

## Article

# Legal Challenges in Protecting the Rights of Cruise Ship Crew at the Post COVID-19 Pandemic Era

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**Abstract:** The unexpected outbreak of the COVID-19 pandemic has harmed the shipping industry, especially the cruise sector. During this period, the cruise crew, as a neglected subject, experienced great work, life and psychological pressures. However, many states, including China, do not pay enough attention to the legal protection of their rights. The legal literature on this issue is insufficient, and this paper attempts to fill the gap. This paper aims to give a legal suggestion for how to protect the legal rights of cruise crews in ways that are both responsible and effective in the post-COVID-19 pandemic era. To achieve the goal, this paper adopts legal research methods to analyze the application of international conventions and Chinese laws and regulations. The paper discusses the legal limitations on the rights' protection of cruise crews in the context of the COVID-19 pandemic, and the research results are legal considerations and suggestions for the protection of the cruise crew. In addition to taking reasonable measures to reduce the impact of the epidemic on cruise crews, the legitimate rights and interests of all cruise crew individuals should be realized as much as possible under existing international conventions and domestic laws. It is important for states to further improve crew and labour legislation and strengthen international cooperation to deal with the impact of the global pandemics on the cruise.

**Keywords:** COVID-19; cruise ship; cruise crew; legal application; protection of rights; epidemic prevention



**Citation:** Yu, Y.; Lorenc, M.; Shao, Y. Legal Challenges in Protecting the Rights of Cruise Ship Crew at the Post COVID-19 Pandemic Era. *Sustainability* **2022**, *14*, 9875. <https://doi.org/10.3390/su14169875>

Academic Editors: Zhixiong Li, Yongjun Pan and Maxim A. Dulebenets

Received: 9 June 2022

Accepted: 8 August 2022

Published: 10 August 2022

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## 1. Introduction

The cruise industry is one of the fastest-growing industries in recent years, according to the Cruise Lines International Association (CLIA), and the latest pre-epidemic figures confirm that the cruise industry is playing an important role in boosting jobs and economic opportunities by creating 1,166,000 jobs worldwide in 2019 [1]. The cruise ship crew, the seafarers including those who provide services on the hotel section of the cruise, are unique but essential and invisible workers who contribute to the growth of the wider tourism, leisure, and hospitality industries [2]. A “seafarer” as defined in Article II, paragraph 1(f) of the Maritime Labour Convention (MLC 2006) refers to “any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.” This definition includes any crew sailing or operating ship and personnel-providing services in the hotel section of the ship. All cruise crew should be protected by the Convention and have the right to a decent standard of work and living (this is based on the definition that the style of cruise ship crew in this paper includes all crew members who sail, operate, or provide services on cruise ships. Therefore, if not otherwise specified in this paper, the term “seafarers” apply to cruise ship crew members as well). However, despite occupational safety standards, seafaring has specific occupational risks that make being a cruise crew member a high-risk profession [3].

Due to the characteristics of floating cruise hotels, cruise companies tend to treat cruise crew as land-based hotel staff rather than ordinary crew members, which leads to extra workload and work pressure for cruise crews. Cruise ships are 24/7 businesses, according to Nevins, and the cruise crew has to work for over 100 h a week with low pay rates [4]. During off-hours, crew members are still on board and limited in what they can do, even in port [5]. The crew does not have much privacy, as they share cabins, bathrooms, and lounge areas. What is worse, under the flag of convenience, cruise companies have the flexibility to employ a multinational workforce, with large numbers of the crew from low-income states being hired with low wages [6].

In 2020, the COVID-19 pandemic had a significant impact on liner shipping and maritime transportation overall [7]. This is reflected in declining shipping capacity, port congestion, declining container turnover, soaring freight rates and container shortages [8]. The two shipping sectors that have been hardest hit in the shipping industry are those most directly related to individual and cross-border flows, namely ferry services and the cruise industry [9]. Travel restrictions imposed by nearly two-thirds of the states had led to a rapid decline in international cruise passengers' numbers [10]. In addition to affecting the development of the cruise industry, the cruise epidemic has also become a global concern. Infectious diseases could spread easily among people aboard due to the closed cabins and high population density [11]. Public health emergencies on cruise ships have frequently occurred before the COVID-19 outbreak (such public health crises could be searched on the official website of the CDC, available at <https://www.cdc.gov/> (accessed on 25 March 2022)). The Diamond Princess cruise ship has been anchored at Yokohama, Japan since 3 February 2020. As passengers began disembarking on 23 February, the confirmed cases of COVID-19 rose to 715, including those of crew members [12]. Notably, the Diamond Princess's crew remained on board during the days when the ship was docked in port and quarantined. The crew members continued to perform their normal duties by serving meals to passengers and remained in their cabins when not working, and crew members with symptoms were required to remain in their cabins, even though they didn't have separate private rooms like passengers [13]. The Diamond Princess has more than 1000 crew members from 56 states, mostly from low and middle-income states in Southeast Asia [14]. The epidemic has had a huge impact on both their financial situation and their physical and mental health. The plight was not unique for the Diamond Princess, with several cruise ships experiencing similar difficulties. During the voyage of the Grand Princess Cruise from 11 to 21 February 2020, the epidemic was further complicated as it consisted of two voyages, A and B, where 19 crew members were infected with COVID-19 on voyage A, and many of them passed the virus to passengers during voyage B [15].

