



Legal and Operational Duality: The Gap between IMO Maritime Safety Regulations and Pet-Friendly Legislation in Emergency Scenarios

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ABSTRACT

This paper aims to analyse the growing regulatory gap between the International Maritime Organisation (IMO) and national or regional legislations, which currently and increasingly recognise rights and protection for companion animals. It analyses the possible problems that maritime workers and shipping companies may encounter when dealing with a regulatory gap between the two institutions, especially in the context of maritime emergencies.

With the legal recognition of animals as sentient beings in the European Union and several states in the United States, the current IMO conventions show an absence of regulation. In order to achieve this aim, we have focused on a comparison between the international instruments with the main related conventions such as SOLAS, MARPOL, among others; putting Pet-Friendly laws first, simulating scenarios of collision and abandonment of the ship.

Without forgetting to address the possible legal consequences that could be faced by crews and shipping companies flying the flags of countries that legally recognise animals as subjects of law.

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1. Introduction.

The IMO maritime conventions, in particular the International Convention for the Safety of Life at Sea (SOLAS) and MARPOL, focus on the protection of human life and the marine environment. However, in developed countries there has been an increase in pet ownership, with some countries seeing a greater proliferation of these animals than biological infants. This has led to legal recognition, granting them a degree of freedom of movement that until recently would have been unthinkable and conferring on them the legal status of ‘sentient beings’ in various jurisdictions, which poses ethical and legal challenges when it comes to maritime evacuations, according to current regulations.

Currently, there is no international standard that provides for procedures for the evacuation or protection of animals in

the event of emergencies on board ships, much less according to international standards. We must not forget that the maritime world is regulated according to the standards of the International Maritime Organisation (IMO). The IMO has to deal with all the countries in the world, where there are a huge number of sensitivities. And for the most part, it represents nothing more than a minimum standard. However, this omission represents a regulatory gap that creates conflicts for ships flagged in countries with advanced animal welfare legislation.

This paper analyses this regulatory duality, proposing a way to harmonise international maritime standards and modern animal protection laws. Or at least seeking to generate enough attention to highlight a huge regulatory gap that leaves maritime professionals unprotected.

2. IMO Regulations and the Status of Animals.

2.1. Current provisions.

The main IMO instruments, such as SOLAS (1974), STCW (1978) and MARPOL (1973/78), do not include specific provisions for animals, often considering them simply as cargo,

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much less as companion beings with universal rights comparable to those of humans. As they are considered cargo or property, in emergency situations they are not even remotely considered a priority, nor are they recognised as subjects to be evacuated. And there is no doubt that they are even less likely to be recognised as requiring evacuation methods or the possibility of being included in existing means of evacuation such as rafts or lifeboats.

2.2. *The ISM Code and Risk Management.*

The ISM Code requires shipowners to identify risks and establish emergency procedures, but limits their scope to human crew and passengers, with no reference to animals, even if they are travelling with legal documentation or a pet passport. Furthermore, with regard to survival equipment and existing evacuation procedures on board, the various conventions do not provide for their use by animals, regardless of their size, weight or characteristics. We therefore find a discrepancy in what we can find on RORO ships, ferries or similar vessels.

3. National and Regional Legislation.

From a legal point of view, we find that some countries around the world have moved towards granting certain rights to a range of animals that have become inseparable from their human companions, such as animals used for psychological or psychosocial treatment in the United States, for example. Or animals such as dogs intended to help humans with various pathologies, such as guide dogs, dogs intended to identify hypoglycaemic attacks, metabolic decompensation attacks that put their human companions at risk.

Or simply legislation that grants the status of 'sentient beings' to a variety of animals, thereby recognising a large number of rights, which not only affect their transport conditions, but also the recognition of legal rights by the countries that recognise them. These are the same countries that must also comply with the IMO requirements mentioned above.

3.1. *European Union.*

Since the Treaty of Lisbon (2009), the EU has recognised animals as sentient beings. Regulation (EU) 576/2013 facilitates the intra-Community transport of pets. In Spanish legislation, Law 17/2021 of 15 December, which amended the legal regime for animals, requires animal welfare to be taken into account in emergency situations.

