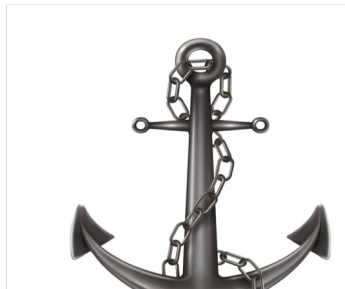


Developing Labour Standards for Representation on Ships

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**This thesis is submitted in candidature for the Degree of
Doctor of Philosophy**

September 2018

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Declaration

This work has not been submitted in substance for any other degree or award at this or any other university or place of learning, nor is being submitted concurrently in candidature for any degree or other award.

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To the Precariat



So spake the doleful mariner,
Transfixing with his e'e,
In fluent, graphic English –
The language of the sea.

'I had no wish to work on ships –
Filipinos know it's hard –
Mouths were many, jobs were scarce,
From birth my life was marr'd.

'From green island homes we travel,
As mariner, nurse, or maid,
And remit to our loved ones
The pittance we get paid.

Excerpt from: *The Rime of the Globalised Mariner: Part I*
Michael Bloor (2012).



Acknowledgements

I owe the Nippon Foundation a debt of gratitude for having funded my education at the World Maritime University and their continued support in funding this PhD at the Seafarers International Research Centre, Cardiff University.

To my supervisors, Professors David Walters and Caroline Lloyd, who did an awesome job in guiding my research. I am forever grateful for your patience and tremendous support in seeing me through to the end. Thank you.

To the participants in the study at all levels and the seafarers who shared their experiences. I also received assistance from a number of persons in the UK shipping industry and other organizations in locating persons and gaining access to others, for which I am grateful. Special thanks to Rossen Karavatchev of the ITF who was a great help in this regard and who graciously responded to all my emails for assistance. Also, thanks to the staff of the seafarers' centre in Liverpool for welcoming me.

Many thanks to Yonathan Preminger, Sean Ffrench, Joy Walcott, William Baker, Amaha Senu and Will Mason-Wilkes, for reading drafts at various points and giving constructive feedback. Thanks to members of the Employment Research Unit (ERU), Cardiff Business School, especially to Dr. Jean Jenkins, for welcoming me into the unit and Professor Edmund Heery, for taking the time to chat with me and share his knowledge.

Thanks to the staff at SIRC, Professor Helen Sampson, Director, and especially to Louise Deeley (Lou), for graciously assisting with all the various things for which I needed help. Thanks to fellow PhD researchers at SIRC and Museum Place, too numerous to name, but I am grateful for the encouragement and advice. Special thanks to Grace Kruse and Melissa Mendez, whose friendship from the first day helped me survive Cardiff, I will always remember your tribute – WWCD! To my SIRC office mate Rogenen Pepito for all the travel tips that have enriched my life. To Jesse Abrahams, thanks for your friendship and support. Thanks to Stella

Brown, for being kind when Cardiff was all new and importantly for helping with my trip to Kilimanjaro!

To my friends and family at home, especially my mother, Dorrett V. Graham, for your prayers and encouragement and my nephew Jowaine Graham. Thanks Mrs. Saunders (June) for 36 years of looking out. To my soul brothers, Oral Brown (OB) and Leonard Wynter (Leo), and the newest addition to my list of friends, Kenisha Nelson, thanks for not letting the distance diminish our friendship. Special thanks to my soul sister Nicola Smith Kea (Nikki) for never being too busy. Your unwavering friendship gave me fuel to press on. Dwayne Deer, thanks for arriving just-in-time. To Jordan Howell and my nephew R. Shaquille Bowie for being an inspiration. Your determination and successes at such a young age gave me courage. I had to do this for you and all the young people I mentor.

There are many others whom space will not allow me to single out, whose welcome greetings and cheerful smiles were nourishment for a stranger in a strange land, but I will do so personally. Thanks for helping me to come out the other side less scarred than I would have been on my own.

Finally, to *Mother, The Source* of all things that made this possible. Thanks for conspiring to help me realize my dreams. *Maktub!*



Abstract

Merchant shipping is considered one of the most dangerous industries for workers' health and safety. The International Labour Organization (ILO), the agency responsible for regulating global labour standards, developed the Maritime Labour Convention 2006 (MLC) as what it describes as a "firm response" to an identified "deficit in decent work" on ships due to economic globalization. The MLC is therefore seen as an important instrument to govern employment and working conditions on commercial ships towards some positive outcomes in one of the most globalized of industries, where State regulatory capacities are said to be challenged. This dissertation focuses on provisions in the MLC for seafarers' representative participation, and the role of such provisions in the regulatory regime for health and safety management on board ships. Studies from other industries, show representative participation in health and safety to be beneficial in improving working conditions providing certain preconditions exist. These are, firm regulations supported by a strong regulatory steer, senior management commitment and organized labour.

Using primarily documents and semi-structured interviews at the international level where such standards are developed, through to where they are operationalized and on to the level of the workplace where they are implemented, this study traces the thinking and practices driving these provisions for representative participation on ships, and their potential for positively impacting seafarers' working conditions.

The findings of the study show that representative participation was included in the MLC based on customary practices, and there was a lack of deliberateness in its development. Equally, there was a lack of strategy for its operationalization, implementation and practice. At the shipboard level, representation emerged as an institution in disarray where the preconditions were not met, and seafarers lacked a full understanding and appreciation of

representative participation as a mechanism for their health and safety protection.

The study concludes that there is a disconnect between the theory and practice of representation for the seafaring workforce and suggests that an absence of consideration at the stage of developing the MLC, may account for this gap. In these findings, the study highlights the challenges to representative participation owing to the nature, organization and control of work on board and the absence of the preconditions for its support. In doing so, the study points to the limits of the regulatory lead and by extension the ILO's global regulatory mechanism for addressing health and safety on board ships.

Key Words: Maritime Labour Convention; Seafarers' Health and Safety; Worker Representative Participation; Global Labour Standards; International Labour Organization; Global Regulation; Decent Work.

Contents

Declaration.....	i
Dedication.....	ii
Acknowledgements.....	iii
Abstract.....	v
List of Tables and Figures.....	xii
Abbreviations.....	xiii

1 Problematizing Standards for Seafarers’ Representation

1.1. Introduction.....	1
1.2. Motivation for the Research.....	4
1.3. Conceptualizing the Research.....	5
1.3.1. Research Questions and Objectives.....	9
1.4. Thesis Structure.....	9

2 Worker Representation in Health and Safety

2.1. Introduction.....	12
2.2. Defining Representative Participation.....	13
2.3. The Origins of and Rationale for Representation in OHS.....	17
2.4. Why Worker Representation in OHSM?.....	22
2.4.1. Evidence for Direct Participation.....	23
2.4.2. Effectiveness of Representation in OHSM.....	26
2.5. Preconditions for Effective Representation.....	30
2.5.1. A Strong Regulatory Lead.....	31
2.5.2. Management Commitment.....	34
2.5.3. Organized Labour and Active Constituents.....	37
2.5.4. Enforcing the Regulatory Lead.....	41
2.6. Conclusion.....	42

3 Dangerous Work, Silenced Voices

3.1. Introduction.....	44
3.2. Health and Safety Concerns for the Seafaring Workforce.....	45
3.2.1. Seafarers’ Death Burden.....	47
3.2.2. Illnesses and Injuries Among Seafarers.....	49
3.3. Globalization and Seafarers’ Health and Safety.....	51
3.4. Regulating OHSM at Sea Prior to the MLC.....	54
3.4.1. The ISM Code.....	57
3.5. Representation in Shipping.....	62
3.5.1. Seafarers’ Participation on Ships.....	64
3.6. The Maritime Labour Convention.....	68
3.7. Conclusion.....	73

4 Methodology

4.1. Introduction.....	74
4.2. Selecting an Appropriate Approach.....	75
4.2.1. The Case Study.....	76
4.2.1.1. The UK Case.....	78
4.3. Structuring the Inquiry: The Three Levels.....	79
4.4. Data Collection.....	80
4.4.1. Documentary Research.....	80
4.4.2. Semi-structured Interviews.....	83
4.5. Participants: Access and Challenges.....	84
4.5.1. Elite Informants.....	86
4.5.2. Seafarers.....	89
4.6. Fieldwork.....	91
4.7. Data Processing and Analysis.....	93
4.8. Ethical Considerations.....	94
4.9. Conclusion.....	95

5 Negotiating Maritime Labour Standards

5.1. Introduction.....	97
5.2. Negotiating Labour Standards at the ILO.....	98
5.2.1. A Framework Convention.....	103
5.2.2. Contradictions in Negotiating Decent Work.....	107
5.2.2.1. Cooperation, Consensus and Compromise.....	109
5.2.2.2. Constraints and Conflicts.....	116
5.3. Representation in the MLC Framework.....	123
5.3.1. Origins of and Rationale for Representation in the MLC.....	127
5.4. Conclusion.....	130

6 Accounting for Representation in the MLC

6.1. Introduction.....	131
6.2. The Origins of Representation in the MLC.....	132
6.2.1. ILO History, Structure and Traditions.....	132
6.2.2. Consolidating Existing ILO Maritime Conventions.....	139
6.2.3. The Influence of Other ILO Conventions.....	142
6.3. Rationale for Representation in the MLC.....	144
6.3.1. Codifying Existing Practices.....	144
6.3.2. Risk Assessment and Changes in Approaches to OHSM.....	146
6.3.3. Uncontroversial.....	149
6.4. Protecting Seafarers or Shipowners?.....	153
6.5. Conclusion.....	159

7 Operationalizing Standards for Representation on Ships

7.1. Introduction.....	160
7.2. Operationalizing the Regulatory Lead.....	160
7.2.1. The UK's Regulatory Steer for Representation on Ships.....	165
7.3. Implementing and Enforcing the Standards for Representation.....	171
7.3.1. Inspecting for Representation.....	173
7.3.2. Relationship Between Inspectors and Representatives.....	178

7.3.3. Selecting Representatives: Appointment versus Election.....	182
7.4. Union Involvement On Board.....	183
7.6. Conclusion.....	187

8 Experiencing the Regulatory Lead

8.1. Introduction.....	188
8.2. Who Represents the Seafarer On Board?.....	189
8.2.1. Knowledge of the MLC.....	189
8.2.2. Supervision versus Representation.....	194
8.3. Participation Practices on Ships.....	198
8.3.1. “We Can All Speak”	199
8.3.2. Consultation.....	203
8.3.3. Participating in Decision-Making.....	205
8.3.4. The Complaints Procedure.....	208
8.3.5. Health and Safety Committees.....	210
8.4. Selective Partnership and Social Dialogue.....	215
8.5. Conclusion.....	217

9 Problems with Standards for Representation On Board

9.1. Introduction.....	219
9.2. Negotiating Standards.....	221
9.3. Supports for Effective Representation.....	223
9.3.1. Management Commitment in Theory.....	223
9.3.1.1. Paternalism and Enlightened Self-Interest as Commitment.....	224
9.3.2. Management Commitment in Practice.....	227
9.3.2.1. Participation Under the ISM and the MLC.....	228
9.3.2.2. Direct Participation On Board.....	229
9.3.2.3. Competence of Representatives and OHS Committee Members.....	231
9.3.2.4. Health and Safety Management?.....	232

9.3.3. Trade Union Involvement.....	234
9.3.3.1. Mind the Gap: Selective Cooperation in OHSM.....	234
9.3.3.2. A Long-Distance Relationship.....	235
9.3.4. Challenges in Enforcing the Regulatory Lead.....	237
9.4. Conclusion.....	240
10 Conclusion: Understanding the Disconnect	
10.1. Introduction.....	242
10.2. Research Summary and Key Findings.....	243
10.2.1. Representation for Whom?.....	247
10.2.2. Unmet Preconditions.....	249
10.3. Contributions of the Study.....	251
10.4. Limitations of the Study and Areas for Further Research.....	254
10.6. Representation Going Forward.....	256
References	259
Glossary	276
Appendices	
Appendix I Report to the ILO on Abandoned Vessel.....	281
Appendix II List of Key Documents Used in Documentary Analysis.....	283
Appendix III Interview Guide – Developmental Level.....	287
Appendix IV Interview Guide – Administrative Level.....	289
Appendix V Interview Guide – Shipboard Level.....	291
Appendix VI Consent Form.....	293
Appendix VII Codes and Themes.....	294
Appendix VIII Ethics Approval Letter.....	298
Appendix IX Maritime Labour Convention 2006 – Title 4.....	300
Appendix X Resolution on Linking The ISM Code and the MLC.....	307

Tables and Figures

Tables

Table 3.1: Selected Maritime Casualties Influencing Development of the ISM.....	58
Table 4.1: Categorisation of Documents used in this Research.....	82
Table 4.2: Description of Interviewees at the Developmental and Administrative Levels.....	85
Table 4.3: Description of Seafarers Interviewed.....	91
Table 5.1: Ratification Status of Seafarers' Employment and Working Conditions Conventions as at December 2002.....	99
Table 5.2: The MLC Framework for the Roles and Rights of Representatives.....	125
Table 5.3: Comparison of Regulatory Provisions for Seafarers' Representatives with Land-based Provisions.....	129

Figures

Figure 2.1: Preconditions for Effective Representation.....	31
Figure 2.2: Statutory Rights of Workers' Representatives.....	32
Figure 3.1: General distinctions between systematic OHSM and OHSM systems.....	60
Figure 4.1: Response to Interview Requests by Shipowners.....	88
Figure 5.1: Timeline of the Meetings of the Working Groups that Negotiated the MLC.....	102
Figure 7.1: ILO Maritime OHS Conventions Influencing UK's Compliance Regime.....	162
Figure 7.2: Provisions for Representation as written in the UK's COSWP.....	167

Abbreviations

AB	Able-bodied Seaman (Able Seaman or Able Seafarer as the gender-neutral term)
CBA	Collective Bargaining Agreement
CBT	Computer-based Training
COPAP	Code of Practice on Accident Prevention on Board Ship at Sea and in Port
COSWP	Code of Safe Working Practices for Merchant Seamen (MCA)
DMLC	Declaration of Maritime Labour Compliance
DPA	Designated Person Ashore
ETO	Electro-technical Officer
EU	European Union
EU-OSHA	The European Agency for Safety and Health at Work
HPWS	High Performance Work Systems
HSC	Health and Safety Committee
HSCE	Health and Safety (Consultation with Employees) Regulations 1996 (UK)
HSE	Health and Safety Executive (UK)
HSWA	Health and Safety at Work Act 1974 (UK)
IBF	International Bargaining Forum
ICONS	International Commission on Shipping
ICS	International Chamber of Shipping
ILC	International Labour Conference
ILO	International Labour Organization
IMO	International Maritime Organization
ISF	International Shipping Federation
ISM	International Code for the Safe Management of Ships and for Pollution Prevention (International Safety Management Code)
ITF	International Transport Workers' Federation
JMC	Joint Maritime Commission
MAIB	Marine Accident Investigation Branch (UK)
MARPOL	International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 the Protocol of 1997
MCA	Marine and Coast Guard Agency (UK)
MLC	Maritime Labour Convention, 2006
MOSH	Maritime Occupational Safety and Health Guidelines, 2014
MSN	Merchant Shipping Notice

OHS	Occupational Health and Safety
OHSM	Occupational Health and Safety Management
OS	Ordinary Seaman (Ordinary Seafarer)
PSC	Port State Control
PTMC	Preparatory Technical Maritime Conference
RoSPA	Royal Society for the Prevention of Accidents
SIRC	Seafarers International Research Centre
SMS	Safety Management System
SOLAS	International Convention for Safety of Life at Sea 1974, as amended
SRSC	Safety Representatives and Safety Committees Regulations 1977 (UK)
STCW	International Convention on Standards of Training Certification and Watchkeeping for Seafarers 1978, as amended, 1995 and 2010.
STWGMLS	(Subcommittee) Transport Working Group on Maritime Labour Standards
TWGMLS	(High-Level) Transport Working Group on Maritime Labour Standards
UK	United Kingdom
USA	United States of America
WERS 98	Workplace Employee Relations Survey 1998 (UK)

Problematizing Standards for Seafarers' Representation

No moral endeavour, no political orientation, no human study that does not pay close attention to [people] at work, can possibly be adequate for our time. For work is affected by and in turn affects all that man is and all that he might become. The question we must ask of any society or of any social program is what kinds of men and women does it select, encourage, create? And in terms of this human evaluation, the most important question we can ask is whether work is a void in which men sacrifice themselves or whether work is a central feature of a style of life in which man may realize himself (C. Wright Mills, 1951, quoted in Abrams 2001).

1.1. Introduction

Developing labour standards for workplace health and safety is an important issue for contemporary society. There is ongoing academic and policy interest in how to protect workers from the dangers of the workplace (eg. Hilgert, 2013; EU-OSHA, 2012; 2018; RoSPA, 2010). Work risks are not confined to the immediate work environment but have social and economic consequences for wider society (Frayne, 2015; Hilgert, 2013; Abrams, 2001). Workplace disasters, such as the Rana Plaza in Bangladesh or Aberfan in Wales, devastate communities, rob families of their livelihood and the full capacities of their loved ones. The maritime industry has had its share of disasters, causing numerous loss of lives and destruction to the marine environment (see Anderson, 2003).

The International Labour Organization (ILO)¹ estimates that 2.3 million workers die annually from work-related injuries and diseases. Another 160 million workers are estimated to suffer from non-fatal work-related diseases and 313 million from non-fatal work-related injuries. It is argued that most injuries and fatalities are preventable if workplaces are effectively regulated and health and safety systematically managed (Walters and Nichols, 2013; Frick et. al., 2000). An important aspect of such efforts to regulate and manage health and safety at

¹ ILO website: <http://www.ilo.org/global/topics/dw4sd/themes/osh/lang--en/index.htm>. Accessed February 7, 2018.

work, is worker representative participation (Walters and Nichols, 2007; Nichols, 1997).

In 2006, at the Ninety-fourth (Maritime) Session of the International Labour Conference (ILC)², labour standards to govern seafarers working and living conditions were adopted in the form of the Maritime Labour Convention 2006 (MLC). According to the ILO, the MLC was developed in response to a “deficit in decent work” on ships (TWGMLS/2001/10).³ The ILO claims that these standards represent a “firm response” to the poor working conditions for seafarers. They include provisions for seafarers’ representatives to participate in health and safety on ships.

Shipping is considered one of the most globalized industries and States are said to be challenged in effectively regulating labour standards due to the effects of economic globalization (DeSombre, 2006; Lillie, 2006; Bloor et. al., 2005). That is, shipowners are able to take advantage of global interconnections to reduce costs and avoid regulations. Among the adverse consequences of these practices have been a “race to the bottom” in labour standards for the seafaring workforce (Lillie, 2006). In this respect, global institutions are seen as important to establish global rules to contain the negative impacts of globalization (Ruggie, 2014; Karns and Mingst, 2004). The ILO is considered to be one such institution and the development of the MLC a regulatory mechanism to address the reduction in States’ abilities to police labour activities on board ships (Lillie, 2006). Indeed, the ILO considers the MLC to be a “firm” global response to the adverse effects that economic globalization has had on seafarers’ living and working conditions (JMC/29/2001/3).

Against this claim, this study aims to explore and understand the MLC regulatory framework for seafarers’ representative participation on ships and examine its potential to contribute to decent work as envisaged. Representation as it concerns this thesis is defined in Chapter 2. The MLC mandates

² The ILO conference of member States where conventions are adopted.
<https://www.ilo.org/ilc/AbouttheILC/lang--en/index.htm>

³ See Appendix II for list of documents used in the documentary analysis.

representatives to sit on health and safety committees on ships suggesting a structure for joint consultation. Structures for representative participation are understood as being outside the employers' sphere of influence to give workers a chance to have some impact on their working conditions.

Reference to the MLC framework takes into consideration the mandatory provisions in the MLC (Title 4, Standard A4.3, paragraphs 1c & 2d), and its guidelines in Standard B, and the Maritime Occupational Safety and Health (MOSH) Guidelines 2014, as well as other guidelines and codes to which the MLC refers, particularly the ILO's Code of Practice on Accident Prevention on Board Ship at Sea and in Port (COPAP). Together, these documents present a set of regulatory policies and practices for representative participation in the shipboard work environment. The presumed aim of these policies and practices is to give seafarers a "say" in their occupational health and safety (OHS) protection. It is argued that regulations are an important precondition for effective representation (Milgate et. al., 2002: 285). Regulations set the framework to guide the practice of representing workers towards positive health and safety management activities and workers health and safety outcomes (Walters and Nichols, 2007; Walters et. al., 2005).

The existing research evidence that seafarers face exceptional risks in their work is convincing (Sampson, 2013; Walters and Bailey, 2013; Nielsen, 1999) and, therefore, the MLC provisions might represent a positive move towards helping to manage these risks. In addition to exposure to extreme weather conditions, seafarers face risks from the cargo they transport, the physical worksite of the ship, the nature and organization of work, and geo-political threats, such as piracy and criminalization (Walters and Bailey, 2013). These conditions are exacerbated by seafarers living and working in the same space, from which often, they may not even temporarily 'escape,' due to increased difficulties in accessing shore leave (Sampson, 2013; Graham, 2009). Recent research points to an increase in poor mental health of seafarers (Sampson et. al., 2017). These are among the occupational risks which led the ILO to declare a "deficit in decent work" on ships and pointed to a need for the MLC. It is against this background of dangerous

work and the ILO's claim that the MLC represents a "firm response" to such conditions, that this study explores the viability of the MLC provisions for seafarers' representative participation to have some impact in a globalized industry, characterised by precarious work.

1.2. Motivation for the Research

In research, "The biography of the researcher is always implicated" (Schostak, 2002: 3). This thesis was motivated by personal experiences as an administrator in the Maritime Authority of Jamaica (MAJ). I worked there for 15 years in various positions leading to the final post as Registrar of Seafarers. During this time the hardships faced by seafarers and the lack of organized support became evident to me.

The MAJ was established under the Shipping Act 1998 as Jamaica's maritime administration to oversee the country's obligations to a number of International Maritime Organization's (IMO) conventions it had ratified. While much effort was made to give effect to the technical and business aspects of being a flag and port State,⁴ the seafarers' section of the Act received scant attention. This became a concern for me as the country was, at the time, increasing enrolment at its seafarer training institution, without systems in place for their protection as cadets and afterwards. In my post as Registrar of Seafarers, to which I was appointed in 2009, I soon discovered that Jamaica's neglect of seafarers was not unique as concerns about seafarers' welfare were being expressed across the international shipping community (Kahveci, 2007; ILO, 2004).

As the Registrar of Seafarers, I dealt with Jamaican seafarers abandoned in foreign ports, foreign seafarers abandoned in Jamaican waters, victimization of Jamaican cadets and other OHS and welfare issues. However, training and other resources to support the post were not forthcoming. Also, there was no systematic programme in place to assist seafarers at the national or the

⁴ A flag State refers to the nationality of a ship under international maritime law. Ships on a country's registry are subject to the laws of that country wherever in the world they are. When a ship enters the port of another country, the country has certain legal rights to board and inspect for compliance with international maritime standards, referred to as port State control (PSC).

international level. Seeking information was met with bureaucracy from organizations that showed little authority or willingness to act. On contacting the ILO regarding the abandonment of foreign seafarers in Jamaican waters, I was told to submit a report to the ILO (Appendix I) and nothing further. Of the two Consuls representing the nationalities of the abandoned seafarers that were contacted, only one responded initially without any sensitivity to the situation, and subsequently stopped responding to my follow-up emails. Fortunately, the seafarers were eventually repatriated on sale of the ship.

In 2012, the ILO announced that the ratification threshold to trigger the coming into effect of the MLC had been achieved.⁵ The MLC was one of my portfolio items but efforts to prepare Jamaica for its entry into force were also given scant attention. Therefore, when subsequently pursuing the PhD research, I decided to further explore the topic of labour standards to protect seafarers' health and safety, and to focus on measures to give them a "say," as in my experience this was one of the areas in need of urgent attention.

1.3. Conceptualizing the Research

Theories, perspectives and concepts guiding this research are drawn from industrial relations, the sociology of work and the social-legal literature on representation in health and safety in land-based workplaces. These three disciplines overlap on the subject matter to present a combined body of work that offers a critical approach to the regulatory paradigm and workplace practices for representative participation in health and safety. "Regulated self-regulation," or "internal control" is the paradigm driving regulatory provisions and practices for OHSM in the contemporary context (Bluff et. al., 2004: 4-5). Under this regime, the responsibility for health and safety outcomes rests on the organization, its management and workers. The State regulatory apparatus should operate from a distance and be concerned with general requirements for the "social processes"

⁵ ILO (2012). Milestone ratifications of seafarers' labour rights charter. ILO News, August 20. Online. Available at: http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_187660/lang--en/index.htm [Accessed 20 July, 2015].

in arriving at the OHS outcomes (Bluff et. al., 2004: 4). Workers' input is seen as necessary under self-regulation but not necessarily representation which would entail union involvement (discussed in Chapter 2, Section 2.3).

The industrial relations perspective is concerned with the effectiveness of representative participation as a workplace relations institution for the collective participation of workers under self-regulation. The industrial relations perspective sees representation as occurring through the normal labour relations channels (Walters and Nichols, 2009: 2). This literature theorises a set of preconditions for effective representation (Walters and Nichols, 2007; 2009; Dawson et. al., 1988). These writers take a pluralist perspective of the workplace and their work overlaps with the sociology of work literature to emphasize the role of autonomous representative participation and the inclusion of unions in ensuring workers' OHS is protected in situations of competing workplace interests. In turn, the sociology of work literature emphasizes the structural conditions in workplaces that result in injuries and underscores the need for workers to have effective representation (Nichols and Walters, 2013; Nichols, 1997).

Industrial relations frames of reference become important in this discourse on what makes representation effective. The literature seeks to establish underlying perspectives driving the regulation and practice of representation and in this way account for the origins and rationale of regulatory provisions on representation that have been developed and its successes and failures. This thesis draws on these frames at various points as concepts to talk about and to understand relevant aspects of the theory and practice of representation (eg. Cullinane and Dundon, 2014; Budd and Bhave, 2008; Fox, 1974; 1966).

The frames of relevance to this thesis are unitarist and pluralist consistent with the management practices described in research on the shipping industry which are unitarist in orientation, and the ILO's pluralist context for the MLC. Budd and Bhave (2008: 94) argue that frames are the lens through which actors perceive and act on social phenomenon. A unitarist framing considers management as the sole authority in the workplace and external influences such as unions and the State as unnecessary interference. A pluralist framing considers the conflicts of

interest in the workplace and seeks to coordinate these interests through bargaining. Unions and State regulations are seen as necessary to counter the unequal power relations inherent in the employment relationship (Budd and Bhawe, 2008).

From the socio-legal perspective, the self-regulatory paradigm comes under scrutiny, particularly in light of the changing nature of work. This literature highlights and critiques the inadequacies of self-regulation to address workplace health and safety issues in the contemporary world of work. It is argued that the self-regulatory regime was geared towards addressing a particular employment relationship comprising stable, predominantly male workforces in medium to large enterprises. Changes in the nature and organization of work resulting in an increase in small enterprises and less stable and identifiable work situations are said to have undermined the self-regulatory paradigm and regulations for workers' representation and participation (Quinlan, 2013a; Dawson et. al., 1988). Further, the paradigm is said to be built on erroneous assumptions about the nature of workplace injuries and as such, seemed destined to fail from the outset (Nichols and Armstrong, 1973). These three disciplines, Industrial Relations, The Sociology of Work and Socio-Legal Studies, combine to present a convincing argument for the importance of representative participation in safeguarding workers' OHS and the preconditions that support its effectiveness.

Worker representation in OHSM is an established workplace institution in many countries. For example, regional regulatory standards, such as the European Union (EU) Framework Directive 39/891, have institutionalized representation for all EU member States. Provisions for representation is also found in workplace regulations and practices in other developed countries, such as Australia, Canada, New Zealand and the United States of America (USA) (Walters and Nichols, 2009). At the global level, representation is a feature in ILO conventions, such as the health and safety Convention 155. Many developing countries also have some

statutory provision for workers' representation on health and safety,⁶ although the extent to which these are operationalized and implemented is uncertain.

Against a background that representative participation is an accepted workplace institution, this study examines the development, administration and implementation of representation on ships as laid out in the MLC framework. Research evidence from land-based studies shows that effective representation contributes to positive OHSM activities and positive OHS outcomes for workers (EU-OSHA, 2012; Shannon et. al., 2010). However, the benefits of representation are found to be contingent on the support of firm regulations giving a strong regulatory lead, senior management commitment and organized labour (Walters and Nichols, 2007; Walters et. al., 2005). These preconditions are said to work together to support effective implementation and practice of representation in the workplace (Menendez et. al., 2009; Walters and Nichols, 2007). While the shipboard work environment may have its own peculiarities, such as being remote and mobile, it is argued that seafarers may also benefit from arrangements for representation on health and safety providing these preconditions exist (Walters and Bailey, 2013; Walters, 2005). However, there are reasons to question the extent to which these preconditions exist in the shipping industry.

Studies examining health and safety in the shipboard work environment reveal that there are conditions relating to the nature, organization and control of work, that inhibit seafarers' participation in measures to manage health and safety (Xue, et. al. 2017; Walters and Bailey, 2013; Bhattacharya, 2012a; 2012b; Kahveci and Nichols, 2006). These measures refer to unitarist management standards established to improve the safety record in the shipping industry. Based on this literature this thesis questions the extent to which the preconditions to support representation on ships exists. In this respect, the thesis problematizes these provisions and as a result, interrogates the ILO's claim that the MLC is a "firm response" to poor working conditions on ships.

⁶ ILO Global Database on Occupational Safety and Health Legislation (LEGOSH), ILO, Geneva. <http://www.ilo.org/dyn/legosh/en/f?p=14100:1000:0::NO::> [Accessed, February 7, 2018].

1.3.1. Research Question and Objectives

The central research question asks: *Are the MLC provisions for seafarers' representative participation in OHS a firm response to poor working conditions on ships?* A "firm response" is described in Chapter 2 and refers to regulatory features to ensure responsible parties meet their obligations for effective representation. These include the rights and powers given to representatives to support them in their roles (Walters, et. al. 2005). The study is qualitative and driven by three interlinking objectives reflective of the stages in the development, administration and implementation and practice of ILO standards. The objectives are:

- 1) To examine the viability of the provisions for representation on ships by exploring their origins, and the rationale for their inclusion in the MLC, and supports for their effective implementation and practice on ships. This objective is aimed at examining the thinking behind the provisions and what measures the architects of the convention have considered for giving them effect.
- 2) To examine how the provisions are operationalized at the national level. The study uses the United Kingdom (UK) as a case to examine how a reputable administration might operationalize representation for its flagged ships and in port State control.
- 3) To examine seafarers' experiences and perceptions of representation as intended by the provisions in the MLC. As the beneficiaries of the provisions, seafarers' perspectives are important to determine the likelihood that the benefits of representation will be realized.

1.4. Thesis Structure

The remainder of the thesis consists of 9 Chapters. Chapter 2 introduces the subject of representation focussing on the land-based literature. The sparse literature for the shipping industry is reviewed in Chapter 3. The land-based

literature establishes the foundation for representation, its history and practices. It provides the inspiration for provisions in the MLC and it is therefore pertinent to a study of representation on ships.

Chapter 2 begins with a definition of representative participation to establish its meaning and use in the thesis. It explores the origins of statutory provisions for representation in OHSM and the paradigm shift in regulatory approaches during that time. The chapter reveals the underlying thinking driving the new paradigm and the source of some of the critique on statutory provisions for OHSM. This leads to an examination of the literature on what makes for effective representation. The research evidence and theory for what works in making representation beneficial to workers is explored.

Chapter 3 examines the literature for the shipping industry and along with Chapter 2, forms the basis for problematizing the MLC provisions. It outlines the evidence for seafarers' work risks and explores research for regulatory provisions for OHSM on ships prior to the MLC. The previous research highlights the absence of good workplace relations practices which might support effective participation consistent with what is described for land-based industries. Consequently, this chapter sets the context for questioning the viability of provisions for seafarers' representation in the MLC and raises questions as to the ILO's claim for a "firm" regulatory response.

Chapter 4 presents the methodology. It details the study design, the data sources, participants and fieldwork. The research is framed as a case study of the MLC. It engages multiple sources of data: Documentary evidence of the deliberations spanning the 6 years of negotiating and developing the MLC; the testimonies of key participants who were involved in those negotiations; data from the UK used as a critical case at the national level; and interviews with seafarers at the shipboard level. The chapter discusses the field work and challenges faced during data collection. It ends with some reflections on ethics.

Chapters 5 to 8 deal with the findings and analysis of the data. Chapter 5 presents the findings from the documentary analysis of the meeting records and

other relevant documents to which the MLC refers, or which form part of the general MLC framework for representative participation. It explores the discussions, the conflicts and their resolutions towards producing the MLC as the 'new' labour standard for global shipping. Chapter 6 addresses the outcomes from the interviews with key informants directly involved in negotiating the MLC text. It explores some of the issues raised in the documents to clarify and substantiate events as they were recorded. Based on the testimonies of those interviewed, the chapter examines the intent of including representation in the text and what consideration was given to supports that might be required to ensure their implementation and effective practice.

In order to gain a fuller understanding of representative participation on ships as provided for in the MLC, the UK was selected as a case study and Chapter 7 presents these findings. Using documents and interviews with key personnel in the UK administration, the chapter presents the findings on how the provisions were operationalized and what adjustments were made for the UK to become compliant with the MLC. Chapter 8 further explores the viability of representation through the perceptions and experiences of seafarers as they reported. It presents the nature of representation on board ships and the views of seafarers on existing practices and changes brought about by the MLC. It also shows the constraints to effective representation at the shipboard level.

Chapter 9 discusses the key findings towards answering the research question. The main themes surrounding the development, operationalization and practice of representation are discussed. In drawing on the data, the chapter asks whether the MLC has provided a "firm" regulatory lead for representative participation and highlights the limits of global regulation.

Chapter 10 concludes the study. It revisits the main elements of the research and reflects on the core findings and explores the relationship between theory and practice of representative participation on ships. The chapter also presents the contributions of the study and highlights its implications for regulating representative participation and points to areas for future research.

Worker Representation on Health and Safety

When directors or take-over bidders assess the health of a company, it is balance sheets that they look at, not medical reports on the health of workers. In capitalism's language of priorities, it is not safety that comes first, but profit (Nichols 1997: 105).