The negative impact of the epidemic on cruise crew members continues. Several cruise companies are laying off crew members as their share prices plunge [16]. Many states have closed their borders and issued a No Sail Order, leaving large numbers of cruise crews stranded at sea for longer periods before being repatriated, resulting in what the International Maritime Organization called a "humanitarian, safety and economic crisis" [17]. Fox News reported that at least 42,000 crew members were still stuck on the cruise ship without pay after a three-month industry shut down due to the COVID-19 pandemic [18]. Bloomberg published a long article titled "The Cruise Ship Suicides" on its official website, telling the tragic story of cruise crew members who committed suicide as trapped on board due to the epidemic [19].

The good news is that the Centers for Disease Control and Prevention (CDC) lifted its COVID-19 risk warning for cruise travel effective on 30 March [20]. According to the CLIA, more than 30 states have reopened to cruise tourism, and additional markets are set to reopen in the coming months [21]. Since the outbreak, we have focused on ports, public health, and the rights of cruise passengers, while neglecting the work of cruise crew and their rights. Cruise crew members will continue to provide hotel services on board with 24/7 work, crammed into cabins for rest, with on days off and low payment. Cruise ships are gradually returning to normal, but this should not happen at the expense of

crew members' health and safety. Although our lives are slowly returning to normal as the COVID-19 pandemic winds down, what if the next public emergency such as another COVID-19 occurs on a cruise ship? Can existing laws and regulations sufficiently protect the rights of cruise crews?

Therefore, to deal with the protection of the rights of cruise crews, this paper discusses from the perspective of law, taking China as an example to explore the application of Chinese laws and policies to solve these problems. With the development of China's cruise industry, international cruise companies have an increasing demand for Chinese cruise crew members [22]. However, China's cruise labour market policies and regulations need to be improved, especially in the context of the COVID-19 pandemic. In China's maritime judicial practice, crew disputes account for a large proportion. According to the Supreme People's Court of the People's Republic of China, from 2015 to 2020, the number of crew dispute cases accepted by maritime courts accounted for 30.98%, 21.78%, 17.95% and 29% of all cases, respectively [23]. However, there is no special legislation on the crew in China, the current laws and regulations have few provisions concerning the crew, which are more focused on the administrative management of them and have a limited role in determining rights and obligations.

This paper will make two contributions to the existing research. First, we put forward suggestions on special measures to respond to public health emergencies and protect the cruise crew in line with the COVID-19 epidemic prevention policies. Second, we examine the legal application of international laws and Chinese regulations in terms of legal preposition and doctrines, and we propose to realize the legal protection of cruise crew members by improving domestic legislation on crew and labour, and promoting international cooperation within the legal framework of current international conventions. Section 3 describes laws and regulations related to the protection of cruise crews, Section 4 discusses the legal limitations of protecting the rights of cruise crews, and the suggestions for addressing the issues are in Section 5. The conclusion is in Section 6.

## 2. Literature Review and Methods

### 2.1. Literature Review

Although there is lots of literature on cruise crews from the perspective of management and psychology, as well as legal research on the cruise industry, there are few literatures on the legal protection of cruise crews. The current research on the cruise crew mainly focuses on the following three aspects:

The first is the occupational welfare and health safety of the cruise crew. Radic pointed out that research into crew members' work and life experiences at sea is still limited, and that occupational and health safety on the cruise remains an uncharted field [24]. It is obvious that the working conditions are not good for the cruise crew as the cruise ship design usually prioritizes the living and leisure areas for passengers and minimizes the space available for the crew to provide hotel and leisure services [25]. Sehkaran noted that cruise ships are not bound by wage standards, and that cruise crew wages are often very low compared to the company's national base pay rates [26]. The problem may be even worse in China. There is a huge demand for cruise crews in China, but the current occupational welfare of the cruise crew is not satisfactory due to the limited language abilities and practical skills [27].

The second is the infectious diseases among the cruise crew in the public health event. Rocklöv said that cruise ships have the highest rate of infectious disease transmission of any other mode of transportation [28]. There have been research analyzing the COVID-19 infections among the cruise crew on cruise ships such as the Diamond Princess [29]. In addition to infectious diseases, crew members are also highly vulnerable to mental problems in the wake of COVID-19 [30]. Radic found that during the COVID-19 pandemic, cruise crew members had their biggest fears related to not having the ability to return home, not being paid, and feeling uncertain about their future [31].

