

BEYOND

How Covid-19 corner-cutting
places too much risk in the
international shipping system

THE LIMIT

International Transport Workers' Federation
Maritime Safety Committee
September 2020





WHEN CRISIS MANAGEMENT BECOMES CRISIS EXPLOITATION, WE MUST SPEAK UP

As members of the ITF Maritime Safety Committee, we have decades of experience in the international shipping industry, particularly in the development and enforcement of conventions and standards which prevent harm to people and the planet.

It is our obligation as seafarers' representatives to compile this report because what we are witnessing right now causes us extreme worry. We cannot in good conscience be complacent and allow seafarers' safety and security to be put at risk.

We hope that by drawing focus to the impending disasters within our industry that international attention will force pause and reflection, so that we avert unnecessary harm to the world's two million seafarers, the public, and our marine environment.

The Covid-19 pandemic has thrown the world into disarray. And the international shipping industry is no exception.

Manning levels have been reduced as crew become hard to change and be refreshed; hours of rest are being ignored and replaced with non-paid hours of work and compliance performance; systems crucial for the safe operation of the world's shipping fleet are being disregarded on a daily basis through superficial remote inspections. This is of course about crew change, but also much more than that.

Our industry has adapted and had to make-do given the unprecedented nature of the present Covid-19 crisis. As the worker representatives who engage every day to improve these systems and standards for the benefit of all seafarers, we understood the reasons ship owners, manning companies, port states, flag states and others requested flexibility in the application of international rules.

However, the extreme interpretations of the regulations and short cuts taken by some in the industry, with the blessing of some flag states in particular, have gone too far, for too long. Of greatest concern is that these short cuts risk becoming permanent.

International rules, regulations, standards, conventions and agreements are how the public, governments and seafarers can have faith in the healthy and safe operation of this critical industry. Every international rule that has been created and adopted was for a reason; be an accident; a drowning; a spill; a grounding; a death. These rules are not an added extra, or 'nice to have'. They are the basis on which seafarers agree to go to work, and countries agree to admit ships into their waters and marine environments.

This report highlights the extremes that these rule are being pushed by some players in the international shipping industry; why such short cuts are dangerous to seafarers' health and safety, human life and the marine environment; and why we need to return to proper implementation and enforcement of these rules by flag states and port state control authorities for the benefit of everyone.

We urge you to consider the findings of this report. If you are a flag or port state – reflect on your responsibilities. If you are a seafaring or maritime union – draw on this knowledge to push for real enforcement in your jurisdictions. If you are media – hear our warnings and report them to the world as we do not raise such a serious alarm lightly.

Odd Rune Malterud
Chair, ITF Maritime
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BEYOND THE LIMIT OF SAFE MANNING

Innumerable human and environmental disasters involving ships have occurred in the past due to vessels operating with too few crew on board to safely handle the ship under adverse circumstances. Inadequate crewing greatly raises the risk of accident or incident. Therefore, a safe ship requires safe manning.

Minimum safe manning of a ship is made up of both the overall number of crew on board, as well as minimum numbers at required skill levels, for the particular size and type of vessel.

In practice, however, Minimum Safe Manning levels have become determined by the ship owner, rather than the regulator. This is because flag states almost always approve the manning levels for ships put forward by shipowners – however low.

The practice of flag states ‘rubber-stamping’ ship owners’ manning levels without due regard to safety has concerned the ITF for many years, but has become unacceptably dangerous in recent months as shipowners have pushed for lower and lower manning levels in the face of the crew change crisis.

To ensure global trade continues uninterrupted (and the income they gain from registering ships), some flag states have advised companies to contact the relevant flag state administrations (registries) and advise of any difficulties in recruiting adequate crew numbers. In most cases, the administrations are providing exemptions to these companies for manning numbers well-below what would have been considered safe pre-pandemic.

This has resulted in many companies now declaring reduced minimum manning on their ships with the approval of the flag state that their ship is registered to. These companies save money in wages and recruitment, but the risk for the crew, cargo and the environment increase substantially.

This corner-cutting increases pressure on seafarers, harming their mental and physical wellbeing, their lives. Reduced minimum manning intensifies stress onboard and contributes to fatigue because it spreads the same workload across a smaller number of seafarers. In what we know from what seafarers report, inadequate manning extends seafarers’ hours of work when they are already stretched. Minimum safe manning is, by design, meant to ensure minimum safety standards can be met onboard. Anything below minimum safe manning is unsafe and puts lives, ships and the environment at risk.

Few ships employ seafarers above the minimum safe manning numbers. Those ships that do can ensure the ship is able to safely sail and operate in almost any situation. Ships that operate with the minimum will be at great danger should some of the crew become unwell or injured, or the seafaring conditions deteriorate.

It has often been alleged that human error is the cause of a maritime incident or accident without mentioning the responsibility and complacency of shipowners and flag state administrations who agree to insufficient manning of the ship, as a contributing factor for the alleged human error. An overworked, tired and fatigued seafarer is more likely to make mistakes than a seafarer who is fresh, well-rested and supported by an adequate number of skilled crewmates.

It is a contradiction that governments and companies publicly display indignation following major incidents that negatively affect their coastlines, the wider environment and costs lives, while condoning the practices which prejudice safety and produce inadvisable risk in the first place.