2.1. Introduction

This thesis' central aim is to assess the ILO's claim that the MLC is a firm response to poor working conditions for seafarers, with specific reference to its provisions for representative participation in OHS. This chapter reviews the literature on representative participation expanding on issues raised in the Introduction regarding its importance in OHSM and the theoretical position that a certain set of preconditions ought to be in place for its effective implementation and practice.

That workplace injuries and ill-health are preventable is a position taken by those concerned with the effects of the work environment on workers' health and safety (Nichols and Walters, 2013; Walters et. al. 2005; Quinlan et. al. 2001; Nichols, 1997). Nichols (1997: 2-3) for example, argues that the concept of an "accident" is misleading as this suggests something unforeseen or "unanticipated, that which is unintentional and that which is down to misfortune or bad luck." He begins from the position that "accidents" are the result of how work is structured and organized therefore to call them "accidents" is a misnomer. Instead, he prefers terms such as "industrial injuries" and "industrial ill-health" which, he asserts, more accurately account for how most people come to suffer harm in their workplaces, and therefore can be managed as they are not unavoidable. This thesis supports this assertion and adopts a similar use of injuries and ill-health instead of "accidents."

This review draws on the land-based literature for advanced market economies as countries such as Australia, Canada, New Zealand, the UK and other members of the European Union in particular, have been the focus of the majority

of studies. In combination, the land-based literature provides strong evidence as to the value of representation in contributing to the establishment of good OHSM practices and OHS outcomes for workers, and the preconditions required for its effectiveness. A few US studies are also included where they are relevant, particularly in showing how representation has been beneficial to workers. The limited literature on representation in the shipboard work environment is reviewed in Chapter 3.

This chapter begins with a definition of representative participation. This is to distinguish it from other participatory arrangements which are different in how they include workers and therefore, as the literature shows, have different outcomes for workers “voice”⁷ and OHS protection. Next, the chapter explores the literature on the origins of and rationale for representation in OHSM, thus establishing the thinking behind statutory provisions for representative participation which is an important aspect in understanding the practice. The empirical evidence for the effectiveness of representation is then presented. The final section examines the preconditions for effective representation.

2.2. Defining Representative Participation

Representation is one of a number of ways that workers may be given the opportunity to participate in health and safety in their workplaces. Representation can take different forms such as individual employee representatives, joint consultation committees or work councils. As the structure most aligned with the MLC framework, joint consultation is defined by Marchington et. al. (1992) (quoted in Pyman, 2014: 264), as “a mechanism for managers and employee representatives to meet on a regular basis in order to exchange views, to utilize members’ knowledge and expertise, and to deal with matters of common interest which are not subject to collective bargaining.” This research is concerned with worker representative participation as a formal

⁷ While there is an understanding of ‘voice’ as its own subject matter which includes expression, silence or exit from the workplace, it is used in this thesis in its basic form to mean speaking out, participating, having an input or meaningful ‘say’ in workplace issues and decisions (Morrison, 2014; Budd and Bhawe, 2008).

workplace structure having regulatory support for workers to collectively present their OHS interests to management⁸ as described in the literature (eg. Lewchuk, 2013a; Walters and Nichols, 2007; 2009; Nichols, 1997; Dawson et. al. 1988).

Representation is embedded in employment relations practices on OHSM through industrial relations traditions and law. Throughout the thesis, *representation* as a stand-alone term to mean *representative participation* is the preferred usage to distinguish it from other participatory mechanisms. The particular model of concern is for workers to elect their representatives who then work through a health and safety committee to ensure their concerns are considered by management and they are given the opportunity to influence decisions (as outlined in the MLC, Regulation 4.3, Standard A4.3, paragraphs 1c and 2d).⁹ Representation or representative participation, is also termed “indirect participation” in some of the literature (eg. Benders et. al. 2001), which is to be distinguished from “direct” or “individual participation” (Lansbury and Wailes, 2008).

Direct or individual participation is where workers represent their OHS interests individually to management and most likely through managerial channels (Walters, et. al., 2005: 9; Benders et. al., 2001). Walters et. al. (2005: 9) define direct participation as “formal arrangements for the engagement of workers with supervisors, managers or employers on health and safety matters individually rather than through their collective representatives.” While employers may allow workers to select representatives in direct participation, this happens without

⁸ This thesis uses *managers* or *employers* interchangeably to refer to those whose decisions affect the work environment in the context of this study. As will be made clear, most of the literature refers to senior management, although some recognition has been given to the importance of supervisory and line managers. Senior managers make the decisions in terms of expenditures and policies that affect workers and work, and therefore this is the understanding when *management*, *managers* or *employers* are used in this study, or additionally, *the company* or *shipowners* in the case of shipping. These terms are used with the understanding that employers may not necessarily be managers, particularly when the different layers of management are considered, compounded by the fragmented nature of employment.

⁹ Other models exist, such as works councils, found in some European countries eg. France and Germany, which, due to the EU Framework Directive 89/391 have to also incorporate its provisions for representative participation or direct participation (with the emphasis being consultation of workers to ensure genuine participation) (James and Walters, 1997).

support of an autonomous employee organization such as a union. As such direct participation most likely remains under the influence of the employer.

Direct participation is also of consequence to this study as in practice it is taken as an alternative to representative participation. The situation is also muddled by regulatory provisions which make allowances for both. For example, the EU Framework Directive 89/391 Article 11 says: "Employers shall consult workers and/or their representatives". Further, the UK, which is the case selected for exploration in this study, has two sets of regulations, one that concerns unionized workers and the other, non-unionized workers. The latter gives employers the choice of consulting with workers or their representatives (James and Walters, 2002) (Direct participation is developed further in section 2.4.1).

Consultation is described as the mechanism through which employers and employees interact to bring about positive health and safety outcomes (Pyman, 2014: 264). It involves two-way communication between employers and employees, with the intention of giving workers a chance to influence decisions on OHS (Walters, 2010; Gunningham, 2008). Joint health and safety committees, sometimes termed joint consultative committees provide a structure through which consultation can take place. Consultation can involve both direct and indirect forms of participation. Direct consultation should occur where workers do not have union support or where employers chose to engage directly with workers rather than representatives. However, this does not necessarily happen in these situations (such as when employers simply inform individual workers of their actions or requirements). It is not uncommon however, to see reference being made in the literature to "consultation and representation" jointly to signify that a comprehensive and systematic approach is intended by the statutory provisions, where the aim is to achieve more than the unilateral conveyance of information from managers to workers (Walters, 2010: 29-35).

Legislative provisions for consultation in non-unionized workplaces (for example in the UK), have been viewed with scepticism. Commentators are sceptical when employers are deemed to have duties to consult workers outside

of organized labour.¹⁰ They argue that where workers are not organized, consultation might fall into one of the “involvement” mechanisms where there is no guarantee that workers are listened to nor their views taken seriously (Guest et. al., 2015; Gunningham, 2008). Thus, the efficacy of consultation is doubted when it is not associated with representation. For example, Gunningham (2008: 344-345) contends that consultation may not be at the level to ensure workers’ genuine participation as employers may appear to consult to satisfy regulatory requirements but do not necessarily take employees’ views into account. This raises questions as to whether regulations that do not provide for autonomous representation are able to deliver effective health and safety outcomes, a point that is later raised in examining participation in the shipping industry (Chapter 3).

Participation as a generic term is also used to refer to “involvement” and “engagement.” These terms often describe managerialist practices aimed at motivating workers without any guarantee of effective two-way communication and consultation (Guest et. al. 2015). Indeed “engagement” and “involvement” are mostly associated with broader issues of participation, linked to human resources and management strategies that seek to simultaneously impact on productivity and worker satisfaction and commitment to the organization (Guest, 2015; Lansbury and Wailes, 2008; Strauss, 2006).

In relation to OHSM, commentators are also sceptical of the potential of the associated involvement and engagement practices, such as staff surveys, briefing groups and suggestion boxes, to effectively address workers’ OHS interests. These managerialist methods claiming to involve workers are direct participatory practices and it is argued that they have limited scope for real contribution to better OHSM (Walters and Nichols, 2009). Those commenting on broader participatory practices, such as Lansbury and Wailes (2008), believe that “participation” differs from “involvement” as participation implies some degree of influence by workers and that they have some power over decision-making, which

¹⁰ Organized labour consists of autonomous representation, trade union support and effective communication between representatives and their constituents. The presence of these activities is expected to contribute to effective representation (Walters et. al. 2005 p. 118).

“involvement” does not imply. From this wider perspective, these direct notions of participation have been implicated in the deterioration of workers’ health (Frost, 2008).

Examining these various concepts and their implications for contributing to effective OHSM and workers’ “voice,” demonstrates the importance of clarity. Section 2.3 will show that there are consequences for developing and implementing statutory provisions depending on how participation is viewed. Is participation a means to involve workers in their own protection or is it a means to cooperate with management for organizational outcomes? As Walters and Frick (2000) discuss, the answer determines which practices are deployed. Although the two should not be mutually exclusive, it appears that there are challenges in integrating the two in most instances as management is said to be interested in participatory arrangements when they see the benefits to productivity. Alternately, participatory arrangements may be neglected when such benefits are not apparent (Strauss, 2006). Understanding the differences among these concepts and the implications for making regulations and driving practices in the workplace is therefore important. Walters, et. al. (2005: v) stress the importance of “a shared understanding of the meaning and potential of worker representation and consultation...” in order to align regulatory provisions with practices.

2.3. The Origins of and Rationale for Representation on OHS

This section explores how and why representation achieved statutory status in OHSM. It highlights the principles underlying the regulatory paradigm for contemporary workplaces which emerged in the 1970s and so provides an understanding of some of the challenges facing representation today. Historically, representation emerged from pluralist thinking on workplace issues as modern views on work emerged to embrace notions of workplace democracy (Kaufman, 2010). Labour was thought to be embodied in the worker and meant more than economic exchange, therefore it was considered ethical that workers participated in determining their conditions of work (Kaufman and Kleiner, 1993).

These notions underpin the ILO's development and is espoused in its most recent efforts at renewal evidenced by its Decent Work Agenda. The Decent Work Agenda is geared towards promoting social justice and is underpinned by the philosophy that labour is not a commodity (Hughes and Haworth, 2011). This agenda is said to be one of the main drivers of the MLC development (ILO, 2006a).¹¹ A pluralist thinking is therefore embedded in the tripartite structure of the ILO to demonstrate this non-commodification of labour and its importance alongside capital. Standards are negotiated by the social partners where labour is deemed to have equal "voice" as capital (that is the employers). In this structure, cooperation, consensus and compromise are key principles in arriving at decisions to satisfy the different and sometimes conflicting interests of all the parties (Hughes and Haworth, 2011) (as Chapter 5 reveals).

Contrary to the pluralist thinking, a unitarist position identifies the employer as the sole authority in the workplace and would consider social dialogue as an interference (Budd and Bhawe, 2008; Fox, 1974). These opposing positions are also evident in health and safety matters in the workplace. A unitarist position would rationalise representation on the basis that health and safety should be managed internally where workers cooperate with management to achieve the organizations' safety goals (Walters and Frick, 2000). While, a pluralist position would rationalise representation as necessary to ensure workers' autonomous input to safeguard their OHS interests from management's imperatives such as profit and production, which may over-ride attention to workers' health and safety (Nichols, 1997).

Representation in the workplace is underpinned by these frames of reference as seen in the self-regulatory paradigm. Statutory provisions for representation on OHS was extended to all industries in the 1970s when there was a shift in how health and safety was managed (Walters, et. al. 2011). The UK's reforms in particular, have received much attention in the literature because they also influenced regulatory reforms in other jurisdictions such as Canada, Australia

¹¹ See Appendix II for reference.

and New Zealand (Walters et. al. 2005; Bluff et. al. 2004).¹² The UK's Robens Committee report is at the centre of these reforms and the paradigm shift to regulated self-regulation (Bluff, et. al. 2004; Gunningham and Johnstone, 1999). As Bluff et. al. (2004) note, these reforms resulted in a distinctive move away from previous prescriptive "command and control" approaches to health and safety, where employers followed detailed standards, to an "internal control" approach, where a desired outcome is pursued in a less prescriptive manner. The State oversees the process towards this outcome. The idea was that employers and employees were to jointly manage safety internally in a systematic way with less intervention by the State (Gunningham and Johnstone 1999).

The assumptions underlying self-regulation were however exposed as flawed (Walters and Nichols, 2013; James, 1992; Nichols and Armstrong, 1973). The Robens Committee assumed that employers and employees had a common interest in health and safety and therefore collective bargaining on OHS, and the intervention of the State's inspectorate were redundant. It therefore recommended that employers, as the main duty holders, consult with workers in solving OHS incidents, as these were claimed to result from apathy on both their parts (James and Walters, 2002; Dawson et. al., 1988; Barrett, 1977). In the Robens Committee's thinking, the solution to bad OHSM was to allow those who were responsible for workplace incidents to manage them (Walters and Nichols, 2013: 3; Barrett, 1977).

This unitarist thinking drew criticisms from industrial sociologists on the grounds that they did not account for the power imbalance between workers and employers which was a more accurate explanation for workplace injuries than apathy (eg. Nichols and Armstrong, 1973). Such imbalances provided sound reasoning for advocating representative participation where workers could rely on trade unions to offset some of the employers' power. These criticisms and arguments continue to be relevant for current work relationships. The argument

¹² Walters et. al. (2016a: 421) point out that regulatory requirements for representation existed for certain industries such as mining in Australia and the UK well before they spread to all industries in the 1970s. Frick and Walters (1998) also refer to statutory provisions for representation in Sweden since the 1940s.

is that self-regulation is unsuited to the current work situations due to the changing nature of work and a return to precarious work, which characterise many work situations (Lewchuck, 2013a; 2013b; Quinlan, 2013a: 25-31; Nichols, 1997). Nichols (1997), for example, demonstrated that workers were far from apathetic and rather, were bound by workplace structures that made them vulnerable to injuries. He showed that workplace injuries went beyond the immediate work environment to the wider economic demands to keep production going within a competitive business environment. An even more critical perspective is shared by Beck and Woolfson (2000) who argue that the self-regulatory turn was in favour of business interests, which makes the subsequent statutory provisions susceptible to deregulation.

A more pluralist thinking was incorporated into the self-regulatory paradigm in the UK as trade unions won legal rights to representation (Glendon and Booth, 1982). The Safety Representatives and Safety Committees (SRSC) Regulations 1977 allowing recognized trade unions to appoint safety representatives was developed under the UK's Health and Safety at Work Act (HSWA) 1974, which was heavily influenced by the Robens Committee recommendations (James and Walters, 2002: 144-143; Beck and Woolfson, 2000: 41-42). The UK subsequently developed the Health and Safety (Consultation with Employees) (HSCE) Regulations 1996, to satisfy EU requirements for employers to consult with non-unionized workers (Walters, 2006; James and Walters, 2002). In adopting the UK's lead, Australia initially included measures for trade union representation in its regulatory provisions, but these were later removed (Milgate, et. al. 2002; Johnstone, 2009).

Other jurisdictions such as Canada were partially influenced by the Robens Committee recommendations (Lewchuk, 2013b; Walters et. al. 2011: 28-31). Trade unions' pressure for regulatory reform resulted in the Ham Commission which, like the Robens Committee, recommended a form of self-regulation where external government control of OHS shifted to an internal responsibility regime. Nevertheless, this regime mandated joint health and safety committees with equal numbers of workers' and management's representatives (Lewchuk, 2013a;

Shannon, 1996). Likewise, the EU's systematic approach to managing health and safety developed in the 1980s took a pluralist position by mandating representation and consultation of workers (Vogel and Walters, 2009). This meant an expansion of representation rights in OHS matters for workers across Europe. Walters and Nichols (2009: 5-6) point out that these EU requirements for representation were also influenced by trade unions.

Despite an apparently strong beginning (see Lewchuk, 2013a; Dawson et. al., 1988), where Robens' recommendations were praised for insisting on the involvement of "work people" (Dawson et. al., 1988; Barrett, 1977), self-regulation eventually faced challenges as the nature and organization of work evolved (Gunningham and Johnstone, 1999). Dawson et. al. (1988), for example, found that the changes in UK workplaces in the 1980s exposed the limited ability of self-regulation to protect workers beyond the standard employment contract of permanent male workers in large manufacturing companies, the employment relationship on which self-regulation was based. Business practices, such as contracting out and downsizing, contributed to an increase in precarious workers and smaller workplaces, where employers are said to have less will and capacity to implement statutory provisions for OHSM and worker representation (Quinlan et. al. 2001). Such conditions of the limitation of the self-regulatory regime to protect workers in the face of work changes, were also found in other jurisdictions, for example, Canada and Australia (Lewchuk, 2013b; Johnstone et. al., 2005; Quinlan et. al., 2001).

Increase in small enterprises in particular, and the impact on regulating OHSM and representation, have received some focussed attention. Frick and Walters, (1998: 367-368) argue that small enterprises tend to be poorly organized for OHSM activities. They lack arrangements for representation; employers have limited knowledge of OHS regulations and preventive measures; limited resources; and limited use of professional services (EU-OSHA, 2018). Small businesses are also said to be more likely than large ones, to be directed by short-term economic pressures which may influence the prioritisation of profit and production over investment in measures to manage OHS (EU-OSHA, 2018;

Quinlan, 2004; Gunningham and Johnstone, 1999). Alongside these changes was a decline in union representation in most countries since the early 1980s which also meant the erosion of a source of protection for workers and the weakening of the preconditions for effective representation on OHS (James and Walters 2002).

These discussions are important for the maritime industry as the self-regulatory paradigm remains the statutory approach to health and safety in many jurisdictions despite the flaws and challenges (Nichols and Walters, 2013; Walters and Nichols, 2007; Bluff et. al. 2004). Shipping regulations at the international level, in particular non-technical provisions, are patterned on land-based approaches.¹³ The ILO has also embraced the Robens' approach which it pointed out has had some influence on Convention 155 (ILO, 2009b) and therefore likely to have also influenced the approach taken in developing the MLC. Therefore, the arguments raised in the land-based context are of relevance to an exploration of the MLC as many commentators have advocated a rethinking of the regulatory paradigm towards measures more appropriate for the contemporary work environment (Lewchuk, 2013a; Bluff et. al., 2004; Quinlan, et. al. 2001).

2.4. Why Worker Representation in OHSM?

There is overwhelming support for the effectiveness of representation from researchers and commentators on the work environment (Gallagher and Underhill, 2012; Charlwood and Terry, 2007; Walters and Nichols, 2007; Milgate, et. al. 2002; Nichols, 1997). Representation is understood as one layer in the enforcement of regulatory provisions for workers' participation as it can contribute to the regulatory provisions being implemented and practised as intended (Charlwood and Terry, 2007; Beck and Woolfson, 2000). In this regard, representation might prove beneficial in an industry such as shipping, where the workplace is isolated and mobile and difficult to regulate from ashore (Bloor et. al. 2005). A number of reviews of the literature at different periods show that

¹³ For example the International Code for the Safe Management of Ships and for Pollution Prevention (ISM) Code (Walters and Bailey, 2013).

representation has positive effects on OHSM activities and OHS outcomes for workers when it is applied according to regulatory provisions, and the preconditions exist to support its implementation and practice (EU-OSHA, 2012; Menendez et. al., 2009; Walters and Nichols, 2007; Milgate, et. al. 2002). The next sections, 2.4.1. and 2.4.2., examine the evidence for the effectiveness of direct and representative participation respectively, following which, Section 2.5 examines the role of the preconditions for effective representation.

2.4.1. Evidence for Direct Participation

Although this study's focus is representative participation, it is essential to include direct participation as it stands as an alternative to representation in theory and practice. As discussed in Section 2.2, the self-regulatory framework provides for both direct and representative participation by giving employers the option to consult with workers and/or their representatives. Scholars have noted the rise in direct participation while indicating the simultaneous decline in representation and union support (Quinlan et. al. 2001; Nichols and Walters, 2009; James and Walters, 2002).

Despite the efforts of such regulatory wording (workers and/or their representatives) to give some participatory rights to non-unionized workers, and the uptake in direct participation, direct participation has not received much support in the industrial relations, sociology of work or socio-legal literature, particularly in the context of precarious work (Lewchuk, 2013a; 2013b; Quinlan 1999). In precarious arrangements, workers are aware of their vulnerabilities and this awareness inhibits them taking actions which they feel might cast them in an unfavourable light (Lewchuk, 2013a). These concerns are increasing due to an apparent trend in the responsabilization of workers for health and safety (Gray, 2009).

Direct participation has found support mainly in the management literature and normally relating to wider participation rather than just health and safety (Frost, 2008; Lansbury and Wailes, 2008). Yet, even where such support lies, the conclusions are disputed. Direct participation is discussed in relation to

high performance work systems (HPWS) and other managerial approaches developed to boost quality and productivity in the workplace (Lansbury and Wiles, 2008). Supporters of such systems contend that they are beneficial to all parties (Frost, 2008; Lansbury and Wailes, 2008). HPWS are said to increase workers' trust in management, increase commitment to the organization, increase job satisfaction, lower levels of stress are experienced by workers and increased wages. Critics, on the contrary, point out the deleterious effects on workers' health and safety. They point to work intensification, overtime, and the lack of union support in such workplaces (Frost, 2008: 428).

Studies of direct participation are inconclusive regarding its benefits to workers. A study by Bryson (2004) used employees' perceptions of management's responsiveness as a measure of the effectiveness of types of participation. It was found that employees perceived management as most responsive in situations of direct participation rather than situations with union or non-union representative participation. Bryson (2004) used these results to refute claims that workers need autonomous union support for effective participation. However, it was also argued that managerial level of support for consultation with unions might have affected the results. That is, where management does not support unions, they might be less responsive to employees and therefore such situations would receive lower scores for management's responsiveness. Additionally, unions might be shunned by workers to appease management. Therefore, these results showing successful direct participation might have been tempered by the intervening variable of management's possible attitude to union presence which was not investigated in the study. Poutsma et. al. (2003: 48) point out that "workers would rather a weak structure with management support versus a strong structure opposed by management."

Strauss' (2006) examination of car manufacturing in the USA disputes claims for effective direct participation. In the case of a particular car manufacturing plant, it was found that improved direct participatory practices which empowered workers to make decisions and control their work, led to increased job satisfaction and production. However, unions were intimately

involved externally to the workplace, in setting terms and conditions of work. Strauss (2006: 785) concluded that while the case seemed to be one of direct participation, it was more so representative participation.

Similar to the limited studies on the effectiveness of direct participation in OHSM discussed below, Strauss' study demonstrated that for direct participation to be effective, workers must have some leverage and/or autonomous support external to the workplace with which to compel employers to listen to them. Strauss (2006: 787) noted that "...participative schemes are likely to be adopted only if they are perceived to have some sort of payoff in production, quality, turnover, satisfaction...they are dropped because they are perceived not to have such payoffs." Such apparent fickleness by management supports those who argue for autonomous representation, to act as a countervailing force to the likelihood of management's arbitrary decisions (eg. Nichols, 1997).

Thus, discussions of direct participation in health and safety, acknowledge that it may be effective providing that workers have some influence in the labour market and are supported by their unions (EU-OSHA 2012: 18; James and Walters 2002: 145-146). Walters and Nichols (2007: 12) for example, discussed an early Norwegian study (Karlsen, et. al. 1975), which showed that direct participation on OHS could be effective under certain conditions, where workers have strong influence both internally and externally and are supported by their unions. Walters and Nichols (2007) asserted that outside of those conditions, individual, non-unionised workers, are unlikely to benefit from direct participation.

Nevertheless, others suggest direct participation is beneficial in OHSM irrespective of the lack of these conditions. A study of non-unionised workplaces in Scotland in the wake of the Health and Safety Executive's (HSE) strategy to promote participation on OHS claimed that "...beneficial worker involvement in health and safety is perfectly feasible in non-unionised workplaces" (RoSPA, 2010: 11). This study set its arguments in the context of the managerialist worker "involvement" and "engagement" literature. It reported the findings of research on the success of self-managed work teams and made an argument for the business case for OHS which claims that both workers and employers can benefit.

Others dispute the arguments for the business case pointing out that management's decisions are complex and are not necessarily associated with costs (Hart, 2010; Cutler and James, 1996). This literature was not reviewed in the RoSPA report.

Furthermore, while seemingly making a case for direct participation, the results of the RoSPA (2010) study in effect, confirm the limitations of direct participation to deliver comprehensive OHSM envisaged in regulations. This report showed that, the involvement strategies in most cases were likely to follow management's agenda and "be confined to the implementation end of the spectrum rather than anything approaching joint planning and collaborative decision-making" (RoSPA, 2010: 11). Situations where consultation was most developed, involved workers who were represented by unions and those unions were active. Situations where non-union representatives were empowered by employers to be "forthright" also showed better results than those where employers were not committed to workplace partnership. In general, this study confirmed other research on the importance of representation supported by the preconditions of having management commitment and unions, for better OHSM (eg. Walters and Nichols, 2007).

Despite efforts to show the importance of direct participation, the most common position driving research and concerns with workers' health and safety, is that workers' need autonomous support as a countervailing force to management's power (Nichols, 1997). In contemporary workplaces where precarious work arrangements have increased, scholars doubt the likelihood that non-unionized employees, acting outside a collective, whose labour market position is weak, will gain much, if any purchase, from direct participation (Walters, et. al. 2005; James and Walters 2002; Nichols, 1997).

2.4.2. Effectiveness of Representation in OHSM

Studies using both direct and indirect measures reveal strong evidence for the effectiveness of representation in OHSM. Direct evidence includes the use of injury rates or lost time frequency rates and their associations with the presence

of representatives or health and safety committees having workers' representatives (Walters and Nichols, 2007; Milgate, et. al. 2002; Nichols 1997; Shannon et. al., 1997). Indirect evidence points to associations between the presence of representatives in the workplace and positive OHS activities and perceptions about health and safety management. These activities include compliance with the legal requirements for OHS; having OHS policies and programmes in place; workers being given information; the conduct of risk assessment and audits; keeping records of injuries; and access to training (Johnstone, et. al. 2005: 94-95; Walters et. al. 2005; Milgate et. al. 2002).

Indirect indicators of effectiveness of representatives have received some criticism that measures showing positive associations do not necessarily translate into reduced harm to workers (Shannon et. al., 1997: 202). However, rather than a critique, both sets of literature combined, provide compelling evidence that representation is important. Indirect measures of effectiveness of representatives such as training, empowerment of workers, and management involvement are also associated with direct evidence such as lower injury rates (Geldart et. al. 2010).

Studies using direct measures reveal positive OHS outcomes including fewer reports of illnesses and injuries, improvements in absences from work due to illnesses, lower compensation rates, injury rates or lost-time frequency rates, when representatives are present in the workplace (Geldart et. al., 2010; Shannon et. al. 1997; Shannon et. al. 1996). The reverse is seen where they are absent, that is, workers experience poorer OHS outcomes (Geldart et. al., 2010).

Shannon et. al. (1996: 267) found an association between the presence of representatives and lower frequency rates for lost time compensation claims in the companies they studied in Canada. The reverse was found where representatives were absent or where participatory arrangements such as OHS committees were performing below expectations. These companies had higher rates for lost time compensation claims. Another study synthesizing the results of ten studies conducted in Canada, the USA, and India, on the effects of organizational and cultural factors on injury rate, found consistently significant

relationships between lower injury rates and the presence of joint health and safety committees (Shannon et. al., 1997)

In the UK, Robinson and Smallman (2006) examined the impact of OHS arrangements on reported workplace injuries and illnesses in manufacturing and the service sector, using the Workplace Employee Relations Survey 1998 (WERS 98). They were particularly interested in the impact of changes in work arrangements and work characteristics on OHS. The work characteristics described precarious work, for example temporary, part-time, home, contracting-out, flexible and shift work. Arrangements to protect workers included the presence of OHS committees, representatives, OHS training, communication and consultation. With the caveat that under-reporting is a problem with such surveys, they found that injury rates were lower for both manufacturing and services only in situations with specific OHS representatives. A key issue, which is revisited below was the lower impact of representation on illness. Like others (Section 2.3), Robinson and Smallman (2006) concluded that current regulatory arrangements for OHSM are not suited to the changing nature of work and contemporary workplace illnesses.

Studies using indirect measures of representatives' effectiveness, examine where they impact arrangements to ensure robust OHSM practices are in place, which is presumed to lead to positive outcomes, such as lower injury rates (Walters et. al. 2005; Walters and Nichols, 2007). A series of analyses arising from two major EU studies, support other research that representation is positively associated with the existence of and adherence to good OHSM practices for both traditional and psychosocial risks, for example, having OHS policies, collecting OHS data and carrying out risk assessment. Also, these practices were more likely to be perceived as effective by both management and employees, where there were representatives (EU-OSHA, 2010: 2012: 2016: 2018). These studies also show that representation is beneficial in challenging situations such as with small businesses. The challenges of effectively regulating OHS in small businesses is a recurring theme throughout the literature (see eg. EU-OSHA, 2018; Gunningham and Johnstone, 1999; Frick and Walters, 1998; Dawson, et. al., 1988). However, as the

series of EU studies indicate, representatives do have some influence on encouraging better OHSM practices in this area compared with those without (EU-OSHA, 2012; 2018).

In addition to influencing best organizational OHSM practices, representation is also important for stimulating workers' OHS behaviours. In examining Spanish workplaces, Olle-Espulga (2015) found that workers knowing that representatives existed elicited better safety behaviours, which the researchers used as an indicator of the effectiveness of representation. This study compared situations where workers had representatives and were aware of them, where there were no representatives, and where workers had representatives but were unaware. Preventive actions were operationalized as risk assessment, training, being given information, and taking remedial actions. Workers who reported not being aware of safety representatives engaged in the lowest levels of preventive action.

Others have shown that workers with active representatives or a functioning participatory system are more aware of OHS issues since those enterprises are likely to conduct training, provide OHS information, conduct risk assessment and take timely actions to remedy faulty situations (Coutrot, 2009; Walters and Nichols, 2006; Garcia, et. al. 2007). Coutrot (2009), for example, on investigating the actions of representatives in France, concluded that health and safety practices, safety training, professional judgement on the quality of prevention were all "unambiguously better" where health and safety committees were present. Such workplaces increased their probability of having better quality prevention practices by 19 percent above those that did not have such committees. Similar findings of the importance of representatives continue in recent studies. Walters et. al. (2016a; 2016b) found that even in a hostile industrial environment, representatives use their knowledge of the law to compel management to take preventive and protective measures.

In summary the evidence shows that for both direct and indirect measures, representative participation impacts positively on OHSM practices and outcomes. Representatives help to stimulate the implementation of regulatory provisions

and increase the awareness of workers and their involvement in health and safety practices. In this respect the body of evidence strongly supports representation as an important institution to assist in protecting workers OHS. However, for representation to be effective certain conditions must be in place, to which this chapter now turns.

2.5. Preconditions for Effective Representation

One of the concerns raised in problematizing the MLC provisions for representation is whether the necessary preconditions are in place for the shipping industry to effectively implement and practice representation. Overtime, research evidence has repeatedly identified a number of preconditions for effective representative participation (EU-OSHA 2012; Walters, 2006; Walters et. al. 2005; Milgate et. al. 2002; Ochsner and Greenberg, 1998; Nichols, 1997; Dawson, et. al. 1988). These preconditions are important irrespective of regulatory differences among countries (EU-OSHA, 2012; Walters and Nichols, 2009). These preconditions are: strong regulations, senior management commitment; organized labour taken to mean trade unions and active constituents; and an effective inspection regime (Walters and Nichols, 2007; Milgate, et. al. 2002; Ochsner and Greenberg, 1998; Shannon et. al. 1996). Figure 2.1 lists these preconditions as advocated by Walters et. al. (2005) from their study on “The role and effectiveness of safety representatives in influencing workplace health and safety.” The study was conducted on behalf of the UK’s Health and Safety Executive (HSE).

Conditions that militate against the effectiveness of representation include an unstable labour force characterized by precarious work and declining trade union influence; lack of management commitment and weak regulatory provisions and external enforcement (Johnstone et. al. 2005; Quinlan et. al. 2001). This section focuses on these preconditions and their role in supporting representation in the workplace.

Figure 2.1: Preconditions for Effective Representation

Preconditions for Effective Representation
<ul style="list-style-type: none">• A strong legislative steer;• Effective external inspection and control;• Demonstrable senior management commitment to both OHS and a participative approach and sufficient capacity to adopt and support this type of management;<ul style="list-style-type: none">○ Competent hazard/risk evaluation and control○ Ensuring competence of representative through training• Effective autonomous worker representation at the workplace and external trade union support;<ul style="list-style-type: none">○ Consultation and communication between worker representatives and their constituents.

Source: Walters et. al. (2005: xi).

2.5.1. A Strong Regulatory Lead

Regulatory provisions on their own do not automatically translate into effective representation (Walters, et. al. 2005: 113-122; Walters, 1995: 308), but are important in establishing the rules of engagement to ensure the actors meet their obligations. It is argued that when organizations implement regulations as intended, including provisions for representation, OHSM activities and outcomes are better compared to when provisions are not implemented (Walters et. al. 2005: 13). However, it is the regulatory provision that sets the tone for organizations to implement regulations as intended. James and Walters (2002), for example, in assessing the strength of the UK regulations, pointed out the strength of the regulatory lead in the SRSC 1977 Regulations in comparison with the HSCE 1996 Regulations. The SRSC 1977 Regulations provide representatives with union support and give representatives powers to request the establishment of safety committees, whereas, the HSCE 1996 regulations make general provisions for employers to consult with workers, but without details.

A strong regulatory lead is important to give legitimacy and legal backing to representatives and therefore help to determine their acceptance by the other parties responsible for OHSM. In particular, regulations provide external support by giving representatives rights to contact a State's inspectorate (Walters et. al.

2005: 34). Regulations also outline the roles and responsibilities of the actors (management, workers, government agents) and offer support to representatives by giving them a statutory base from which to act (see eg. Walters et. al. 2016a; Olle-Espulga et. al., 2014; Hall et. al., 2006). Regulations also provide representatives with legal protection from victimization in carrying out their duties and gives them authority to perform their roles. Figure 2.2 outlines basic statutory rights for representatives in the UK as detailed in Walters and Nichols (2007: 13), but which are similar across the EU and other jurisdictions having statutory provisions for representation (Walters and Nichols 2009).