The third is the rights and interests of the cruise crew. Terry found that existing laws are more inclined to protect cruise companies, the relationship between cruise companies and the cruise crew is not equal, and the legal rights of crew members from lower states are more likely to be damaged [32]. Before the outbreak of COVID-19, Graham noted that from the human perspective, no catastrophic incident related to crew members had occurred to prompt legislation to safeguard their welfare, but now the epidemic has led to more disasters for crew members [33].

After searching the literature, we found that there is little analysis of the rights of the cruise crew from a legal perspective, which may be a new field. The hot topics of discussion are the prevention and control of the cruise epidemic [16,34], the international obligations of the states [35], and the development of the industry after the COVID-19 pandemic [36]. It is undeniable that the research had laid a foundation for the development of this study. Through the research, we could find that the occupational welfare and health safety of the cruise crew are not perfect, and the COVID-19 pandemic has aggravated such difficulties. (The first and second aspects of the literature review above.) These studies confirmed the importance and necessity of protecting the rights of the cruise crew. Through the literature review of the current research on the rights and interests of the cruise crew, we could confirm that the existing laws and regulations of the ordinary crew are being applied to the cruise crew in the absence of special legislation. Based on the existing literature, the paper could further consider the following two questions: Are existing laws and regulations sufficient to protect the rights of the cruise crew? What are the shortcomings of the existing laws and regulations in responding to the COVID-19 pandemic? These two issues will be discussed based on the current research. After a comprehensive analysis of the application of laws and regulations, this study will put forward suggestions for the protection of the rights of the cruise crew, which could be the significance and value of this paper.

## 2.2. Methods

The research method adopted in this paper is the classical legal method including empirical research of law, policy science and comparative case studies. The facts about the outbreak of the COVID-19 pandemic on cruise ships, and the information of the cruise crew members, are mainly collected through the official websites of the International Maritime Organization (IMO), the CLIA, the CDC, and relevant news reports. The research presents a desktop study of the major legal resources, including international conventions and Chinese laws and regulations related to cruise crews. They mainly include the Maritime Labour Convention (MLC 2006), the protection of human rights under the United Nations (UN) Conventions, the International Health Regulations (IHR 2005), the Maritime Law of China, the Maritime Traffic Safety Law of China, the Regulation on Seamen of China, etc. The purpose of analyzing existing laws and regulations is to explore the original intention of the legislation, find out the ambiguity and inefficiency in relevant rules, and put forward reasonable suggestions for improvement.

For an in-depth academic discussion of these laws and regulations, research literature and references were obtained by using keywords such as cruise ships, COVID-19, epidemic prevention, and cruise crew to search. A comprehensive search and literature review on the cruise ship epidemic and the cruise crew provided a solid basis for empirical analysis and further discussions. Based on these findings, the actual effects of existing policies and regulations on protecting the rights of the cruise crew are evaluated. These empirical studies will help to understand the operation of relevant legal systems and the impact of the formulation of policies to protect the rights of the cruise crew.

The research also includes a comparative study of China as its tremendous complexity and development dynamics. Combined with the new situation arising in the post-COVID-19 pandemic era and the practical challenges of laws in China, the paper emphasizes the necessity of protecting the rights of cruise crews and analyzes the ways to improve the legal protection of cruise crew members in China under the existing legal framework.

### 3. Applicable Laws and Regulations for the Rights' Protection of Cruise Crew

#### 3.1. International Conventions

Three interrelated international legal standards can be used to protect cruise crew members: the protection of seafarers' rights under the International Labour Organization (ILO) Conventions, the protection of human rights under the United Nations (UN) Conventions, and the strengthening of the maritime safety under the IMO conventions. This set guarantees the rights of all cruise crew members, not just ordinary seafarers, as well as the comprehensive legal protection approved by states [2].

The most important of these is the Maritime Labour Convention (MLC 2006), implemented by the International Labour Organization (ILO), sometimes called the "Seafarers Bill of Rights" [37]. "Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection" (Article 4.4). Aimed to "ensure comprehensive worldwide protection of the rights of seafarers; and to establish a level playing field for states and shipowners committed to providing decent working and living conditions for seafarers, protecting them from unfair competition on the part of substandard ships" [38], the Convention's adoption and entry into force has resulted in significant changes to the rights and benefits of seafarers in the international maritime industry. For the cruise industry, maritime labour standards were used to only protect seafarers working in ship operations, but the MLC 2006 classifies all shipboard workers as "seafarers", including those who have traditionally been understood to work outside of seafaring: hotel and restaurant staff, actors, photographers, etc., regardless of their employer [39].