ENOUGH IS ENOUGH: UNSAFE MANNING IS A THREAT TO THE SAFETY AND SECURITY OF THE CREW, THE SHIP AND THE ENVIRONMENT.

We say: enough is enough – seafarers are already under increased pressure and suffering from fatigue due to extended employment agreements, extended working hours, additional tasks normally performed by inspectors and dockworkers, and the uncertainty over when they will be able to return home to their loved ones. Unsafe manning presents an unacceptable threat to the safety and security of the crew, the ship and the environment and requires immediate action.

The ITF is also concerned about the lack of familiarisation procedures taking place for new sign-on crew due to reduced manning, as well as the premature promotion of seafarers to cover certain positions. Both issues have emerged as consequences of the pandemic and governments' willingness to set aside international regulations to keep trade moving at all cost.

THE ITF CALLS ON ITS MEMBER UNIONS TO:

- Use the following regulations as tools to call governments to act responsibly toward safe manning and the safety of ships and seafarers:
 - SOLAS Ch. V/14 Ships' manning
 - Assembly Resolution 1047(27) the Principles of minimum safe manning
 - STCW Ch.VI Emergency, occupational safety, security, medical care and survival functions
 - SOLAS Ch. XI Management for the safe operation of ships
 - ISM Code Ch 6 Resources and Personnel
 - MLC 2006, as amended Reg. 2.7 Manning levels
- Focus on the importance of the minimum safe manning that is the result of a very careful analysis of the requirements for safe navigation and operation of a ship
- Highlight that "safe manning" is the right perspective to look at for a safer maritime industry;
- Enhance active cooperation with port state control officials to insist on clear responsibilities in accordance with existing regulatory scope;
- Actively pursue flag states, national maritime authorities, recognised organisations and shipowners/managers to ensure safe manning;
- Use this statement to stop the negative trend towards unsafe manning levels and push governments to give proper and serious consideration to the safety implications of a blanket extension of the minimum requirements on safe manning.



BEYOND THE LIMIT OF SAFE HOURS OF WORK AND REST

Photo: An Australian Transport Safety Bureau investigation found crew fatigue was a major factor in the MV Shen Neng 1 running aground on the Great Barrier Reef in 2010

Ships are complicated, highly technical pieces of machinery that require the continuous cooperation of many skilled seafarers across all hours of a day to ensure their continued safe operation and navigation. A ship's safe operation requires its workforce to be physically capable and mentally present.

Like all working people, seafarers need a break from work in order to stay healthy – and mentally and physically alert. It is critical that during the crew change crisis and beyond that seafarers are protected from being overworked and fatigued. The crisis has already burdened them with the insecurity of not knowing when they will be home again. Employers must not add to that stress by forcing or encouraging them to engage in unsustainable workloads at the expense of important rest time.

We are concerned that the present crisis is being exploited by employers and the industry more broadly to steal time from seafarers and shift an increasing number of hours from rest to work. We believe this is happening as companies deliberately man their ships with inadequate crew numbers, and then demand from the remaining crew more time working – mostly unpaid.

“We seafarers are working onboard in harsh environment, even we do not get proper rest, sometimes working for 17 to 18 hrs [in a day].”

**Seafarer, 39, India
7 months at sea**

ITF Crew Change Survey September 2020



With reduced crew numbers, everyone onboard is forced to work longer hours. Seafarers are pushed to undertake tasks at all hours of the day and night beyond their ordinary duties, increasing pressure on the seafarers and their stress levels. This in turn negatively affects their health and wellbeing and is a risk to the safety and security of the crew, the ship and the environment. Concerningly, this practice often does not show in the ship's logs, and in turn, regulators are turning a 'blind eye' to the real situation onboard.

The World Maritime University is about to issue a report on the implementation of the current maritime regulatory framework on rest and work hours for seafarers. In the upcoming report's conclusions and recommendations, the authors write:

“Accurate recording of seafarers' work/rest hours is not only a legal requirement under both the MLC, 2006 and the STCW, 1978, but also a compliance monitoring tool. When records are regularly or systematically adjusted, there is no feedback on the work as it is. Therefore, the management of the company as well as regulators do not have accurate input of work processes. It affects the understanding of the effectiveness of fatigue-mitigating strategies, thereby limiting improvement attempts. It also undermines regulatory enforcement actions.”

The report is timely given the rising use of reduced safe manning levels in the industry during the current crew change crisis.

Demanding more from a tired and fatigued workforce is a recipe for disaster. We say enough is enough: if ships are not properly manned and seafarers are unable to be replaced, then the ship's operations must be significantly reduced to take into account the situation. Employers cannot continue to shift more and more work onto fewer and fewer crew members and regulators cannot pretend this is not happening under their noses.

“Giving same amount of work load/job orders and work hours like the workforce doesn’t feel tired due to expired and prolonged contracts? [Even] proper rest hours won’t be enough when you’re already mentally exhausted.”

Seafarer, 28, Philippines - 11 months at sea

ITF Crew Change Survey September 2020



It is inhumane and dangerous to human life and our marine environment to force seafarers to continue to work the maximum number of hours of work every day, seven days a week while taking only the bare minimum hours of rest provided in regulations. Under the present rules, this rest cannot be divided into more than two periods - one must be at least six hours in length.

It has been proven scientifically that a lack of sufficient rest negatively affects the attention needed to perform tasks and increases not only the risk of human error, but also causes extreme physical and mental distress.¹

If reducing the ship's operations means that world trade will slow down, increase costs and take longer for goods to be transported, then that is the cost that the world must pay to maintain the safety and security of the crew, the cargo and the marine environment.