Figure 2.2: Statutory Rights of Workers’ Representatives

Statutory Rights of Workers’ Representatives
<p>Details may vary across jurisdictions, but the basic statutory rights are:-</p> <ul style="list-style-type: none"> • Employees’ selection of representatives in health and safety; • Protection of representatives from victimisation or discrimination as a result of their representative role; • Paid time off to be allowed to carry out the function of a safety representative; • Paid time off to be trained in order to function as a safety representative; • The right to receive adequate information from the employer on current and future hazards to the health and safety of workers at the workplace; • The right to inspect the workplace; • The right to investigate complaints from workers on health and safety matters; • The right to make representations to the employer on these matters; • The right to be consulted over the health and safety arrangements, including future plans; • The right to be consulted about the use of health professionals; • The right to accompany health and safety inspectors when they inspect the workplace and to make complaints to them when necessary.

Source: Walters and Nichols (2007: 13)

Representatives rely on the protective guarantees given in regulations to carry out their duties with confidence (Walters et. al., 2016a; Olle-Espulga et. al., 2014). Walters et. al.’s (2016a) recent study of coal mining in Australia shows continuing evidence-based support to this argument. They showed how representatives relied on regulations to support their roles in a hostile industrial relations climate.

Hall et. al. (2006), made a claim for representatives' knowledge activism as important in their workplaces amidst waning structural supports such as unionization, legislation and external oversight. However, their study also supports the importance of regulatory structures. They compared three types of representatives: those who view OHS in technical terms and separate from labour issues; those who take an adversarial approach and use external mechanisms such as complaints to government authority; and those who use a combination of legal, technical and indigenous knowledge to press claims for improvements. Of the three, those who used "knowledge-activism" (i.e. a combination of strategies), were found to be most effective in achieving significant changes in their workplaces. In this case, while legislation alone was insufficient, as noted earlier, existing legislation was important in setting the parameters for action and supported the representatives in performing their roles.

Some jurisdictions give significant powers to representatives to stop dangerous work or issue improvement notices (Johnstone et. al. 2005; James and Walters, 1997). It is argued that such regulatory provisions are important empowering mechanisms. They give representatives legitimacy in the eyes of management and their constituents and boost the likelihood that they will be effective in their roles (Walters et. al. 2016a). Regulations that do not have a strong lead are susceptible to changing conditions (Walters and Nichols, 2007; James and Walters, 2002; Dawson et. al. 1988).

Changes in the nature of work and how regulations for representation have been undermined as a result, is a recurring theme in the literature (Robinson and Smallman, 2006; Johnstone et. al. 2005; Quinlan, et. al. 2001). Johnstone et. al. (2005) argued that the basis on which the current self-regulatory regime was built has been eroded by modern practices that have fragmented work. As such, the stable, permanent and secure workforces, largely in the manufacturing sector, are less a feature of today's work environment and there are more workers in precarious situations where their ability to exercise "voice" is diminished (Johnstone et. al. 2005; Quinlan et. al. 2001). However, despite the weakening regulatory lead, current studies have shown that representation on OHSM may

still be effective with the presence of the other preconditions and implementation of the prevailing regulations (EU-OSHA, 2018; Walters et. al. 2016a; 2016b).

2.5.2. Management Commitment

Management commitment is an important precondition for effective worker representation. Much of the focus in the literature is on senior management commitment to OHS (Olle-Espulga et. al., 2014; EU-OSHA, 2012; 2018; Walters and Nichols 2007; Milgate et. al., 2002). This is, however, extended to a commitment to representation following from the discussion that representation is important to good OHSM. But, line managers are also important in ensuring the success of workplace representative arrangements. Simard and Marchand (1994) for example, argued for the integration of line managers in participatory arrangements as this affects the effectiveness of such arrangements for OHSM. They concluded that "...the type of supervisory involvement in safety that seems to have an impact on worker accidents is one that integrates workers' participation." In contrast, hierarchical type of supervision was associated with higher accident frequency rates (Simard and Marchand, 1994: 178).

Notwithstanding, senior managers have the power and control over resources to implement representation (Geldard et. al., 2010). Walters and Gourlay (1990) [discussed in Walters et. al., 2005: 36] found in their study of the effectiveness of representatives, the other preconditions to support representation were dependent on management's willingness to commit to participation. Management commitment is demonstrated through managers' or employers' adherence to their statutory obligations to implement and support representative arrangements; investing in preventive actions such as training and risk assessment; and making use of safety professionals (Walters and Nichols, 2007; EU-OSHA, 2012; 2018).

The empirical evidence for the importance of management commitment is seen in studies using both direct and indirect measures to demonstrate its association with positive OHS outcomes (EU-OSHA, 2018; Morse, et. al. 2013; Geldart et. al., 2010; Shannon et. al. 1997). Studies in North America using direct

measures reveal that management commitment is associated with lower compensation rates and injury rates (Morse, et. al., 2013; Geldart et. al., 2010; Shannon et. al. 1997). In Canada, Shannon et. al. (1997) found that management style and culture, that is, whether they had good relations with workers and took an active role in OHS and empowered workers, were consistently related to lower injury rates. As they argued “...many of the important variables seem to reflect a genuine concern by management for its workforce. It is unlikely that this can be acquired simply by ‘tinkering’ with policies and practices....” (Shannon et. al., 1997: 213).

Another Canadian study also found that lower injury rate workplaces were more likely to demonstrate higher management commitment (Geldart et. al., 2010). Additionally, these workplaces were more likely than medium and high injury rate workplaces to include OHS responsibilities in managers’ job descriptions (Geldart et. al., 2010: 566). Similar to Shannon et. al.’s (1997) findings, empowerment of workers and demonstrated management commitment, were features of workplaces with low injury rates. Geldard et. al. (2010) also revealed that joint health and safety committees in workplaces with low injury rates had executive functions and greater involvement of workers. The opposite was seen for workplaces having higher injury rates, as management in these situations was more likely to reject committee recommendations.

From these findings Geldard et. al. (2010: 569) concluded that worker and management collaboration is important in effective OHSM and outcomes. They argued that:

... it is management that has the authority to make decisions on OHS. Ultimately...it is the attitude and values of top management and the manifestation of those attitudes in the form of operational policies and informal actions which contribute to safer workplaces.

Similarly, Walters and Nichols (2006) found in their study of cases in the chemicals industry in the UK, that participatory arrangements were most developed in the cases where management commitment to demonstrable actions

rather than “tinkering with policies,” was highest. The indicators of high management commitment included a senior person named as being responsible for health and safety; the discussion of OHS issues at board level; written safety policies which included the names of senior persons and their responsibilities for health and safety matters; and active engagement with, and commitment to a meaningful participatory system (Walters and Nichols, 2006: 241). In the cases demonstrating high management commitment, workers also had positive perceptions of arrangements for OHSM. Throughout that study there was consistent alignment between positive actions and attitudes with the case studies that had high management commitment.

At the EU level, a study of a variety of organizations in different industries, also supported the importance of management commitment. Workplaces with a combination of representation and high management commitment to OHS were seven times more likely to have implemented good OHSM practices. For psychosocial risks, workplaces with this combination of management commitment and representation, were five times more likely, than those without this combination, to have implemented good OHSM practices (EU-OSHA, 2018: 8). This effect is important to note as psychosocial issues are being increasingly discussed in the maritime press.¹⁴

An important indicator of management commitment is their investment in the competence of representatives and members of the health and safety committees (Markey and Patmore, 2011; Geldart et. al. 2010; Walters et. al. 2005; Shannon et. al. 1997). Competence of representatives is associated with improved OHS outcomes for workers (Geldart et. al. 2010; Liu, et. al. 2010; Shannon et. al. 1997). In evaluating the effects of safety committees on injury rates, Liu et. al. (2010), found that only firms that comply with their statutory obligation to train members of the safety committee recorded reduced injury rates. Training however was more significant if it was continuous. Workplaces with higher injury

¹⁴ Example: *Safety4Sea* (2018): <https://safety4sea.com/cm-addressing-seafarer-mental-health-issues/>
The Maritime Executive (2017): <https://www.maritime-executive.com/article/bbc-looks-at-seafarer-mental-health>

rates provided lower levels of continuous training. Morose et. al.'s (2013), USA study, supports these findings showing that companies where committee members were trained recorded lower compensation rates.

Safety representatives or participatory programmes in the workplace are constrained by management's willingness and/or capacity to meet their obligations (EU-OSHA, 2018; Olle-Espulga, et. al. 2014; Markey and Patmore, 2011). In assessing safety representatives' perceptions of support to carry out their duties, Olle-Espulga et. al. (2014) found that management's willingness to invest in OHS affected representatives' ability to fulfil their roles. Lack of management commitment in this particular study also impacted how much workers engaged with their representatives due to fear of reprisals from management (Olle-Espulga et. al., 2014: 342 & 346).

This section explores the literature on management commitment showing its importance both on direct and indirect measures of health and safety outcomes for workers and good OHSM practices. Although supervisory management is important, it is evident that, as the decision-makers, senior management's commitment is essential to establish the culture and practices to support representation (Walters and Nichols, 2007; Shannon et. al., 1997). Such support requires tangible evidence such as providing resources and ensuring the competence of representatives as well as naming a top manager as being responsible for health and safety. In short, commitment should be seen in the words as well as the actions of top management, and their support for worker involvement and the management of health and safety is collaborative rather than unilateral.

2.5.3. Organized Labour and Active Constituents

Organized labour consists of autonomous representation, trade union support and effective communication between representatives and their constituents (Walters and Nichols, 2007: 139-140; Walters et. al. 2005 p. 118; Glendon and Booth, 1982). The evidence for effective representation strongly supports autonomous participation of workers through trade union involvement (Walters et. al., 2016a;

Coutrot, 2009; Walters et. al., 2005; Nichols, 1997). Worker representation is typically associated with trade unions due to their longstanding role in representing workers' rights and advocating for improved working conditions and regulatory protection (Charlwood and Terry, 2007; Walters et. al., 2005; Abrams, 2001). Ochsner and Greenberg (1998: 355) argue that it was "labour-based health and safety movements [that] shaped government's response to occupational health and safety as well as practices at the worksite level" in the USA, similarly in the UK and EU (discussed in Section 2.3). Weinstock and Failey (2014) for example, present detailed accounts on union advocacy over a number of years and their successes in gaining a slate of OHS laws passed in the USA.

The evidence consistently shows that trade unions contribute to the effectiveness of representatives, whether on health and safety specifically or wider workplace issues (EU-OSHA, 2012; Charlwood and Terry, 2007; Milgate, et. al., 2002). Their contribution also holds in situations of individual representatives or whether they operate through health and safety committees (EU-OSHA, 2012; Milgate et. al., 2002). Union support provides workers with a sense of security and confidence to raise OHS issues (Walters et. al., 2016a; Gunningham, 2008; Ochsner and Greenberg, 1998). Studies in the UK found that where workers had autonomous representation, supported by trade unions, OHSM was better organized and management's response to their legal obligations was more positive (eg. Walters et. al., 2005: 118-120).

Effective representation is also supported by those being represented (Glendon and Booth, 1982). Studies on workers' interaction with their representatives are limited but evidence exists to underscore their importance in supporting representation. In examining representatives' perceptions of support, Olle-Espulga et. al. (2014) found that representatives were more effective in their duties when they had workers' support. Alternately, representatives were constrained by lack of constituent involvement due to a hostile environment where workers feared reprisals and were therefore wary of supporting union-related activities. That study also found that workers' labour market position (precariousness) constrained their support of representatives. In other words,

workers in sectors affected by the broader economic climate who feared being laid off, were less likely to engage with representatives (Olle-Espulga et. al., 2014).

As trade union influence has declined in many countries, there has been an ongoing debate about non-union forms of representation and their importance in giving “voice” to workers (Williams et. al., 2011; Haynes et. al., 2005; Taras 2002). Civil society groups and management-led initiatives have been studied as alternatives to union representation. Williams et. al. (2011) for example, examined the scope of activities for civil society groups which included education and awareness creation among workers. Civil society groups they explained, seek to influence laws, policies and practices and may engage in public actions such as protests to press for results. However, they noted that unlike trade unions, civil society groups have less direct contact with the workplace which limits their direct influence on employer action.

Other studies attempting to show that representation is possible without trade unions, have not been very convincing. In questioning the survival of union representation in Canada, Taras (2002) pointed to the existence of other representative forms and argued that lack of unions did not mean that workers were not represented. A number of alternative forms of representation were identified, including non-union staff associations, company-based representation plans, specific industry councils and rights and access to arbitration. However, they found that union representation remained the foundation and fall-back institution for workers where these non-union alternatives were unable to deliver comparable services, or where the commitment of managers waned overtime (Taras, 2002). While this study revealed that workers might have access to other forms or representation, it also supports the argument for unions as a more reliable and enduring institution for workers.

Haynes et. al. (2005), also suggest that unions might not be as critical as others claim. In discussing participation in general, in the context of workers having limited access to participatory mechanisms at work due to liberalization and decline in union influence, they analysed data from the 2003 New Zealand Worker Representation and Participation Survey. A number of managerialist

direct mechanisms for involving workers were identified as alternatives to union representation. These included regular meetings between management and staff; a personnel or human resources department; “open door” policies; and quality circles and consultative committees of management employees. Their analysis showed union involvement to be significantly associated with the effectiveness of joint consultative committees. At the same time, non-unionized employees reported that joint consultation was *very* effective, as against unionized workers reporting that joint consultation was *quite* effective. They concluded that management’s interest in employee consultation did not decline with the rolling back of unionism and that workers may have gained new “voice” mechanisms.

While this may be so, these findings should nevertheless be taken with some caution as qualitatively, the difference between *very* and *quite* is debatable for subjective ratings. Haynes et. al. (2005) did not consider that unionized workers are usually more aware of workplace issues (EU-OSHA, 2012) and that their expectations may be greater and so might have accounted for the difference. In relation to OHS, studies have found unions to be associated with increased workplace injuries where it was asserted that unionized workers are more likely to report OHS issues as they have union support, rather than unions contributing to increased injuries (eg. Nichols, 1997).

Despite contradictory findings, the overwhelming body of research indicates that trade union representation or the support of representatives by trade unions, delivers the most benefit for workers. Unions have also been particularly useful to small enterprises that present special characteristics making regulating health and safety difficult. Trade unions offer training and provide information to support workers and their representatives. They provide a particular type of pedagogy focused on labour education which is found to be “...superior to that of mere ‘technical’ training...” in OHS (Walters and Nichols, 2007: 140). Unions investigate workplace complaints, relate to workers and provide a channel to management, as well as apply pressure for regulatory mechanisms. According to Walters and Frick (2000: 40), the more these criteria are met the more representation is effective in addressing workplace risks.

2.5.4. Enforcing the Regulatory Lead

An inspection regime to enforce regulatory requirements has emerged in the literature as an important precondition for effective representation (EU-OSHA, 2012; Walters and Nichols, 2007). Studies in this area are limited and are mostly concerned with inspecting for regulatory compliance with OHS standards rather than administrative processes associated with representative practices (EU-OSHA, 2018; Walters et. al., 2011; Johnstone, 2004). Ochsner's and Greenberg's (1998: 357) survey investigating factors which support effective worker participation, found that being able to contact the industrial hygiene department was viewed as the most important resource available to safety professionals.

In substantiating their argument of the importance of an inspection regime to support OHS, Ochsner and Greenberg (1998) discussed jurisdictions, such as Sweden, that has a history of strong workers' rights but also saw it as necessary to have a well-developed system for representation and a strong and regular system of workplace inspections. By contrast, a Canadian study showed that a shift towards relying on internal responsibility and reducing the resources for inspectorate monitoring saw a rise in workplace injuries (Ochsner and Greenberg, 1998: 355). Likewise, early studies in the UK showed that a reliance on self-regulation and reduced inspections had its limits in protecting workers OHS (Dawson et. al. 1988), a trend which continues in later studies (Walters and Nichols, 2007).

In the UK, self-regulation cast the role of the inspectorate as supportive rather than coercive. It is argued that the regulatory agencies are not proactive in enforcing the regulations for representation, and take a distant approach largely leaving implementation to the employers and employees (Walters, 1998: 185). This reflects the unitarist thinking which underpins self-regulation, discussed in Section 2.3, where external influences were discouraged. Although there may be regulatory provisions for a relationship between inspectors and representatives, this is left to the individual inspectors and influences of the broader political economic climate in terms of how OHS is viewed and therefore the resources and

support given by the State (Walters et. al., 2011: 174-186; Walters and Nichols, 2007: 122-123).

In a study of inspection practices in the UK, Hutter (1993) found that, in the majority of cases, local managers accompanied inspectors rather than representatives and that contact in all cases was with management representatives. Several explanations were offered such as managers holding primary responsibility under the law and decisions about expenditure and safety systems being in their remit. As such, inspectors found it easier to ask questions about deficiencies and reprimand management when representatives were not present. Other aspects of the legal relationship were also not fulfilled according to the law. Communication of inspection findings to representatives varied where letters were sent to managers and only in some instances were these copied to employees or their representatives.

Although inspectorates are considered important to ensure employers fulfil their OHS obligations, under the self-regulatory paradigm and neo-liberal deregulatory practices, inspectorates have been cast in a more supportive role (Walters et. al., 2011). Regulatory provisions, for example, in the UK, for inspectors to engage with representatives is rarely practiced (Walter and Nichols, 2007; Hutter, 1993). There is also very little research on this aspect of effective representation. As such the evidence for the role and impact of inspectorates is limited but there are commentators who see it as important.

2.6. Conclusion

This chapter reviewed the land-based literature examining issues of relevance to this thesis. It defined representation as workers having the support to autonomously present their collective interest to management. It distinguishes other concepts that are sometimes used interchangeably but are different in practice and OHS outcomes. The chapter examined the origins and rationale for representation and explored the thinking that drove the regulatory paradigm for OHSM and representation. It highlighted the shortcomings of this thinking

regarding the causes of accidents and showed that self-regulation as an OHSM paradigm neglects the power imbalances in the workplace.

The chapter showed much evidence for effective representation and the conditions under which it is effective. While a strong regulatory lead is an important precondition, it is supported by the other preconditions. It appears from the literature that management commitment could arguably be the most important element as they provide the resources to support representation. It is their will and capacity that makes representation more than a “tinkering with policies.” However, given a strong regulatory lead and union support, representation may also be effective in hostile work environments. The next chapter zeros in on the shipping industry and explores the issues raised in this chapter regarding the evidence for what works in effective representative participation.

Dangerous Work, Silenced Voices

Merchant seafarers have chosen a dangerous occupation in which they are exposed to risks in a combination rarely encountered in other occupations (Nielsen 1999: 121).

3.1. Introduction

Consistent with the evidence in previous research, the main argument of this chapter is that seafaring is among the most hazardous occupations and seafarers have generally poor OHS outcomes due to the nature, organization and control of their work (Walters and Bailey, 2013; Kahveci and Nichols 2006; Nielsen and Panayides, 2005; Nielsen 1999). Nevertheless, it is argued that these poor outcomes are preventable for the most part if effectively managed (Walters and Bailey, 2013). Effective management of OHS means the development, implementation and practice of measures which support positive OHS outcomes for workers based on the evidence for what works (EU-OSHA, 2012; Walters and Nichols, 2009). There is a convincing body of literature that what works is a strong regulatory lead with robust provisions for representation supported by the preconditions for its effective implementation and practice (Chapter 2, Section 2.5.).

In order to understand the link between OHS at sea and this exploration of measures to give seafarers some influence into how their health and safety is addressed, the chapter begins by examining the literature on OHS outcomes for seafarers. The next section highlights how seafarers' OHS risks arose as a consequence of economic globalization and the associated negative impact on working conditions and simultaneous removal of workplace support for managing these risks. Subsequently the chapter examines the literature on OHSM prior to the MLC and the failure of the shipping industry to successfully address health and safety matters on ships. The evidence for representation and seafarers'

participation is then examined before introducing the MLC and reviewing the literature on its potential to address health and safety for seafarers.

3.2. Health and Safety Concerns for the Seafaring Workforce

This section highlights the risks seafarers face in their work to substantiate the argument that global regulation of representative participation in OHSM is a worthy pursuit owing to its potential for positive OHS outcomes. The history of seafaring is replete with accounts of poor OHS outcomes (Carter, 2015; Quinlan, 2013). Although seafarers (mostly in developed countries) gained regulatory protection and support, this was eroded by what might be called the second wave of precariousness¹⁵ seen from the 1970s onwards (ILO, 2004; Alderton and Winchester, 2002a; 2002b). During this time shipowners in developed countries increasingly registered their ships with foreign flags (countries) to reduce costs, and along with contingent employment practices, work risks for seafarers increased (discussed in Section 3.2.3).

The body of literature on seafarers OHS outcomes is predominantly based on research of fleets of developed countries. Studies of fleets from developing countries are few, but their findings are similar to those of developed countries in terms of the nature of risks, while showing that those seafarers may face even poorer outcomes (Borovnik, 2011; Roberts 1998). OHS risks for seafarers are made evident in shipping as a mobile and isolated industry; in the operational requirements; the social and the organizational arrangements on ships; control of work by a distant shore-based management; as well as the broader global political economic context of the shipping industry (Xue et. al., 2017; Sampson 2013; Walters and Bailey, 2013; Nielsen and Panayides, 2005; ILO, 2004).

¹⁵ In outlining precarious work for the seafaring labour force between 1815-1935, Quinlan (2013) showed that precarious work arrangements have been a longstanding issue for seafarers. However, there was some reprieve for particularly seafarers of developed countries through worker activism and union organization, which saw laws being put in place and provisions for representation to protect seafarers OHS (see eg. Walters and Bailey). With the economic crisis of the 1970s and other consequences of economic globalization, much of the gains made were eroded and additional risks added with increased technology and modern business practices (ILO 2004; Sampson, 2013).

Reviews of the literature paint a grim picture of the magnitude of work risks and poor outcomes for seafarers (eg. Walters and Bailey, 2013; Iversen, 2012; Oldenburg et. al., 2008; Nielsen and Panayides, 2005). The reviews show seafarers to not only be at risk of a wide range of occupational injuries and illnesses, but that they have higher rates of mortality and morbidity associated with their working conditions, than those working ashore. Studies of Danish (Hansen, 1999), Polish (Jaremin and Kotulak 2003) and British (Roberts 2008) seafarers, for example, found these groups to have higher rates of death and illnesses than respective shore-based workers.

An important issue is the institutionalized patterns of rules and work, that reflects a hierarchical military-like organizational structure of work and life on board. These features have been shown to impact negatively on seafarers' health and well-being (Kahveci, 2007; Kahveci and Nichols, 2006: 133). Opportunities to go ashore for reprieve from such working conditions have declined with increased intensity in work schedules, the remoteness of modern ports and increased border protection strategies¹⁶ (Sampson, 2013; Graham 2009; Mukherjee and Mustafar 2005). When other risks, such as exposures to chemicals, noise, vibration, and extremes of temperatures; bullying and harassment; criminalization, abandonment and piracy, are considered, seafaring makes for perilous work (Walters and Bailey, 2013; Bloor et. al. 2000).

The most vulnerable groups have been found to be the ratings (ship's crew minus the officers) in the studies where ranks were identified. Roberts, et. al., (2010) found suicide rates in the British fleet higher for ratings than officers. In another study, deck ratings had the highest risks for occupational fatalities and injuries (Roberts et. al. 2014: 264). A study of telemedicine records over a 25-year period (1986-2010) from an Italian-based provider, also showed deck ratings having the highest deaths from natural (diseases and illnesses) and non-natural

¹⁶ Security measures introduced in shipping after the September 11, 2001 attacks in the United States spurred the development of additional global standards to govern security at sea and in port in the form of the IMO International Ship and Port Facility Security (ISPS) Code. However, some countries also instituted unilateral measures such as onerous visa requirements and security measures for seafarers in ports which some describe as human rights abuses (Mukherjee 2006).

(incidents and injuries) causes (Grappasonni et. al., 2012). In other instances, engine room crew appeared to be more vulnerable to cancers and are exposed to the effects of the physical environment of the engine room, such as noise, vibration and excessive heat (Bloor et. al. 2000: 334).

That ratings are most vulnerable is unsurprising owing to their social position. As Nichols (1997: 3) asserts, injuries at work are bound up with workers' class positions. Research, such as that of Kahveci and Nichols (2006) reveal the precarious occupational and social positions that ratings inhabit in the shipboard hierarchical structure and for many, the wider political economy (i.e. their countries of origin and/or their class positions). Socioeconomic precariousness is associated with increased susceptibility to work risks and diseases in any industry and society in general (Scott-Marshall, 2010; Link and Phelan, 1995). Bhattacharya (2012a) found that ratings were more afraid of losing their jobs than officers and were therefore less likely to speak out in OHS committee meetings. This is the group most likely to benefit from representation as they lack the power position from which to present their interests individually to management, similar to land-based precarious workers (Chapter 2, Section 2.4).

3.2.1. Seafarers' Death Burden

This section gives some details regarding fatalities at sea. The main source of physical harm for seafarers are maritime disasters and/or occupational injuries. Foundering, collisions, groundings, explosions and fires are some of the causes of maritime disasters which may result in total or partial loss of the ship and the crew (eg. EMSA, 2016; Roberts et. al. 2014). Slips, trips and falls, involving mostly individual seafarers at sea, or in port, also account for a large proportion of occupational fatalities (eg. EMSA, 2016; Roberts et. al. 2014). Other sources of physical harm include strains, suffocation in enclosed spaces, and handling of equipment.

Non-physical causes of fatalities such as diseases and illnesses are classified as death from natural causes in the literature. Studies have shown a preponderance of diseases of the major systems in the body. In a review study of

Danish seafarers' and fishermen's health and safety, Poulsen et. al. (2014) reported that seafarers died from a range of diseases of the digestive and circulatory systems and several types of cancers. Further, cardiovascular and gastrointestinal diseases accounted for large numbers of deaths, which have been linked to lifestyle practices such as smoking, alcohol consumption, lack of exercise, poor diet and/or eating habits, being overweight and stressed (Hansen 1999: 273).

The magnitude of the work burden for seafarers can be seen when their occupational fatality rates are compared with land-based populations. Roberts and Marlow (2005), showed that for British seafarers over the period 1976 to 2002, there was a mortality rate from occupational accidents 27.8 times higher than the general British workforce for the corresponding period. This included higher risk of fatal accidents compared with other high-risk occupations such as construction, forestry and fishing. A later study for the period 2003 to 2012 revealed a reduction in the rate, but it remained higher than all major shore-based British industries. It was 3.5 times higher than the energy and utility supplies sector; 4.7 times higher than in construction; 13 times higher than manufacturing; and 50 times higher than the fatality rate in the service sector (Roberts, et. al. 2014: 262-263).

Similarly, among Danish seafarers for the period 1986 to 1993, the fatality rate was 11 times higher when compared with the average for Danish male workers ashore (Hansen, 1996: 274). Borch et. al. (2012) also found significant improvements of death rates in the Danish fleet, although they remained six times higher than the death rate of male land-based workers. Like other researchers, Borch et. al. (2012) concluded by expressing continued concern for the health and safety of seafarers.

Outside of European fleets, a study of the Hong Kong Marine Department records over a 10-year period, indicated that maritime casualties were the leading cause of deaths among those seafarers (Nielsen, 1999). In another study, Roberts (1998) reported that Singapore had a seafarer mortality rate 2.4 times, and Hong Kong twice the level of the British fleet, suggesting an even worse situation. As

Roberts' (1998) noted, the results were from accidents and incidents on board and do not include the high levels of fatalities due to maritime disasters.

3.2.2. Illnesses and Injuries Among Seafarers

This section details some evidence for non-fatal illnesses and injuries at sea. Seafarers' injuries and ill-health arise from similar causes to those accounting for occupational fatalities. Slips, trips and falls during work or moving around a ship account for a large proportion of injuries (Jensen et. al., 2005). EMSA (2016: 41) reported that 34.5% of occupational accidents on cargo ships were due to slips, trips and falls. This percentage is in keeping with a likely average according to Jensen et. al.'s (2005) review of the literature on slips, trips and falls which showed figures ranging from 27% to 46%.

A study using self-administered questionnaires collected responses from 6,461 seafarers from 11 countries (China, Croatia, Denmark, Indonesia, Philippines, Poland, Russia, South Africa, Spain, Ukraine and the United Kingdom) (Jensen, et. al., 2005). Of those reporting on injuries (n=467), 43% were due to slips, trips and falls. The injuries suffered included fractures, sprains, back injuries, wounds to head, eyes, neck and other body parts. Jensen, et. al. (2005) estimated that seafarers' risk of injuries from these sources to be about three time higher than shore-based industries. While the researchers indicated some limitations in terms of the nature of recall in research, which may lead to over or underestimation of events and their severity, the percentage results for injuries were consistent with other research (eg. Li, 2002).

In addition to high rates of injuries, seafarers are at risk of and suffer from a range of illnesses and diseases. Lefkowitz et. al. (2015) studied telemedicine records obtained from a global pool of seafarers and found that seafarers presented with twice as many illnesses as injuries. The top illnesses were listed as dental, gastrointestinal, dermatological and respiratory. Other illnesses and diseases identified by Lefkowitz et. al. (2015) included musculoskeletal, cardiovascular and psychiatric illnesses. These findings demonstrate the significance of illnesses among seafarers as compared with injuries and

underscore the arguments of others calling for more attention to seafarers' health (Bloor et. al. 2005; Nielsen and Panayides, 2005).

A review of studies on health risks in global shipping found seafarers to be at risk of a variety of cancers, cardiovascular diseases, liver diseases, disease of the nervous system and infectious diseases (Bloor et. al., 2000). The researchers noted a variety of health risks arising from the physical environment such as hearing, alertness and mental health issues due to noise, vibration and extremes of temperatures. Poulsen et. al.'s (2014) review of register-based studies of Danish seafarers and fishermen spanning the years 1970 to 2012, revealed elevated hospitalization rates for diseases and illnesses such as gastrointestinal, cardiovascular, endocrine/nutritional conditions and cancers.

While many of the studies examined prevalence of injuries and incidents in terms of numbers of seafarers who were hurt, the impact on work is rarely investigated. Impact on work is important as illnesses place additional pressures on the remaining crew (Hansen et. al., 2002; Jensen, et. al. 2005; Tomaszunas and Weclawik, 1997). Jensen et. al. (2005) found days lost from occupational injuries ranged from 1-90 days for seafarers across the 11 countries they investigated. In their study of the telemedicine company's records, Lefkowitz et. al. (2015) found that 50% of injuries led to restricted work. In that study, illnesses were the greater cause for work restrictions than injuries.

The above studies relied on quantitative measures that do not go behind the statistics to uncover root causes. Borovnik's (2011) qualitative study of seafarers from Kiribati and Tuvalu, provides an example of how work qualitatively impacts on the health and safety of seafarers. The study was useful in relaying the seafarers' lived experiences of work and how they responded. The work risks identified included exposure to dangerous cargo; increased pace of work; fatigue; and fast turn-around-times. Work intensification as a consequence of economic globalisation has been identified as an important factor in seafarers' health and safety (Sampson, 2013; Wadsworth, 2008; ILO, 2004). In Borovnik's (2011) study, the seafarers explained how the lack of shore leave, intense work and feelings of stress, combined with the use of alcohol for coping, sometimes led to violence on

board. Their vulnerabilities also increased due to extended time on board, which was sought to increase their income. Thus, these seafarers' socio-economic status and contingent employment arrangements further increased their exposure to risks - staying longer on board increases risks of stress and loneliness which may lead to more destructive coping strategies.

Although the studies in this section are limited in terms of representativeness of the global seafaring workforce, they are nevertheless useful in demonstrating the levels and nature of risk and poor OHS outcomes for seafarers, justifying the need for measures to improve working conditions at sea. The study by Borovnik (2011) was useful in showing how seafarers may come to harm due to their lived experiences, but it also highlights that illnesses and injuries are "constructed" by the nature, organization and control of work.

3.3. Globalization and Seafarers' Health and Safety

Economic globalization¹⁷ has had a negative impact on seafarers' OHS through business practices that encourage work intensification, workforce fragmentation, the weakening of seafarers' collective response and regulatory oversight (Lillie, 2006; Alderton and Winchester, 2002a; Bloor et. al., 2000; Bergantino and Marlow, 1997). Alderton and Winchester (2002a) describe how shipowners, seeking competitive advantages in response to increased costs from such events as the oil crises of the 1970s shifted the geo-political landscape of shipping by 'flagging-out'¹⁸ their ships to open registers or what the International Transport Workers Federation (ITF) labels as flags-of-convenience (FOCs).¹⁹ The prior

¹⁷ Economic globalization in this thesis refers to the transformation of the shipping industry from a predominantly national enterprise to a global enterprise involving a myriad of transnational interconnections and networks that now drive the industry. In Kuman's and Hoffman's (2012) definition, the features of economic globalization are trade liberalisation, transport, standardisation and telecommunications which are key elements in the shipping industry. Other important features are de-regulation and labour fragmentation.

¹⁸ The practice of registering ships in countries other than that of the nationality of the shipowner.

¹⁹ Prior to liberalization of the maritime industry ships would assume the nationality of their countries of origins, that is, where the owner was domiciled for the most part. With globalization, ships can assume any nationality by being registered with a foreign country. This practice is called "open registration" or the country that registers such ships regardless of nationality is called an "open register." Open registers developed a reputation for perpetuating substandard shipping by accepting owners whose operations are substandard (Alderton and Winchester, 2000). The ITF

practices, where traditional maritime States controlled ships and seafarer supply, gave way to a growth in business practices involving non-traditional maritime countries with less stringent or no regulatory requirements for doing business. In that regard, areas such as the hiring of seafarers was liberalized and standards of employment and working conditions on ships declined as a result of attendant cost cutting practices (Lillie, 2006; ILO 2004; Bloor et. al. 2000).

Traditional maritime States for the most part hired their own national seafarers to crew their fleet and these were frequently unionized seafarers with statutory provisions for their OHS protection (Walters and Bailey, 2013: 173-177). Flagging-out to countries with no requirements for hiring, resulted in a growth in multinational crewing practices as ship owners sourced labour from anywhere. As such, a market developed for low cost seafarers from countries in Asia and Eastern Europe (ILO, 2004).