The Convention is first of all a consolidation of previous ILO legislation on labour standards for seafarers [40]. Structurally, MLC 2006 follows a similar approach to the STCW Convention. The Convention consists of Articles, Regulations and a Two-Part Code. The Two-part Code contains mandatory standards (Part A) and non-mandatory standards (Part B). The Articles contain more general statements of principles, obligations and rights with the specific details set out in the Regulations and the Code. The Regulations and the Code are organized into general areas under five titles: "Minimum requirements for seafarers to work on a ship", "Conditions of employment", "Accommodation, recreational facilities, food and catering", "Health protection, medical care, welfare and social security protection", and "Compliance and enforcement". The Convention specifies the responsibilities of flag states, port states and labour-supplying states. Flag states must examine and certify their registered ships according to MLC 2006 provisions. Port states must inspect foreign vessels entering their jurisdiction, and could use the "no more favourable treatment" clause to inspect even non-ratifying state ships. Labour-supplying states are responsible for enforcing minimum standards in the recruitment and placement of seafarers and for providing social security protection for their nationals' seafarers [41].

Since the MLC 2006 combines hard and soft law, in which hard law provisions are partially binding, but states have lots of flexibility with soft provisions [39]. The responsibility for implementing standards on seafarers' rights and human rights rests primarily with the states, national legislative, judicial and executive branches need to review, formulate, modify and adopt national legislation and policies to give effect to standards in treaties ratified by states [2].

The human rights of seafarers, including all cruise crew members, are provided for in two human rights instruments of the United Nations: the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR). These instruments declared the social and economic rights to which all workers were entitled and established the standards for state behaviors to protect human rights.

The maritime safety regulatory standards developed by the IMO do not directly create rights for seafarers, as they only deal with technical aspects such as maritime safety, training, navigation, equipment, certification procedures and marine pollution, but they all recognize the importance of human beings in maritime safety, security, and protection of the sea. Such conventions include the International Convention on Standards of Training

and Watchkeeping for Seafarers (STCW), the International Convention for the Prevention of Pollution from Ships (MARPOL), the International Convention for Safety of Life at Sea (SOLAS), and the International Safety Management Code (ISM Code) as amended.

### 3.2. Laws and Regulations in China

As a sponsors of the MLC 2016, the Convention officially came into force in China on 12 November 2016. At present, the implementation of the Convention in China's domestic laws involves the work, life situation, social security, and training of ship crew, which meets the requirements of the Convention. However there are few contents concerning crew's rights, which are scattered in different laws and regulations.

First, comprehensive laws applicable to the protection of the rights and interests of all citizens are also applicable to cruise crew members in China. Detailed laws are shown in Table 1.

**Table 1.** Comprehensive laws for Chinese crew.

Laws	Effective Date	Issuing Authority	Main Contents
Constitution of the People's Republic of China	11 March 2018	National People's Congress	The fundamental rights and duties of citizens. (Chapter II)
Civil Code of the People's Republic of China	1 January 2021	National People's Congress	The personal rights, other lawful rights and interests of the parties to civil legal relations shall be protected by law. (Chapter V Civil Rights) This law is hereby formulated following the Constitution for the protection of the legitimate rights and interests of laborers, readjust labor relations, and establish and safeguard the labor system.
Labor Law of the People's Republic of China	29 December 2018	Standing Committee of the National People's Congress	The state shall establish a social insurance system including basic pension insurance, basic medical insurance, employment injury insurance, unemployment insurance and maternity insurance to guarantee the rights of citizens. All laborers are entitled to join and form trade union organizations under the law. The state shall protect the legal rights and interests of trade unions and prohibit any infringement of these rights and interests.
Social Insurance Law of the People's Republic of China	29 December 2018	Standing Committee of the National People's Congress	
Trade Union Law of the People's Republic of China	24 December 2021	Standing Committee of the National People's Congress	

Second, the main maritime regulations are the Maritime Law of the People's Republic of China, and the Maritime Traffic Safety Law of the People's Republic of China, but there are few provisions concerning the rights and obligations of seafarers in the current laws. Most relevant regulations are concentrated on the administration and management of seafarers. In 2021, the Maritime Traffic Safety Law of the People's Republic of China was revised and the protection of crew's rights was added for the first time (Article 6).

The crew's early warning and emergency response to overseas emergencies (Chapter II), the crew's working conditions and navigation guarantee (Chapter III), and the crew's management (Chapter IX) have also been clarified in this regulation. This means that the crew's rights protection has risen to the law level, although the provisions are still general and not specific.