The industry and its regulators cannot continue to “turn a blind eye” to the systematic disregard for international maritime regulations.

With shore leave severely curtailed during present pandemic due to government border restrictions, many

seafarers are being prevented from taking portions of their non-working time ashore and away from their workplace. Their ever-present proximity to their workplace under these conditions has made it even harder to escape requests (or orders) to take up tasks beyond their paid delegations.

Seafarers are not alone in this regard during Covid-19. The ‘creep’ of work into the hours of rest and relaxation is a phenomenon reported by millions of workers around the world who are currently experiencing major disruption to their own working lives. Just as an office worker working from home needs to set strict boundaries on where work ends and home starts, so too must seafarers who live aboard their own workplace be able to limit the demands of work into their hours of rest. Seafarers have a right to ‘switch off’, too.

Furthermore shipowners must take every practical step during the present pandemic to ensure that the rest and relaxation time owed to seafarers is spent in adequate facilities onboard, so that they can recover from work and perform at their best when working again. This means ensuring the provision of appropriate rest, relaxation and exercise facilities and activities, internet and communications access, and appropriate advocacy to port states and others for shore leave for their crew.

THE ITF CALLS ON ITS MEMBER UNIONS TO:

- Urge effective enforcement of international regulations:
 - SOLAS Ch. V/14 Ships’ manning
 - SOLAS Ch. XI Management for the safe operation of ships
 - ISM Code Ch 6 Resources and Personnel
 - STCW Reg. I/14 Responsibilities of companies
 - STCW Reg. VIII/1 Fitness for duty
 - STCW Reg. VIII/2 Watchkeeping arrangements and principles to be observed
- Inform affiliate union members that all crewmembers should follow the strict record of hours, keep accurate records and do not sign inaccurate or inappropriate declarations from their company onshore or while on the ship;
- Encourage their members to use the onboard and onshore complaint procedures adopted in the ILO MLC 2006, as amended in the event there is a disagreement regarding the hours of work and rest onboard;
- Use ITF manning policy and the recent research completed by the World Maritime University on hours of work and rest (attached to this report as an appendix) when lobbying national governments;²
- Chapter 8 Conclusions and Recommendations when lobbying national governments;
- Encourage port state control to check the rest and work hours records against the ships’ operations to validate the accuracy or discrepancies.

1. See for example: https://journals.viamedica.pl/international_maritime_health/article/view/IMH.2015.0024/30326; <https://orca-mwe.cf.ac.uk/48168/1/ITF%20FATIGUE%20REPORT%20final.pdf>

2. *Evaluation of the implementation of the current maritime regulatory framework on rest and work hours - Phase I*



BEYOND THE LIMIT OF OUR INTERNATIONAL RULES SYSTEM

The international rules that govern the international maritime industry are made up of regulations, standards, conventions and agreements. These rules, agreed by International Maritime Organisation (IMO) Member States, are how the public, governments and seafarers themselves can have faith in the healthy and safe operation of this critical, and potentially dangerous, industry.

Governments created the rules – governments need to enforce the rules.

We are very concerned that during the present Covid-19 pandemic, government regulators in flag and port states have chosen to suspend the application and enforcement of these critical rules. Each breach of each rule adds undue risk to the international shipping industry, and undermines the international rules system that delivers these regulations to us. Companies will ask themselves, 'if we can ignore this rule, why not this other? Or all of them?'. The consequences could be calamitous for the people who work in this industry, the public and our marine environment.

It is particularly concerning to us that employer compliance with the IMO, which regulates safety and security of life at sea, is exempted. It is understandable that in the early days of the outbreak, all parts of the industry needed to agree practical, temporary measures to allow flexibility in the application of various international regulations. However, inconsistent interpretations across regulators, flag states, port states, classification societies, ship owners and companies has made a mockery of what should be universal rules for the safe operation of a global industry and the welfare of its global workforce.

Safe ship operations seem to have been forgotten or deprioritised, thereby endangering the safety of maritime workers and the marine environment.

We say that enough is enough: over six months has passed since the outbreak of this pandemic. Too many corners have been cut for too long. Contravention of critical maritime regulations is no longer acceptable to seafarers' representatives and should not be acceptable to shipowners, port state regulators, or flag states.

THE CONSEQUENCES COULD BE CALAMITOUS FOR THE PEOPLE WHO WORK IN THIS INDUSTRY, THE PUBLIC AND OUR MARINE ENVIRONMENT.

Governments, particularly through their Port State Controls, and the maritime industry more broadly, need to ensure the effective and consistent enforcement of safety and security-related IMO regulations with immediate effect. The regulations were developed and amended for the safety of maritime workers and the marine environment, and therefore cannot simply disappear.

The international regulations that have been adopted and implemented are now being undermined, out of expedience, not out of necessity. These practices are setting a dangerous precedent and, if allowed to continue, will put maritime workers' safety in jeopardy.

