover the health and/or medical issues/costs that seafarers may experience on board a vessel or in port, but in reality this overlapping jurisdictional maze allows the shipping industry to safeguard companies through flags of convenience and legal loopholes, which may be pernicious to seafarer's health and well-being.

## UNITED STATES POLICY

The United States has not ratified many of the conventions that guide medical and health care for seafarers, including the MLC, 2006, even though 81 countries have ratified it, including the Philippines. Although the United States has not ratified the MLC, 2007, United States shipping companies are required to pay for certain benefits for the seafarers they hire based on two United States laws; (1) maintenance and cure and (2) the Merchant Marine Act of 1920. Maintenance and cure was brought to British admiralty law in 1150 and formally enacted by the first United States Congress in 1790, making it one of the oldest laws that expresses protections for seafarers from the severity of life at sea at the cost of the shipowners [20]. The doctrine was based "on the belief that the vessel served as the seaman's home and the seaman should be entitled to continue receiving lodging and food even when sick" [20] and United States courts granted maintenance and cure "regardless of the seaman's employment contract" [20]. However, according to a letter addressed to United States Congressional Committees from the Centre for Seafarer's Rights, maintenance and cure benefits are under the near-constant threat of being dissolved for some seafarers due to lobbying and legal challenges mounted by certain shipping companies.

The Merchant Marine Act of 1920, also known as the Jones Act, guarantees "a seafarer's right to a trial by jury as

a remedy to recover damages in the case of injuries sustained while under contract to work aboard a ship” [21]. In essence, workers on a ship that operate out of United States ports can seek legal remedy in the United States, even if the seafarer is a foreign citizen [21]. The Jones Act and maintenance and cure are based on where a shipowner operates, not on the citizenship of the seafarer [21]. In these instances, the legal domicile of the ship companies, not land, citizenship, or international waters, serves as the space of recognition for seafarers to have legal recourse for injuries, sickness, and other health-related diseases. The ship becomes an extension of the nation-state, yet holds special exceptions to the rights and laws that govern nation-states [7].

To date, maintenance and cure and the Jones Act are still in effect legally, but recent decisions in the court cases *Bautista v. Star Cruises* and *Francisco v. STOLT ACHIEVEMENT MT* have made some of the oldest laws protecting one of the most dangerous occupations merely nominal [21]. William Terry, a critical geographer writes that, “The *Bautista* and *Francisco* cases have set a precedent that allows the defence attorneys for shipping companies to remove cases from state courts to federal courts, where judges will automatically compel arbitration because of the aforementioned jurisdictional concerns. Consequently, the merits of any individual case are never considered in the process, and Filipino seafarers no longer have ready access to legal remedy in United States courts” [21]. As an attorney described it, “Yeah, it’s because the cruise lines have decided to enforce the POEA [Philippine Overseas Employment Agency] arbitration provisions, nothing more than that, and the *Bautista* decision [is] why those cases are getting dismissed” [21]. The precedent of the *Bautista* and *Francisco* cases affects all Filipino seafarers who have arbitration agreements in their contracts, which includes all Filipino seafarers. Filipino seafarers are required to sign POEA Standard Employment Contract (SEC) agreements to work on foreign ships, and the updated POEA SEC agreements include an arbitration clause [21]. In theory, this clause guarantees Filipino seafarers the right to have a grievance heard by a legal entity, but in practice it has removed their right to have their case remedied in United States courts [21]. Inevitably, Filipino seafarers find themselves in a precarious state of citizenship/slight citizenship/ /no citizenship simultaneously.

## DISCUSSION

### PRECARIOUS EMPLOYMENT AS A STRUCTURAL DETERMINANT OF HEALTH

It is no accident that in one of the most globalised industries over a third of all seafarers come from the same

country — the Philippines — totalling a quarter of a million people [7]. The poverty of Filipinos alongside their national debt makes many desperate to find work. As one Filipino seafarer put it rather bluntly, “We are cheap and speak good English” [7]. According to ‘The Economist’, Filipinos are the country’s largest export — an eerie yet measured description [22]. Categories — like “exports” or “migrants” — come to have significant political and economic meaning as well as identity meaning-making. In other words, how people identify themselves, how others identify them, or how structures and systems identify certain groups of people (e.g. economic migrant or economic export) may influence the way seafarers can or are willing to construct or contest labour relations.

Robyn Magalit Rodriguez argues in ‘Migrants for Export’ that describing people as commodities (e.g. exports) is a technique of the Philippine state and is made knowable through the economic labour brokerage movement [23]. The labour brokerage movement is a network of crewing agencies that exist to arrange work for Filipinos and who profit from doing so. Filipinos are hired as temporary workers who work finite periods of time on contract and are part of a neoliberal globalisation that is restructuring how people can access rights and services guaranteed to them through current laws and policies. Neoliberal globalisation and the workers it produces are created through the practices and techniques of multiple actors at multiple scales, such as the creation of precarious employment.