A mixing of crew served several functions to the advantage of shipowners, such as, fragmentation of organized structures to support seafarers, for example unions (Walters and Bailey, 2013: 173-181). It allowed cost-cutting through wage differentiation based on nationality, irrespective of seafarers' rank (Sampson 2013; Kahveci and Nichols, 2006). Discriminatory practices served to create ill-will among some crew, further fuelling divisions and reducing the likelihood of collective actions. Lillie (2006) argued that these were deliberate practices aimed at weakening seafarers' solidarity. In addition, such practices compounded other forms of discrimination and prejudicial relations on board (Kahveci and Nichols, 2006). Multinational crewing is also used as a tool by some managers to secure seafarers' submission, increasing their sense of vulnerability and reducing the likelihood that they will seek redress for unfair practices (Kahveci and Nichols, 2006: 30).

Global changes affecting work structure and organization are not unique to shipping (Walters, 2005) and are similar to land-based experiences where

labels these "flags-of-convenience" as a way to highlight the lack of a relationship (genuine link) between owners and the flag, and to distinguish between these and traditional registers deemed to be providing better quality service.

business strategies have been pursued sometimes at the expense of workers' health and safety (Quinlan, 2013a; Quinlan et. al. 2001). Others have pointed out that, in a competitive business climate, management may forgo health and safety expenditures to achieve a certain profit level or maintain the financial health of the company (Gunningham and Johnstone, 1999). Practices at the work level are also affected and writers, such as Nichols (1997), explain these practices in terms of "safety versus profit" and workers themselves, aware of business pressures, may take risks to facilitate production.

Within the shipping industry, the safety versus profit explanation for poor working conditions is also relevant (Walters and Bailey, 2013; Cutler and James, 1996). The business rationalization that took place in shipping is argued to have created conditions that led to a "race to the bottom" in labour standards as shipowners sought to avoid regulatory compliance, reduce costs and increase production and therefore profits (Bloor et. al., 2000; Bergantino and Marlow, 1997). These trends also affected other workers around the world, but arguably are more extensive for seafarers and have graver effects as their workplace is remote and removed from the gaze of regulators and support structures (Walters 2005; Kahveci and Nichols, 2006).

DeSombre (2006; 2008), offers a less pessimistic view arguing that there has been a "race to the middle" in labour and regulatory standards instead of a "race to the bottom." She pointed out that, while labour and regulatory standards in the maritime industry declined as a result of economic globalization, there are those whose interests are served by maintaining some level of compliance. Bloor et. al. (2013: 179), found that ship operators were willing to comply with regulations on condition that other operators were also complying, as they were desirous of a "level playing field" without "free riders." In that respect, there are shipowners willing to subject their businesses to higher standards and they band together to apply market exclusion strategies to either force sub-standard operators from the industry or compel them to improve standards (DeSombre, 2008). Meanwhile, DeSombre (2008) also noted that, in response to competition, lower standards were also introduced by those deemed to be quality providers.

With that, she pointed to practices such as the opening of second registers by traditional maritime States with less stringent requirements. Thus, the “up push” by compliant owners and the “push down” by flag States, led to a convergence of standards at a middle ground.

It is however, uncertain, how much of this middle ground applies to seafarers’ living and working conditions. Efforts by the ITF to address sub-standard shipping has received less success than envisioned (DeSombre, 2006). Violation of seafarers’ rights does not seem to be diminishing amidst the emergence of new concerns with psychosocial illnesses on ships, or increased (or perhaps more publicized), cases of abandonment.²⁰ Although seafaring work may always be precarious (Quinlan, 2013b), there has been a weakening of States’ capacity to regulate OHS in the face of these global forces, giving rise to the need for the ITF and a global network of welfare providers that support seafarers. These and the expansion of global governance machineries of the International Maritime Organization (IMO) and the ILO have been among the responses in shipping, although there are many challenges in ensuring regulatory compliance (Bloor et. al. 2005).

3.4. Regulating OHSM at Sea Prior to the MLC

This section discusses efforts at global regulation of health and safety prior to the MLC with a specific focus on the International Code for the Safe Management of Ships and for Pollution Prevention (ISM Code). The international regulatory regime for OHSM is dominated by the IMO with much less attention paid to the ILO instruments. Regulating OHSM at sea has its foundations in attempts to address maritime disasters (Nielsen and Panayides, 2005; Anderson, 2003). There was (and continues to be) a strong focus on maritime technical defects to address safety of ships with much less attention given to occupational health and safety as an end in itself (Bloor et. al. 2005; Nielsen and Panayides, 2005: 148-149). A shift

²⁰ *Splash*: Campaign on crew abandonment. Contributions from persons across various sections of the maritime industry highlighting the plight of abandoned seafarers and some of the companies involved. This campaign might have contributed to a few countries banning companies or vessels involved. Available at <https://splash247.com/?s=crew+abandonment>. Accessed 08 August, 2018.

was made when the IMO increased its focus on the people in shipping with a rhetoric that the “human element” was neglected in attempts to address safety at sea. This shift however, turned out to be a focus on managerialist standards for operational and technical safety, underpinned by a heavy behaviour-based approach to OHS (Walters and Bailey, 2013; Bhattacharya, 2012a).

Health and safety at sea is couched in a narrative that over 80% of accidents involve the “human element” in one form or another (Anderson, 2003). Technological advancement was expected to lead to safer shipping, but regulators and industry spokespersons expressed alarm that major maritime casualties continued to occur (eg. O’Niel, 2001; 2002). This alarm directed focus on the “human element” and the ensuing narrative of a safety culture in the shipping industry as the means to stem the human contribution to accidents (Barnett, 2005; IMO 2002).

This narrative gained traction and is reflected in such underpinning IMO rhetoric as “safer shipping demands a safety culture,” where the focus turned to seafarers and shore management (IMO 2002). Today, the IMO maintains that view as shown in its safety culture statement on its website²¹

An organization with a “safety culture” [original emphasis] is one that gives appropriate priority to safety and realises that safety has to be managed like other areas of business. For the shipping industry, it is in the *professionalism* [original emphasis] of the seafarers that the safety culture must take root...

It is relatively unusual for new types of accidents to occur on board and many of those that continue to occur are due to unsafe acts by seafarers. These errors, or more often violations of good practice or established rules, can be readily avoided. Those who make them are often well aware of the errors of their ways...Most will have received training aimed at preventing

²¹ IMO website: Safety Culture [Available at] <http://www.imo.org/en/OurWork/HumanElement/VisionPrinciplesGoals/Pages/Safety-Culture.aspx> [Accessed: 16 October 2016].

them but, through a culture that is tolerant to the ‘calculated risk,’ they still occur.

These beliefs about the cause of accidents at sea have most likely contributed to the turn to behaviour-based management and are reflected in practices and attitudes towards OHS in shipping where seafarers’ behaviour and qualifications became the focus of attention. The EMSA (2016) shipping casualty report, for example, listed “human error” as the overarching cause of incidents at sea. Although in some cases this “human error” was attributed to supervisory decisions and some shore-based decisions, the majority of human error was reported as arising on board ships.

The maritime industry’s pursuit of a safety culture entailed the development of and amendments to international maritime standards, as well as enforcement elements to address “human errors.” For example, amending the IMO STCW Convention²² (twice to date), developing the ISM Code, along with port State control and flag State initiatives, form a regulatory regime of international codes and practices focussing on surveillance and fixing the faulty humans. Although the industry claimed to have adopted a socio-technical approach (Graham, 2008; Anderson, 2003), in essence, the focus was directed at correcting the behavioural flaws in the seafarers and their quality of training, with little attention paid to the structural conditions affecting seafarers’ work practices, such as commercial pressures.²³ The sociology of work literature speaks to *structures of vulnerability* that impact how workers undertake their tasks which may include taking risks (Nichols, 1997). Issues of fatigue and work intensification emerged as evidence that the nature, organization and control of work need to be addressed.

²² The Standards of Training Certification and Watchkeeping (STCW) 1978 as amended Convention of the IMO.

²³ While some attention was paid to fatigue as an occupational health issue, this was due to fatigue playing a major role in shipping casualties. Fatigue was isolated from other occupational issues and served to substantiate the observation that the focus of the industry is on ship safety and the prevention of maritime casualties and pollution. Yet the industry neglected to address the “elephant in the room” of reduced manning requirements and instead placed the responsibility on seafarers to comply with work/rest schedules developed by the industry and encouraging seafarers to “speak out” where these and other standards were being violated. The industry is yet to openly discuss the *structures of vulnerability* (eg. precarious work; commercial pressure; power imbalances) and how to address these.

However, the industry is yet to take a concerted look at issues such as manning²⁴ levels that could assist in reducing seafarers' workload (Bloor, 2012; Bhattacharya, 2009).

3.4.1. The ISM Code

The ISM Code is the maritime industry's principal regulatory instrument for OHSM on ships (Bhattacharya, 2009; Trafford, 2009; Anderson 2003). Developed as a response to a series of maritime casualties in the 1980s and 1990s, (Table 3.1), the Code is a systems approach to OHSM inspired by such approaches that had developed for land-based enterprises (Walters and Bailey, 2013). Prior to its adoption, the ship-owning community at the time, represented by the International Chamber of Shipping (ICS) and the International Shipping Federation (ISF), developed a voluntary Code of Good Management Practice in Safe Ship Operations for their members.

At that time the UK also issued a number of maritime notices which were presented at the IMO which was discussing mechanisms to address these casualties at sea (Anderson, 2003). After the *Herald of Free Enterprise* disaster, the UK developed the Merchant Shipping (Operations Book) Regulations 1988. Following the *MV Scandinavian Star* casualty in 1990, elements of these UK regulations and those voluntary codes developed by shipowners, were formulated into the ISM Code. The ISM was inserted as Chapter IX into the IMO's Safety at Life at Sea (SOLAS) Convention. It was adopted in 1994 and phased in until it came into effect for all types of vessels in July 2002 (Anderson, 2003). With that, regulated self-regulation of OHS was introduced into the shipping industry (Bhattacharya, 2009).

²⁴ One effect of increased technology was to reduce the number of seafarers required to 'man' (crew) a ship. However, with work intensification this reduced manning was offset which the industry has not addressed (eg. Bhattacharya, 2009).

Table 3.1: Selected Maritime Casualties Influencing Development of the ISM

Year	Name of Ship	Casualties
1987	<i>Herald of Free Enterprise</i> (ferry)	Capsized off Zeebrugge – 190 persons died
1987	<i>Dona Paz</i> (ferry)	Collided with a tanker – Philippines – 4,386 persons died
1989	<i>Exxon Valdez</i> (oil tanker)	Ran aground – Alaska, pollution damage
1990	<i>Scandinavian Star</i> (ferry)	158 persons died
1991	<i>Agip Abruzzo</i> (oil tanker) <i>Moby Princess</i> (ro-ro-ferry)	Collision - Livorno, Italy - 143 persons died, pollution damage
1991	<i>Haven</i> (oil tanker)	Fire and explosion - Genoa, Italy - 6 crew died, pollution damage
1991	<i>Salem Express</i> (ferry)	Struck a reef – Egypt – 470 persons died
1992	<i>Aegean Sea</i> (oil tanker)	Broke in two off La Coruna, Spain - pollution damage
1993	<i>Braer</i> (oil tanker)	Grounding – Shetland Islands - pollution damage
1994	<i>Estonia</i> (ro-ro passenger ferry)	Sinking - 852 persons died
1996	<i>Sea Empress</i> (oil tanker)	Milford Haven, UK – pollution damage

Source: Anderson 2003

The ISM Code focussed on shipowners (or managers) as the main duty holders with legal responsibility for safety but espoused the idea that everyone was responsible for safety, in the spirit of self-regulation. A similar thinking to the land-based self-regulatory regime examined in Chapter 2 (Section 2.3) underpins the ISM Code (Walters and Bailey, 2013: 130-139). The IMO website confirms the ideology of the Code and the self-regulatory thrust:

Effective implementation of the ISM Code should lead to a move away from a culture of "unthinking" compliance with external rules towards a culture of "thinking" self-regulation of safety - the development of a 'safety culture'. The safety culture involves moving to a culture of self-regulation, with every individual - from the top to the bottom - feeling responsible for actions taken to improve safety and performance. Application of the ISM Code should support and encourage the development of a safety culture in shipping.²⁵

²⁵ IMO website: Human Element [Available at]: <http://www.imo.org/en/OurWork/HumanElement/Pages/Default.aspx> [Accessed: 16 October 2016].

Ironically, the ISM seems to have led to some amount of “unthinking” compliance in managing safety contrary to the vision outlined by the IMO (Anderson, 2003; Bhattacharya 2012a). For example, Bhattacharya (2012a) found that seafarers tended to rely more on their skills and experiences to manage day-to-day shipboard safety rather than the ISM procedures which, in instances, were found to be unsuited for situations that arose on board. Rather, the ISM was viewed as a paper exercise which was completed to satisfy the shore-based office. The IMO seemed to have promoted self-regulation uncritically and omitted to make allowances for seafarers’ autonomous participation, similar to the experiences on land. But unlike land-based sectors, unions had no influence at the IMO to raise the issue of on board representation to support the ISM requirements. Self-regulation has been criticised for land-based industries as an ineffective paradigm for OHSM owing to the structural conditions in the workplace and workers’ vulnerability due to the unequal power inherent in the employment relationship (Chapter 2, Section 2.3).

This critique is also relevant for the shipboard work environment. The literature shows that self-regulation has its limitations owing to working conditions that militate against seafarers’ participation (Xue et. al., 2017; Walters and Bailey, 2013; Bhattacharya, 2012a; 2012b; Bailey, 2006). Xue et. al., (2017) for example, found that seafarers underreported incidents for fear of losing their jobs. A similar finding emerged in Bhattacharya’s (2012a) study discussed in Section 3.5. A criticism of the ISM Code is that it has no binding provisions for seafarers’ participation although this is presumed under self-regulation.

The ISM Code system does entertain notions of participation on ships (Bhattacharya, 2012a). OHS committees are to be established and seafarers are encouraged to participate. However, critics of self-regulation have argued that precarious workers do not have the power position for self-regulation to deliver the envisaged outcomes (Lewchuk, 2013a; 2013b; Nichols, 1997). As precarious workers, seafarers for the most part are also not in a position to individually represent their interests (Bhattacharya, 2012b; Kahveci and Nichols, 2006), which is the preferred *modus operandi* under self-regulation. Studies revealed that the

ISM Code was not implemented as envisaged in many instances and therefore failed to achieve the desired purpose of effective OHSM (Bhattacharya, 2012a; Bailey, 2006; Anderson, 2003).

The ISM is a systems approach where companies develop and implement safety management systems (SMSs) as the core activity in safety management (Trafford 2009; Anderson, 2003). SMSs are described as standardized commercial packages used to manage work processes (Frick et. al. 2000). These are voluntary and driven by documented procedures with audits as the main means of accountability. These systems have not been viewed with much confidence for addressing workplace health and safety issues. However, there are those who argue that SMSs have the potential to encourage positive OHSM practices if effectively implemented and there is management commitment to participation (Gunningham and Johnstone, 1999).

SMSs are contrasted with a systematic approach to OHS, which is regulated management. In distinguishing between these two approaches and their implications for workers' participation, Frick et. al. (2000) argued that a systematic approach provides for worker participation, while a systems approach emphasises the role of management who are not obligated to consult with workers. Scholars in this field have argued for the importance of workers' participation and the preconditions to ensure self-regulation serves not only the purpose of management but those of workers (Chapter 2). These conditions were not articulated in the ISM Code (Bhattacharya, 2012a). Figure 3.1 outlines the main distinctions between these two approaches.

Figure 3.1: General Distinctions between Systematic OHSM and OHSM Systems

Systematic OHSM	OHSM Systems
<ul style="list-style-type: none"> • Regulated minimum standards for OHSM • Applicable to all types of employers • Risk assessment is a key component • Mandated worker participation • (pluralist) 	<ul style="list-style-type: none"> • Voluntary, market-based packages • Highly formalized prescriptions for OHSM as an integrated element in the business process • Emphasizes documentation • Management driven – top-down focus (unitary)

Source: Compiled from Frick et. al. (2000).

Another concern regarding the ISM system is that its management focus, coupled with a behaviour-based paradigm, might have encouraged a top-down authoritarian approach to OHSM (Walters and Bailey, 2013). In assessing the effectiveness of the ISM Code, Bhattacharya, (2012a; 2012b; 2009) reveal a clear leaning towards a behaviourist approach. The behaviourist approach on the part of the managers in that study echoed the underlying narrative of “human error” in accident causation. Incident reports developed by the companies, listed seafarers’ unsafe behaviour as both immediate and root causes of accidents (Bhattacharya, 2012b: 14). These reports were substantiated by interviews where managers believed that they had to unilaterally manage safety because seafarers were not trusted to act safely. Such perceptions show a persistence of attitudes underlying the regulatory reforms of the 1970s and arguments advocating for self-regulation, where it was said that accidents were a result of apathy on the part of workers (and managers) (Chapter 2, Section 2.3).

Studies on the ISM Code show the negative consequences for OHSM of not including workers, such as mistrust of the system, under-reporting of incidents and a gap between its envisioned purpose and the realities of practice (Bhattacharya, 2012a; Bailey 2006; Anderson, 2003). By contrast, Anderson (2003) found that including seafarers in the development of the SMS, was important in gaining the necessary commitment to the system. In presenting a case study where seafarers were included in the process of developing and implementing the SMS to satisfy the ISM, it was found that those seafarers had a positive perception of the ISM and the SMS. Otherwise unilateral development of the safety system was met with resistance and complaints. In such instances, seafarers viewed the ISM and the attendant SMS as a tool for the shore-based company managers to pass on responsibility and blame to the crew (Bhattacharya, 2012a; Anderson, 2003).

Such outcomes should be unsurprising when one considers the rhetoric of the “human element” driving the thinking behind the ISM. Similar to the critique of self-regulation for land-based industries, those who developed the ISM Code, did not appear to have given adequate consideration to the structural and social issues on board, to make the ISM approach effective. This is perhaps wishful

thinking as the IMO is a technical body that developed a management standard by way of codifying existing voluntary management practices. Although there was some awareness of challenges in the work environment, and attempts were made to address them by providing for a “designated person ashore” (DPA)²⁶ to support seafarers in their work, this operates within the shipowners’ power structures. In the land-based literature, autonomous representation is supported in recognition of the need to have a countervailing force to management power (Walters and Nichols, 2013; Nichols, 1997). Seafarers’ “voice” at the IMO is greatly limited and at the time of the development of the ISM would have been more so.

Further, these mechanisms of the ISM Code do not address the broader political economic conditions driving work intensification and the imperatives of production that have been described for work at sea (Xue et. al. 2017; Walters and Bailey, 2013: 141-145). Nichols (1997) has demonstrated for land-based workers that such business imperatives contribute to workplace risks. Likewise, Nichols’ *structures of vulnerability* is applicable to what obtains at sea, as studies show that production has taken precedence over seafarers’ health and safety (Xue et. al., 2017; Kahveci and Nichols, 2006; Cutler and James, 1996).

3.5. Representation in Shipping

Activism for regulations to improve employment and working conditions for seafarers is well documented, particularly for advanced market economies (Carter, 2014; Quinlan, 2013b; Walters and Bailey, 2013; McFarlane, 1970). As such, statutory support for representation on ships is not new. For example, from the 1960s, the UK has had provisions for crews to select their representatives whose duties included representation on general employment and working conditions but also health and safety (Walters and Bailey, 2013: 173-177).

²⁶ Revised ISM Code (2015: para. 4). **Designated Person Ashore:** To ensure the safe operation of each ship and to provide a link between the Company and those on board, every Company, as appropriate, should designate a person or persons ashore having direct access to the highest level of management. The responsibility and authority of the designated person or persons should include monitoring the safety and pollution-prevention aspects of the operation of each ship and ensuring that adequate resources and shore-based support are applied, as required. https://www.classnk.or.jp/hp/pdf/activities/statutory/ism/ISM_Cd/ISM-Code-e.pdf

Representation also existed at the international level for seafarers, in ILO conventions, such as Convention 134, dated 1970, but these were not widely ratified.

Changes in the business of shipping due to the effects of economic globalization, weakened structures for representation at sea (Bailey, 2006; Lillie, 2006; Walters, 2005; ILO, 2004; Alderton and Winchester 2002a). Lillie (2006: 66-67) argued that globalization is an employer strategy to fragment workforces thereby weakening their capacity for solidarity and resistance. He went on to show that, through the work of the ITF, union organized responses to globalization are possible (Lillie, 2004; 2006). Gekara, et. al. (2013), have also shown union successful organising across borders in the case of the seafarers' officers union, NATILUS, having alliances across the UK, Netherlands and Switzerland. However, there remains a gap in understanding as to what obtains at the shipboard level in the day-to-day working lives of seafarers, as the research in this area is sparse.

Trade unions as the traditional voice of seafarers have been severely curtailed at the shipboard level (Sampson, 2013; Walters and Bailey, 2013). Decline in union organizing at the workplace level has been more widely discussed for land-based sectors. The changes wrought by economic globalization such as shift to service sectors and business practices to privatize and fragment workforces, have eroded unions traditional spaces and methods of organizing (Biffl and Isaac, 2002: 6-7). Similar forces in shipping that sought to decentralize and deregulate the seafaring workforce have had similar consequences for union organizing on board (Walters and Bailey, 2013).

The union response to globalization in shipping is most visible at the international level through the work of the ITF and its campaign against FOCs, to address issues of declining labour standards and wages for seafarers (Lillie, 2004; 2006). However, representation at the shipboard level appears underdeveloped. Alderton and Winchester (2002a) demonstrated that seafarers on FOC ships are more likely than those working on ships registered in traditional maritime States, to experience discrimination, have more intense work, work longer hours, receive lower wages and experience hostility from their employers towards unions. While

the ITF has been somewhat successful in arresting the “race to the bottom” in wages in particular, the conditions outlined by Alderton and Winchester (2002a) remain problematic for many seafarers. The ITF is a union of national unions and although it goes beyond the role of a secretariat and actively engages in setting standards and conditions of work for the global seafaring workforce, its activities at the shipboard level appear limited to crisis situations.

3.5.1. Seafarers’ Participation on Ships

A ship is a traditionally undemocratic workplace and regulatory and social practices in the past discouraged any form of independent “voice” (Quinlan, 2013b; McFarlane, 1970). Quinlan’s (2013b) historical study from 1815-1935 found that British and Australian laws prevented seafarers removing themselves from unseaworthy ships, and systems for making complaints and seeking redress were onerous. Modern shipping also has difficulties with establishing democracy on board which is likely to be a legacy of this tradition (Schrank, 1984; McFarlane, 1970). Seafarers’ participation is thus curtailed by traditional hierarchical structures and divisions on board (Sampson, 2013; Bhattacharya, 2009; Bailey, 2006). Its rigid military-like ranking system, reflected in for example, the physical layout of the ship (separation by rank in the location, quality and size of living spaces) reinforces divisions and might serve to constrain social interactions (Sampson, 2013; Schrank, 1984).

Additionally, the wider political-economic environment is inimical to union organizing on ships. Multinational crewing practices, the use of employment agencies and weak national industrial relations systems for many seafarers, coupled with the mobile nature of work, make it difficult for seafarers to develop solidarity at the workplace level to represent their interests collectively (Lillie, 2006). A few studies have found deliberate attempts by shipowners to prevent seafarers from seeking union representation (Kahveci and Nichols, 2006; Alderton and Winchester 2002a).

With the absence of union support, OHSM is left to the interaction of seafarers and their managers on the ship and those ashore. Relevant studies into

the shipboard work environment which examine seafarers' participation are limited. Participation usually emerges as findings rather than being the subject of inquiry. One exception is Kahveci and Nichols (2006: 126-128) who included consultation and perceptions of participation as variables within their study on the life of seafarers on car carriers. The study compared seafarers' responses to being consulted with that of land-based responses from the British WERS, 1998 survey. Health and safety was the topic on which seafarers reported being mostly consulted. However, in unpacking this finding, the researchers noted that this was not exceptional compared with the land-based reports. Additionally, it was not clear from the quantitative data how much consultation took place and the quality of this consultation.

Some insights were gained into the quality of the participation from the study's qualitative data, which showed that while some shore managers were efficient in giving information on some ships, there were less opportunities for seafarers to give feedback and influence decisions in the true spirit of participation and consultation (Kahveci and Nichols, 2006). Some seafarers in the study explained that instructions were given by shore office staff and they simply followed these instructions, so were not consulted. As discussed by Walters and Bailey (2013: 178-181), consultation in the manner already described (Chapter 2, Section 2.2), (as a statutory requirement for allowing communication flow two ways, thus providing structures for workers' "voice" on health and safety matters and for managers to listen and respond) is not a common feature of employee relations on ships.

Other studies also support the discussion that seafarers' participation is curtailed due to working conditions. Seafarers are reluctant to speak out on issues or report dangerous situations (Xue et. al., 2017; Bhattacharya, 2012a, 2012b; Bailey, 2006; Anderson, 2003). Xue et. al., (2017) demonstrated the implications of poor communication between seafarers and shore-based management. They revealed that communication was top-down and authoritarian, with the suggestion of consultation in theory but not in practice. Communication was driven by production targets which were found to be inimical to seafarers OHS as

risks were taken to meet these targets. In relation to the control of work, shore-based management was very involved in the daily operations of the ship which took away some of the decision-making role of the seafarers, while seafarers in turn were reluctant to go against shore management's decisions (Xue et. al., 2017). Sampson et. al., (2016), also found tensions between the shore-based office's need to keep production going and the needs of those on ships.

Seafarers' "silence" is a common theme in the literature on participation on board. Such silence is associated with concern for their jobs and professional reputation. In that regard, seafarers may underreport safety matters or be biased in their reporting of incidents to present a positive picture of themselves and/or the operations of the ship (Xue et. al., 2017; Bhattacharya, 2012a). The potential for communication to positively influence OHSM practices by being transparent and open was not realized for the seafarers in those studies. Organizational learning from incident reporting is a principle of building a safety culture, to which the maritime industry aspires (Manuel, 2011; Graham, 2008). Nevertheless, poor communication arising from the conditions of work threatens such aspirations. Rather, the opposite outcome of a safety culture is often the reality and threatens both the safety of the ship and seafarers' OHS. Seafarers often feel stressed with having to communicate with shore-based management (Xue et. al., 2017; Sampson et. al., 2016). Some of this stress was managed by underreporting or withholding information generally, but seafarers may also attempt to self-manage personal injuries rather than report them (Acejo et. al., 2011).

As the foregone discussion shows, precarious employment conditions may serve to "silence" seafarers and contribute to suspicious relations with shore-based management. This mistrust also flows from shore management to seafarers and heighten negative relations (Bhattacharya, 2012a). In that respect, management commitment as a precondition for effective worker participation is likely to be compromised. There is evidence that management commitment to health and safety in shipping may be exercised through authoritarianism and control (Bhattacharya, 2012a). As discussed in Chapter 2, such unitary approaches to management tend to be associated with behaviourist explanations for

occupational injuries and, therefore, behaviour-based solutions are pursued. Bhattacharya (2012a) found that managers held behaviourist notions of the cause of accidents believing that most accidents result from seafarers' lack of expertise or non-compliance with the company's SMS. The "human error" narrative already discussed, was invoked by managers and served as the rationale for their authoritarian approach to managing what they perceived as seafarers' apathy. Rather than the "no blame" culture espoused by the maritime industry in pursuing a safety culture, Bhattacharya (2012a; 2012b) found that the blame culture was palpable, even among those managers who had some awareness of its negative effects.

Studies such as Anderson (2003); Kahveci and Nichols (2006); and Bhattacharya (2012a) revealed a picture of shore management who were highly committed to the ISM Code, and its effective functioning but not to a participatory system. Anderson (2003) found that for the most part, the SMSs were unilaterally developed, and seafarers were expected to follow the procedures. By contrast, the companies that sought seafarers input in developing their SMSs had better compliance and reported improvements in rates of injuries and cost savings (Anderson, 2003). This lack of seafarers' input in the OHSM systems on board was further supported by Bailey (2006) who examined risk assessment as an important aspect of safety management under the ISM. Seafarers were not included and as such the purpose of risk assessment towards continuous improvement was not being realised.

This section examined the literature on seafarers' OHS outcomes and arrangements for OHSM prior to the MLC. It showed that while arrangements are in place for seafarers to participate, these are plagued by faulty thinking and ineffective approaches which stifle participation. Representation is not a feature described in this literature. The practices described are consistent with a unitarist model of self-regulation seen in early regulatory developments to address workplace health and safety matters. This literature has demonstrated that the preconditions of strong regulations, management commitment and union presence to support a participatory practice are poorly constituted for the

shipping industry. This is the context within which the MLC was developed to function and therefore the basis for problematizing representation in the MLC.

3.6. The Maritime Labour Convention

This section introduces the MLC and the rationale for its development. As a “new” instrument, there is not yet a well-developed body of critical literature on the MLC. The publications that exist are mainly from the ILO or from those who were involved in some way with its development and are geared towards explaining the convention or promoting its virtues (eg. Christodoulou-Varotsi, 2012; McConnel et. al. 2011; Bolle, 2006).

There is much rhetoric surrounding the MLC. The ILO’s narrative sets the MLC within its “decent work agenda” to address the “deficit in decent work” on ships. It is viewed by the ILO and industry as the seafarers’ “bill of rights” which will provide a “firm” but “flexible” global response to the poor working conditions resulting from the business practices driving economic globalization. As the ILO explains, the MLC is “firm” on rights but “flexible” in how its standards are to be met to serve the different national systems (see Chapter 5). The MLC is also held as the “fourth pillar”²⁷ in the international maritime regulatory regime for quality shipping encompassing safety, security and marine pollution prevention. The other three pillars are maritime standards developed by the IMO:

- International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended.
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL).
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) as amended, 1995 and 2010.

²⁷ See Safety4Sea maritime press release at <https://safety4sea.com/seafarers-bill-of-rights-to-come-into-force/> [Accessed, December 04, 2017].

Yet, this alignment with the IMO, might be more reflective of the ILO's public relations narrative rather than the reality of the situation. Research evidence suggests that this is a promotional tactic by the ILO to bolster the MLC, rather than legitimate cooperation, as IMO officials maintain that the two organizations have a different focus (Thomas, 2012: Xlii).

The MLC is a consolidation of ILO maritime conventions that existed as separate instruments dealing with specific subject matter such as "paid vacation," "wages" and "social security." Article X of the MLC lists the conventions that were consolidated and replaced by its coming into effect (MLC 2006: 6-7). The MLC brings seafarers' labour and social issues to the fore in a comprehensive manner that did not exist prior to its coming into effect, and gives regulatory support to representation for seafarers, an element that is missing from the other "pillars."

Additionally, the MLC is intended to address unfair competition among shipowners by creating a "level playing field" through re-regulating the industry and in so doing, remove some of the economic advantages gained by sub-standard operators from lowering labour standards (Lillie, 2008: 193-194; DeSombre, 2006). In this goal, both the employers' and workers' group were united, making the MLC possible (Lillie, 2008: 193-194).

A major position of those supporting the MLC is that it is an innovative instrument. Supporters outline the features giving rise to this description, such as the MLC as a consolidated instrument, its tacit amendment procedures and enhanced compliance and enforcement mechanisms which require certification and inspection of labour standards. However, these are only innovative to the extent that they broke from ILO traditions. These are features of IMO instruments on which the MLC structure is modelled. But for those supporting the MLC, its "firm" yet "flexible" approach is the feature to ensure wide ratification and therefore effective protection for seafarers (Bolle, 2006).

These views from the ILO camp regarding the extent to which seafarers will be protected by the standards of the MLC, might be overly optimistic. More critical perspectives such as Bauer (2008), highlight some important concerns that

might result in the MLC being less effective than envisaged. With direct reference to seafarers' health and safety, Bauer (2008) pointed out the lack of strong provisions on shore leave to alleviate the institution-like atmosphere on ships. Importantly, he also noted the absence of measures to empower seafarers to protect the rights afforded under the MLC, in particular the absence of provisions for seafarers to take industrial action. While acknowledging the historical reality that ships are not democratic workplaces and not all jurisdictions allow for seafarers to strike, Bauer interpreted the absence of such provisions as a weakness in the MLC framework and argued that it is at least worth some consideration (Bauer, 2008: 655-657). Bauer (2008) however stopped short of arguing for union support which is normally a precondition for workers to avail themselves of such rights if they exist.

Legal views describe the MLC as a "new direction" in international labour law and global governance (McConnell et. al. 2011). McConnell et. al. (2011), gave a detailed explanation of each aspect of the MLC and how it is intended to apply in law. Emphasizing the legal strength of the MLC, downplays the politics of compliance and regulation in the maritime industry (Bloor et. al. 2013). The ILO itself does not have any enforcement capabilities and its "horizontal" governance regime, where it relies on member States to give effect to conventions, is considered unreliable (Gumbrell-McCormick, 2008; Standing, 2008; Biffl and Isaac 2002). Countries differ in how they view efforts at global governance and seek to protect their economic interests. Biffl and Isaac (2002: 27) note that developing countries are wary of standards that seek to regulate their workforces as they see this as a hindrance to economic growth. But there are those who are of the opinion that the port State control (PSC) enforcement regime in the MLC is a firm regulatory lead and will be effective in ensuring uniformity of application of the standards (Christodoulou-Varotsi, 2012; Lillie, 2008; 2006; Bolle, 2006).

Confidence is placed in the "no more favourable treatment"²⁸ clause in the MLC where any relevant ships are to be inspected whether or not the country

²⁸ See Glossary

whose flag it flies have ratified the MLC. Bauer (2008) was cautious in lauding the measures for PSC arguing that the “flexibility” built into the MLC might result in compliance and enforcement issues where States will act in their own interest under economic pressures and might not judiciously apply the standards on their own ships. Nevertheless, he also noted that the “no more favourable treatment” clause might counter any such practices from becoming widespread. Although speculative, there seems to be some confidence in the literature that the regulatory steer will ensure an acceptable level of compliance and enforcement of the standards. However, these perspectives have not taken into consideration problems identified with the PSC governance machinery or that ships spend most of their time at sea away from the gaze of regulators.