The main areas of concern that are being undermined under IMO regulations are:

- Threat to the safety of lives and ships at sea;
- Threat to the marine and coastal environment;
- Seafarers loss of employment opportunities and income;
- Reduction to manning levels;
- Additional responsibilities are being required of the seafarers beyond their normal duties;
- Increased physical and mental pressure and fatigue;
- Limited access to port facilities and the consequences on ship operations and social issues;
- The plight of seafarers' families;
- Reduced attractiveness to pursue a career at sea when international and national legislation that has been adopted for the protection of seafarers can so easily and over a sustained period of time be set aside;

The ITF Maritime Safety Committee believe that if governments want vital cargo to continue to flow in and out of their ports, they have a legal and moral obligation to fulfil their commitment to the international maritime regulations that they have created and endorsed for the safety and security of maritime workers and the marine environment. Anything less risks undermining the international rules system that safe and efficient global trade relies on.

THE ITF CALLS ON ITS MEMBER UNIONS TO:

- ITF calls on its affiliates to use the following regulations to force their government to focus on maritime safety and security:
 - SOLAS Ch. II/2 Construction, fire protection, fire detection and fire extinction
 - SOLAS Ch. V/14 Ships' manning
 - Assembly Resolution 1047(27) the Principles of minimum safe manning
 - SOLAS Ch. XI Management for the safe operation of ships
 - ISM Code Ch. 6 Resources and Personnel
 - SOLAS Ch. XI-2 Special measures to enhance maritime security
 - ISPS Code Part A-6 Obligations of the Company
 - STCW Reg. I/2 Certificates and endorsements
 - STCW Reg. I/14 Responsibilities of companies
 - STCW Ch. VI Emergency, occupational safety, security, medical care and survival functions
 - STCW Reg. VIII/1 Fitness for duty
 - STCW Reg. VIII/2 Watchkeeping arrangements and principles to be observed
 - MARPOL
 - ILO MLC 2006, as amended Reg. 2.3 Hours of work and hours of rest
 - ILO MLC 2006, as amended Reg. 2.7 Manning levels
 - ILO MLC 2006, as amended Reg. 2.8 Career and skill development and opportunities for seafarers' employment
- Stress to the governments the importance of these safety and security issues which affect all stakeholders;
- Remind their government of the importance of a constructive national tripartite system to discuss safety and security of maritime workers;
- Actively participate in government established tripartite working groups and committees where maritime safety and security is on the agenda;
- Actively cooperate with their Port State Controls and advocate to enhance universal monitoring scheme for legislative enforcement.



BEYOND THE SAFE EXTENSION OF SHIPS' AND SEAFARERS' CERTIFICATES

“Trainings are too expensive – they’ve increased by 75% [since the pandemic]. That’s why I’m willing to extend my contract for now: I need to earn an extra \$1500 for my certificates.

I think it’s better to be a farmer in our province than to stay as a seafarer because of the system.”

Seafarer, 30, Philippines – 10 months at sea

ITF Crew Change Survey September 2020



Ships' and seafarers' certificates are important to maintain the safe and efficient movement of people and goods at sea. They often require in-person training on elements of ship operation and maritime safety.

During the present pandemic, the IMO and ILO have encouraged a pragmatic and practical approach in relation to certificate and endorsement extensions. Many countries and employers have taken a force majeure approach without consideration of the overall and future impact of these decisions.

The ITF and its maritime affiliates are concerned with how these extensions are affecting seafarers' ability to access employment, required training and maintenance of their certificates. Left to continue, these practices could have a major impact on seafarer supply – which is already under major strain due to government border, travel and transit restrictions.

Due to the cancellation of courses and the logistical impediment of quarantine and travel restrictions, seafarers are unable to attend and complete the courses and testing required to maintain certificates. As a result, Seafarers that have returned home or had their employment contracts terminated have no choice but to remain without valid certificates, income or future employment opportunities.

In some cases, seafarers who have lost their employment have also lost access to employer-provided training. This transfers the financial burden of maintaining the validity of certificates to the seafarer, further impeding their ability to meet the requirements for certification. Consequently, the affected seafarers become ineligible for further decent employment.

The ITF has been notified of many seafarers being required by their employer to complete computer-based training (CBT) while onboard vessels. In some cases, seafarers are instructed to complete the CBT coursework while standing watch or during their hours of rest. Both of which are in direct breach of maritime regulations and present a threat to the safety of lives on board, and protection of marine environment.

The unacceptable number of extensions granted to date due to the Covid-19 crisis will result in serious labour supply shortages to the industry if not addressed in the near-term. We believe the longer this situation is allowed to continue the worse it will get. Course availability will be limited; administrations will be overwhelmed with applications and renewals; the number of seafarers holding valid certificates attested to be completed with necessary training will reduce, all of which will worsen the shortage.

Now is the time to address these issues.

It is of paramount importance that administrations ensure seafarers have access to approved courses for maintenance of required certificates and to retain their positions and employment on vessels.

The unintended consequence of granting long-term extensions by some governments has created opportunities for companies to hire personnel without mandatory safety training and appropriate certificates.

We are beyond the safe application of these extensions. Extensions place intolerable risk into the global shipping system, which billions of people around the world rely on.