As this is a European directive, all countries belonging to the European Union will eventually include these amendments in their internal regulations. However, the European Union regulation does not address their transport, which has not prevented some countries, such as Germany and France, from attempting to incorporate some evacuation protocols affecting their pets by stipulating the guidelines to be followed. As might be expected, these do not cover all scenarios, but these attempts have prompted their consideration and updating in all protocols.

Another problem we encounter, although not directly related to this article, is the very loose definition of sentient animals in some countries. For example, Law 17/2021 of 15 December of the Kingdom of Spain (in Article 333 bis of the Civil Code) contains the definition

'Animals are living beings endowed with sensitivity'

This makes it clear that this definition refers not only to companion animals such as dogs, cats and ferrets (the most common in Europe) but also to a wide variety of other beings. However, for the sake of simplicity, we will consider only those animals that can be kept in the same premises as humans without the need for major modifications.

3.2. *United States.*

So as not to focus solely on Europe and to show that this is a growing movement for recognition, which will sooner or later lead human society to change the way it views the animals around us. In the United States, at the federal level, the PETS Act (2006) requires states to include pets in their emergency and evacuation plans. This has even reached the point where some states, such as California and Florida, penalise animal abandonment during disasters of any kind. Pets, especially dogs and cats, have a reinforced legal status. This has reached the point where almost any type of animal can obtain the status of 'Emotional Support Animal', with the legal capacity in many states to access the same facilities as humans. This paradigm has reached the point where horses, rabbits, rodents, dogs, cats, reptiles, etc. have been certified in this way. Any animal that demonstrates to the competent authorities that it helps to calm or treat its human companion in certain situations and cope with the environment can be certified.

This undoubtedly leads me, as a maritime professional, to imagine a situation of abandonment in which the owner or human companion of such an animal is unable to take it with them. The difficulty in dealing with the situation that this may entail, not to mention that, as mentioned above, some states consider the abandonment of animals in disasters to be a crime.

3.3. *Legal Conflicts and Flag State Responsibility.*

With all of the above in mind, we must not forget that ships registered in pet-friendly jurisdictions may also be involved in legal action if animals are not protected during emergencies. At this point, we should remember that safety and rescue devices are regulated by very strict legislation issued by the IMO and its various conventions. None of these currently include anything related to animals in the manner described above. This means that, in countries with the aforementioned jurisdictions, there is a head-on collision between the two sets of regulations.

Let us not forget that, first and foremost, this can create serious safety and management problems for maritime professionals, who have to deal with conflicts for which the vast majority are unprepared. Not to mention that both the shipping company and the professionals themselves are exposed to possible sanctions by the applicable jurisdiction depending on the flag of the ship or, in some cases, even the nationality of those involved.

4. Emergency Scenario Simulations.

Next, in order to provide a better understanding, I will describe an example of how the currently coexisting legislation could be applied.

4.1. Case 1: Passenger ferry (Spanish flags).

In this case, a ferry covering the Valencia-Ibiza route suffers a night-time collision with a pleasure boat. The ship is abandoned due to a fire in the engine room. There are 40 dogs and 12 cats on board with their owners (spread across the different areas of the ship, including the kennel). In the absence of a protocol, only the human passengers are evacuated, mainly for fear that the dogs, some of which are large, could damage the evacuation systems. Many animals die from smoke inhalation or drowning.

Based on what happened and according to current Spanish legislation, even though the crew followed all protocols correctly and are protected by maritime regulations, upon arrival at port, they could face charges and proceedings for alleged animal abuse under Law 17/2021. In this case, the responsibilities of both the different crew members and the shipping company itself should be defined, as the latter did not foresee the situation and is ultimately responsible.

4.2. Case 2: Ro-Pax with US flag.

In this circumstance, a RO-PAX passenger and cargo ship between Miami and Nassau is forced to anchor due to weather conditions and suffers anchor drag during a hurricane. The evacuation is chaotic. Passengers are not allowed to board lifeboats with their dogs. Several pets are abandoned in cabins and perish. As in the previous case, lawsuits could be filed in Florida for animal cruelty and failure to provide assistance. Liability would have to be determined, as in the previous case, between the shipping company and the crew (with special mention of those responsible, such as the captain).