The Maritime Law is regarded as a milestone in China's development of its maritime legal framework [42]. It was adopted by the Standing Committee of the National People's Congress and came into force on 1 July 1993. This law is enacted to regulate the relations

arising from maritime transport and those pertaining to ships, and to securing and protecting the legitimate rights and interests of the parties concerned (Article 1). Chapter III “Crew” includes the rights and obligations of seafarers, especially the qualifications and duties of the Master. Chapter XI “Limitation of Liability for Maritime Claims” stipulates the liability and amount of compensation for personal injury or death of the crew. Chapter XII “Contract of Marine Insurance” claims that the wages and other remuneration of crew members may be the subject of marine insurance. These are all the provisions of Maritime Law on crew’s rights, which are dispersed in different chapters and much less than the actual needs of crew’s rights protection. After 25 years of implementation, the Ministry of Transport organized a revision of the Maritime Law in 2018. (The revised consultation paper could be found on the official website of the Ministry of Transport of the People’s Republic of China, available at [https://xxgk.mot.gov.cn/jigou/fgs/201811/t20181105\\_3109896.html](https://xxgk.mot.gov.cn/jigou/fgs/201811/t20181105_3109896.html) (accessed on 25 March 2022)). At the time of writing this paper, the revised Maritime Law has not been promulgated. The Ministry of Transport has made it clear in its 2022 Legislative Plan that the revised law will be issued this year). In the revised consultation paper released in November 2018, some provisions on crew’s rights were added to Chapter III “Crew”. The provisions of the crew’s labour contract have been improved (Revised Article 3.3), and the repatriation rights of the crew have been clarified (Revised Article 3.5). In Chapter XI “Limitation of Liability for Maritime Claims”, the limitation of compensation for personal injury was increased (Revised Article 12.7).

The improvement of international laws such as MLC 2006 has also played a positive role in promoting China’s legislation, the most significant achievement was the approval of the Regulation of the People’s Republic of China on Seamen in 2007 [42]. This regulation was also revised in 2020 and contains specific provisions for the protection of the crew’s labour rights and interests. To cooperate with the implementation of this regulation, the Ministry of Transport has formulated more than ten departmental regulations on crew registration training, examination, watchkeeping, and assignment, such as Rules for the Administration of Seamen Training (2019 Amendment), Rules for Competency Examination and Certification of Seamen (2020), etc.

In addressing the COVID-19 pandemic situation on cruise ships, China mainly refers to the following two regulations: Administrative Measures for the Quarantine of Entry and Exit Cruise (2018), and Technical Plan for Emergency Treatment of Mass Diseases During International Cruise Ship Navigation (2009). These two rules were formulated before the COVID-19 pandemic to deal with emergent infectious diseases, including provisions for the emergency treatment of cruise crew members and passengers in case of emergent infectious diseases on cruise ships. Since the outbreak of COVID-19, the Ministry of Transport, the General Administration of Customs, and the Ministry of Foreign Affairs have both issued several guidelines, departmental regulations or working documents for the prevention and control of the epidemic among crew members, which have played a positive role in the protecting of cruise crew members from the risks of the epidemic. Among them, Guidelines on the Prevention and Control of COVID-19 on Board guides personal protection against the epidemic for the crew members. (The guidelines have been revised several times, and are now in their ninth edition, and have been shared with all member states by the International Maritime Organization (IMO) in the form of Circular Letters, the guidelines could be found on the official website of IMO: <https://www.imo.org/en/GoogleSearch/SearchPosts/Default.aspx> (accessed on 23 March 2022)). The details are shown in Table 2.

**Table 2.** Special management regulations for Chinese crew.

Documents	Effective Date	Issuing Authority	Main Contents
Guidelines on the Prevention and Control of COVID-19 on board (Version 9.0)	18 April 2022	Maritime Safety Administration of China	Develop a management system, reporting system, and emergency response system, improve prevention and control measures, provide guidance for crew's protection, and adjust crew members' mental health during the COVID-19 period.
Announcement on the Prevention and Control of COVID-19 among the Crew Members of Vessels Engaged on International Voyages (No. 14 [2022])	28 January 2022	Ministry of Transport of China, General Administration of Customs of China, Ministry of Foreign Affairs of China	Implement the COVID-19 regular testing system for crew members as well as emergency isolation and treatment measures in case of positive tests to avoid further infection and ensure the health of crew members.
Announcement on the Further Prevention and Control of the COVID-19 on International Vessel and Crew Members	21 January 2022	Ministry of Transport of China	The port should be equipped with adequate quarantine, COVID-19 testing, medical assistance and other resources to ensure that crew members receive timely treatment for their injuries and the Chinese crew shifts on time.
Notice on Further Prevention and Control of the COVID-19 on International Ships and Crew	10 December 2021	The State Council of China	Efforts should be made by the government to prevent COVID-19 and protect the rights of crew members on international voyages.
Guidelines for the Prevention and Control of COVID-19 on Domestic Cruise Ships (Version 4.0)	05 August 2021	Ministry of Transport of China	Mitigate the risk of COVID-19 on cruise through compulsory vaccination, regular testing, and timely isolation of cruise crew members.
Notice regarding Precisely and Effectively Conducting Prevention and Control of the COVID-19 Outbreak among the Crew of Vessels Engaged on International Voyages (No. 142 [2020])	22 April 2020	Ministry of Transport, Ministry of Foreign Affairs, National Health Commission, General Administration of Customs, National Immigration Administration, China Civil Aviation Administration of China	Shipping companies, regulatory authorities and governments have the responsibility to ensure the shift and return of Chinese crew members and protect their legitimate rights and interests.