THE ITF CALLS ON ITS MEMBER UNIONS TO:

- Use the following legally binding regulations:
 - STCW Reg. I/2 Certificates and endorsements
 - STCW Reg. I/14 Responsibilities of companies
 - SOLAS Ch. XI Management for the safe operation of ships
 - ISM Code Ch 6 Resources and Personnel
 - MLC 2006, as amended Reg. 2.4 Entitlement to leave
 - MLC 2006, as amended Reg. 2.7 Manning levels
 - MLC 2006, as amended Reg. 2.8 Career and skill development and opportunities for seafarers' employment
- Urge Administrations to uphold their obligation to ensure that seafarers are provided with approved courses;
- Urge Administrations not to allow for anymore extensions of Certificates;
- Urge Administrations to ensure that companies are not allowed to employ unqualified seafarers;
- Enshrine in agreements that seafarers be able to attend courses to obtain valid certificates to continue their career;
- Keep shipowners responsible for organising and paying for mandatory courses.



BEYOND THE LIMIT OF REMOTE INSPECTIONS

Under International Maritime Organisation regulations, ships are inspected by flag states (or their agents) to ensure a vessel is seaworthy and not a danger to human life or the marine environment.

Due to national travel restrictions implemented by governments in an attempt to prevent the spread of the Covid-19 virus, maritime administrations and classification societies are promoting non-physical ship inspections. Handing the responsibility from trained, paid inspectors to the crew of the ship, seafarers onboard have been requested to:

- Take photos and videos of inspection areas; and
- Compute necessary data in the system required by the respective maritime administration.

The use of remote surveys has been hailed as the solution to keep ships sailing and cargo moving. The class society company DNV GL CEO Knut Ørbeck-Nilssen recently said:

"In these challenging times we are seeing the benefits of the full scope of digitalization initiatives that we have been building up over the past few years. The use of remote surveys has meant that we have been able to limit disruptions to customer operations resulting from travel bans or quarantines involving our surveyors. Ship operators are able to receive immediately updated and verified electronic certificates, which make their business dealing with class, authorities and vendors much more efficient."

WE BELIEVE THAT THE USE OF SEAFARERS TO CARRY OUT REMOTE INSPECTIONS SHOULD BE FORBIDDEN IF THE CREW IS FATIGUED BECAUSE OF EXTENDED CONTRACTS AND LONG WORK HOURS.

There is little doubt that remote inspections/surveys are a way to ensure continued movement of world trade. They provide an economic solution for ship owners who save on the cost of a class surveyor and it simplifies the work of the maritime administrations.

However, the extra burden on the seafarers who are expected to assist with remote inspections seems to be forgotten under this practice. In addition, performing such tasks tacitly requires seafarers to be responsible for guaranteeing the outcome that is, to reiterate, not their assigned responsibilities. The majority of the world's seafarers in international trade have been forced to continue to work way past the expiration of their initial contracts; some have been onboard for over a year even up to 15 months. In addition, many ships have reduced manning levels because of the challenges with crew change; this means longer work hours for the remaining crew.

In these challenging times, this practice has benefits to everyone else except the seafarers themselves. The use of remote surveys definitely limits the disruption to everyone except the seafarers – enough is enough, seafarers cannot continue to be the only group to bear the burden.

We believe that the use of seafarers to carry out remote inspections should be forbidden if the crew is fatigued because of extended contracts and long work hours. Furthermore, we are concerned about the conflict of interest of having seafarers inspect their own ship and the liability that could be put on the seafarers. There needs to be an official discussion amongst IMO member states on this point.

The ITF and its affiliates are of the strong view that remote inspections/surveys, as it is now, can be seen as a convenient temporary solution, but it will set a negative norm in the future.

Remote inspection can only be a reasonable solution when the ship is properly manned with competent crew. It must be the exception, not the rule.

THE ITF CALLS ON ITS MEMBER UNIONS TO:

Use the following regulations:

- SOLAS Ch. V/14 Ships' manning
- SOLAS Ch. XI Management for the safe operation of ships
- ISM Code Ch 6 Resources and Personnel
- STCW Reg. VIII/1 Fitness for duty
- STCW Reg. VIII/2 Watchkeeping arrangements and principles to be observed
- MLC 2006, as amended Reg. 2.3 Hours of work and hours of rest

- Address and raise awareness of the feasibility in conducting remote inspection as additional burden and unprotected responsibilities that could be put on seafarers;
- Request pragmatic Guidelines for remote inspection procedure that thoroughly instruct roles and responsibilities for each party;
- Participate in law making venue with the relevant national maritime authority and employers to ensure watch system, safe manning and hours of rest are not violated.

APPENDIX I - UPCOMING WORLD MARITIME UNIVERSITY RESEARCH REPORT

Evaluating the implementation of the current maritime regulatory framework on rest and work hours

Executive Summary

Underreporting of work hours or adjustment of work/rest hour records¹ has been suggested by previous research to be a common practice in the shipping sector.

With this starting point, the World Maritime University has conducted exploratory research into the implementation of the current framework on work and rest. The associated research activities broadly aimed to achieve the following:

- (1) Investigate stakeholder perceptions of the capacity of the current international regulatory framework to effectively prevent fatigue;
- (2) To assess the barriers to effective implementation onboard ships; and
- (3) To evaluate the level of compliance with the current regulatory regime.

Data collection approaches

This qualitative study made use of semi-structured interviews, focus group discussions and case studies, to gain in-depth appreciation of seafarers' recording practices, and a clear understanding of how different stakeholders deal with implementation, compliance monitoring and enforcement of the relevant provisions of the instruments of the International Labour Organization and International Maritime Organization.

To collect a diversity of views, the sample included maritime stakeholders such as seafarers, port State control officers (PSCOs), as well as representatives from shipowners' organizations, industry organizations, maritime non-governmental organizations, and casualty investigators.