5. Legal and Operational Consequences.

As seen in the simple examples above, we are faced with a tangle of legislation in which we, the seafarers, will bear most of the burden.

As for insurers, the ambiguity in coverage for damage to animals, as well as the duality of legislation, benefits them. This raises the need to adjust policies in order to be able to take responsibility. Not to mention that in some countries the number of variables is enormous. This problem, although it has already begun to be noticed in some countries, has not yet begun, which does not mean that in any case of a group of claims these entities will find themselves in a position where they need to act.

As for shipping companies, there would be a duality of consequences. On the one hand, there is the possible impact of the insurance policies mentioned above. But equally, even if civil claims were to be dismissed, which is very complicated, the reputational impact in a society that is increasingly evolving towards a pet-friendly environment could lead to enormous losses, which might not be affordable.

If we focus on the crew, it would be necessary to study each piece of legislation separately. However, from a general perspective, it is possible to envisage the possibility of criminal charges for negligence or animal cruelty. Not to mention the more than likely compensation claims for various reasons (loss of the animal, stressful situations, emotional damage, etc.). These would vary in intensity and amount in each situation depending on the actions carried out by each person or the responsibilities they have on the ship.

All of the above assumes that the actions taken by the crew were appropriate and in accordance with IMO regulations, i.e. without any misconduct on the part of the crew, who acted professionally, swiftly and with seafaring expertise. This does not mean that it complies with all the legislation of an increasingly changing and globalised world. Where borders are becoming increasingly blurred, but this comes at the cost of any regulation that claims to be international having to face a wide variety of societies with different idiosyncrasies and mentalities. This becomes a problem that needs to be solved.

Conclusions and Recommendations.

Conclusion.

In this paper, we have attempted to highlight an issue which, although not a priority in international regulation, already has real legal and operational effects on the maritime sector. The lack of IMO regulations on animals recognised in many countries as sentient beings, with different levels of sentience, causes conflicts with national and regional animal welfare laws.

As maritime professionals, we can see that this legal vacuum puts crews, especially officers in command, in a situation of legal uncertainty. In emergencies, where decisions are made quickly, not having clear rules on the handling of animals on board leaves things to personal discretion, when they should be regulated objectively and backed by regulations or principles that should apply equally to all ships. This lack of standards can lead to criminal charges, penalties or lawsuits, even if actions were taken in accordance with international agreements.

Examples show that legal consequences are a real risk that is already being seen in several places, and could even affect the reputation of shipping companies in a society that is increasingly concerned about animal welfare.

It is essential that the IMO and Member States should, as soon as possible, consider standards that harmonise animal laws with current international regulations. This update is not only an ethical issue, but a necessity to protect legal and operational security in the global maritime sector. However, we must not forget that the IMO's scope of action is at the international level. The issue of sentient animals is one that mainly affects certain countries, which, although they belong to the IMO, are not all members. I also believe that forcing developing countries to comply with safety measures, including animal safety, at the level of developed countries is nothing short of utopian. However, it is necessary to create a formula to protect maritime workers in the proper performance of their duties.

It is not a question of giving animals priority over people, but of recognising that their current legal status requires minimum treatment in emergency and evacuation plans. This implies the development of new technology and methods of action in response to different emergencies. This clashes directly with the highly regulated nature of the maritime world. Ignoring this puts crews at risk and damages the credibility of the institutions that guarantee safety at sea.

In short, we cannot ask seafarers to solve problems that legislators have not addressed. Normally, the development of regulations tends to lag behind the needs of society. But in this case, we are talking about legislation that is already being developed in some countries, while in others it is still years or decades away at best. However, the international body that regulates all these different states is obliged to protect both the most advanced and those that comply with minimum standards. It is time for international regulations to face the challenges of a changing world, where animals are not just cargo, but in many countries, and increasingly so, beings with recognised legal status.

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