#### 4. Discussions for the Rights' Protection of Cruise Crew

Based on clarifying relevant international conventions and China's domestic laws, considering the situation of the COVID-19 pandemic, this study attempts to discuss the following two issues:

- Are existing laws and regulations sufficient to protect the rights of cruise crew members?
- What are the shortcomings of existing laws and regulations in responding to the COVID-19 pandemic?

##### 4.1. Limitations of the Current Laws and Regulations

After the above analysis, we have made it clear that both the MLC 2006 and relevant international conventions apply to all cruise crew members, whereas other conventions, such as the STCW, SOLAS, and the ISM codes, provide navigation, training, and equipment



of the cruise crew. However, there are legal loopholes in the protection of crew members' rights in international conventions. On one hand, these conventional provisions seem unable to deal with the risks brought by public health emergencies for crew members. On the other hand, based on our definition of "cruise crew", a large number of cruise crews cannot be subject to the rules of the conventions, such as navigation and management, as their primary task is to provide services.

Considering the domestic regulations, the issue of the legal protection of the cruise crew could be more complicated. There are problems in the connection between international conventions and domestic laws, and it is necessary to transform and apply international laws and make legislative adjustments. Since government agencies prefer to advise and make recommendations on proper social behavior rather than develop legislation or mandatory regulations [43], the imperfection of laws also affects the implementation of policies to a certain extent.

China has no national law specifically for seafarers, and the level of regulations is relatively low [40]. Although there are many departmental regulations in China, these regulations tend to regulate the management of crew from an administrative perspective, and the legislative level is low, the content of rights and interests is not clear, systematic, and incomplete [44]. The legal effect of these regulations is not high and cannot fully meet the needs to protect the rights of the crew. Furthermore, the existing labour laws in China are mostly designed for land-based works, without considering the particularities of offshore works, which is even less suitable for the working situation of international cruise ships [45]. The protection of crew members' rights and interests involves several government departments, such as market regulation, human resources, and social security, transportation, and maritime safety, with overlapping functions and lack of effective communication mechanisms, resulting in a low efficiency in protecting crew members' rights [46]. In the trial of crew legal disputes in China, the application of law and jurisdiction is not clear, which will also affect the protection of the crew's rights [47].

#### 4.2. Limitations in the COVID-19 Epidemic Prevention

Whether a port state can close or restrict its borders in response to a sudden outbreak of COVID-19 needs to be determined following the United Nations Convention on the Law of the Sea (UNCLOS) and the International Health Regulations (IHR 2005). Under the "Innocent Passage" legal regime of the UNCLOS, foreign cruise ships impacted by COVID-19 could sail through the port states' territorial waters [34]. According to the IHR, "ships shall not be refused *free pratique* by States Parties for public health reasons; in particular they shall not be prevented from embarking or disembarking, discharging or loading cargo or stores, or taking on fuel, water, food and supplies" (Article 28). This ensures that those on board, including the crew, have a basic livelihood in the event of an outbreak. However, both the IHR and other relevant technical documents that exist as supplementary technical guidance are designed for cargo ships, whereas the sanitary conditions of cruise ships are different from those of cargo ships, so these regulations can only be considered as minimum standards for international cruise ships [16].

Of course, China has provided good experience in the prevention and control of the COVID-19 pandemic on cruise ships, which is why the relevant regulations in China are introduced in this paper (Table 2). However, states assert their sovereign rights and react differently to the health risks of COVID-19 [48]. According to Zhang and Wang, in the face of COVID-19, specialized organizations such as the WHO, the ILO, and the IMO have very limited cooperation and few joint actions have been taken [49]. Various measures have been taken by different ships, ports, and coastal states to prevent and control the epidemic on cruise ships, with many ports closed with travel limitations and international cruise ships and foreigners denied entry. The controversial measures have left lots of passengers and crew members stranded on board and they cannot be repatriated home. Therefore, if international cooperation is not strengthened, even if a state's domestic laws and policies are perfect, we will not be able to deal with the impact of the next epidemic.