Another problem with these accounts in relation to seafarers’ OHS protection, is that they refer to the MLC in general. The limited attention paid to Regulation 4.3 on health and safety protection and accident prevention which provides for representation, focuses on the provisions for social dialogue²⁹ at the national level in giving effect to the MLC and for its regular review. According to Christodoulou-Varotsi (2012: 475), this element of flexibility in providing for consultation of the social partners, will bring the MLC framework closer to the realities of the industry. However, Christodoulou-Varotsi (2012) neglects to consider the shipboard level and the minimal provisions in the MLC for social dialogue on board. Instead, the complaints mechanism was highlighted as a positive move in providing seafarers with a means to seek redress should their rights be violated. Studies into land-based workplaces demonstrate that precarious workers do not make much use of such individual means of protecting their rights (Lewchuk, 2013a). Such opinions coming out of the ILO are legal perspectives outlining in theory what the MLC provisions mean, and they ignore the social and political contexts governing shipboard work. Writers from a

²⁹ Social dialogue is defined by the ILO as “an instrument of good governance which fosters cooperation and economic performance and helping to create an enabling environment for the realization of the objective of decent work at the national level.” Further explanation is given in the Glossary. <https://www.ilo.org/global/topics/workers-and-employers-organizations-tripartism-and-social-dialogue/lang--en/index.htm>.

sociology of work, industrial relations and socio-legal perspectives are yet to significantly contribute to discussions on the MLC.

An exception might be Lillie (2008; 2006; 2004) who provides an industrial and international relations perspective on the possible effects of the MLC. Similar to some of the views coming from the ILO, he regarded the MLC as a new paradigm for global labour rights with special reference to the ILO's tripartite structure. However, this is not a new paradigm and while tripartism may function effectively enough at the international and even the national level, Lillie (2006) does not account for its absence on ships and how the international will translate into effectiveness at the workplace level.

Another claim that needs critical attention is that "when the MLC comes into force it will signal an important change in the way that global labour rights are governed in the maritime industry..." (Lillie, 2008: 194). Like others, Lillie is referring to the PSC regime for member States to enforce standards on each other as the "teeth" in the MLC compliance and enforcement mechanism and a sign that the MLC will be an effective instrument (Lillie, 2008). He is also of the opinion that "PSC will operate as an incentive encouraging shipowners and flag States to adequately regulate their own shipping" (Lillie, 2008: 193), and therefore maintain the continued relevance of States in global governance. Yet, similar to the legal commentaries, his analysis remains at the international level without consideration of the complexities in global governance and its dependence on factors ranging from the will and the capacity of States to the experience and individual approaches of inspectors (Bloor et. al., 2005). In theory, the ILO has indeed changed how it previously approached the governance of maritime labour standards, but the literature provides little assessment of the practicalities of the infrastructure on which the MLC governance regime relies, and it scarcely addresses the shipboard work environment.

3.7. Conclusion

The chapter examined the literature on the status of seafarers' health and safety and conditions giving rise to poor health and safety outcomes on ships. The main argument is that these poor OHS outcomes are preventable by having effective measures to manage the risks of the shipboard work environment, including representation. The literature showed that the main health and safety management instrument, the ISM Code, has failed to achieve the envisaged outcome and some of this failure is attributed to lack of seafarers' participation. The ISM Code system presumes the participation of seafarers rather than having actual provisions. While safety committees with seafarers' representatives have been instituted as part of fulfilling its requirements for risk assessment, seafarers are not provided with an autonomous "say" in health and safety. Further, OHSM provisions and practices under the ISM are inconsistent with the evidence in the land-based literature for effective participation.

Examining the existing literature on the introduction of the MLC, the emphasis has been mostly the legal aspects and what should happen in theory. These perspectives have not addressed the supports necessary for the legal provisions to be effectively implemented and practiced. The review of this literature revealed an absence of discussion on unions and management commitment, although much has been made about the regulatory steer. However, as the land-based literature shows (Chapter 2) a strong regulatory steer is also influenced by the regulatory lead. These prevailing conditions have given rise to the question as to whether the MLC is a firm response to poor working conditions on ships, with respect to representation. The remainder of the thesis explores the provisions for representation in the MLC by examining their development, administration, implementation and practice.

4

Methodology

...when I enter the world of those I have chosen to study it is my gaze in dialogue with theirs that begins to shape the project in conjunction with the literature that I read for inspiration and guidance (Schostak, 2002: 24).

4.1. Introduction

This research examines the viability of regulatory provisions for seafarers' representation in health and safety management on ships. It poses the research question: *Are the MLC provisions for seafarers' representative participation in OHS a firm response to poor working conditions on ships?* Seafarers' representation was singled out from among the MLC's provisions as it has the capacity to contribute to improved working conditions by involving those at risk. Other studies conclude that seafarers' participation is important to safeguard their health and safety but is missing from work relations practices on board (Xue et. al., 2017; Bhattacharya, 2012a; 2012b; Bailey, 2006). Chapter 3 reveals that the ISM Code, as the established OHSM regime for shipping, does not make provisions for any form of autonomous participation. Although seafarers' participation is presumed under the ISM self-regulatory regime, a unitarist approach is taken which has not effectively delivered OHS protection for seafarers. To my knowledge, this is the first empirical study on the MLC and more so with specific focus on representation.

Representation is advocated in this thesis as it provides for workers' autonomous input into OHSM in recognition of the organizational features of work that make workers vulnerable to illnesses and injuries (Nichols, 1997). Empirical evidence shows that representation has direct and indirect benefits to workers' health and safety outcomes (Chapter 2, Section 2.4.2.). However, it needs to be supported by certain preconditions which Chapter 3 (Sections 3.4. and 3.5.) revealed are poorly constituted for shipping. In that context, this research

problematizes the claim made by the ILO that the MLC is a “firm response” to seafarers’ poor working conditions. This research aims to examine this problem in respect of representation in the MLC, to ascertain in what ways the architects have considered developing a “firm response.”

This chapter describes the methodology used in addressing the research question. It first outlines the study design and justification for selecting the particular approach. Next the chapter explains the structure of the study based on the objectives and goes on to describe the data source and collection strategies. Accessing participants and some challenges involved in that process are subsequently discussed. A description of the field work is followed by an outline of the data analysis and then some reflections on ethics in the research.

4.2. Selecting an Appropriate Approach

This section describes the research design and the decisions taken in selecting the particular approach. The research is a case study of the MLC with specific focus on the standard for seafarers’ representation in health and safety management. Adopting an appropriate methodology is important in ensuring the validity of the research outcomes (McCaslin and Scott, 2003). A qualitative design is most suited to accessing the ‘backstage’ dynamics which influenced the development of the MLC and the inclusion of these specific provisions for representation.

The appropriateness of a qualitative design is supported by previous studies examining regulations in shipping and how they impact seafarers OHS (Sampson, 2013; Bhattacharya, 2012a; Dacanay and Walters, 2011; Abou-Elkawam, 2011). For example, Bhattacharya (2012a) discovered that previous quantitative research inadequately accounted for failures of the ISM Code to achieve the envisaged purpose of positive OHSM practices on ships. In adopting a qualitative design, he found that social and organizational factors in the shipboard work environment thwarted the effective functioning of the ISM Code. A qualitative design thus allowed access to perceptions and attitudes and unearthed underlying dynamics that better explained the failures of the ISM.

Ethnographic designs in particular are widely used in researching seafarers' issues. Akamangwa (2017), Xue et. al. (2017) and Bhattacharya (2012a), for example, incorporated case studies of shipping companies within an ethnographic design. Sampson (2004), in studying the effects of regulations in raising maritime education and training standards, carried out ethnographic research in training institutions in the UK, Singapore and the Philippines. In the tradition of using ethnographic designs to explore and examine the various concerns within the seafaring workforce, I also considered an ethnographic approach.

Ethnographies are suited to investigating cultural interactions (Creswell 2013: 90-96). While representation or the lack of it, and how it is practiced, would be part of the workplace culture and would be suited to ethnographic research, this was not the main focus of this research. The focus of this research is primarily the thinking behind the regulatory provisions and the supporting mechanisms for their effectiveness which would have been established prior to implementation. The data source for this is the documentary records of how the provisions were developed, interviews with those who negotiated the convention and interviews with those operationalizing the requirements. However, seafarers as the main beneficiaries, were included to strengthen the empirical evidence and gain a fuller understanding of the provisions by examining how they are deployed in the work environment. Owing to the time and resources required to do an ethnography on board a ship, it was decided that the necessary insights could be gained from semi-structured interviews with seafarers while they were ashore. This method has been used by other researchers in this field of research (eg. Acejo et.al. 2011; Dacanay and Walters, 2011).

4.2.1. The Case Study

The case for study is the MLC focussing on the provisions for seafarers' representation in OHSM on ships as the unit of analysis. Case studies are traditionally used in research on individuals or a small group, but they can also be used for researching an event(s) or entities such as decisions, programmes, or organizational change (Yin, 2014: 31). Case studies allow in-depth exploration of

a bounded system or systems in detail with the intent of understanding a specific concern or issue (Creswell, 2013: 98; Stake, 1995:49-68). In this instance, the case study allows an interrogation of the suitability of the approach taken to give seafarers autonomous representation. The study uses semi-structured interviews, various types of documents and field notes as the main data sources suited to case studies (Creswell 2013; Stake 2005; 1995). Multiple sources of data are used to establish validity (Creswell, 2013). Case studies are used in other disciplines such as education, health and political sciences to evaluate programmes, policies or processes and develop interventions (Yin, 2014: 4; Baxter and Jack, 2008).

While the MLC forms part of an international regime to address health and safety on ships, it is its own 'bounded' system. As the only public (versus private) international maritime labour regulatory instrument for shipping, the MLC contains a set of ideas and practices which makes it different from the other international maritime regulatory instruments. It is the main labour instrument of shipping and the chief one from the ILO by virtue of its ratification record. In general terms it brings labour and social issues more to the fore alongside technical and operational issues.

Discussions of the importance of case studies involve whether the case(s) selected is of intrinsic or instrumental value (Creswell, 2013; Stake, 1995). Although in later discussions, Stake noted that the boundaries between these are flexible and one case can be chosen both for intrinsic and instrumental value (Stake, 2005). In this research these have come together. Intrinsically, this case is valuable as a labour standard for the shipping industry previously dominated by technical maritime standards. It is therefore useful to the industry to ascertain how a labour standard integrates with embedded technical standards and the benefits to be derived. Instrumentally, this case may inform the wider context for regulating OHSM on ships and offer insights into the ILO's attempts at global governance. The case also adds another dimension to the existing literature on representation by including the seafaring workforce in the discussions on worker representation in OHSM which is dominated by land-based studies.

4.2.1.1. The UK Case

The UK was chosen as a case at the national level for its instrumental value, to gain a better understanding of the MLC provisions by examining their function in a real-life context. The UK is what is considered a closed or a traditional maritime register³⁰ with well-developed maritime regulatory systems. As a case, the UK's experience provides a supportive role in this examination and facilitates a more in-depth look at the standard (Stake, 2005: 445). The initial plan was to select at least one open and one closed register, as a multiple case approach to compare how the different systems operationalize the provisions.

Multiple cases are recommended as their findings are deemed to be more compelling than single cases (Yin, 2014: 63-64). The discourse around ship registers is that open registers are generally of a lesser quality than closed registers (DeSombre 2006; Alderton and Winchester, 2002a; 2002b; Li, 1999). Choosing a case from each group would have provided an opportunity to examine how these contrasting regimes go about giving effect to representation and what could be learned from those findings. Although one open register agreed, and one interview was conducted,³¹ time and resource constraints would not have allowed timely completion of the data collection.

The UK was therefore chosen as a critical case. Such cases are considered the standard bearers against which others are compared (Yin, 2014: 51; Stake, 2005). The UK can be considered a standard bearer in the maritime industry. It adheres to international shipping regulations it has ratified and is a leading player in setting and enforcing international maritime conventions, both globally and locally. Its Merchant Shipping Act forms the legal basis for most commonwealth countries and its practices are among those used as best practices for the industry. As such, the UK provided a setting in which there was the likelihood for the

³⁰Closed registers only accept shipowners who are citizens in their country. These registers have rules regarding crewing of ships with their own national and usually have more stringent regulations and tax schemes. Open registers are the opposite and gained popularity as a way for shipowners to avoid regulations and lower costs.

³¹ This interview was conducted in London on the participants' visit to an IMO meeting.

provisions on representation to be implemented and is expected to demonstrate how viable those provisions are for improving working conditions on ships.

4.3. Structuring the Inquiry: The Three Levels

The research adopts a multi-layered approach reflective of the three levels at which an international convention operates. First, there is its development and adoption. Next the requirements are given effect at the national level, where laws, regulations and polices along with monitoring and enforcement regimes to support the conventions are developed, which is described as “horizontal governance” (Thomas, 2018). These are then implemented at the workplace level, in this case, on board ships. This research is therefore organized according to the three main objectives, as follows:

- 1) The developmental level. To examine the origins of and rationale for seafarers’ representation in the MLC and supports for its effective implementation. The purpose of this objective is to ascertain the influences on determining the inclusion of the provisions, the thinking behind their inclusion and support mechanisms. This part of the research seeks to ascertain the background issues and what consideration was given to the context for effective representation, bearing in mind the theory for effective representation, and also previous research outcomes that the nature of the shipboard work environment is not conducive to participation.
- 2) The administrative level. To examine how a country goes about operationalizing these provisions. International treaties are given effect at the national level. Resource availability, political commitment and the country’s industrial relations system, are important influences on implementing regulations for representation (EU-OSHA, 2018). Based on the evidence for the necessity of meeting the preconditions, this section of the research examines how a particular country goes about implementing these provisions given what is envisaged and provided for at the developmental level.

3) The workplace level. To examine seafarers' experiences and perceptions of representation. The purpose of this objective is to ascertain the on board practices of representation, given what is envisaged at the other two levels, and to determine whether the theory aligns with the practice.

The participants are described below in Section 4.5. The study is structured in this manner as it allows insight into the different dimensions of this international standard and how the parts relate to and influence each other towards the stated ILO intention to secure decent work for seafarers.

4.4. Data Collection

This section describes the data collection, the different strategies and the justification for their selection. The main sources of data were semi-structured interviews and documents. However, for a better understanding of the workings of the industry relative to the study objectives, selected conferences and meetings³² were attended, informal conversations were also held with persons at all three levels of the study.

4.4.1. Documentary Research

Documents are an important source of data in this research. Other researchers have discussed the importance of documents to the social researcher (eg. Prior, 2003; Scott, 1990). Traditional approaches to documents in research see them as mute evidence, as Hodder (2012) describes the written text. However, others such as Scott (1990) and Prior (2003; 2008) consider documents to be active agents and that they play a role in social interaction, as part of the human network of actors.

³² 1) *Britain and the Sea 3*. 'Enriching Britain's Maritime Capability.' Plymouth Graduate School of Management, 11-12 September, 2014; 2) *London International Shipping Week*. 'Maritime Welfare: The Big Debate.' The Willis Building, London, 8 September, 2015. 3) *International Festival for Business 2016*. 'UK National Maritime, Invest in Blue.' Exhibition Centre, Liverpool, UK, 15-16 June, 2016; 4) Seafarers International Research Centre 21st Anniversary Symposium. Cardiff University, Cardiff, 29-30 June, 2016. 5) *NAUTILUS International Symposium*. 'Jobs, Skills and the Future.' Radisson Blu Hotel, Cardiff, 4 October, 2016.

This description of documents is in keeping with my experience with the MLC and the other documents used in this research.

Documents are described as the consequences of social activities and are not created for research purposes (Payne and Payne, 2004: 61). The key issues examined in this research were derived from negotiations in the meetings to develop the MLC which were recorded and produced as meeting documents. Also, policy and regulatory documents are a result of the socio-political context within which they were created and are directed at social action. Prior (2003; 2008) invites us to expand our research relationships with documents beyond the accustomed encounters as mute evidence. Documents play an active role in the decisions taken in my research, from conceptualizing the study through to the analysis. As I read, re-read and follow document trails, they became a guide to the deliberations and how decisions were taken (Stake, 1995: 68). As a partially retrospective study, the documents also helped in reconstructing events of the MLC negotiations as they unfolded over the 5 years.

As the main document, the MLC was the source of the research problem and therefore the portal through which I entered the study. It was also used extensively during the interviews both by myself and some interviewees. I particularly used my copy of the MLC as a buffer and evidence as to what the provisions in question required in order to legitimize the questions I was asking. It was a case of “the MLC says...” rather than me the researcher. In this way I positioned myself as one who was seeking to understand the directives given in the MLC which the ILO and the shipping industry framed as being very important, rather than an intrusive researcher. Owing to the limitations of memory (asking persons to recall events that took place over 14-15 years prior) and subjectivity on the part of interviewees, the documents were important in aiding recall and served to corroborate interview responses. Table 4.1 shows the main categories of documents as they were used in the research. Appendix II presents a detailed list of the documents used in the research.

Table 4.1: Categorization of Documents used in this Research

Archival	Active	PR documents
<ul style="list-style-type: none"> - ILO Meeting Records - ILO Reports - Discussion Papers submitted by representative groups to the MLC negotiations 	<ul style="list-style-type: none"> - MLC - MLC MOSH Guidelines - ILO Applicable Codes - Relevant ILO Conventions - ILO Flag State Implementation Guidelines - ISM Code - MCA Code of Practice - Relevant UK Government Laws and Policies - ITF Guidelines 	<ul style="list-style-type: none"> - Brochures - Pamphlets - Annual Reports - Official Websites of Representative groups (seafarers' and shipowners/ship-managers)

Source: Author

Scott (1990: 96-111) proposes four criteria for assessing documents to be used in research: authenticity, credibility, representativeness and meaning. These criteria were taken into consideration in assessing the documents for this research. The documents were authentic and credible in being official public documents of the ILO and the organizations which the interviewees represented. Official websites were perused as recommended by interviewees, which were used to corroborate documents and gain additional information and insights into organizations. As such, the documents used were deemed to be representative of the kinds of documents produced by these organizations. As public documents giving instructions and stating official positions, their meanings were taken as unambiguous and reflecting the organizations' intentions. That said however, it is understood that the main documents do not necessarily reflect all the concerns and issues that might have influenced the MLC deliberations and final outcome (see eg. Trebilcock, 2009; 2008).³³ Many issues appeared to have been discussed informally or in smaller workgroups and a summary of outcomes documented rather than the discussions in full.

While some details of deliberations may have been lost, the documents also proved valuable in providing some insights into the operations of the global

³³ These are two in-depth interviews conducted with the spokesperson of the seafarers' group and the shipowners' group in the MLC negotiations, as part of the ILO Century Project. They were not available to participate in the study, but these interviews provide rich data on the behind the scene dynamics.

governance machinery of the ILO and how standards are made (at least for the maritime industry). The documents importantly outlined the various interests and offered a window into the concerns of the architects. They showed how proposals were made and defended, what concessions were made, and how conflicts were resolved. The documents allowed for a better understanding of the inner workings of the ILO standard setting apparatus and how this relates to the final product which might not reflect the initial concerns brought to the discussions.

In the main, 48 key documents were instrumental to the research (Appendix II). These comprised all committees and subcommittees meetings from 2001, when the MLC negotiations began, up to 2006 when the convention was adopted. These and other documents, were read and key themes and issues of relevance to representation, and the wider issue of how this process affected standards developed were noted. Documents presented for consideration to the meetings by interest groups, and draft MLC texts produced at each stage were read. Provisional and final resolutions coming out of the adoption conference were also read. Active documents were read noting instructions given as to the mode of participation and how the system should be arranged, for example UK Marine and Coastguard Agency (MCA) Code of Safe Working Practices (COSWP), and regulations to which this document refers. Some of these documents also made references to other documents and therefore document trails were followed to get a full understanding of the issues of interest.

4.4.2. Semi-structured Interviews

Interviews are common and acceptable methods of data collection (Rubin and Rubin, 2012; Fontana and Frey, 2005). They can be structured, unstructured or semi-structured. Semi-structured interviews were chosen for their flexibility in keeping with the nature of the research as an exploration of a newly developed convention, but also allowing for some structure and formality, particularly in dealing with the corporate-type participants (Rubin and Rubin, 2012). This study is retrospective in parts, as the main events took place between 2000 and 2007 requiring participants' recall. The flexibility of the semi-structured interview

allowed participants the space to expand on narratives and facilitated the natural emergence of information. Semi-structured interviews encouraged more in-depth descriptions and facilitated probing to gain a deeper understanding of the topic under study (Rubin and Rubin, 2012).

The interview questions were guided by the research question and organized according to the main objectives at each level. Three basic interview guides were developed for each of the levels although modifications were made where necessary depending on the interviewee's area of expertise. Although these were organized according to sections, the interview flow directed the questioning rather than adhering to any pre-set order. The guides are found in Appendices III-V. The interview scheduled went along with a consent form, that respondents were asked to sign if they wished (Appendix VI).

4.5. Participants: Access and Challenges

Participants at the first two levels were selected by purposeful sampling (Creswell, 2013: 154-157). The interviewees included key informants who were recruited for their specialist knowledge to respond according to the objectives at levels one and two. These have been characterised as elite informants (Section 4.5.1.). These persons were involved in the development of the MLC, referred to as the 'architects' of the convention. At the UK level, those responsible for operationalizing the provisions through policy development and enforcement were interviewed. Seafarers were selected through convenience sampling and included those employed on UK-flagged ships. Table 4.2 describes the 15 interviewees, all of whom have had considerable involvement with the MLC with the majority being involved from the beginning of the negotiations until present time. Two persons from the seafarers' group, one from the shipowners' group and the ILO participant were involved in discussions prior to the decision to develop the MLC. Only 3 of the 15 were women, and 9 participants were former seafarers. The participants also possessed considerable knowledge and experience of the maritime industry spanning 15 to over 40 years. Seafarers are described in Section 4.5.2.

Table 4.2: Description of Interviewees at the Developmental and Administrative Levels

Category	Number of Informants (n=15)	Description
INTERNATIONAL development of the MLC	1 ILO	Involved before, during and after the adoption of the MLC. Was retired at the time of the interview. Former seafarer.
	4 Seafarers' Group	1 - National Union – involved before, during and after the adoption of the MLC to present. Former seafarer. 3 – International Union <ul style="list-style-type: none"> - 1 - involved before, during and after adoption of the MLC to present; involved in the MOSH guidelines - 1 - involved during and after the adoption of the MLC to present (during the MLC deliberations he represented his country); involved in the MOSH Guidelines. Former seafarer. - Became involved after adoption of the MLC to present; involved in the MOSH guidelines. Former seafarer.
	3 Shipowners' Group	1 National Shipowners' group <ul style="list-style-type: none"> - 1 - involved before during and after the adoption of the MLC to present; involved in the MOSH guidelines. Sits on committees with the International Shipowners' group and national maritime committees. International Shipowners' Group <ul style="list-style-type: none"> - 1 - involved before during and after the adoption the MLC to present; involved in the MOSH and other MLC guidelines. - 1 - involved before, during and after the adoption of the MLC to present. Was retired from the group at time of interview but went into private consultancy and continues, to present, to be heavily involved in maritime industry policy issues and seafarers' labour issues at the international level, including with MLC issues. Former seafarer.
	1 Government	National and international levels – involved after the MLC to present. Was involved in developing some of the accompanying inspections guidelines for the MLC; involved in the MOSH guidelines; national policy, compliance and enforcement level. Former seafarer.
NATIONAL Operationalization/ Policy	4 Administration	Administrative policy, compliance and enforcement <ul style="list-style-type: none"> - 1 - involved during and after the MLC to bring the country's policies in line with MLC; sits on national maritime committees. - 1 - involved after the MLC at the national level to bring the country's policies in line with the MLC - 2- involved at operationalization level. Before and after MLC to bring national system in line with MLC. Former seafarers.
	1 shipowners'/ship managers' group	1 – Shipowners' international organization/ship management group. Advisory role on the MLC but did not attend MLC negotiation meetings. Former seafarer.
	1 National Union	1 - National officers' union, senior official. The union had an input in the MLC, but interviewee not personally involved.

Source: Author

4.5.1. Elite Informants

The persons of interest were at the highest decision-making level as they negotiated the text of the MLC and, for the UK, were responsible for the maritime policy. Their status as heads of, or, holding other high-prestige positions in organizations and on national and international committees, meant that they fit the criteria as elite participants (Mikecz, 2012; Harvey 2010; 2011; Tansey, 2007). Welch et. al. (2002: 613) provides a definition of elites suitable to this research as it reflects the types of individuals whom I attempted to gain access to, and the challenges encountered. They define the elite participant as:

...an informant (usually male) who occupies a senior or middle management position; has functional responsibility in an area which enjoys high status in accordance with corporate values; has considerable industry experience and frequently also long tenure with the company; possess a broad network of personal relationships and has considerable international exposure.

A key challenge of using elite participants is that they are difficult to recruit even though they may be public figures or very much in the public domain (Goldstein, 2002). This was the experience with the current research. Although they were purposefully selected using the list of attendees for each meeting found in the respective ILO documents, snowballing was the main recruitment strategy. Snowballing is an acceptable qualitative method for recruiting difficult to reach and elite participants (Mikecz, 2012; Goldstein, 2002). Where contact was made, and the participants agreed to participate in the research, the next hurdle was to settle on a suitable date, time and meeting place, as these were very busy persons.

Elite participants provide specialist knowledge, corroborate information from other sources, reconstruct an event and give insights not available to the general public (Tansey, 2007). As this research was seeking to ascertain among other things, the thinking behind the provisions, these participants were valuable in giving details that were not recorded, provided explanations as to what was recorded and were used to triangulate the documentary sources and each other's accounts of events. The participants also played a major role in giving insights

about the shipping industry generally and making introductions with other key informants (Goldstein, 2002).

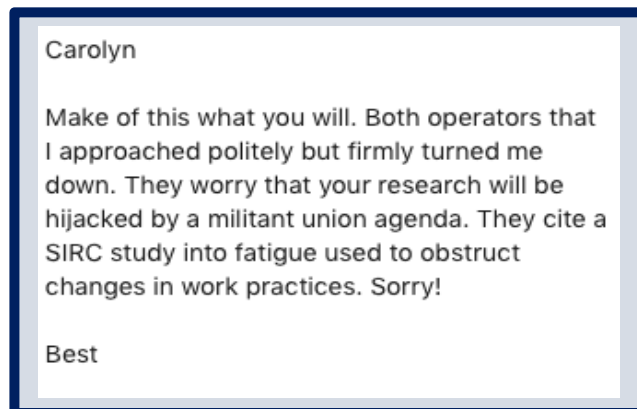
Their assistance also presented challenges as some were dominant and opinionated as to some of the details of the research (Welch, et. al. 2002). Mikecz (2012) argued that elite respondents are accustomed to being in charge and being asked about their opinions and may dominate an interview. Additionally, the location of the interviews made a difference. The majority took place at participants' workplace. However, those that were in their offices proved to be somewhat more challenging as there was the tendency for the participant to interrupt the flow of the interview to access information on the internet and in their folders which they believed I should read. While this was helpful in some instances, in others, these were ILO documents that I had already read in preparation for the interviews. Ostrander (1995) advised that interviews take place in neutral locations to give the researcher more control over the environment. However, consistent with the participants' availability, this was the best option.

Attempts were made to address this challenge by careful listening and identifying cue points to return the discussion to the subject matter and resume control of the interview. Questions were repeated and reworded at various points to keep the respondent on task and to ensure the questions pertinent to the research were addressed. I recognized the offer of assistance which was welcomed, and the idea was to end the interviews on a positive note with an open door, should the need for post-interview assistance and clarification of interview points arise (Mikecz, 2012).

An additional hurdle was that not all persons targeted on the list were available, while others did not consent to participate. Refusal is not an unusual research experience and it takes different strategies to gain participants' "buy in" to do an interview. Interviewing elites involved luck as much as it did preparation (Goldstein, 2002). The first respondent I met by chance, at a conference I attended as a terrain mapping strategy, had been instrumental in the decision to develop the MLC and fortunately participated in the research. In contrast, another very

important person whom I also met by chance at an industry gathering, and who was initially positive, did not follow through with being interviewed. Likewise, there was a similar experience with a ship manager at the national level. Additionally, some of those identified had retired and/or changed jobs or moved to other countries, which made them more difficult to locate. Although a few were located, they did not participate. Another who would have proved very valuable based on the meeting documents, had sadly passed away. At the national level, shipowners proved challenging. In the end only one person who spanned both the national and international level was interviewed from the shipowners' perspective. Figure 4.1 provides an interesting example of two refusals made through a personal contact, citing the use of previous research at the Seafarers' International Research Centre (SIRC), as the reason.

Figure 4.1: Response to Interview Requests by Shipowners



Carolyn

Make of this what you will. Both operators that I approached politely but firmly turned me down. They worry that your research will be hijacked by a militant union agenda. They cite a SIRC study into fatigue used to obstruct changes in work practices. Sorry!

Best

Source: Author's contact.

Union officials were also difficult to recruit. While they were willing, they were very busy and therefore it took considerable time from initial contact to do the interview. Others did not materialize and an interview that was conducted by telephone while the participant was in transit, was later discarded due to its poor quality. These challenges impacted the research process, consumed resources and led to extended time for data collection. However, the final interviewees provided valuable data and along with the documents, there is confidence that the data gathered is valid and reflects the events of interest to this study.

4.5.2. Seafarers

Seafarers are defined in the MLC (2006: p.3) as “any person who is employed or engaged or works in any capacity on board a ship to which... [the MLC] applies.” These are the technical crew on board (including cadets) who are responsible for navigation, cargo handling and maintenance of the ship, having received specialized maritime education and training, as well as others employed to cater, serve and entertain on passenger and cruise ships. This is an expanded definition to include hospitality staff and others who might be employed on a ship. However, States are allowed to define seafarers according to their national situations, but this is to be done in consultation with the social partners. This study is concerned with the technical crew on board.

Seafarers are also a difficult group to research for different reasons. They are usually more accessible when at sea and so many researchers tend to use ethnographic designs and non-participant observations on ships (eg. Akamangwa, 2017; Sampson, 2013; Bhattacharya 2009). Others have conducted land-based studies by recruiting participants at ports, through groups and organizations where they gather for business or pleasure (eg. Acejo et. al., 2011; Decanay and Walters, 2011; Jensen et. al. 2005). This study recruited seafarers through a welfare centre in the UK port of Liverpool.

Seafarers on UK registered ships proved more difficult to access. Additional strategies were used to recruit such participants. Contact was made with UK seafarers’ organizations, union officials and personal contacts. Social and print media were also used, for example, posting requests on recommended seafarers’ group pages and advertising in a seafarers’ newsletter. These strategies had mixed results with some responses not fitting the criteria and others while fitting, were not on UK registered ships. Consequently, 5 seafarers recruited were working on British flagged ships.

No involved selection criteria were used for ship type as the MLC applies to all ships except those in domestic shipping or inland waterways, fishing vessels, traditionally built ships and naval vessels (MLC, 2006: 3). A State may nevertheless choose whether to apply the MLC to its domestic shipping or other ship types.

Regardless of the ship type or cargo, in general terms, the requirements of the provisions under study are not affected. Therefore, using an international port gives access to relevant ship types. The following sets out the basic seafarer selection process:

- Seafarers with enough sea experience to respond competently to the questions. This may include cadets providing they had some experience at sea.
- Seafarers having good enough command of English language as judged by informal conversations to assess ease of communication and understanding. I only speak English and the seafaring workforce is multilingual.
- Seafarers from a general pool visiting the welfare centre, or those recruited otherwise and seafarers specifically working on UK registered ships.

The seafarers interviewed were typical of what would be expected coming to an international port such as Liverpool. They worked on a variety of ships types in the bulk, oil and container ship sectors. There were also a few on combined passenger and cargo ferries (roll-on-roll-off, or, ro-ro passenger ferry). Their job positions span those typically found on ships from ratings to senior officers and captains, across the main departments on those ships, the galley, the engine room and the deck. Reflecting the gender imbalance at sea, the majority were men. Of the 26 seafarers interviewed only two were women, one junior and one senior officer. There were also a variety of nationalities mainly from the Far East and Western and Eastern Europe. Seafarers were from the Philippines, Indonesia, Vietnam, India, Madagascar, Hungary, the Netherlands, England, Wales, Greece, Ukraine and Panama. The ships they worked on were multinational, with an even wider variety of nationalities. Table 4.3 describes the seafarers interviewed.

Table 4.3 Description of Seafarers Interviewed

Pseudonym & Time as a Sea	Position/Rank	Nationality	Ship Type & Flag
1. Frank, 17 yrs.	Fitter	Ukrainian	Bulk carrier - Cyprus
2. Eva, 5 yrs.	4 th Engineer	Filipino	Tanker - Bahamas
3. Archie, 10 yrs.	2 nd Engineer (Acting)	Dutch	Ro-ro ferry - Dutch
4. Earl, 13 yrs.	3 rd Engineer	Welsh	Ro-ro ferry – Dutch
5. Winston, 2 yrs.	Wiper	Filipino	Tanker - Bahamas
6. Oliver, 6 yrs.	Ordinary Seafarer	Filipino	Bulk carrier - Dutch
7. Alfred, 7 yrs.	Able-bodied Seafarer	Filipino	Bulk carrier - Cyprus
8. Courtney, 11 yrs.	Chief Officer	Panamanian	Container ship - Bolivia
9. Peter, 38 yrs.	Captain	Filipino	Container ship – Bolivia
10. Carl, 7 yrs.	Chief Officer	British	Platform Supply Vessel - Singapore
11. Nigel, 14 yrs.	Captain	Indian	Bulk carrier - Malta
12. Christine, 20 yrs.	Chief Officer	British	Anchor Handling - Denmark
13. Joseph, 27 yrs.	Captain	British	Container - Denmark
14. Eddie, 14 yrs.	2 nd Engineer	Indian	Tanker – Bahamas
15. Mark, 10 yrs.	Junior Officer	Filipino	Bulk carrier – Japan
16. Stanley, 15 yrs.	Steward	Indonesian	Container ship – missing
17. Enroy, 2 yrs.	3 rd Engineer	Vietnamese	Bulk carrier - Dutch
18. Russel, 10 yrs.	3 rd Engineer	Filipino	Bulk carrier - Japan
19. Chris, 21 yrs.	Steward	Malagasy	Container – missing
20. Marlon, 33 yrs.	Motorman	Filipino	Bulk carrier - Singapore
21. Donny, 1.4 yrs.	Deck Cadet	Hellenic	Bulk carrier - Singapore
22. Oscar, 5 yrs.	Ordinary Seafarer	Filipino	Container ro-ro - UK
23. Ashton, 26 yrs.	Able-bodied Seafarer	Filipino	Container ro-ro – UK
24. Sam, 12 yrs.	2 nd Officer	British	Ro-ro Ferry – Belfast, UK
25. Ezie, 30 yrs.	Electro-Technical Officer	Hungarian	Container – Gibraltar, [UK]
26. Oniel, 4 yrs.	2 nd Officer	British	Fisheries Protection, UK

4.6. Fieldwork

Fieldwork was scheduled for June 2015 to August 2016 which was thought to be adequate time to conduct interviews at each level and use those findings to inform interviews at the next level. However, it became apparent that this was not feasible owing to delays in establishing contacts and arranging interviews. The initial plan for a cascading approach to collection was abandoned and data collection was mostly simultaneous. Data collection continued into 2017. An arrangement made to attend a seafarers' representative training on the MLC,

which would have given me access to union representatives and British seafarers and provided a unique opportunity to see how representatives are trained to carry out their roles on board, was cancelled a few days before the event was due to take place.