The Institute for Work and Health, a research-to-action organisation that seeks to improve the safety and health of working people, defines precarious employment as lacking “certainty about continuing work, control over work, legal protection, adequate income and benefits, job status and job safety” [24]. Benach et al. [25] write that the “global increase of flexible employment relations”, “higher levels of job insecurity”, “erosion of workers’ employment and working conditions”, and “limited workplace rights and social protection” have led to precarious employment as an emerging social determinant of health. The effects of precarious employment on the health of individuals is well documented [26] and is “linked to the emergence of a new underclass” according to economist Guy Standing [27]. Standing calls this underclass the “precarariat” and argues that they comprise people who have insecure lives because of insecure jobs [27]. People who work contractual or temporary jobs are referred to as “circulant migrants” by Standing, with the shared traits of traveling to and from their country of origin and their country of work in order to send remittances to relatives in their home country [27]. By this definition, seafarers are most closely aligned to “circulant migrants” because of their transient lives and contractual work, all while lacking certain benefits and protections that citizenship theoretically guarantees.

## POLITICAL LIFE AS RECOURSE

Citizenship, in theory, is a defence against the erosion of civil, social, political, economic, and cultural rights within the nation-state one belongs, whether by birth, marriage, or naturalisation, respectively. Although people within nation-states are generally categorised as ‘citizen’ or ‘non-citizen,’ another jurisdictional categorisation for members of a population is *denizenship*. A denizen is a foreigner who is allowed certain rights, but not full rights [27]. The concept has historical roots in the Middle Ages and follows the ancient Roman idea of people who have the right to live in a place but are not allowed to participate in political life [27]. Although the various types of migrant status (e.g. undocumented, refugee, circulant) will change who and how people can access certain civil, social, political, economic, and cultural rights, the denizen will always lack the full rights of citizens. The concept of the denizen is similar to Giorgio Agamben’s theory of bare life, which is one who lacks political rights, but is part of the political because of the sovereign’s decision to make life or death [28].

As noted above, Standing [27] argues that precarious employment is a form of political and labour insecurity. Bringing Standing to bear on Agamben, the exclusion of denizens from political life happens through a hyper-commodified labour market, which results in certain people (the precarious) not having the time or leisure to participate in political life [27]. The danger of disengagement is that because people no longer have the time or leisure to participate in political life, they no longer have the capacity to actively reject policies that create precarious employment conditions, such as a lack of benefits, legal protections, and income. Moreover, for migrants who not only lack time and leisure, but also lack the currency of citizenship to contest policies, the neoliberal strategies of market disciplines and trade agreements have significant effects on how they can lay claim to rights that are guaranteed to them, like the right to health care or to seek health care services.

For seafarers, who are usually legal workers but are vulnerable to the conditions of precarious employment, their denizenship may theoretically secure them civil, cultural, economic, and social rights, but in reality those rights can be dismantled through the jurisdictional maze of laws and policies regulating the shipping industry because they lack the full political rights of citizenship. In other words, a seafarer may be theoretically protected from discrimination (civil), may be able to participate in artistic or scientific advancement (cultural), is guaranteed safe working conditions (economic), and can access health care (social), but through flags of convenience and legal loopholes, seafarers’ civil, cultural, economic, and social rights can be subverted because they lack political recourse to claim their rights while at sea, in port, or outside their country of origin.

## CONCLUSIONS

The liminality (a position of being betwixt and between) that seafarers experience being at sea and between national and institutional sovereignties; racial, class, and citizenship hierarchies; and insecure worker contracts are not happenstance. David Harvey writes that the globalised workforce has a direct connection to what he has called “time-space compression” [6]. Harvey’s thesis is that by increasing geographical ranges and shortening market contracts, conceptions of time-space are changed, and this change can be traced to the economic and political story of neoliberalism [6]. Space, like time, is not static, but it is imagined and produced [29]. Terry, reflecting on the legal decisions of *Bautista* and *Francisco*, writes that, “Legal interpretations actively produce space and have both material and discursive effects at multiple scales” [21]. Water is often thought of as an open and free space, but lines and maps draw and re-draw the sea, and those lines and maps are continually produced and created. How the sea is spatially contested and constructed creates social, economic, and political relationships between seafarers as well as between the structures that come to impact the health care of seafarers.

There are numerous laws, regulations, and human rights norms that have been established to protect seafarers, but uncertain recourse to lay claim to such laws, regulations, and norms while at sea. As George expressed it best, ‘The sea dissolves paper’ [7]. Lack of recourse to laws and regulations, taken together with the changed conditions of labour and worker protections through technology and neoliberal policies, create the conditions that may be ripe for worse health inequities among seafarers [30]. There are complex seafaring networks that come together to affect seafarers and their health care access, such as government policies, corporate policies, environmental policies, technological innovations, human rights norms, unions, legal sectors, and the everyday practices of people as compared to law, policies, and regulations [21].

Seafaring is a fraught and complicated way of life, and any research that attempts to understand the health care rights of seafarers must undertake the messy and complicated work of studying the many pieces, and sometimes missing pieces, that contribute to illness, injury, and demise. Seafarer’s health care rights cannot be understood without considering neoliberal policies of the late twentieth century, studying the regulations that contribute to protections or the lack of protections, interrogating structures that lead to seafaring as an occupation amongst certain population groups, and speaking to the very people who live day in and day out the life and work of seafaring. Health policy discussions in the United States and internationally must not solely focus on the health of seafarers as an interruption to travel and trade, but policy makers should consider that their decisions

may contribute to how seafarers can exercise their rights to health care. In this context, health is more than disease and access to care – governance and economic structures come to not only matter, but play an integral role in the facilitation or impediment of health care and to the health arrangements/conditions of workers.

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