## 5. Suggestions for the Rights' Protection of Cruise Crew

### 5.1. Special Measures for the Protection of Cruise Crew under the Current Legislation

As a result of measures such as border closures taken by various states, a large number of crew members had their labour contracts postponed and their scheduled changes of crew delayed. This issue was broadly considered to be “force majeure” [50]. On 5 May 2020, the IMO approved a “recommended Framework of Protocols for ensuring safe ship crew changes and travel” during COVID-19 [51], the IMO has also insisted repeatedly that crew members are required to be designated as “Key Workers”, to facilitate international movement and work. The cruise crew is undoubtedly included among these “Key Workers”. However, these rules are relatively weak, and the blurring of “force majeure” makes it more likely that employers will break the rules. So, what will happen when the next epidemic hits? Based on compliance with MLC 2006, recognition of crew members’ key worker status, a standard crew change, and contract performance rules need to be established.

While maintaining current international conventions and legal systems, it is necessary to take urgent measures against cruise ships in response to COVID-19. Brewster et al. pointed out that the initial increase in COVID-19 cases during on-board quarantine may be partly due to shared cabins and crew members continuing to carry out their basic duties [36]. Considering the working situation of the cruise crew mentioned, there is a necessity to establish a rapid testing and quarantining system for the cruise crew. According to Liu and Chang, emergency measures such as circular disinfection, repeat testing, and transfer quarantine could be set up on cruise ships [16]. When an epidemic occurs, these measures can be taken promptly to isolate individuals, thereby interrupting the spread of the disease on cruise ships [29]. Codreanu et al. also demonstrated that COVID-19 infection could be reduced among cruise crew members through proper isolation and emergency measures [52].

In this regard, China’s experience may be instructive. In January 2020, China successfully handled the crisis of the “Costa Venezia” and the “Costa Serena”, cruise ships docking at domestic ports at the risk of COVID-19 [53]. The Guidelines on the Prevention and Control of COVID-19 on Board issued by the Maritime Safety Administration of China also have implications for cruise ships, which include emergency response measures when suspected COVID-19 cases are identified. Such as the quarantine systems, emergency operation of ships, report and transfer of suspected cases. That, of course, includes measures to protect crew members from COVID-19. These measures, together with the several management regulations for crew shown in Table 2, provide a basis for an emergency response to the outbreak of COVID-19 on cruise ships.

Moreover, the significance of mental health first aid in dealing with emergency psychological stress caused by catastrophic events is often overlooked [54]. When the COVID-19 pandemic occurred, crew members continued to carry on their job duties with the stress of isolation, and as the COVID-19 pandemic gradually ends, they may also face financial stress, fear of unemployment, and permanent emotional trauma. Therefore, it is also important to establish mental health support measures for crew members.

A reasonable epidemic prevention and control system is necessary to deal with COVID-19, but it should not burden the normal life and work of the cruise crew. With the resumption of cruise ships and the end of the COVID-19 pandemic, these measures should be adjusted in time. Meanwhile, it is necessary to divide the responsibilities of each department and clarify the legal responsibility of the supervising subject, to improve the mechanism of protecting the rights and interests of crew members.

### 5.2. Further Considerations for the Legislation of the Cruise Crew

In addition to adopting reasonable policies and experiences to reduce the impacts of the epidemic on the cruise crew, is it necessary to regulate the legitimate rights and interests of the cruise crew through special legislation in the long run? As discussed above, we could find that despite the current international convention that cannot fully cope with cruise crew’s rights protection, it seems to be impossible to set a specialized “Cruise Crew

Protection Law". In other words, rather than defining new protected areas, it would be more effective and practical to consider how to incorporate the characteristics of the cruise crew's profession into current international conventions and domestic laws on labour and crew protection.

To protect the legitimate rights and interests of the cruise crew, domestic legislation of labour and crew for the states is needed. As far as China is concerned, it is necessary to revise the crew regulations, to start formulating crew law at the national level. The labor law should be amended to consider the particularity of maritime work, and should be adapted to the working conditions of international cruise ships. Only by improving the labour rights and interests of the crew, health and safety protection measures, and the compensation system for the crew's rights and interests, can the state gradually realize more effective protection of the cruise crew from the legal level [55].

International cooperation may be another way to solve the problem of the cruise crew's rights protection. On 8 December 2020, the ILO approved a special settlement calling for urgent action to resolve the problem and put the rights of seafarers at the forefront of national considerations [56]. The physical illness and psychological harm suffered by the cruise crew is undoubtedly a humanitarian crisis, and some of these infrastructure safeguards and benefits should have been addressed before the pandemic of COVID-19.