Fieldwork was undertaken in two main locations, London and Liverpool, in addition to Skype and telephone interviews. London is one of the major global shipping capitals and is home to the corporate headquarters of shipping organizations (UK Gov 2015). The persons of interest had their offices located mainly in London. Face-to-face interviews were conducted in their offices. Participants located in other areas of the UK or outside the UK, were interviewed by Skype or telephone, as they preferred. One of the UK's Marine and Coast Guard (MCA) offices was visited, where face to face interviews were conducted. Sections 4.4 and 4.5 already describe the data collection methods and participants. The interviews at the developmental and administrative levels lasted on average 60 minutes. The interviewees were helpful, and each interview ended with the offer of further assistance including follow-up questions, which became necessary in a few instances to clarify issues or to provide further information.

Liverpool was the main site of the seafarers' interviews. This site was chosen as one of the UK's busiest with a variety of ship types calling at this port. Seafarers' centres at Bristol and Cardiff ports were also explored but proved unsuitable. Bristol was a "dry centre" (it did not serve alcohol), seafarers did not visit the centre regularly, and those who did, immediately left. The Cardiff centre was undergoing administrative review at the time and eventually closed before field work began. Although Liverpool was some distance away, which necessitated the use of additional resources, it was accessible and adequate for conducting the interviews with seafarers. The centre was visited three times. The first visit was for familiarization and to test the seafarers' interview guide. This took place while visiting Liverpool to interview inspectors, December 9-11, 2015. Data gathering was conducted in two main phases, January 27-February 1 and March 1-8, 2016. Skype interviews were conducted with seafarers recruited through other means.

The first visit to the seafarers' centre was for familiarization to become accustomed with the location and the workers at the centre. I also approached seafarers and had informal chats where I was able to identify language as a potential problem which I had not initially considered. Three interviews were conducted to test the interview guide. It was discovered that seafarers might not be familiar with the word "representative" as I had taken for granted. Also, "health and safety" is not commonly used as I had thought, and seafarers were more familiar with "safety." Notes were made to probe these in interviews to ensure seafarers were clear on what I was asking. Interviews lasted approximately 30 to 60 minutes. Eight interviews were conducted in the first phase and twelve in the second phase. Of the remaining interviews, four were conducted by skype, one by email and one face-to-face in Cardiff.

4.7. Data Processing and Analysis

Data processing and analysis were ongoing. It was useful to embrace the iterative approach that data analysis is "a reflexive activity that should inform data collection, writing, further data collection, and so forth" (Coffey and Atkinson, 1996: 6). As such, data processing began with the meeting documents as they informed the interview schedules for the architects of the convention. Interviews were personally transcribed to begin familiarizing myself with the data and noting initial codes. Transcriptions were completed within a few days of each interview. This aided recall and, along with notes made during the interviews, key issues relating to the objectives of the research began to emerge. Early transcription also indicated where the participants' stories aligned with those of the documents and how these sources of data related to each other.

Coding was done manually. Codes were developed based on the research aim and objectives (Saldana, 2016; Braun and Clarke, 2006). Appendix VII provides a list of codes and themes. Initial codes relating to the objectives were noted on printed transcripts. As more interviews were transcribed these were added to create a group of codes describing particular trends in responses in the data. This analysis consisted of reading and re-reading the documents and transcripts,

writing down codes and grouping these into themes along with supporting quotes. Braun's and Clarke's thematic analysis approach (2006) was adapted in developing themes from the codes.

4.8. Ethical Considerations

Ethics are considered very important as they serve a number of functions, such as ensuring credibility of the research and legitimacy of the findings, as well as safeguarding participants and researchers (Payne and Payne, 2004). A common approach is to assure participants of privacy and confidentiality, gaining their informed consent and giving them the option to withdraw from the research at any time or to withhold their responses if they see fit (Christians, 2005; Payne and Payne, 2004). In Stake's (2005: 459) words "Qualitative researchers are guests in the private spaces of the world. Their manners should be good and their code of ethics strict."

Ethical approval for this study was granted by the Cardiff University, School of Social Sciences Ethics Committee (Appendix VIII). While generally speaking this was not a particularly sensitive topic, seafarers are considered a vulnerable group because of their precarious employment situations. This was taken into consideration although there were no obvious threats. Ethical practices should always be considered as a core aspect of research even in such low risk studies (Payne and Payne, 2004). The standard ethical considerations were applied in this research. Confidentiality and anonymity in collecting, storing and using the data were applied. Interviews were recorded on a personal device with a password. Participants were informed of the nature and purpose of the research and my obligations to ensure confidentiality and anonymity. Some seafarers did not wish to be recorded and instead the responses were hand written.

With the seafarers, care was taken in proving my identity as a PhD student by presenting my Cardiff University business card. A number of studies indicated that seafarers work in a low-trust environment (eg. Sampson, 2013; Bhattacharya 2012a, Xue et. al., 2017). These are issues to be considered when conducting research with seafarers. To build rapport and trust (Rubin and Rubin, 2012), the

interviews with seafarers began with informal conversations. It was helpful that I am from Jamaica which I discovered made for a good icebreaker and general conversation to put the seafarer at ease. Some were curious about my studies and asked questions. It was also helpful to explain about what we do at the Seafarers International Research Centre (SIRC) and that we could easily be found online. I believe these various strategies assisted in building rapport and provided proof of my identity and helped in seafarers consenting to being interviewed.

For the elite participants, the beginning was more direct. Most of them took charge of the opening of the interview and began talking about the research before the ethical formalities. Welch et. al. (2002) discuss the positionality of researcher in elite interviewing and the power dynamics, which were experienced to some extent in this research. However, I had already made contact and my introductory emails had provided information about the research and my ethical obligations. In such situations, I attempted to steer the interview back to the beginning and obtain signed informed consent. Those interviewed on skype or telephone gave verbal consent. Their permission was also sought for the interview to be recorded and there were no refusals at this level.

Although this was not a particularly risky project, personal safety was discussed with my supervisors. Before departing to any location, supervisors were informed as to where I was going and for how long. The SIRC administrator was also informed in general that I would be away from Cardiff and which city I would be visiting.

4.9. Conclusion

This chapter presented a detailed description of the methodology of the research. The design and methods were carefully considered in relation to the research question and objectives. The research was designed as a case study to explore the regulatory measure for seafarers' representative participation in OHS on ships. It is concerned with the thinking behind this standard, consideration for its purpose, and structures that are necessary for its effectiveness. A qualitative approach was deemed most suitable to access these backstage issues dealing with negotiating

international standards and attempting to access past events via recall and the use of documents.

Key informants were chosen for their involvement with the MLC. These participants had many years of experience in maritime industry spanning 15 to over 40 years, and were involved at the highest levels, nationally and internationally. They were all involved in the development of the MLC and the majority were still involved at the time of the interview and continue to be involved to the present. Seafarers were chosen more generally to convey their experiences of representation on ships. Although there were some challenges, they did not detract from the data quality and the findings that emerged towards answering the research question. The next four chapters present the findings reflecting the development, administration, implementation and practice of representation on ships.

Negotiating Maritime Labour Standards

There are...pressing social and human rights issues associated with crew composition and size, wage levels, continuity of employment, health and safety, the quality of shipboard life and, and above all the quite fundamentally, an unfailing recognition of the seafarers' need for dignity and respect. None of these issues can be properly dealt with without appropriate regulation of the labour market at the global level. (JMC/29/2001/3: 30).

5.1. Introduction

This chapter presents the findings of the documentary analysis. The documents were analysed for their accounts of the negotiations with the aim of tracing the development of the provisions for representation, such as, when they were included, who proposed them and what discussions surrounded their inclusion. Special attention was paid to the supports for effective implementation and practice. The main documents used in the analysis are listed in Appendix II.

The documents spanned the MLC negotiations from 2001 to 2006 (as explained in Chapter 4, Section 4.4.1). These include the meeting reports and relevant position papers presented at the meetings. The MLC 2006 and relevant regulatory guidelines were also considered part of the data source and constitute what the thesis refers to as the MLC framework for representation. Documents used as supplementary data in examining the UK's case are incorporated in presenting those findings in Chapter 7.

Documents have their limitations, as they are the products of the interpretations of those who developed them. Also, not all discussions took place formally and therefore some information may not be on public record. However, the meeting documents used in this research were sufficiently detailed that they present an acceptable account of what transpired in negotiating the MLC text. The documentary accounts were also supported by interviews which serve to supplement and corroborate the records.

This chapter has two main sections. The first section presents the data and analysis of the MLC negotiations. It gives the context for the MLC and how its text was deliberated and the outcomes of interest to the study. The second section deals with the MLC framework and the model for representation, consistent with the research question as to whether these provisions provide a “firm response” to poor working conditions on ships. The conclusions draw out concerns around the lack of discussions on representation in the MLC negotiations, the limitations of provisions for representation in the MLC framework and wider issues of standard-making in the ILO and global governance.

5.2. Negotiating Labour Standards at the ILO

The MLC came into force on August 20, 2013,³⁴ having received the required number of ratifications to fulfil the entry into force criteria of 30 member States (countries that are members of the ILO), commanding 33% combined share in the global gross tonnage of ships (volume of all the enclosed spaces on a ship) (MLC Article VIII, para 3: 6). While it is not an entirely new instrument, as many of its provisions existed as separate conventions, the architects sought to amalgamate and update these conventions into one instrument with more robust compliance and enforcement mechanisms than previously pursued by the ILO. The MLC therefore contains provisions the architects claim will secure seafarers’ rights to decent work. Article X of the MLC lists the conventions that the MLC revises. These conventions along with respective recommendations represent just over 70 international maritime labour instruments that the ILO has adopted.³⁵

The list of conventions tells the history of the ILO’s efforts to regulate employment and working conditions on ships, with many conventions receiving scant attention from member States (TWGMLS/2001/10: para 5: 2). Table 5.1 is

³⁴ The MLC received the required ratifications in 2012, but entry into force was one year after this criteria was achieved, consistent with Article VIII of the MLC which outlines the administrative aspects of the convention.

³⁵ ILO website: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/seafarers/lang--en/index.htm>.

an illustration of the ratification status of some conventions relating to seafarers' health, safety and wellbeing, as at the early stages of the MLC negotiations.

Table 5.1: Ratification Status of Seafarers' Employment and Working Conditions Conventions as at December 2002.

Conventions	Number of Ratifications as at December 2002
Prevention of Accidents (Seafarers) Convention 1970 (No. 134)	27
Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)	13
Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)	43
Seafarers' Welfare Convention, 1987 (No. 163)	12
Health Protection and Medical Care (Seafarers) Convention, 1987 (No.164)	11
Social Security (Seafarers) Convention (Revised), 1987 (No. 165)	2
Labour Inspection (Seafarers) Convention, 1996 (No. 178)	7
Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)	9

Source: International Labour Conference (ILC) 91st Session 2003. Report III, Part 2. List of Ratification by Convention and Country (as of 31 December 2002).

At December 2002, the ILO had 175 Member States.³⁶ Convention No. 147, considered the most well-known of the ILO maritime conventions, with provisions for PSC inspections, had 43 ratifications and by May 2004 before the Preparatory Technical Maritime Conference (PTMC) in September of that year to deliberate the final draft of the MLC, it had received 46 ratifications (PTMC/04/2). As of 2004, the convention with the highest ratification was the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), with 81 ratifications (PTMC/04/2). This is one of the least controversial conventions and in some jurisdictions the costs are borne by the seafarers.

³⁶ ILO website: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11003:0::NO::> Accessed 6 September 2018.

To date (August 6, 2018) 87 countries, representing 91% of global gross tonnage, have ratified the MLC.³⁷ With the “no more favourable treatment” clause in the MLC, this should cover the approximately 1.5 million seafarers³⁸ working internationally. Prior to its entry into force, the MLC has been hailed by supporters as a land-mark instrument accompanied by lofty narratives of the expectations for its contribution to decent work at sea (eg. Bolle, 2006; Charbonneau and Chaumette, 2010).

The *Geneva Accord*, an agreement reached by the Joint Maritime Commission (JMC), is used by the ILO to mark the beginning of MLC’s development (TWGMLS/2001/10: 3). The JMC is the bipartite body of the ILO, comprising seafarers’ and shipowners’ representatives and chaired by a government representative of the ILO. The decision to strengthen the labour regulatory regime was bolstered by the JMC’s review of the ILO film “*The Vital Link*”, a report by the International Commission on Shipping (ICONS, 2000) on *Inquiry into Ship Safety: Ships, Slaves and Competition* and an ILO report on the *Living and Working Conditions for Seafarers* (ILO, 2001). These documents reported on the poor working conditions at sea, the effects of globalization on the seafaring workforce and shipping in general, as well as the failures in the shipping industry’s regulatory regime to address them. According to the ILO’s summary of the ICONS report for example, it “identified the underlying causes of sub-standard shipping and suggested that commercial and regulatory mechanisms be used to eliminate the fiscal advantages which arise from avoiding international standards, labour in particular” (TWGMLS/2001/10: 3).

With the evidence from these documents, the JMC concluded that an appropriate response was necessary to stem substandard shipping to the benefit of seafarers and those shipowners and governments that were applying the standards. According to the meeting report:

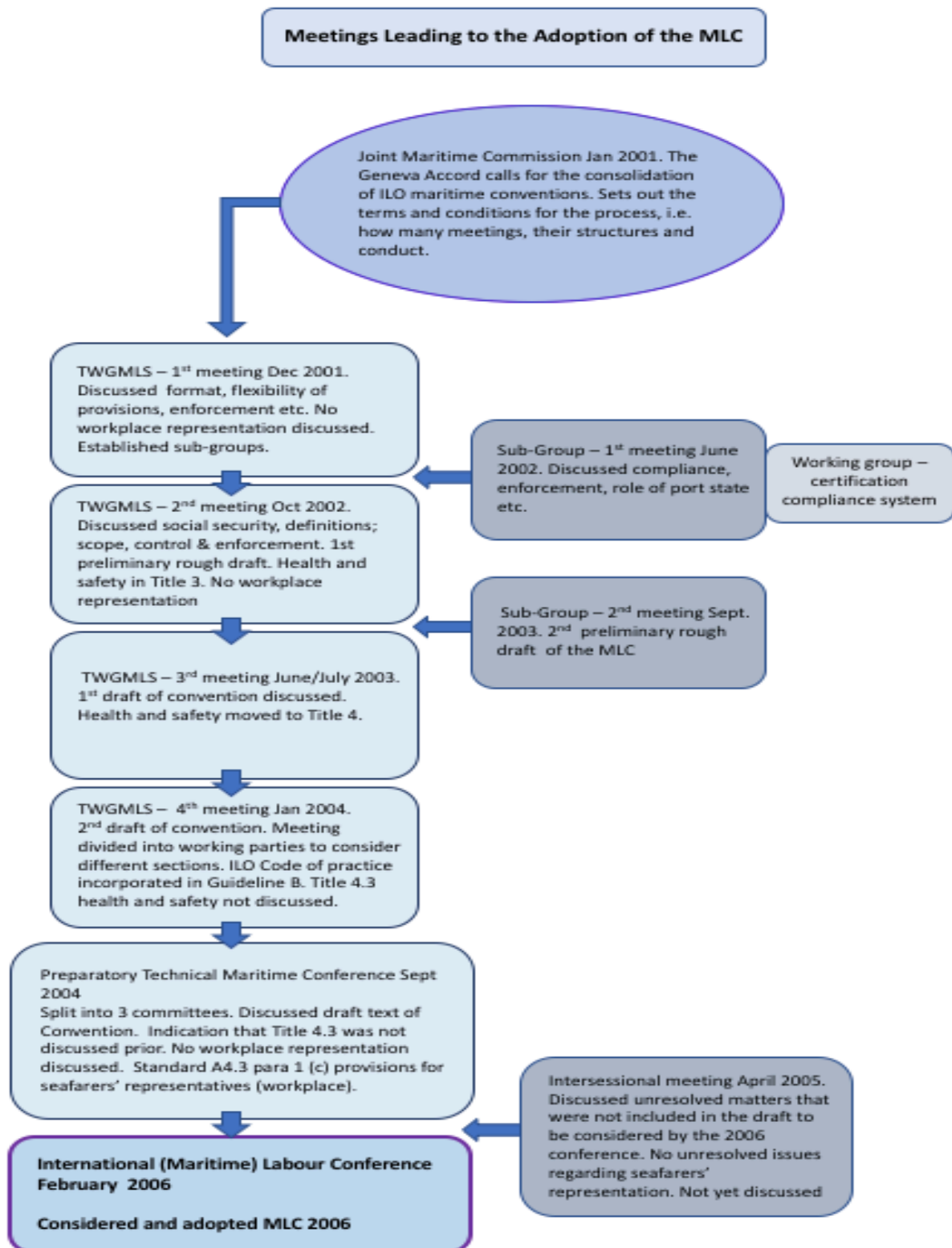
³⁷ ILO website: <http://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm>. Accessed 6 August 2018. Accessed 6 August 2018.

³⁸ ILO website: <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/seafarers/lang--en/index.htm>. Accessed 6 August 2018.

The Shipowners' and Seafarers' representatives of the Commission, ... considered that the protection provided by the standards was not reaching numerous seafarers. Even Convention No.147, the best known of the ILO maritime Conventions, had been ratified by States representing about half the world shipping gross tonnage... Thus, shipowners and governments providing decent conditions of work were bearing an unequal burden due to the absence of generally applicable labour standards or, where they existed, their lack of proper enforcement. As the JMC had said what was required was an international regulatory response of an appropriate kind – global standards applicable to the entire industry. (TWGMLS/2001/10: para 5: 2).

As the JMC recommended, a high-level Tripartite Working Group on Maritime Labour Standards (TWGMLS) was formed. The role of this group was to assist the ILO in the development of the MLC. Additionally, a Subcommittee of the high-level Tripartite Working Group on Maritime Labour Standards (STWGMLS) was formed. This was a working group tasked with preparing the text as directed by the high-level group. The MLC negotiations were time-tabled for 4 years, to be adopted in the 5th year. As such, there were to be 4 meetings of the TWGMLS from 2001 to 2004 with the aim of producing a draft instrument to be finalized at the PTMC, which would produce a final draft to be deliberated and adopted at the International Labour (Maritime) Conference (ILC) in 2005. However, a number of outstanding issues prevented the production of a final draft at the PTMC and an additional intersessional meeting was held to address those outstanding matters. None of the outstanding matters included representation, although Title 4.3 under which it falls was one of the areas to be discussed (PTMC/04/2: Comment 32: 30). The additional meeting pushed the ILC to 2006, where it was held in February and the MLC was unanimously adopted. Figure 5.1 outlines the committees and main meetings held over the period 2001 to 2006.

Figure 5.1: Timeline of the Meetings of the Working Groups that Negotiated the MLC



Source: Author, compiled from the meeting records 2001-2006.

5.2.1. A Framework Convention

Prior to beginning the MLC negotiations, the JMC's proposal for a consolidated instrument was approved by the Governing Body of the ILO. The *Geneva Accord* contained recommendations, not only on the structure and schedule of meetings for developing the MLC, but preliminary ideas as to the nature of this "new" instrument:

The Commission [JMC]... discussed the significance and impact of maritime labour standards. It agreed that many of the existing ILO maritime labour instruments were outdated, deficient and not reflective of modern practices; those which were up to date and pertinent were not sufficiently ratified. It concluded that the best way forward in line with the integrated approach approved by the Governing Body at its 279th Session (November 2000) was the adoption of a single "framework" instrument which would consolidate the existing body of ILO maritime Conventions and Recommendations. (ILO, 2001a: GB.280/5).

As a framework instrument, the MLC provisions were to be less detailed, clear, simple, coherent and concise. These words were frequently used, particularly in the first meeting where the guiding principles for the deliberations and aspirations for the "new" instrument were established. A framework convention is understood as containing minimum standards aimed at securing wide ratification. Framework conventions are treaties outlining the broad objectives of an instrument of governance and establishing commitments for the duty holders, where the details are decided in further protocols or regulations (Matz-Luck, 2009).

The structure for the MLC was modelled on the IMO's Standards of Training, Certification and Watchkeeping (STCW) Convention 1978 (as amended). The MLC contains Articles, Regulations, Standards and Recommendations under one cover (Explanatory Note, MLC 2006: 12-13), a deviation from previous ILO model where conventions consisted of articles only and had Recommendations as

separate documents.³⁹ Subject areas are given titles and broadly stated regulations to give them effect. The regulations are immediately followed by mandatory standards Part A, which are followed by non-binding guidelines (Recommendations) Part B, (Appendix IX illustrates this structure with the section of relevance to this study: Title 4: Health Protection, Medical Care, Welfare and Social Security Protection).

Framework agreements have their challenges in attempting to be simultaneously universal and effective (Matz-Luck, 2009). As Matz-Luck (2009: 445) notes “...universal legal regulation requires compromise that impedes substantive commitments by the parties. Often the choice is between many States but weak regulations or strong legal obligations but few participants.” To solve this problem, framework conventions may have broadly stated and relatively weak statements of principles and objectives to the agreement of all parties with more substantive details being settled in protocols. In the case of the MLC, the details are non-binding and governments and shipowners raised concerns and sought assurances that these were merely guidelines (for example, TWGMLS/2003/10: para 26: 6: paras 152-155). A government member’s concern was recorded as follows:

Members were requested to give “full consideration” to implementing the responsibilities stipulated within Part B and this seemed to have a more stringent legal status than a Recommendation. He expressed concern that this could become a major obstacle for some members to ratify. Careful consideration needed to be given to make Part B softer and more flexible in terms of legal status. (TWGMLS/2003/10: para 26: 6).

There was much discussion as to the legal status of Recommendations, as the ILO sought to assuage the concerns, while simultaneously attempting to give

³⁹ Adopting this structure also served the purpose of flexibility in making amendments through a simplified procedure (see Explanatory Note, MLC 2006: 12-13). Articles are the treaties and these require a long process to amend. The standards in the MLC can be subject to tacit approval. This was one of the modernized features of the MLC that would ensure its currency.

some status to Part B. As it was noted, some of the substantial provisions of previous conventions had been incorporated into these guidelines:

Part B was intended to be non-mandatory and would therefore not be binding. However, member States had to report as for Recommendations under article 19, paragraph 6, of the ILO Constitution, but in addition, Article V of the proposed draft asked for *full* consideration to be given. This wording had been chosen because most provisions in Part B were cascaded from Part A and originally stemmed from Conventions. (TWGMLS/2003/10: para 31: 7).

Using “*full* consideration” was an attempt to give some weight to these recommendations. Yet, further clarification was sought as some government members remained uneasy with the term “*full*” and statements by the ILO that Part B was an “integral part” of the Convention. This was clarified through distinguishing the legal implications of the words used in each section. “Shall” meaning where provisions are binding, for example used in the Regulations and Standard Part A, is different from “should” used in the guidelines (TWGMLS/2003/10: para 36: 8; paras 199-200: 27-28). Not to be consoled however, it was further suggested by a government member that “*full* consideration” should be replaced by “*due* consideration” (TWGMLS/2003/10: para 152: 21). The seafarers’ group expressed their concern at what seemed to be a weakening of some provisions:

The Seafarer spokesperson drew attention to the overall structure of the instrument. Part B was a guideline and non-mandatory but he expected States to give “full consideration” to its contents since many of its provisions would have been moved down from Part A. Part B should not become irrelevant; *if this was to be the case*, [original italics] he would demand a substantial amount of the text to be moved back to Part A. (TWGMLS/2003/10: para 154: 22).

It was also pointed out by the ILO’s legal adviser that the “...new Convention’s only real innovation was that in the new Convention the amount of

non-binding provisions was much higher than in any earlier Convention.” (TWGMLS/2003/10: para 199: 28). This however, did not sway the concerned government members who did not want added obligations. The compromise was to accept the suggestion of the wording “*due consideration*,” as it now stands in the MLC (Article VI: para. 2: 5). To ensure that recommendations remained on the radar, the explanatory note to the MLC indicates that:

...by following the guidance provided in Part B, the Member concerned, as well as the ILO bodies responsible for reviewing implementation of international labour Conventions, can be sure without further consideration that the arrangements the Member has provided for are adequate to implement the responsibilities under Part A to which the Guidance relates. (MLC 2006: para 10: 13).

The alternative was that a member State would be obligated to prove to the ILO that measures it implemented were “substantially equivalent” to those provided in the MLC guidelines. This seemed sufficient to have satisfied the seafarers’ group as they made no further protests on the matter.

The preceding is one, but important example of how these standards were negotiated and how their effectiveness was lessened in order to gain wide support. The example reflects wider discussions on how the robustness of international standards might come to be less than envisaged (Hilgert, 2013; Matz-Luck, 2009) and exposes the limits of global regulation. Nevertheless, the ILO has hailed the MLC development as an example in the effectiveness of tripartism:

This Convention demonstrates that social dialogue and international cooperation can effectively address the challenges of living, working and conducting business at sea. But it goes even further by showing how dialogue and tripartism can also address the challenges of globalization (ILO, 2015a: VII).

The reality is however more subdued than the ILO’s statements. The MLC development, as the outcome of “negotiated compromise,” shows how firmer provisions became recommendations in an attempt to satisfy the various interests

of the social partners and to achieve the objectives of flexibility and wide ratification (further explored in Section 5.2.2).

5.2.2. Contradictions in Negotiating Decent Work

This section furthers the analysis as to the nature of standards in a context of varying interests. The MLC discussions were set within the context of providing decent work in keeping with wider themes in the ILO (TWGMLS/2001/10: para 8: 2). Throughout the MLC process, the ILO's Decent Work Agenda was used as a reference point, particularly by the seafarers' group but also by some government members, to remind the meeting of the rationale for the MLC, and the importance of social dialogue as an important principle in arriving at decent working standards. The seafarer spokesperson was reported as saying:

It is ...essential that the deliberations reflect the core mandate of the [ILO] which is to promote decent conditions of work. We must ensure that the concepts, which the ILO has agreed are fundamental to decent work, are not only included in the new instrument but guide us at all times as we consider the draft instrument. (TWGMLS/2003/10: para 10: 3-4).

A vital aspect of the decent work agenda is the inclusion of workers' "voice." The ILO's submission on decent work for the consideration of the architects pointed to the ILO's goals of improving working conditions for people and promoting opportunities for decent and productive work in "conditions of freedom, equity, security and human dignity" (STWGMLS/2002/5: 1). According to the records, improving the situation of workers:

...is a very human aspiration that expresses the hopes of people for work that will respect their individuality and dignity, provide them and their families with sustenance, ensure provision for the uncertainties of employment, health and old age, provide equal recognition and enable women and men to make choices and to take control of their lives, *permit them to have a say and to participate in decisions about what they do, provide an opportunity to participate in representative organizations and be a source of social meaning and identity* [stress added]..

The first meeting of the subgroup was tasked with outlining how the goals of decent work related to the shipping industry. This was accomplished by referencing the report on seafarers' living and working conditions and previous discussions in the JMC, as well as the first meeting of the high-level tripartite group to stress the deleterious conditions at sea and to reiterate the goals of the group to develop a "firm response" to these conditions. In this manner, the subgroup linked the task of developing the MLC to the goals and aspirations of the ILO's decent work agenda and concluded on the necessity of applying the agenda to the shipping industry, which was taken as important for human rights at work; employment and income; social protection and social security; and social dialogue (STWGMLS/2002/5: 3-10).

Decent work therefore formed the foundational principles of the MLC which are to be found in its preamble, including full references to the ILO's Declaration on Fundamental Principles and Rights at Work, 1998, which embodies the core labour standards of the ILO that should ensure decent work. Decent work is also included in the constitutional provisions of the MLC which are the most binding parts of such international treaties. In that respect, Article I on the general obligations of members to the convention, and Article IV, listing seafarers' employment and social rights, make references to decent work.

The ILO's decent work agenda was influenced by the 1995 World Summit on Social Development, Copenhagen 1995 (ILO, 2005)⁴⁰. The summit focussed on poverty eradication, human development and other social and economic rights, such as; a decent standard of living, safe and healthy working conditions, fair and equitable treatment and dignity at work (Eade, 2009). The consensus from the

⁴⁰ The ILO noted that the World Summit on Social Development aligned with some core principles of the ILO. "The Social Summit had for the first time recognized, within the ILO's battery of international labour standards, a core set of enabling rights which merited special emphasis. They concerned freedom of association, freedom from discrimination, freedom from forced labour and freedom from child labour – fundamental freedoms which constituted the foundation on which the ability to realize other rights and aspirations could be built." (ILO, 2005: 3). Subsequently the ILO released its Decent Work Agenda driven by the Declaration on Fundamental Principles and Rights at Work 1998 containing the Core Standards from these 8 Conventions (listed in the Preamble of the MLC).

summit was that there was a need to put people at the centre of development in order to achieve stable, safe and just societies (United Nations 1995). These ideas from the Summit were aligned with the ILO's programme and motivated the ILO to take its work forward from then, under the theme of decent work (ILO, 2005).

Decent work is promoted on the basis of the Declaration on Fundamental Principles and Rights at Work and the core labour standards which is considered a new international labour rights regime of soft law (Alston, 2004). This approach has its supporters and detractors. Support has been given on the basis that this approach introduces flexibility in the labour standards regime in allowing the core standards to apply to diverse situations outside the confines of the conventions to which they belong (Alston, 2004). Others see the notion of core standards as the ILO stepping back from standard setting and creating a hierarchy of standards to the detriment of others (Alston, 2004). In other words, the decent work agenda is seen as a compromise by the ILO in light of criticisms of its failure to implement firm standards to impact working conditions in the advent of economic globalization (Standing, 2008). The softer approach is evident in the MLC as a framework convention. Its development in the context of the broader politics of ILO standard-making, places the foundations of the MLC on shaky grounds, with writers such as Bauer (2008) questioning whether it is an adequate guarantee of seafarers' rights or an impediment to true reforms at sea.

5.2.2.1. Cooperation, Consensus and Compromise

The first meeting to negotiate the MLC held in 2001, was largely to co-opt governments as they were not party to the *Geneva Accord*. Subsequent meetings were focussed on negotiating the contents of the MLC based on drafts prepared by the ILO office from the deliberations. The first point for consensus was for all the social partners to agree to go forward with the consolidation process. Among the concerns of the *Geneva Accord* was that governments had not ratified many of the existing ILO maritime conventions and the first meeting focused on gaining their commitment to developing the MLC in a spirit of cooperation and compromise with the goals of adoption and wide ratification (TWGMLS/2001/10).

The tone of the deliberations was set by the ILO with reference to several points of interest and the aspirations for this “new” instrument.

The ILO stressed the need for active participation and a demonstration of governments’ commitment through national actions of statutory provisions and enforcement. Having no enforcement powers of its own, except to name and shame (Bauer, 2008: 649), the ILO relies on governments to implement and enforce its conventions. This “horizontal” form of governance is said to be limited in a globalized world and it is argued that critics see it as contributing to the ineffectiveness of ILO standards (Thomas, 2018). The ILO also realizes the limits of its influence on effective application of its standards (Wilson et. al. 2006), as such it sought to capitalize on the cooperation exhibited by the seafarers’ and shipowners’ group in arriving at the *Geneva Accord*:

Success [in arriving at a final instrument] would require dedication and continuity of participation. The rewards would be considerable. ...the maritime industry was an example of social dialogue at its best. This meeting must now demonstrate tripartism at its best. The result would be standards which ensured protection for the vast majority of seafarers in their multinational environment. (TWGMLS/2001/10: para 7: 2).

This statement reflects a strategic pre-emption of the likely conflicts that such negotiations could encounter. The documentary analysis revealed that each of the social groups had their own interests which were evident from the first meeting and maintained throughout the 5 years of negotiations. Although these interests overlap and at various points groups shared or supported the interests of another, to perhaps further their own cause, it was also possible to align certain key interests with certain groups.

The ILO was interested in consensus, compromise and cooperation in arriving at decisions, while upholding ILO traditions:

While the work ahead should be based on existing standards, the Working Group should seek a balance between the industry’s tradition and the need to innovate. It was necessary to build an instrument which was coherent

with the ILO's current approach to standard setting and also with the contributions of other organizations working in the maritime field such as the IMO. The working Group should be able to count on contributions from all, with *consensus as the golden rule*. [italics inserted] (TWGMLS/2001/10: para 9: 3).

The ILO also stressed the need for an instrument that would be widely accepted. Wide acceptance was an interest also shared by the other groups in order that the "new" convention would not go the way of the others that were not ratified.

The shipowners' group also made references to their "unanimous agreement with the Seafarers at the JMC" (TWGMLS/2001/10: para 87: 18), as a means of pre-empting the cooperation of the governments. They went on to thank the Government representatives that spoke in agreement with the *Geneva Accord* and hailed the consensus towards the process of developing the MLC as "unprecedented in the history of ILO maritime meetings" (TWGMLS/2001/10: para 87: 18).

The seafarers' group also made their contribution as to their expectations for compromise and cooperation. The record showed that:

The Seafarers' spokesperson declared that the Governments' views were welcome and that, even if the Seafarers has some fundamental concerns about some of the opinions expressed, they would adopt a tolerant attitude at that stage, expecting identical behaviour from the Government group regarding their own positions in the future. (TWGMLS/2001/10: para 89: 18).