Four (n=4) separate interview instruments were created according to the broad categorization of stakeholders: seafarers, shipping companies, maritime organizations, and port State control officers. In total, seventy-one (n=71) interviews were conducted with eighty-one (n=81) participants.

The interviews were complemented by two (n=2) separate focus group discussions. The first one was held with a group of International Transport Workers' Federation inspectors; the second focus group invited port State control officers and focused on compliance monitoring and enforcement. Finally, a case study was used to further validate the findings.

Research findings

The clear convergence of empirical data collected confirms existing literature and suggests that recording malpractices are widespread.

On the relevance of the current international regulatory framework to effectively prevent fatigue and mitigate its effects, the research outcomes suggests that there is no scientific basis to ensure the effectiveness thereof. The thresholds of the existing regulations receive stark criticism across the entire range of stakeholders interviewed except for views expressed by a few shipowners' organizations.

1. To monitor compliance, the work/rest hours records are required by flag State legislation implementing the Maritime Labour Convention, 2006 and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended.

The determination of manning levels and their approval have been particularly questioned. The research findings indicate that the detailed principles listed in International Maritime Organization Resolution A.1047(27) for establishing minimum safe manning are not adhered to in most instances. It was apparent that flag States do not always fulfil their responsibilities, nor do they necessarily ensure that shipowners carry out theirs with regards to efficient and sufficient manning of ships. This results in an imbalance between workload and the number of personnel available to complete the diversity of onboard tasks. The analysis made indicates that insufficient safe manning levels are the root cause of violations and recording malpractices. The situation is exacerbated during peak workload conditions such as those experienced in relation to special operations and port-related activities. These findings corroborate previous research.

The effectiveness of recording practices to demonstrate compliance with regulations was widely questioned by research participants and viewed as purely a paper exercise for compliance purposes. Many of the recording software programmes are deemed to be 'gamed for success' to ensure compliance with the regulations and 'incentivise' crew to adjust their records.

The current research found a "culture of adjustment" among seafarers; work hours are either underreported or work/rest hour records are adjusted to facilitate compliance. As demonstrated in previous research, adjustment of records are found to extend beyond mere work/rest hour records. Participants were of the opinion that any record has the potential to be adjusted, pointing out a number of records that are susceptible to adjustment practices. They include records of planned maintenance, drills, oil record book, checklists and risk assessments, and, eventually, and even official logbook entries.

Various factors are raised as contributing to seafarers adjusting their work/rest hour records. Eighty-five percent (n=17) of seafarers interviewed attribute adjustments to insufficient manning levels, particularly during activities in ports, quick succession of ports (short sea shipping), and when their vessel operates (in port or at sea) on the 6 hours on/6 hours off watch system. Other factors that encourage recording malpractices primarily include fear of sanctions from shore management, especially considering employment insecurities and consequences

of failing third-party inspections. Financial incentives such as bonuses or overtime, meeting key performance indicators, and the nature of recording software were also mentioned as contributing factors resulting in recording malpractices.

For seafarers, the sole objective of recording work/rest hours is to confirm compliance to avoid disruptions to vessel operations and not to confirm actual working time onboard. They seem unable to prioritise their allegiance: ship interests or regulations. They are trapped in cognitive dissonance, where deviance is normalised.

Most companies seem to neglect seafarers' feedback about work/rest hours, which signifies that they operate with deficient safety management systems unable to allow circulation of information and proper response to shipboard difficulties.

Systematic adjustment of records indicate that flag States' surveys and audits are ineffective in verifying the implementation of regulations beyond paperwork, which questions the overall effectiveness of the International Safety Management Code. Participants also mentioned that the safety management systems often give rise to the bureaucratisation of safety and ship operation, which widens the disconnect between the sharp (ship) and blunt (company) ends.

Although port State control seems to be carried out according to the guidelines on harmonisation of activities and procedures in most instances, the fact is that only two items are systematically checked, the watch schedule and the records of work/rest. This reduced scope of initial inspection has been found as a limitation to effective compliance monitoring and enforcement. Indeed, inspectors reported that they rarely assess the accuracy of records. The extent of the items to be checked on ships, the lack of resources (in time and personnel) and difficulties to find incontrovertibly clear grounds justifying detailed inspections, have been highlighted as the main obstacles.

The participants suggested that inconsistencies in implementation and non-dissuasive enforcement measures of flag and port States create an environment for the normalisation of deviance. This results in widespread recording malpractices and failure by all stakeholders - seafarers, companies, flag and port States

- to address the issue despite being recognized by all of them. Consequently, there is an apparent inability to enforce existing work/rest hour rules which may seriously affect ship safety as well as seafarers' health and safety, cognitive performance, and their retention in shipping.

Finally, the failure to address violations and recording malpractices indicates systemic failures, which may, in the absence of significant reform in both industry and administrative practices, perpetuate, creating a cultural context and practices that will be increasingly detrimental to the shipping industry and international maritime governance.

The way forward : three core directions

The study reveals three significant shortcomings in the extant situation

First, the study confirms previous research that insufficient manning levels facilitate non-compliance with rest hours requirements. Subsequently, the adequacy of the current legal framework and associated practices may need to be reviewed to balance workload with manning, safe operations and safety culture on board, including accurate record-keeping.