In the initial stages of COVID-19, the rapid spread of the virus due to the lack of medical facilities and emergency plans, the inability of passengers and crew members to disembark after the port call, and the prolonged stay of crew members on board showed that international coordination and cooperation needed to be reinforced and improved. The international community should cooperate in the design, operation, and management of cruise ships, and work together to revise and enhance the construction regulations and epidemic prevention standards [49]. To prevent and control epidemics on international ships, conventions such as IHR need to further elaborate and clarify the existing provisions to enhance operability, and additional health measures must be developed for public health emergencies to adapt to the specialties of international cruise ships [34]. Similarly, in terms of the minimum labour standards stipulated in the MLC 2006, it is necessary to make the soft law provisions such as "guidelines" gradually become a kind of social responsibility that shipowner organizations and crew organizations are willing to better implement through a reasonable supervision framework. The WHO, the IMO, the ILO, and other relevant international organizations should join forces to coordinate the regulations of different states and positively evaluate their measures. To enhance cooperative governance, a more effective supervisory mechanism should also be established.

## 6. Conclusions

This paper discusses the legal protection of the rights of cruise ship crews in the post-COVID-19 pandemic era. We can see that as we learn more about COVID-19, the emergency is slowly easing, the cruise industry is recovering, and more and more crew members are returning to work from their injuries and stress. However, what if the next outbreak comes? Will the cruise crew continue to be isolated in cramped cabins and work? Will the cruise crew continue to suffer the pain of not being able to disembark or go home? Liu and Chang said that a major public health event could test the original legal system and provide an opportunity to review the soundness of the rules [16].

Previous studies on cruise occupational welfare, cruise epidemic prevention and control, cruise industry development, and other similar issues are relatively sufficient, which further confirms the necessity of protecting the rights of the cruise crew. This paper makes two contributions based on the current studies.

Firstly, the paper examines the legal application of international laws and Chinese regulations for the rights protection of the cruise crew. The MLC 2006 is the most important seafarer's bill of rights at present. Together with the human rights instruments of the United Nations and the relevant IMO treaties, the MLC 2006 provides the international law basis for the protection of seafarers. For the cruise crew, a Chinese perspective is

chosen in this paper to further study the issue of legal protection. Through the analysis, the paper discusses limitations in the application of current international conventions and domestic law. Although the existing laws and regulations are applicable to the cruise crew, they are far from enough to protect the legitimate rights of the cruise crew, such limitations are also reflected in the COVID-19 pandemic. There are legal loopholes in international conventions, and the imperfect domestic laws make it more difficult for the rights protection of the cruise crew.

Secondly, the paper proposes legal considerations on the rights protection of the cruise crew. Under the current circumstances, the legitimate rights and interests of all cruise crew should be realized in the current international conventions and domestic laws as far as possible. Emergency measures such as circular disinfection, repeat testing, and transfer quarantine could be set up on cruise ships. Crew psychological assistance mechanisms, crew change, and contract performance rules are also available. However, in the long run, the state must attach importance to the legislation of crew protection and divide reasonable responsibilities, which is the necessary way to deal with crew dispute cases. In the age of globalization, with a global pandemic such as COVID-19, no individual state could govern everything, and no individual international organization could address problems on its own [57]. States, the WHO, the IMO, the ILO, and other relevant international organizations, should join forces to enhance international cooperation by improving the safety of the cruise crew, and guaranteeing their reasonable legal rights.

Finally, we must admit that the current research still leaves many issues that deserve further exploration. For example, although the global cruise industry is steadily recovering, the pace varies from country to country. Different countries still adopt different development policies and epidemic prevention measures, and the cruise industry has not recovered in some countries such as China. Therefore, it might be more targeted to further explore the protection of cruise crew's rights according to the situation of different countries. In addition, the legal considerations put forward by this study are relatively general, and the specialized legal measures and policy suggestions for the protection of the rights and interests of cruise staff are not enough, which is also a limitation of the paper. If sufficient data could be obtained for our subsequent research, more in-depth and detailed research may be a necessary step. In any case, the study is expected to raise awareness of the legal protection of the cruise crew's rights. As stated in the UN Human Rights Charter, the cruise crew is expected to have good conditions of work, rest, and leisure, which include reasonably limited working hours and regular paid holidays. By respecting the human rights of seafarers, cruise crew members should be in the direction of international cooperation in the future.

**Author Contributions:** Conceptualization, Y.Y. and Y.S.; methodology, Y.Y. and M.L.; data curation, Y.Y., M.L. and Y.S.; writing—original draft preparation, Y.Y.; writing—review and editing, M.L. and Y.S.; visualization, Y.S.; supervision, Y.S.; project administration, Y.Y.; funding acquisition, Y.Y. and Y.S. All authors have read and agreed to the published version of the manuscript.

**Funding:** This research was funded by Social Science Foundation of Shandong Province, grant number 19CQXJ02 and Social Science Foundation of Qingdao, grant number 2019B08.

**Institutional Review Board Statement:** Not applicable.

**Informed Consent Statement:** Not applicable.

**Data Availability Statement:** Not applicable.

**Conflicts of Interest:** The authors declare no conflict of interest.

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