The governments mostly required flexibility and were concerned with how compatible the standards would be with their own national systems. Flexibility was seen in a number of ways. The first was to make provisions for "substantial equivalence" meaning that, governments that already had provisions in place would not need to duplicate their requirements but demonstrate to the ILO that their national systems provide compatible levels of protection. The second notion of flexibility was not having too detailed a convention. Third, that the instrument

takes national peculiarities into consideration with some allusion to the capacity of some governments to give effect to conventions. It was interesting that the capacity of governments to comply was to be taken into consideration around the theme of flexibility, however governments' will to fulfil their obligations was somewhat of the elephant in the room, particularly in respect of open registers that have gained a reputation for substandard shipping (Frawley, 2005; Alderton and Winchester 2002a; 2002b; Li, 1999). For example, one government member of an open register with a reputation for having substandard ships on its register, raised the point that:

...until this afternoon, open registers had been insufficiently taken into account. However, the agreement reached today...should ensure that every member State would be given an opportunity to participate in the future proceedings...[this country] was prepared to cooperate with everybody in the current exercise, provided that the new instrument will not upset the role of flag States... Neither should it endanger the economy of open registries and the employment of so many seafarers, in particular those coming from developing countries (TWGMLS/2001/10: para 69: 14)

The economic discussion was not pursued at this point although at other points throughout the negotiating period, the importance of flag States' role in compliance and enforcement was stressed.

Flexibility was also of interest to the shipowners' group. They pointed to a number of options for flexibility that already existed in some ILO maritime conventions, including "substantial equivalence" in ILO Convention 147, or the mechanism for agreeing to higher or lower standards from an agreed list, similar to ILO Convention 165 (TWGMLS/2001/10: paras 51-54: 11). Later on, the IMO's Convention for the Prevention of Pollution from Ships (MARPOL)⁴¹ was also suggested.

⁴¹ The IMO's marine environment pollution convention. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 and the Protocol of 1997. It was suggested at various points in the negotiations that the MARPOL's flexible regime which allows governments to "pick and choose" which standards to apply after ratification could

Shipowners were also interested in enforcement and verification and a clear text that was easily understood. They stressed consolidation and argued that, due to time constraints all existing instruments could not be revised. Therefore, the compromise would be to find a middle ground where “outdated standards are eliminated, duplication is avoided, and excessive detail is removed without straying into the contentious areas of inventing new standards” (TWGMLS/2001/10: para 53: 14). The “consolidation pact” would later emerge as a constraint on developing more progressive standards (Section 5.2.2.2.). Consistent with wider discussions around employers’ aversion to regulations (Walters and Bailey, 2013: 8; James and Walters, 2002), shipowners did not wish to be dealing with new standards and were keen on sticking closely with the consolidation process.

In parallel, one major interest of the shipowners’ group was fair competition and they saw the MLC as a means of addressing this and were therefore willing to accept some amount of (re)regulation of the industry. This was the major area of consensus between the shipowners’ and seafarers’ groups. The ITF has had a longstanding campaign against substandard shipping, particularly targeting open registers (Lillie, 2006). According to the International Shipping Federation’s (ISF) submission to the meeting:

...shipowners ... were no different from other employers so far as their concept of how they wished to run their businesses was concerned. They were not pleased with the idea of yet more regulations, controls or penalties. However, they were pragmatists and they wanted to make sure that sensible labour standards were in place and that they were applied impartially to all competitors. This would allow for a level playing field in

be looked at for adoption for the MLC (TWGMLS/2002/13: para 6: 2). MARPOL comprise 6 Annexes relating to different pollutants. A State only had to ratify Annexes I (oil) and II (chemicals), the others were optional and could be ratified as the State gained the capacity to do so: IMO website:

[http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/FocusOnIMO\(Archives\)/Documents/Focus%20on%20IMO%20-%20MARPOL%20-%2025%20years%20\(October%201998\).pdf#search=how%20does%20a%20country%20comply%20with%20MARPOL](http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/FocusOnIMO(Archives)/Documents/Focus%20on%20IMO%20-%20MARPOL%20-%2025%20years%20(October%201998).pdf#search=how%20does%20a%20country%20comply%20with%20MARPOL) Accessed 11 September 2018.

which standards of service dictated customer preference and not the ability to drive labour conditions down below an acceptable minimum standard. However, such level playing field for maritime labour standards did not now exist. The industry did not have an up-to-date, effective and properly enforced core of key labour standards impartially applied to all. (TWGMLS/2001/10: para 21: 5).

The shipowners' position reflects DeSombre's (2006) analysis of regulating labour standards in the maritime industry, as a "race to the middle" discussed in Chapter 3, (Section 3.3). Some level of regulation above the bottom is achieved as the "better" group of shipowners subject themselves to regulatory standards in order to bring substandard operators up to par or to force them from the industry. As this chapter demonstrates at various points and specifically in Section 5.2.2.2., the shipowners were willing to subject themselves to some regulatory control. However, they also argued for flexibility and were adamant in resisting some areas, for example seafarers' autonomy in the complaints mechanism, which would mean tighter regulation of their operations, as they would have been agreeing to additional external oversight on board. This analysis highlights the shipowners' unitary framing of the shipboard work environment.

In expressing their interests, the seafarers' group firstly cautioned against the drive for flexibility. In response to the shipowners' group's submission they noted:

The ISF submission was balanced, but perhaps overemphasized the issue of flexibility. Some flexibility was necessary to ensure widespread ratification, but too much could result in a meaningless instrument. What was truly needed was a true "bill of rights for seafarers." (TWGMLS/2001/10: para 56: 12).

The seafarers' group's interests were articulated in their submission in the second meeting (TWGMLS/2002/13). Like the other groups, they were interested in a widely ratifiable instrument, and reiterated their statement made in response to the shipowners' submission. The MLC, they believed, "should help to eradicate

substandard shipping. It should constitute a real and unambiguous Seafarers' Bill of Rights, making decent work a reality on all ships." (TWGMLS/2002/13: para. 10: 3). In their thinking, the seafarers' group was "proposing a radical approach, which was a package, and which would remove a lot of the prescriptive details." (TWGMLS/2002/13: para. 10: 3). With these interests, the seafarers' group's vision for the MLC was not very different from what the other groups articulated, although with different stresses. While they were concerned about too much flexibility, they embraced the notion of a less prescriptive instrument.

A major point of interest for the seafarers' group was the compliance and enforcement mechanism. While they agreed with the other groups as to the need for a robust system, the seafarers' group was adamant on the means by which this was to be achieved. The group refused to support the inclusion of working conditions within the ISM Code regime in keeping with their interest against too much flexibility (further discussed in Section 5.2.2.2.). They also refused the suggestion for the IMO's MARPOL-type regime which gives States a choice in which sections to comply with, as they believed it would lead to excluding some seafarers on certain ships which they saw as incompatible with the Declaration of Philadelphia (TWGMLS/2002/13: para. 11: 3-4). The group explained that the idea of having a "bill of rights" was to make breaches of social regulations detainable as in the case of safety under the IMO Conventions.

The theme of flexibility ran throughout the negotiations along those lines of either picking and choosing standards or including the "substantial equivalence" clause. While some governments and shipowners stressed a need for flexibility, seafarers opposed to some extent, and the ILO attempted to find a middle ground. The compromise was to state that the MLC provisions would be "inflexible with respect to rights" but "flexible with respect to implementation" (TWGMLS/2001/10: 24). This notion remained in reference to the MLC in subsequent narratives that it is a "firm but flexible" response to the deficit in decent work for seafarers. Assessing the contradictory nature of this statement would require some detailed analysis which is currently beyond the scope of this thesis. As seen in Section 5.2.1. on the framework convention paradigm, flexibility

imposes constraints on developing a firm regulatory lead. These were the main interests on the table and the parameters established that the process was more one of consolidation, with the principles of cooperation, consensus and compromise guiding the deliberations. The negotiations went ahead to produce what the ILO has described as the seafarers “bill of rights” and the “fourth pillar” in the maritime industry international regulatory regime for quality shipping.

5.2.2.2. Constraints and Conflicts

While it was strategic and most likely an efficient way of approaching the development of the MLC in having an established agreement between seafarers and shipowners prior to the meetings (this would have also involved some governments as the proposal had to be sanctioned by the ILC (GB.280/5 (Corr.)), the *Geneva Accord* also imposed some constraints on the deliberations and therefore the final product. One main constraint was the aim of consolidation, explained in Section 5.2.2.1., where the shipowners’ group reminded the meeting that new issues should not be included. While the documents did not record any controversy in this regard, mention was made in the interviews that this was a constraint (Chapter 6). However, based on the documentary record, it appeared that by the third meeting, this constraint was circumvented to some extent.

The third meeting of the high-level group recorded a modification. It stated that the initial purpose of consolidating existing conventions now included updating the conventions, taking into account, “current and emerging issues including the changing nature of the international seagoing workforce” (TWGMLS/2003: 2). Although at that point there was no indication as to how these conventions were being updated, the compliance and enforcement mechanism in particular, (Title 5 of the MLC) improved on measures in previous conventions such as Convention 147. One interviewee from the shipowners’ group did express some dissatisfaction with the seafarers’ group wanting to move away from the “consolidation pact” (Chapter 6, Section 6.2.2).

The need to satisfy the various interests and ensure an instrument that had the potential for wide ratification also posed some constraints. The consensus

was that one of the aims would be to reduce the details and create a framework instrument with much of the details outlining the specificities put into the non-mandatory Part B. Governments had to be satisfied that the “new” convention would be compatible with their national systems. For example, in discussing exempting domestic shipping from the convention, the seafarers’ group expressed concern that such seafarers would not benefit from the protection offered by the convention. They proposed that provisions be made in the convention for an agreement with the social partners to sanction such exemptions. Governments however preferred the less binding “in consultation” rather than “an agreement” claiming it was contrary to a government’s exercise of sovereignty. As the record showed:

Various Government representatives said that an agreement being concluded between the national legislature and social partners was not compatible with their systems. The adoption of legislation should not depend on obtaining the agreement of the social partners. Any such requirement would clash with the national legislatures’ supreme right to free decision. It was considered, however, that consultations were often essential parts of the process and considered useful. (TWGMLS/2003/10: para 99: 16).

They agreed that the wording for “consultation” in the draft being discussed at the time, would remain, particularly as some governments had already decided to exempt domestic shipping and would not be entering into agreements with the social partners on the subject.

The main areas of conflict of relevance to representation were with the compliance and enforcement mechanism, with respect to the seafarers’ group, and the complaints mechanism with respect to the shipowners’ group. The first meeting of the subgroup in June 2002, was mainly concerned with compliance and enforcement, including the role of port State control (PSC) as the possible mechanism through which to secure these. This led to a discussion of the difference between technical and labour standards, making it clear that the

shipping industry recognizes and acknowledges the differences and that the industry is based largely on technical standards.

How technical and labour standards were to be integrated, and recognition that PSC officers were not qualified to inspect labour standards, were discussed. The need to ensure objective criteria for inspecting social issues, so as to avoid subjective detentions, and the training of inspectors in that respect, were seen as critical to the successful functioning the MLC. The agreement to address this deficiency in labour inspection was for the ILO to offer technical assistance to countries without the capacity for labour inspections. The ILO's technical assistance programme is argued to be one means by which it persuades governments to ratify conventions in the absence of enforcement capabilities (Gumbrell-McCormick, 2008: 338).

The ISM Code regime was recommended as providing a framework for enforcement and compliance by several government members in the first meeting (TWGMLS/2001/10: para 37: 8; para 64: 13; para 76: 16), to which other government officials expressed reservations. For example, one was clear that:

...he did not think the Working Group should rely on the participation of the IMO in the development of the new instrument. After all, there were boundaries between the safety issues to be handled by the IMO and the social issues to be dealt with by the ILO. He observed that references had been made to the possibility of placing the envisaged new ILO Convention under the ISM Code. He did not believe that the IMO would accept this. (TWGMLS/2001/10: para 79: 16-17).

This reservation was later confirmed in the third meeting when a government representative reported that the IMO Maritime Safety Committee at its 77th session, had a discussion on the matter of transferring issues from the ILO to the IMO, and was not in agreement. (TWGMLS/2003/10: para 114: 17).

In the second meeting the Norwegian government member submitted a proposal based on their national system, demonstrating how labour standards could be incorporated into the ISM Code regime and be certified, in keeping with

the proposal of having certification attached to the “new” instrument (TWGMLS/2002/Appendix). The shipowners group had reservations about this proposal on the grounds that “they were not fully committed to the issue of certification. Nor were they yet convinced about the need for an auditing system and remained very sceptical about the ISM auditing process” (TWGMLS/2002/13: para 67: 14). This reservation by the shipowners’ group furthered their desire to limit regulatory control, although they supported some regulation. For example, their continued reference to a MARPOL-type approach (also preferred by some Government members) would offer less control. In response, the seafarers’ group “reiterated their fundamental and implacable opposition to a MARPOL-type approach which did not conform to the aspirations of the Seafarers.” (TWGMLS/2002/13: para 117: 21).

The most discussed proposal for an enforcement and compliance regime was the ISM-type approach. This became most contentious for the seafarers’ group, and one on which they were unwilling to compromise. The seafarers’ group vehemently rejected any thought of using an ISM-type approach. They contended that the ISM is a self-regulating system and its reliance on audits and paperwork did not provide a suitable model for compliance and enforcement and therefore they did not have confidence in this regime to address their interests. The seafarers’ group was interested in a certification process for compliance and not a certification of procedures (TWGMLS/2002/13: para 11: 3). Chapter 3 (Section 3.4) explained the reservations in the literature regarding safety management systems, including the failures of the ISM safety management system. If not effectively managed, these systems may become paper exercises which do not address the realities of the situations for which they were developed (Frick et. al., 2000). In response to the Norwegian Government’s submission and other discussions, the seafarers’ group spokesperson firmly laid out their position. As the records showed:

The Seafarers’ view of ISM-type regime was well known... There was no possibility of accepting such a regime, regardless of the standards on which it was based as it would be tantamount to de facto self-regulation. There

was a role for audits to verify that the flag States discharged their responsibilities and for labour-supplying States in verifying effective oversight and control of manning agencies... **These issues could be further discussed, but there would be no change in the Seafarers' group's views about quality assurance systems and he entered a formal reservation on this issue.** [stress added] (TWGMLS/2002/13: para 65: 13).

The outcome in this instance was that the compliance and enforcement mechanism as envisaged by the seafarers' group was adopted. The mechanism includes a maritime labour certificate, issued by the flag State, to certify that the measures for compliance outlined by the shipowner, in a declaration of maritime labour compliance document, meet the requirements of national regulations (MLC, Regulation 5.1.3: 76) (The mechanism is detailed in Chapter 7, Section 7.3).

Nevertheless, integrating the ISM and the MLC remains on the agenda. A resolution adopted by the maritime session of the ILC in 2006 concerning occupational safety and health, acknowledged the "inextricable link" between seafarers' health and safety and their work risks and the implementation of the ISM Code, while also emphasizing the need for the ILO to promote safety committees and the appointment of safety representatives on ships (ILO, 2006f: 10). The Provisional Records (ILO, 2006d: 9) showed that this resolution was jointly submitted by the employers' and the workers' groups. It is a milder promotional approach to the integration approach submitted jointly by 26 government members which was not adopted (ILO, 2006d: 13-14).

The proposed resolution by these government members continued the subject of integrating aspects of the ISM with the MLC (see Appendix X). It is worth noting as it contained some salient points on the commonalities between the two instruments and the importance of integration. Such integration might serve to stimulate shipowners' commitment to representation. The findings at the administrative and shipboard levels reveal that the decision by the seafarers' group to oppose even a discussion on the matter might have been hasty. There are difficulties to harmonize the two regimes in practice without an orchestrated effort, which this resolution seemingly advocated. According to an interviewee

from the seafarers' group, the matter is not concluded and is expected to be discussed in the standing committee established to continuously review the MLC⁴² (Chapter 6).

The shipowners' group had two distinct points of conflict of relevance to representation. One having to do with including the term "management systems" in the MLC and the second one on the complaints mechanism allowing seafarers some autonomy to complain to State officials. Firstly, the term "management systems" was introduced into the draft convention discussed at the PTMC (PTMC/04/1). The explanatory notes to this draft indicated that some shipowners were amenable to the use of the term, but others raised objections to having "management systems" in the MLC. Those objecting noted that there were many existing health and safety management programmes, including health and safety committees under IMO requirements and they did not wish to be bound by further requirements for systems (as was confirmed in the interviews, Chapter 6, Section 6.2.3).

These provisions were introduced by the ILO office in preparing the text. Their commentary on the draft indicated that "relevant ILO occupational safety and health experts" were consulted and proposed the adoption of the ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH, 2001) (PTMC/04/2: Comment 32: 31-32). The seafarers' group were in favour of its use and explained that specifying "management systems" provided for greater emphasis on data collection, risk management and prevention strategies. This explanation echoed the EU's framework for a systematic approach to OHSM. Indeed, the ILO-OSH (2001) is an attempt to merge both systematic and systems approaches to OHSM and it contains requirements for representatives. The shipowners were adamant that all references to "management systems" be removed from the draft. They were instead in favour of using the term "consultation" with respect to measures to be developed for health and safety and

⁴² *Article XIII Special Tripartite Committee* States that "The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in the area of maritime labour standards" (MLC, 2006: para1: 8).

not “management systems.” This, however, did not lead to a discussion on “consultation” and how it would be operationalized. The resulting compromise was a rewording of the text to read “guidelines for the management of occupational health and safety.” Subsequently the shipowners were vigilant in ensuring all uses of “management systems” were removed from the MLC text.

The second distinct point of conflict for shipowners was developing a complaints mechanism for seafarers to appeal to officials outside the shipowners’ sphere of influence. The shipowners were resistant. This might also be an indication of the unitary framing that dominates shipboard activities. To resolve the differences, both groups were asked to make a joint submission. In summarizing the concerns, the joint submission noted:

It is fair to say that the position of both groups was very similar with regard to the procedures for dealing with grievances on board. Different views were expressed, however, with regard to the procedures for dealing with grievances that could not be resolved at the level of the ship or the employer and were therefore referred to the government officials or agencies or to a legal system. (TWGMLS/2003/10/Annex 3: 53).

Both groups agreed on laying out internal and external procedures having details for an on board mechanism and very general statements on the right of the seafarer to raise grievances with external authorities outside the shipowner’s sphere of influence. Also, in receiving complaints, external authorities should inquire that the on board procedures were exhausted. The final provisions in the MLC mandatory standards note that laws and procedures *shall* have appropriate on board complaints procedure which *shall* include provisions for seafarers to be accompanied or represented during the complaints process (Standard A5.1.5: paras 2-3: 84). However, this was not linked to the formal on board representative process and it installed an individual means for seafarers to represent their interests.

In concluding this section on negotiating labour standards, the documentary findings showed that in the process of developing the MLC the

various groups had their own interests to satisfy which were mediated by cooperation, consensus and compromise, although there were also conflicts. This account serves to demonstrate how global labour standards are developed and the nature of the process that accounts for what finally emerges. The requirements for consensus, compromise and cooperation to satisfy the varying interests might not necessarily lead to the best standards to suit a particular situation but emerge as the best compromise. However, this compromise may be disconnected from the realities of the situations they aim to address and may not meet the needs of the intended beneficiaries.

5.3. Representation in the MLC Framework

This section presents the documentary analysis on representation in the MLC. It first outlines the provisions for representation as written in the MLC and then examines the discussions leading to these provisions. The MLC provides for the election of representatives and the establishment of OHS committees but does not have any definitive statement on consultation albeit presumed in joint OHS committees. Some jurisdictions make specific provisions for joint consultative committees or joint consultation on health and safety. The French system, for example legally requires the establishment of joint consultative committees for workplaces with 50 or more employees. This committee becomes a subsection of the broader works council and workers elect representatives to the committee with the employer as the chair. The representatives have statutory roles and rights to act on behalf of workers and take their concerns to the committee and the committee in turn have statutory rights to be consulted by the employer (Coutrot, 2009).

Provisions for representation are found under Title 4, Regulations 4.3 (MLC, 2006: 60) (Appendix IX). The purpose of these regulations is “to ensure that seafarers’ work environment on board ships promotes occupational safety and health.” The regulations provide broad statements regarding the obligations of ratifying countries to ensure laws are in place to give them effect. The provisions

for shipboard representation are found in Standard A, paragraphs 1c, and 2d.

Paragraph 1c states:

On-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection, involving seafarers' representatives and all other persons concerned in their implementation, taking account of preventive measures, including engineering and design control, substitution of processes and procedures for collective and individual tasks, and the use of personal protective equipment; and (MLC 2006, A4.3 para 1c: 60)

This paragraph echo the land-based systematic approach to health and safety, particularly those promulgated by the EU in the Framework Directive 89/391, where the employer manages the process with these preventive principles in mind and the involvement of representatives. Absent in this paragraph however, is the requirement for consultation with the representatives. Although it requires their "involvement," as Chapter 2 (Section 2.2.) explains, this is a nebulous term and is usually associated with managerial unilateral styles of managing the workplace and have been found to be less effective in OHSM than representation. "Consultation," although subjected to misinterpretations, has been introduced in land-based regulations to strengthen participation and emphasize to management the need for meaningful two-way communication and giving serious consideration to workers' views (James and Walters, 2002).

Paragraph 2d of Standard A, goes on to make clear the framework for representation:

Specify the authority of the ship's seafarers appointed or elected as safety representatives to participate in meetings of the ship's safety committee. Such a committee shall be established on board a ship on which there are five or more seafarers. (MLC 2006, A4.3 para 2d: 61).

Joint consultation is implied by the mandatory provision for OHS committee. However, the details to support these broadly stated standards are

found in the Guideline B4.3.1 which does not make a definitive statement but requires that the provisions *should*⁴³ take into account the ILO Code of Practice on Accident Prevention on Board Ship at Sea and in Port (COPAP). The COPAP precedes the MLC and contains details for representative arrangements. The COPAP provides details as to the role of the health and safety committees, also found in subsequent MLC health and safety guidelines (MOSH) developed in 2014 and the ILO/MLC/ITF guidelines on OHS. Together, these guidelines show the model of representation as joint OHS committees where seafarers elect or appoint their representatives to participate on these committees. Table 5.2 lists the features of the model in each document which together comprise what the thesis refers to as the MLC framework for representation.

Table 5.2: The MLC Framework for the Roles and Rights of Representatives

MLC 2006 Mandatory Provisions	Code of Practice on Accident Prevention on Board Ship at Sea and in Port (COPAP), 1996 (Section 2.8.4.: 12)	Maritime Occupational Safety and Health Guidelines (MOSH), 2014 (Section 5.5: 43-45)	ILO/MLC/ITF Guidance about the Safety and Health on board Ships (Section 8: 12)
<p>States are to develop laws, regulations and other measures to ensure OHS protection. These <i>shall</i> include:</p> <ul style="list-style-type: none"> - Seafarers' representatives (appointed or elected) - Authority of representatives to sit on OHS committee; 	<p>Representatives <i>should</i> be:</p> <ul style="list-style-type: none"> - Elected or appointed by and from the crew; - Participate in safety committee meetings; - Not be subjected to dismissal or prejudicial measures because of their role; - Have access to all parts of the ship; - Participate in the investigation of accidents and near-accidents; - Have access to all the necessary documentation, 	<p>Representatives <i>should</i> be:</p> <ul style="list-style-type: none"> - Elected or appointed from their work groups or departments; - Participate in safety committee meetings; - Allowed time without loss of pay to fulfil functions or receive training as representative; - Not be subjected to dismissal or prejudicial measures for conduction functions assigned to this role; - Have access to all relevant information and documentation, including investigation reports; 	<p>Representatives <i>should</i> be:</p> <ul style="list-style-type: none"> - Elected or appointed in consultation with seafarers' organization from the crew; - Participate in safety and health committee meetings; - Allowed time off without loss of pay to fulfil functions or receive training; - Not be subjected to dismissal or prejudicial measures for carrying out functions assigned to this role; - Have access to all relevant information and documentation, including investigation report;

⁴³ *Should* and *shall* have particular meanings, where provisions that are mandatory are referred to using *shall* and guidelines or recommendations are referred to as *should*. As is made clearer in discussing the structure of the MLC (Section 5.3.1), it is divided into mandatory sections denoted by Standard A and guidelines denoted by Standard B. Standard A and the Regulations which precede them are worded as what governments *shall* do to give effect to the MLC, and Standard B, is worded as what they *should* do (TWGMLS/2003/10: para 36: 8; paras 199-200: 27-28).

<ul style="list-style-type: none"> - Health and safety committees to be established on ships with 5 or more seafarers. 	<ul style="list-style-type: none"> including investigation reports, past minutes of safety and health committees, etc.; and - Receive appropriate training. 	<ul style="list-style-type: none"> - Have access to all parts of the ship; - Participate in planning on board tasks including applying preventive measures and risk assessment; - Participate in accident investigation; - Have the unrestricted right to communicate directly with the relevant competent authorities and seafarers' organization; - Receive appropriate training and instructions. 	<ul style="list-style-type: none"> - Have access to all parts of the ship; - Participate in planning on board tasks including applying preventive measures and risk assessment; - Participate in accident investigation; - Have the unrestricted right to communicate directly with the relevant competent authorities and seafarers' organizations; - Receive appropriate training and instructions.
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Sources: MLC 2006; ILO (1996a) 2nded. Code of Practice: *Accident Prevention on Board Ships at Sea and in Port*; ILO-MOSH (2015); IMO/MLC/ITF Guidance on Health and Safety.

The table puts into perspective the broad provisions in the MLC mandatory section relative to the details in the guidelines. No further provisions are found in the MLC mandatory section. The supporting COPAP and guidelines give details establishing what is envisaged by the MLC provisions and the wider industry actors who developed and agreed on these standards.

In this model, seafarers' safety representatives are to be elected or appointed to serve on OHS committees where there are 5 or more seafarers working on a ship. Representative is defined in the COPAP (Section 1.3: 2), an element missing from the MLC list of definitions. It states: "*safety representative*: a member of the crew elected or appointed by and from the members of the crew to serve on the shipboard safety and health committee."

The MLC non-mandatory guidelines also do not specify arrangements for representation but make specific provision for the use of the COPAP and general references to other industry guidelines that *should* be taken into account when measures are being developed for OHSM. As stated in the MLC Guideline B4.3.1: 61.

The provisions required under Standard A4.3 should take into account the ILO code of practice entitled *Accident prevention on board ship at sea and*

in port, 1996, and subsequent versions and other related ILO and other international standards and guidelines and codes of practice regarding occupational safety and health protection...

Nevertheless, as had to be repeatedly explained in the negotiations to allay the concerns of some government members, guidelines are not mandatory, but the expectation is that they are treated “in good faith” (TWGMLS/2003/10: para 202: 28). Additionally, while representation was made mandatory in the MLC and there were discussions on social dialogue and representation at the national level, representation on ships was not discussed in terms of how it was to be operationalized and the supports for its implementation and practice.

Social dialogue as a key component of decent work were two recurring themes in the negotiations (discussed in Section 5.3.2). The ILO situated the MLC in its decent work agenda where workers’ “voice” is an important component (Budd, 2004). Some government participants in the negotiations were keen on pointing out the link between decent work and social dialogue and suggested that the “new” convention incorporate these principles. (TWGMLS/2001/10: para 28: 6; TWGMLS/2002/13: para 21: 5).

The seafarers’ group expanded on the need for a mechanism to ensure social dialogue. This was considered important particularly as some countries had no representative social partners. However, in the MLC negotiations, discussions on social dialogue focussed at the national level with no discussion for dialogue at the shipboard level.

5.3.1. Origins of and Rationale for Representation in the MLC

Provisions for representation in the MLC are consolidated from Convention 134. Article 8 of Convention 134 (Prevention of Accidents (Seafarers) Convention, 1970) provides for seafarers or their representatives to play an active role in implementing programmes for occupational accident prevention. The recommended draft discussed at the MLC adoption conference also made references to other sources of influence on the MLC standards for Title 4.3 on health and safety protection, these included Convention 155. Convention 155 is

the ILO's main health and safety convention and has broad requirements for representation.

The meeting reports had no record of who introduced the text. It was absent from the early drafts and the second preliminary draft taken at the final high-level meeting had these provisions in the non-mandatory section. Provisions for health and safety committees were also absent. It appeared that the ILO office introduced the text when it prepared the recommended draft for the PTMC (PTMC 04/1). This was also when the ILO included provisions for adopting its OSHM system into the MLC. While the paragraph containing representatives was amended to its current form during the PTMC, again any discussion as to the role of these representatives and how the mechanism was to function on board was absent. The only amendment made was to change the word "powers" in the text that, representatives "powers" shall be stated to attend health and safety meetings. Shipowners instead preferred the word "responsibilities." The seafarers later proposed to use "authority" as a compromise, which was accepted.

As Table 5.2 shows, the safety representatives' roles and rights as outlined in the COPAP, and subsequently the MLC MOSH and ILO/MLC/ITF guidelines, are limited compared with land-based provisions, although they were inspired by land-based provisions. Much of the duties for OHS in the MLC framework are delegated to the safety officer and the OHS committees. Table 5.3 compares the provisions for representatives' role in the COPAP (as the document named in the MLC) with the UK's provisions, as an example of how limited these provisions are.

Table 5.3: Comparison of Provisions for the Roles and Rights of Seafarers' Representatives with Land-based Provisions.

Code of Practice on Accident Prevention (COPAP)	Land-based provisions – UK.
<p>Representatives should be:</p> <ul style="list-style-type: none"> • Elected or appointed by and from the crew; • Participate in safety committee meetings; • Not be subjected to dismissal or prejudicial measures because of their role; • Have access to all parts of the ship; • Participate in the investigation of accidents and near-accidents; • Have access to all the necessary documentation, including investigation reports, past minutes of safety and health committees, etc.; and • Receive appropriate training. 	<ul style="list-style-type: none"> • Employees' selection of representatives in health and safety; • Protection of representatives from victimisation or discrimination as a result of their representative role; • Paid time off to be allowed to carry out the function of a safety representative; • Paid time off to be trained in order to function as a safety representative; • The right to receive adequate information from the employer on current and future hazards to the health and safety of workers at the workplace; • The right to inspect the workplace; • The right to investigate complaints from workers on health and safety matters; • The right to make representations to the employer on these matters; • The right to be consulted over the health and safety arrangements, including future plans; • The right to be consulted about the use of health professionals; • The right to accompany health and safety inspectors when they inspect the workplace and to make complaints to them when necessary.

Sources: ILO (1996a) 2nded. Code of Practice: *Accident Prevention on Board Ships at Sea and in Port*. Section 2.8.4.: 12; For UK regulations: Walters and Nichols (2007: 13).

Other jurisdictions such as Australia have even stronger provisions allowing representatives to require dangerous work to cease and to issue improvement notices (Johnstone, 2009). Another short coming of the MLC provisions is that they do not outline a specific relationship with the State inspectorate, nor make any detailed statements as to the role of seafarers' representative organization in supporting representation on board. In short, provisions outlining support for representation in the MLC are absent. In the MLC framework, minimal support is suggested in the ILO/MLC/ITF guidelines (3.6 para 2: 6). These guidelines suggest the appointment of a person ashore from the company to "consult closely with the master and crew on all matters concerning safety and health." This is however not linked to the activities of the on board

health and safety committee, and echoes provisions in the ISM Code for a designated person ashore to support the company's safety system. Further, this support might be problematic as it is within the employer's sphere of influence and the point of representation is to have autonomous support as a countervailing force to that of the employers.

5.4. Conclusion

This chapter presented the findings of the documentary analysis. It examined how the MLC text was negotiated generally and highlighted the competing interests and constraints. The chapter demonstrated how such efforts at global governance might come to be less substantial than intended as negotiating parties make compromises to arrive at a consensus. In respect of representation, the documents revealed that it was not discussed as expected. Considering the MLC and supporting guidelines, there is the notion of joint OHS committees, yet the role and rights of representatives are limited. Further, there is a leaning towards detailed provisions of the role of all parties except trade unions in the on board health and safety activities. The records showed that representation was included as part of the consolidation process as provisions for seafarers' representatives to participate in on board health and safety were in other conventions and ILO guidelines. This absence of a discussion is important as it raises questions as to the rationale for including such provisions without a clear intent as to its role in achieving the ILO's decent work objectives and how it might benefit seafarers.

The absence of a discussion on the role of seafarers' representatives is surprising, considering representation has been shown to benefit workers' OHS, and the evidence regarding the poor employment and working conditions on ships. The architects also acknowledged the changes in the nature and organization of work at sea, and the lack of representative organizations in some countries, but this did not lead them to discuss the viability of these provisions or the mechanisms required to support their implementation and practice. The following chapter draws upon the interviews with the architects to explore why representation was not given much consideration.

Accounting for Representation in the MLC

...safety in shipping should not just mean prevention of accidents to the ship that may arise due to faulty construction methods, defective equipment and lack of operator training. Rather, safety in shipping should encompass the prevention of casualties (accidental death or injury) and all associated aspects of health and safety (Nielsen and Panayides, 2005: 148).

6.1. Introduction

This chapter presents the findings on the origins and rationale for the provisions for worker representation in the MLC to further address the research question as to the firmness of the regulatory lead for representation on ships. Regulations legitimize the role of representatives and provide a statutory basis for them to act and as protection from discrimination because of their role (Gunningham and Johnstone, 1999). Building on the findings in Chapter 5, this chapter explores the perspectives of the architects of the MLC text, how they rationalized the lack of discussions and detailed provisions on representation, in light of the challenges on board ships.

The MLC was negotiated by government representatives and representatives of the shipowners' and seafarers' groups from the ISF and ITF respectively. The ILO, as the responsible organization oversaw the negotiations although its officers were not passive as they also contributed to the text (Chapter 5). This chapter draws on interviews with key informants, referred to as the architects of the MLC. They were members of the seafarers' and shipowners' group and one participant from the ILO. One interviewee from the seafarers' group had represented his government at the time of the negotiations and offered some insight from a government's perspective. The ILO interviewee also reported on various governments' positions. Otherwise the research relied on documentation for the governments' perspective, as described in Chapter 5, and therefore this chapter mostly explores views of the shipowners' and seafarers' groups and the ILO.

The chapter is divided into three main sections and a conclusion. The first two sections examine the viability of the provisions on representation by exploring their origins in the MLC and the rationale for their inclusion. The third section explores the strength of the regulatory lead by focusing on whose interest is served by having representation in the MLC as understood by the architects and how they envision representation would be supported on board ships.