Therefore, it is suggested that:

- Maritime administrations should seek to collaborate on developing a stringent, objective, and research-based model for determining safe manning, allowing full compliance at all times and in all operational conditions.
- The safe manning level for each ship should integrate the diversity of ship operation and be thoroughly justified and documented to establish sufficient manning.
- The ILO and IMO should start considering how manning provisions for the safe operation of ships could be developed in order to make them binding in nature.
- ILO and IMO should review the current work/rest hours regulations to align them with the evidence-based research on fatigue.

Second, fully in line with previous research, the study suggests that the ISM Code face challenges to achieve some fundamental objectives, such as full compliance with regulations and effective feedback mechanisms. Therefore, it is advocated that maritime administrations should engage in assessing the effectiveness of, and considering amending, the ISM Code accordingly, as appropriate.

Third, also confirming previous research on ship/shore relationships, the study considers the negative impact of chronic mistrust between shore and ships combined with job insecurity characteristic of numerous seafarers' working contracts, as triggers of a culture of adjustments to, in particular, records of work/rest hours. Maritime administration should prevent such a culture by putting in place protection mechanisms that secure seafarers' employment and to promote the concept of just culture.

To a certain extent, all maritime stakeholders seem aware of the existence of a culture of adjustment. This de facto connivance needs to be unlocked to avoid the culture of adjustment to becoming uncontrollable and irreversible. Therefore, in the context of work/rest hours, maritime stakeholders should engage in high-level discussions to review comprehensively the existing safety culture and applicable legal framework and identify potential gaps and areas for improvement.

Aware of the obstacles and time necessary to achieve such a significant revision of major IMO and ILO instruments, the report proposes a number of short-term and follow-up recommendations to pave the way forward and set the stage for the necessary paradigmatic shifts.

Short-term recommendations for national regulators and regional organizations²

(1) Flag States and port State control (PSC) regimes should recognize the importance of the human element and the detrimental impacts of insufficient rest on ship safety, work performance, and occupational safety and health. Therefore, flag State surveyors and PSCOs should be trained accordingly. Furthermore, inspections should target work/rest hour and ensure records' accuracy.

(2) Flag States should review the guidance given to their surveyors and those authorized to act on their behalf, as appropriate, to include systematic verification of work/rest hours records' accuracy. In addition, flag States should ascertain that all relevant personnel are fully cognizant of the guidance and strictly apply it.

Furthermore, national PSC organizations and PSC regimes should amend their guidance and instructions to include systematic verification of records' accuracy during the initial inspection. The Procedures for PSC (resolution A.1138(31)) should be amended accordingly.

(3) Tailor-made tools to facilitate detection of violations and malpractices in recording work/rest hours are recommended for flag State and port State inspectors. Such tools should be supported by training such as those developed in association with MARPOL Annex I inspections.

(4) National PSC organizations and PSC regimes should initiate Concentrated Inspection Campaigns (CICs) focusing on work/rest hour regulations with emphasis on assessing records' accuracy. Before launching such CICs, the PSCOs should be instructed on cross-checking methods.

(5) General PSC inspections should be complemented with focused inspections outside CICs. Such focused inspections allowing cross-checking should be randomly launched or determined via targeting using risk assessment frameworks. For example, PSC regimes should modify their targeting system to enhance inspection on work/rest hours on ships operating on a two-watch system.

(6) Relaying the concerns expressed in Annex 3 of the resolution A.1047(27) on Principles of Minimum Safe Manning, flag State authorities, national PSC organizations and PSC regimes should amend their guidance to include the presence of a two-watch system as clear grounds immediately prompting detailed inspections, since this watch system is, in practice, incompatible with the provisions on hours of rest set out in the 1978 STCW Convention as amended, and the MLC, 2006.

(7) Flag State surveyors and PSCOs should register adjustments of records as major non-compliance to specific instruments and evidence of ISM Code non-conformity.

(8) At present, PSC inspections' outcomes consider, inter alia: no deficiency, deficiency(ies), requiring inspection in the following port, detention in port, or inspection suspended. In the context of violations of work/rest hours or adjustment of records, PSC regimes should develop innovative responses such as delaying the ship to allow the crew to rest without recording it as a detention. Additionally, PSC regimes should strengthen co-operation with the flag States of ships with related deficiencies, for them to take relevant actions on the safety management system. The relevant flag state could be invited to expand the current reporting mechanism regarding "flag comments" following detention to all deficiencies related to adjustments of records.

(9) When conducting ISM external audits, flag State surveyors should not exclusively rely on paperwork. Other forms of data collection, such as confidential interviews with seafarers, should be promoted.

(10) During the renewal of the Document of Compliance (in respect of the ISM Code), surveyors should cross-check the information provided in ISM records and investigate the effectiveness of feedback mechanisms.

² It is important to recall some practical differences between flag State inspection and port State control. Flag State or Recognized Organization acting on their behalf, carry out surveys and audit ships to certify them. Their inspectors are mandated to thoroughly monitor ships' compliance levels with respect to every instrument ratified/enacted by the flag State. Therefore, flag State inspectors conduct multiple and in-depth inspections. On the other hand, the port State control regimes emerged to protect national waters from substandard ships and compensate for the failures of certain flag States as well as to organize the conduct of inspections regionally. In this context, the PSCO does not certify the ship but verifies its compliance with the international conventions. Usually, PSCO verifies at once all conventions but do not have time for in-depth verification during the initial inspections. Therefore, in principle the flag State inspector/surveyor is expected to complete the bulk of inspection tasks with port States simply carrying out verifications of compliance.

Short-term recommendations for companies

- (1) Companies should acknowledge and address any feedback from ships which may be of concern and respond to violations of working time standards or any justified request for additional crew. Besides, companies should regularly assess their ships' manning levels with the crew's inputs. Finally, non-routine events or situations such as canal/channel crossing or heavy maintenance should immediately trigger pro-active company's response with a manning level increment.
- (2) Companies should train their shore managers and decision-makers to recognize the importance of human factors and the detrimental effects of fatigue on ship safety and occupational safety and health and show evidence of such training (such as the shore-based training records required by the IMDG Code).
- (3) Companies should initiate fatigue management programmes incorporating work/rest hours data verification.
- (4) Companies should establish a genuine link with their crews and strive to incorporate them stable employment conditions in seafarer contracts.
- (5) Companies should promote the concept of just culture to strengthen their reporting systems.
- (6) Companies should empower DPAs to, inter alia, initiate substantial change enabling trustful feedback and initiate/support research on the bureaucratization of ship operation and its impacts on safety and working conditions. Internal audit guidance should be adjusted to become an opportunity to assess safety beyond a mere paper exercise.
- (7) Companies should test and implement innovative methods for record-keeping as long as they are ethically acceptable. Good practice in record-keeping should be reported to international trade organizations and other industry stakeholders.

Short-term recommendations for seafarers

- (1) Campaigns targeting seafarers should urge accurate record-keeping and reporting violations to companies.
- (2) Seafarers should be encouraged to use existing reporting procedures such as per ISM Code and MLC, 2006 complaint procedures to report violations and malpractices. When fearing victimization, seafarers should report to any framework allowing sufficient confidentiality and protection such as CHIRP maritime.

Short-term recommendations for international organizations on implementation and enforcement

- (1) ILO and IMO should initiate discussions on the implementation and enforcement of work/rest hours regulations and related instruments.
- (2) Considering the concerns about the two-watch system expressed in Annex 3 of the IMO Resolution A.1047(27) and the research on fatigue, the IMO member States should consider amending the provision 6.3.2 of Appendix 11 to resolution A.1138(31) on Procedures for Port State Control, 2019 to include the two-watch system as clear ground prompting detailed inspections.
- (3) IMO should amend Appendix 11 chapter 6.2 of Resolution A.1138(31) to expand the scope of the initial inspection and allow systematic cross-checking of records.
- (4) The ILO guidelines for Flag State Inspections and Port State Control Officers should be revised to include systematic verification of records' accuracy during initial inspections.
- (5) Resolutions MSC.255(84) and A.1075(28) related to the Casualty Investigation Code should require the systematic assessment of manning levels and report the adjustments of records and particularly those related to work/rest hours. Furthermore, the resolutions should evaluate the effectiveness of the ISM Code beyond its paperwork.
- (6) ILO and IMO should review tamper-proof monitoring technologies limiting manual input and forging attempts. Ethically acceptable technology guaranteeing seafarers' dignity, and data confidentiality should be identified.

Other short-term recommendations for international organizations

- (1) Considering that the current 14-hour workday and 10-hour rest split into two periods in maritime employment do not align with fatigue research, ILO social partners and IMO Member States should re-examine the thresholds included in MLC, 2006 Regulation A2.3 and STCW Section A-VIII/1. Additionally, ILO social partners and IMO member States should discontinue the two-watch system as an acceptable arrangement.
- (2) The MLC, 2006 Guideline B2.3 should include an explanation about compensatory rest, as used in Standard 2.3 paragraph 8, and STCW Section A-VIII/1.4 should establish limits to “overriding operational conditions.”
- (3) The ILO and IMO instruments related to working time should strictly align their requirements.

Further recommendations

- (1) Regulators, maritime education and training institutes, professional organizations, trade unions, and shipping industry organizations (including P&I Clubs and insurance entities) should initiate and strengthen programmes on human factors for seafarers and shore managers (including DPAs). Among other things, such programmes should create substantive awareness of the importance of maintaining accurate work/rest hour records and seeking, ascertaining and using feedback.
- (2) The maritime and labour communities should debate using ethically fair and efficient sanctions or other measures as a last resort to address systematic violations and recording malpractices. Any form of sanctions should additionally focus on those who hold power to determine manning quantity and quality.
- (3) Further research to assess and identify options to overcome the detrimental impacts of working conditions and victimisation for accurate recording and feedback should be initiated. The mechanisms engender fear that hinder trustworthy recording as well as impact seafarers’ mental health should be researched and counter-measures proposed and implemented.
- (4) Long-term contractual agreements and protection of seafarers should become a primary objective and norm in shipping. Mutual engagement is a necessary condition for implementing just culture and building confidence between seafarers and their companies. Flag States should promote social security measures enabling confidence.
- (5) Legal practitioners should be encouraged to research the impact of work/rest hour violations and adjustment of records on the concept of seaworthiness.



About the ITF

The International Transport Workers' Federation (ITF) is a democratic, affiliate-led federation recognised as the world's leading transport authority. We fight passionately to improve working lives; connecting trade unions from 147 countries to secure rights, equality and justice for their members. We are the voice for nearly 20 million working women and men in the transport industry across the world, including over a million seafarers.

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