6.2. The Origins of Representation in the MLC

This section examines the main findings regarding the origins of worker representation in the MLC. Key informants at the international level who had direct involvement in the development of the MLC were asked about the source of the provisions on seafarers' participation in order to understand the basis for their inclusion. The findings revealed that representation in the MLC had both ideological and concrete origins. The architects explained that the philosophy of tripartism in the ILO and existing land-based practices influenced the provisions. The ILO's influence stood out among these explanations, with respondents being clear that the tripartite structure of the ILO dictated that all instruments developed by the ILO contain provisions for workers' representation. As such, other ILO conventions, including previous ILO maritime conventions, were used as examples to justify provisions for representation in the MLC. The following sections detail the various influences as described by the architects.

6.2.1. ILO History, Structure and Traditions

The history, structure and traditions of the ILO provided the more ideological explanations for representation in the MLC. The ILO was founded on principles of social justice to be achieved through social dialogue among the social partners. These origins were reflected among the main explanations given by the architects. A shipowners' group member explained:

... it goes further back...the whole ILO process...when was it born? 1919. What was going on at the time? Russian Revolution...they didn't believe in employers and workers...we were all there together in Russia and bringing

soldiers home and thought there might be riots over here [Western Europe]...So enshrined in everything that the ILO produces is workers representatives. The whole philosophy of this at the ILO is workers have an equal right to be represented...and all we're doing in here [points to MLC]...is reflecting that, and you should also mention...the Declaration of Philadelphia – “no lasting peace without social justice”... it would be enshrined in the whole idea that workers must have a say in what's going on. (KI-2).

The ILO was formed in 1919 after the First World War. It was founded on pluralist principles of cooperation, consensus and compromise towards achieving harmonious labour relations (Hughes and Haworth, 2010: 5-19). The Second World War also led to further assertions regarding social justice and labour rights towards creating social harmony. The Declaration of Philadelphia 1944 marked this reassertion of the founding principles of the ILO. The quest for peace in post-war reconstruction on both occasions was defined through industrial relations terms involving cooperation through collective bargaining in addressing the various interests of the social partners (Hughes and Haworth, 2010; Rodgers, et. al. 2009). Of significance was the declaration that labour was not a commodity. In that respect, work was defined in terms wider than economic exchange to embrace notions of wellbeing and self-actualization (Swepston, 1998).

In this framework, labour “standards were an indelible part of political democracy bound up with a growing post-war emphasis on human rights and the pursuit of industrial prosperity” (Hughes and Haworth, 2010: 13). These early activities to bring the social partners into cooperative dialogue to pursue peace and prosperity, also formed the basis for other responses to the question of the origins of the provision on representation in the MLC. The ILO respondent explained that if one wanted to know the origins of representation in the MLC then this philosophy must be understood:

You should look at the philosophy of the ILO in relation to worker representation... Look at the other... conventions that the MLC replace. Look at the context of this in terms of worker representation issues and

also then, look at the ILO conventions for other industries in terms of worker representation. That will give you the philosophy of the ILO. (KI-8).

This philosophy, as understood by the interviewees, was operationalized in the ILO's tripartite structure as reflected in its conventions. A seafarers' group respondent said:

That's the very basis of how the ILO operates. You have the tripartite structure in the ILO and any convention in the ILO is to be adopted in consultation and in participation of the social partners. The employers and the workers and the voting which takes place in Geneva. (KI-1).

The decision-making apparatus of the ILO comprises employers' and employees' groups (trade unions), along with governments. The employers' and employees' groups share a combined 50% of the vote (25% each) with the remaining 50% going to governments. This is unlike other UN bodies where other interest groups may be observers and only governments make the decisions. The ILO's structure compels an alliance of workers and employers in some instances to present their concerns to government, as was the case with the MLC. The shipowners' group in general found employers' rights at the ILO to be advantageous when the fate of the maritime conventions were being contemplated. A participant from the shipowners' group explained that prior to the decision to develop the MLC, some shipowners had suggested moving the maritime labour issues to the IMO, but the majority were not in favour because they had less "say" in the IMO. As it was put, the shipowners decided: "...we actually like the ILO, we have the right to speak..." (KI-2).

Additionally, the ILO structure attempts to preserve the participatory rights of employees and employers through its supervisory mechanism, which allows complaints to be lodged against governments for breaches of the social pact (Hughes and Haworth, 2010: 27-29). This right was also used in narratives to underscore the explanations for representation in the MLC. One member from the seafarers' group explained:

... governments are obliged to follow the advice given by unions or employers...there has to be justified reasons in writing from government authorities to say OK, we have decided to implement certain changes that the shipowners said they don't like it, the seafarers said they don't like it, but then we are going to do it anyway because we believe it's important...and if you don't follow this process, it gives the possibility that either the employers or the representatives of the workers will file a complaint with the ILO for breach of the spirit of the convention. It's not just the MLC but any convention adopted and is in force by the ILO. (KI-1).

With participation of the social partners engrained in the fabric of the ILO, the respondents thought it logical that seafarers' representative participation be included in an ILO instrument. This marks the general understanding and acceptance of the origins of the standard to the extent that probing regarding the supporting structures, elicited a somewhat defensive response from a respondent of the seafarers' group: "...what are you saying then, that we shouldn't have included it?" (KI-1).

The line of questioning seemed to have disrupted the taken-for-granted understanding of representation in the MLC. Another from the seafarers' group said:

Stepping back to how the ILO works as a tripartite organization with shipowners and seafarers being equal partners and the governments completing the tripartite dynamic, ... *it shouldn't surprise anybody* that when we then develop a convention, the roles of the workers and the workers' voice, the involvement in consultation of workers is up there alongside the obligations of the flag State and the role of the shipowners, so at every level of the convention, it is a requirement to involve seafarers. (KI-3).

The findings revealed that respondents considered representation in the MLC as a given. The respondents' narratives were substantiated by documentary sources which added further clarity to the persistent reference to the ILO's

influence. As Chapter 5 revealed, the historical origins of the ILO, its structure and traditions were invoked at the first meeting as the principles that should guide the deliberations. For example, the documentary analysis showed some tensions between the old (ILO previous format) and the new structure that was suggested, which the MLC now has. The opening remarks of the ILO secretariat to the attendees at the first meeting is illustrative:

[The deliberations] ...would include considering questions with little guiding precedents and preparing solutions which, though perhaps drawn upon the practice of other organizations, *would require adaptation to the special philosophy and constitutional requirements of the ILO* [italics inserted] (TWGMLS/2001/10: 2).

The strength of traditions was demonstrated by a few participants who explained that the ILO was not convinced of the need to adopt a different structure by consolidating the maritime conventions into one. Commentators such as Standing (2008: 374) have argued that there is somewhat of a culture of resistance to innovative thinking at senior levels of the ILO and the Governing Body. This perhaps explains the ILO's appeal to traditions and alignment with the ILO's agenda as the organization laid the ground rules for the negotiations. One participant from the ILO, who indicated intimate involvement prior to the *Geneva Accord*, explained the ILO's reluctance as follows:

...There was a lack of confidence in the ILO that so many conventions could be revised and be merged into a single one. It was not easy for them to be convinced. Particularly on the matter of one single convention. This was different from the custom... there was a lot of opposition... it was not easy to get them to accept the proposal (KI-8).

While the MLC eventually took shape, the text remained that of the old conventions. The ILO, however, was not solely responsible for this, as the "consolidation pact" referred to in Chapter 5 dictated much of the outcomes. Representation was one of the provisions that maintained the traditional approach. Another participant however, offered some vindication for the ILO in

wishing to maintain some of its traditions. The focus on flexibility explained in Chapter 5, had the undertones of de-regulation resulting in much of the details of previous conventions being put into non-binding guidelines. A shipowners' group member reported that the ILO wanted to preserve the force of previous conventions:

...we had a discussion as to what we could do to improve things and to make these [ILO maritime conventions that were not ratified] more effective and the idea was put forward to... consolidate them all into one single instrument. The trade unions, the ITF were in general supportive of that, the biggest obstacle was actually the ILO itself, because we [shipowners' group] pointed out that a number of these instruments that it had adopted hadn't entered into force because they contain too much detail. Probably governments hadn't participated sufficiently in their development and quite often an instrument would be adopted, and an actual government would look at it, find a provision it couldn't accept and therefore the entire instrument wasn't ratified. So there had to be a certain amount of modernization and cleaning up of text, which meant that certain provisions that were mandatory in the earlier conventions, ceased to be mandatory in the consolidated instrument that became the MLC. Now from a legal point of view the ILO had a problem with that because it was already in parts of international law, especially for those countries that had already ratified those instruments... the problem was solved by inserting the clause that a State shall not provide any lesser provisions than those it already had in place. [KI-5].

This insight notwithstanding, another aim of the MLC was to have provisions to address the changes in the nature and organization of shipping. Yet representation, which studies have shown to be limited in its traditional form, and even more limited in this instance (Chapter 5, Section 5.3.1.) was not addressed. The provisions for representation were a recycling of longstanding approaches. The documents outlining the details for representation to which the MLC refers, and which subsequently formed part of the MLC guidelines for OHS management,

have not been updated since the 1990s. The particular approach to representation seen in the MLC framework (Chapter 5, Section 5.3), circulates around the various documents on health and safety put out by the ILO and the shipping industry.

While a consolidated maritime labour convention, and other features of compliance and enforcement, were regarded as innovative from the perspective of the ILO (eg. McConnell et. al., 2011; Bolle, 2006), it was also a compilation exercise in many respects and particularly so for health and safety and representation. Although there was a parallel narrative of innovation and modernization of the conventions, efforts were made by the ILO to anchor these in its traditions. The ILO respondent said:

...in whatever area you have occupational health and safety look at the old conventions and the new one and you will see there is not much difference, the words may be different because what was attempted was a simplification of the language.... At one point we put in the text things that were forgotten...but you see the text on that subject would be similar. Look at the non-maritime conventions and you will see if the texts are similar or the substance is similar. You will see that on that area there is not anything new, it's just that we have applied first what seafarers had and second what other workers had. The ILO is dealing with all workers. (KI-8).

While there is some understanding of the reluctance to move away from some of the provisions, in respect of representation, research has shown that innovation is needed as the particular model is unsuited to contemporary flexible labour practices (Quinlan et. al., 2001; Gunningham and Johnstone, 2009), which are also evident in the shipping industry (Walters and Bailey, 2013). Other models exist that might have been explored (Frick, 2009).

6.2.2. Consolidating Existing ILO Maritime Conventions

On a less philosophical level, representation was explained as originating with other conventions. The understanding that the MLC was to be only a consolidated instrument was a strong element in the negotiations. In explaining the origins of representation in other ILO maritime conventions, a respondent from the seafarers' group revealed the insistence in the negotiations on maintaining the *status quo*:

...it [representation] must have been in the original instrument, because 95% or more of what we did, was strictly consolidation, and *there was a lot of pressure applied to everyone not to try and introduce new issues*, even if those new issues were not contentious, the emphasis was stick to the deal of consolidation, get it through and then we'll worry about other aspects later. [KI-3].

The "consolidation pact" made between the seafarers' and shipowners' group at the JMC was a strong element in determining the MLC text (Chapter 5, Section 5.2.2.1.; 5.2.2.2.). Although it was indicated that the MLC development process would also involve updating the conventions, there was also paradoxically, a strong desire to maintain what was already in place, with the exception of those conventions that were identified as outdated, too detailed or contained duplications. A respondent from the shipowners' group confirmed that the main aim was consolidation and expressed some displeasure that the seafarers' group had attempted to introduce new areas inconsistent with the "pact." The respondent said:

The workers, the seafarers' side, as I am used to them, would always take what is here [points to CMC⁴⁴] as the start point of negotiating for the next level up. The shipowners' people did not see it like that, so we thought the words of that [CMC] would go straight into that [the MLC], and felt it was a bit unfair that the workers said oh yes that's all we're going to do is

⁴⁴A copy of the Compendium of Maritime Labour Instruments, a publication by the ILO compiling all the maritime instruments.

consolidate, but then as soon as you start looking into the words, they upgrade you into something else. [KI-2].

These findings substantiate discussions in Chapter 5, on the shipowners' interest in not having too much regulations, and the tensions among the various groups' agendas and how these might have led to the development of weaker standards generally. Others have documented challenges in developing strong standards in the ILO institutional framework. Hilgert (2013), for example, has documented how weaker standards might emerge to suit the dominant interests.

The rationale for the MLC as a consolidated instrument was outlined as emanating from a standstill in the work of the JMC. A shipowners' representative explained that there was no work programme going forward from the JMC to the resolutions committee which would usually take issues forward to the International Labour (Maritime) Conference (ILC). The standstill resulted in an initiative by the shipowners' group to "do something" about the ILO maritime conventions:

...this was a shipowner initiative to breathe life into the ILO...and try and make things better for us. So that's where it comes from. The shipowners were quite clear that all we wanted to do was to move what was in the Compendium [of Maritime Labour Instruments] into a consolidated text based on...if you look at the STCW convention at the IMO, it is exactly the same framework, because we've already been through that and we thought...this is much better framework than the usual ILO conventions, and we wanted updated procedures based on the IMO tacit amendment procedures...so that's in here...so this is borrowing from the IMO. (KI-2).

Another respondent confirmed the role of the shipowners' group in suggesting a consolidated convention:

There was a concern amongst the shipowners that there was a whole body of international law covering labour standards for seafarers that had been adopted at the ILO and not all of it had taken effect, not all the conventions had been ratified, those that had been...were still unratified by a number

of significant flag States...and we had a discussion as to what we could do to improve things and to make these more effective and the idea was put forward to ...consolidate them all into one single instrument. (KI-5-shipowners' group).

The *Geneva Accord* outlined the areas of agreement between the seafarers' and shipowners' group to consolidate the ILO conventions. The upgrade entailed an overhauling of the conventions and making them more "ratification friendly" for governments. There was consensus surrounding the change of format toward the IMO model where the articles, regulations and standards were under one cover with a tacit approval approach for amending the guidelines. But, as the findings show, the shipowners' group was resistant to too much change in terms of existing text.

The research found that representation was consolidated more out of custom than any strategic move to give seafarers a genuine "say" in OHS, although the responses showed some received wisdom that workers' should be included in OHSM. One seafarers' group member was not clear where the provisions came from outside of giving the general philosophy of the ILO (bearing in mind the retrospective nature of the study):

...and it isn't a particularly revolutionary convention...it isn't particularly revolutionary...and it is in the spirit, which is why I try to frame my answer in the context that this is a tripartite instrument developed by three parties...(KI-3)

Chapter 5 (Section 5.2.2.2.) corroborates this response. Although a commentary by the ILO office showed that representation was consolidated from Convention 134, and in the spirit of ILO's guidelines, in particular the COPAP, it was also not "revolutionary" and perpetuated the *status quo*.

6.2.3. The Influence of Other ILO Conventions

Other ILO conventions covering land-based industries also featured among the explanations as to the origins of the provision for seafarers' representation in the MLC. The land-based conventions were mentioned to substantiate the explanations regarding the embeddedness of the ILO's philosophy and tripartite structure in all its instruments. General references were made to the ILO's involvement in the process and it was therefore presumed that this could have been where the provision originated:

I think it's not impossible that in the formulation of these particular words...the ILO office would've been advising us on other ILO standards, for example, so if there are other ILO standards that suggest that seafarers' representatives...or workers' representatives should be involved, the answer might lie there, because the office would've been advising us... (KI-3 – seafarers' representatives)

This explanation was also given by another participant in relation to the ILO's involvement in drafting the convention guided by what was agreed in the meetings:

...ILO, I think, hoped that they could just push through the health and safety stuff from elsewhere...because they were focussing on trying to resolve the issues related to social security...stuff then came from the ILO which they wanted to take from land-based stuff which related to occupational safety and health and participation. So they prepare the drafts... they include stuff to complete sections that were not as controversial...I think to help the process along and to keep their focus, they include stuff on occupational safety and health and they would include participation...(KI-4 - shipowners' group)

The commentary by the ILO on the draft prepared for the technical conference showed that the ILO had included provisions for OHSM systems based on its own publication and this was the draft that had provisions for representation as seen in the MLC (PTMC/04/2). Other ILO conventions, in various

ways, make up the ILO regime for health and safety and representation. For example, Convention 135, Workers' Representatives Convention, 1971, (and the Workers' Representatives Recommendation, 143), sets out protective rights for workers' representatives in carrying out their roles. Its preamble makes references to Convention 98, 1949, on the Application of the Principles of the Right to Organise and to Bargain Collectively. Convention 98 establishes rights of workers and employers to non-interference in the establishment of their organizations and participation in such organizations. Convention 98, Article 1 speaks to the protection of workers from "acts of anti-union discrimination in respect of their employment." Convention 98 does not make specific reference to workers' representatives but its alignment with representation in Convention 135, expands the protection it offers to workers' representatives.

A year prior to Convention 98, the ILO membership adopted Convention 87, 1948 on the Freedom of Association and Protection of the Right to Organize. Convention 87 sought to protect these rights from government intervention, while Convention 98 focused on workers' protection from employers' interference. These three early conventions speak to representative participation or the principle of participation confirming its embeddedness in the ILO structure and previous conventions. They allude to unionization, although the word itself is not used, it is accepted that unions are workers' representative organizations in the ILO and makes it a reasonable conjecture that the MLC framework expects union involvement.

Further, the Director General's final report on the MLC (ILO, 2006c), makes references to the influence of Convention 155. Convention 155 is not sector specific but makes exceptions for the shipping industry owing to its particular characteristics. This point is important as elsewhere the ILO points out the influence of the Robens Committee self-regulatory approach on Convention 155 (ILO 2009b) and therefore underscores the link that this thesis makes between the MLC and land-based self-regulatory practices. This link also highlights one of the arguments of the thesis regarding the re-cycling of ideas and approaches rather than innovative thinking.

6.3. Rationale for Representation in the MLC

The architects of the convention were asked for the rationale for including the provision to ascertain how they envision seafarers might benefit from being given a “voice.” Similar responses as those given on the origins of the provision, served as rationalizations for its presence in the MLC. Representation was included because that was the custom of the ILO based on its tripartite structure, therefore it is required in any instrument developed by the ILO. Additionally, there were other explanations specific to answering the question “why?” This section examines the main arguments that emerged in this regard: codifying existing measures; developments in OHSM in general including risk assessment; the provision was uncontroversial and; it is beneficial to shipowners.

6.3.1. Codifying Existing Practices

It was explained that health and safety standards in the MLC were also a codification of what “good shipowners” were already doing. This explanation was given mainly by shipowners’ group members. The “good shipowner” was a recurring theme in the interviews (further explored in Chapter 9). The shipowners were instrumental in the development of the MLC and it was made clear that those involved were seeking to re-regulate the industry to address unfair competition. These shipowners could be considered as the “good shipowners” operating at the better end of the market. One respondent reported:

Well originally it was... shipowners [– unclear] that pushed forward this idea because we wanted to try to negotiate with...we were fed-up ...quite frankly of the bad shipowners giving the industry a bad name, think it’s like that all over... probably similar for airlines, you know... (KI- 4 – shipowners’ group).

Therefore, substandard shipowners who were driving global labour standards down were the targets of the MLC rather than “good shipowners.” The “good shipowners” wanted to make things better for themselves but did not wish to be subjected to additional regulations. It therefore made sense that they would wish to formalize some of their practices to bring substandard operators in line,

but which would require little change in their operations (as the findings in other chapters show). This finding is not unlike the development of the ISM Code which was also a codification of best practices of “good shipowners” (discussed in Chapter 3). A shipowners’ group member said:

...what we wanted...was really what the good shipowners, what the well established companies were doing already, which is basically what’s codified here in standard A4.3, so health and safety policies, on board programmes and the involvement of crew members...that’s not to say it was happening everywhere, but if you look at it from the point of view of, for example, a ship operator based in the European Union or flagged in the EU, there is already a pretty comprehensive body of health and safety law emanating from EU directives. (KI-5).

The EU was also reported as one of the influencers at the MLC meetings. One seafarers’ group member explained it was so the EU could monitor what was being proposed to ensure the final document was compatible with EU directives:

...the European Commission was also there advising us and also informing the European seafarers and shipowners’ groups of the necessity to make sure that nothing came into the convention would cause a problem at the European level, if we wanted Europe to embrace the convention...and don’t forget the EU would have to give the OK to member States to ratify the convention and did so. So, they got very nervous around the provisions because they didn’t want anything that conflicted with treaty obligations...there’re directives on this subject matter and so we would have been thinking about what the directives said as well. Of course that’s a sensitive issue because you can’t tell the rest of the world that they have to adopt European standards, but it’s quite possible that within the framework of these discussions in the corridors, in breakout groups, these issues would come up... what are existing ILO standards in other areas, other industries general ILO conventions and what EU directives are out there. (KI-3).

Another seafarers' group interviewee also mentioned the EU's presence as an important element in determining the text of the MLC and in this respect, its provisions for health and safety:

...the EU as well would want to make sure it was compatible with their system. The EU has its directives and requirements for risk assessment...there is the role for representatives in this... the EU system very much has worker representatives as part of health and safety. (KI-1).

The documentary records were silent on any interventions by the EU although the list of participants at the end of each meeting report showed EU presence. However, documents do not provide accounts of all the other meetings that took place. Small group meetings were held where only the results were made public. It is also expected that informal discussions formed a large part of these negotiations as a seafarers' group respondent pointed out (KI – 3). Greater involvement of the EU was recorded in two in-depth interviews with key figures, who were not available for this research (Trebilcock, 2008; 2009).

That the EU had no objections to the MLC text and directed its members to ratify the convention, is an indication of its acceptance of these provisions (EC, 2012). The MLC provisions were made into an EU directive to take effect simultaneously with the coming into force of the MLC. This is evidence of the compatibility with EU policy (EC, 2009). Directive 1999/63/EC replicates the MLC verbatim. This might also be considered as further evidence underscoring the conventional approach to representation which reproduces the *status quo*. As Chapter 2 discussed for land-based workplaces, these measures in their traditional form are not necessarily suited to an environment of fragmented (and precarious) work and what the evidence in this study has shown, is a continuous re-cycling of existing provisions for representation.

6.3.2. Risk Assessment and Changes in Approaches to OHSM

The rationale for representation in the MLC was also linked to a general trend in health and safety where the notions of OHSM and risk assessment were introduced. This explanation also, did not incorporate arguments for decent work

and the MLC as the “seafarers’ bill of rights,” rather the adoption of practices influenced by wider developments in addressing health and safety was given. A seafarers’ group member explained that these developments would have influenced notions of seafarers’ representatives. He pointed out that:

...changes took place...the idea of safety and health management systems and then as part of this...it is compulsory for employers to develop and implement safety and health procedures...he has to involve the employees...on top of that is the requirement for risk assessment...and in order to do the risk assessment you have to involve the people who are to perform those duties and the easiest way is to get the safety rep involved. (KI-1).

This explanation may be reflecting the received wisdom in theory and particular understandings and expectations for adopting risk assessment, rather than the reality of shipboard life. Risk assessment has also been a part of the OHSM practices on ships through the requirements of the ISM Code. Bailey (2006), for example, found that lack of seafarers’ input undermined effective risk management, which highlighted another dimension in which the absence of genuine participation has led to a gap between theory and practice.

The ILO has embraced the language and practices of the systems approach for risk assessment and continuous improvement with the expectation that workers are included (see for example the ILO guidelines on health and safety management systems – ILO-OSH, 2001). However, early understandings of OHSM systems saw them as commercial packages for voluntary, private self-regulation. These were management driven and unitarist in their approach to OHSM. Workers’ input was orchestrated to assist management’s goals and were direct rather than representative and autonomous. While the OHSM systems approach may require workers’ input, this was not mandated but taken as good practice (Frick et. al. 2000).

This contrasts with a systematic approach, such as the EU’s approach, which takes a more pluralist view of the workplace and mandates the involvement

of workers and/or their representatives to protect workers OHS interests. Even then, these may fall short of envisaged practice in managerialist settings (James and Walters, 2002). A systematic approach does not preclude the use of OHSM systems to achieve this goal, as the ILO for example attempts to merge the two in its ILO-OSH Management Systems Guidelines (ILO-OSH, 2001). Commentators argue that a systems approach has the potential to deliver positive OHS outcomes providing that the preconditions are present (Gunningham and Johnstone, 1999: 43-45). Another respondent from the seafarers' group pointed to the ILO's activities in this regard:

Seafarers representatives is a standard part of risk assessment. Once the requirement for risk assessment exists, it is presumed that representatives are involved. This comes from the ILO Code of Practice on Accident Prevention which is in the MLC as one of the documents to be consulted in developing policies to comply with the MLC. It has always been a part of the ITF's collective agreement to have shop stewards and a part of the ILO system as a tripartite organization. (KI-7).

Although this code of practice and other guidelines have no statutory weight, and are in essence voluntary, the architects seem to believe that they will be given "due" consideration (Chapter 5, Section 5.2.1.), as KI-4 reported: "So basically the text in the MLC is the flesh and bones and then the more substantive meaty stuff is actually in the MOSH guidelines" (KI-4). These explanations underscore the influence of wider developments in regulatory approaches on representation in the MLC. They echo performance standards approach in respect of self-regulation, where general duties are substantiated by non-binding codes which do not have statutory weight but are of "evidentiary value" to demonstrate that activities by the duty holder are comparable with those outlined in codes (Gunningham and Johnstone, 1999: 27).

6.3.3. Uncontroversial

To further understand the rationale for representation in the MLC the architects were asked about its apparent neglect during the negotiations. As has been revealed to this point, representation was not considered critical, but the notion that it was uncontroversial is noteworthy:

To tell you frankly, it was not considered to be a very, very critical area of the convention, not because it's not important, in the spirit of the ILO this is essential to improving conditions of work, on a day to day basis on board ship, if you are to improve conditions of work, it is a question of the crew finding out what's wrong to improve the situation, but It was not considered a critical area because agreement on those things was not difficult, it was not controversial. Not controversial because it is already an acquired system in the ILO that there must be worker representation. (KI-8- ILO interviewee).

A seafarers' group member also reported that the provision was unanimously accepted: "Everyone accepted the provision..." (KI-7). The main arguments emerging was that it was not controversial and given the limited time it was not discussed. It was explained that more controversial issues, such as social security, took time. As put by a shipowners' group member (KI-4), since "...nobody questioned the concept of having trade union representatives, it was a given," there was no need to discuss this matter. This is surprising given that research evidence elsewhere found representation to be political and controversial (Chapter 2). The definition and issues of the rights involved, and the existence of direct and collective representation simultaneously, and the role of representatives and the extent of their powers, are some of the complexities of representation, which seem to have eluded the architects' awareness.

Another finding supporting the analysis that representation is controversial is the confidence placed in the ISM system by the shipowners' group. The ISM approach to participation is direct, where workers individually represent their interest, rather than through representation. Yet, as one participant from the shipowners' group sees it, provisions were already in place and so there was

no need for a discussion on representation in the MLC. For this participant, the MLC was a step backward and the “good shipowners” were already operating at higher standards and therefore the “situation” (meaning the ISM arrangements) was adequate:

As far as I’m concerned there was no need. I don’t think there’s a problem with that, and therefore there was not much to be gained from a discussion. The situation we’ve got at present was deemed adequate. There was no need for improvement in this respect. (KI-9).

Yet, there was a difference with the seafarers’ group that thought the ISM was inadequate. A respondent from that group pointed out: “The ISM does not institutionalize seafarers’ representation but we [the ITF] have” (KI-7). During the development of the MLC, conflicts arose in discussing the ISM and its suitability for ensuring workers’ rights are upheld (Chapter 5, Section 5.2.2.2.). Participation as understood by the shipowners’ group, is having safety committees and consultation of seafarers as per the ISM system, that is, direct participation rather than representation.

Whether the instrument [the ISM] is being used, whether there is a committee on board is another issue, but there are provisions already in place, which allow... which actually insist on shipboard management to consult seafarers, for seafarers to have a voice, whether it works or not is another issue. But provisions are already in place (KI-9).

Consultation in situations of direct participation has emerged at several stages throughout this study with the conclusion that typically it does not work. In theory, consultation was introduced to ensure non-unionized workers had a “say” in health and safety. In practice, a unitary understanding of consultation exists where managerial top-down approaches are deemed to be consultative (Chapter 2). Others have commented on the neglect in the ISM system to include workers. Bhattacharya (2009) for example, argued that allowing seafarers to participate under the ISM system is more of a presumption based on good management practices than an institutionalized practice for including seafarers.

Where OHS committees exist, the literature shows that social conditions on board inhibit participation in committee meetings (Bhattacharya, 2012a; Bailey, 2006). Committee meetings can be dominated by the captain leaving no opportunity for seafarers to participate (Bhattacharya, 2009). Further, the ISM does not include seafarers' participation (or representation) among its functional requirements. Seafarers' representatives may have been included as part of risk assessment, but the ISM does not specifically provide for seafarers' participation or representation.

The seafarers' group in contrast, frames representation within a more pluralist understanding of industrial relations at sea and would rather have union involvement on ships. However, it appears to be a challenge to gain shipowners' commitment to representation on board. A seafarers' group member explained:

It is the ITF's view that safety reps should be preferably elected and be union reps; if not the union should be consulted. The safety reps should have the same protection as union reps and should be allowed to contact the unions concerned without fear of prosecution. (KI-1).

These findings underscore the argument that representation is controversial, particularly as a shipowners' group member explained that they would not have accepted any union-type representation. This explanation is more consistent with the expected behaviours of shipowners when the wider context of employers' attitudes to representation on OHSM is considered. The respondent reported:

...There might be a misunderstanding over the term "seafarers' representatives". Although not often expressed publicly, shipowners are very determined to avoid a situation arising on board where a crew member might appear before the Master and claim to represent the crew before making a demand i.e. a shop steward or union convenor. They will in the main accept a shore-based union official making demands on behalf of their employees - provided the employees are members of that union - but they will resist a union-type structure emerging among the crew of a ship. Shipboard Safety Representatives are not generally regarded by

employers as representatives of the crew in a union sense so their role is considered to be a practical rather than a political device. (KI-2-shipowners' group).

The documentary evidence supports this testimony in not having any record of representation being discussed, showing instead the acceptance of the provisions without objections. This study revealed that while representation might have been unanimously accepted, there are underlying issues such as a distinction between the shipowners' and seafarers' groups as to the meaning of representation. These differences might have benefitted from a discussion and perhaps resulted in a more suitable model.

Another explanation for the scant attention paid to representation during the negotiations is that the provisions do not place too much obligation on shipowners:

I am sure there was not much discussion because it was not controversial, the contents are pretty straightforward it doesn't bring a lot of obligation on shipowners as that's is why it was easily accepted. (KI-8- ILO interviewee).

On the contrary, representation has a number of statutory obligations for employers, particularly in the context of facilitating the operation of the practice (Walters and Nichols, 2007). The employer should provide resources for representatives to fulfil their roles, provide training, they have obligations to consult, give information and to listen to representatives (Chapter 2). These details are however in the guidelines and might rightly be interpreted as not placing much obligation on shipowners. Of greater concern is that this response gives cause to reflect on the intended purpose of representation in the MLC.

Representation as the architects reported, turned out to be ambiguous and is in need of clarification within the MLC framework. The findings clearly illustrate that the architects do not share a common understanding of representation and that it is controversial, contrary to their testimonies. As the provisions were not

discussed, these contradictions did not arise in the negotiations, however they are more likely to be apparent at the shipboard level (Chapter 8).

6.4. Protecting Seafarers or Shipowners?

Although it was absent from the discussions, the respondents from the seafarers' groups saw a role for representation as giving seafarers a "say" on board. When questioned further about lack of supports and the reason for including representation, a respondent from the seafarers' group thought it was logical for shipowners to want to include seafarers. It was put this way:

How would you develop on board programmes for prevention of occupational health and safety management if you didn't involve the very people whose health you were trying to improve or whose safety you were trying to improve without listening to them and the problems and experiences and giving examples of where things have gone wrong or where things have gone right. How would you do that without...it seems very obvious...if you start from the perspective that we are involved as equals in this process [i.e. the social partners], you then determine that there is a need to make sure there is continuous improvement, how would you go about that without involving seafarers? (KI-3-seafarers' group).

This respondent applied a simple rationality to a complex issue. Although the response is in keeping with perspectives in the literature on the importance of including workers, the absence of deliberate actions to ensure shipowners fulfil these obligations raises questions as to the level of understanding relative to the requirements to support representation. The participant seems to have erroneously thought that since there was cooperation at the international level then this might also be translated into cooperation at the shipboard level.

Within the literature, the rationale for worker representation might be divided into two broad themes. Representation is a protective mechanism for employees, particularly, where unions are involved, and is considered a countervailing force against management's decisions, whose interests differ from

employees in some respects (Walters and Frick, 2000; Gunningham and Johnstone, 1999: 3-6). The idea expressed by KI-3, echoes the ethical perspective in this literature which is required to balance the power relations. Additionally, workers might also be involved from a practical perspective that they have the knowledge of the day-to-day work and are best placed to advise management in a corporatist framework (Walters and Nichols, 2009). These ideas, although expressed by the respondents, fall short for representation in the MLC framework, as they lack the appropriate regulatory support. The literature shows that without deliberate orchestration and the presence of the preconditions, employers may not fulfil their legal obligations for representation and instead pursue consultation without effectively including workers (Walters and Frick, 2000; Gunningham and Johnstone, 1999).

The architects, from the shipowners' group gave explanations suggesting confidence in the "good shipowner" to willingly implement the provisions for representation. Section 6.3.1. noted that the MLC is also a codification of the practices of "good shipowners" who are attempting to address substandard shipping. It therefore stands to reason, in the thinking of the architects, that shipowners would recognize the value in seeking seafarers' input:

Yes, there was never any suggestion that ships would not have a safety committee and would not either appoint safety representatives or ask the trade unions to appoint safety representatives or have an election. The shipboard safety committee is seen as an integral part of the same management system, and it was really quite uncontroversial. (KI-5 – shipowners' group).

Another explained in terms of utilizing seafarers' knowledge:

We see that absolutely as integral because the best people to resolve a concern or understand what a concern is are the seafarers themselves. So, you need to have them involved...they can come up with the most cost effective and possible solutions...Certainly the big companies recognize that health and safety is absolutely paramount and it could be very costly

if they get it wrong, so they are changing the culture for people they are putting on board (KI-4 shipowners' group).

This explanation is consistent with the employers' perspective derived from the management literature which rationalises participation in cooperative terms to support organizational imperatives (Chapter 2). There are also echoes of the business case for health and safety in the participant's stresses that costs might be incurred if seafarers were not included:

A lot of companies have suggestion schemes, have plans, ask for innovative ways to come forward and say...introduce tool box, tool talks, because the best ideas invariably come from the people who work at the sharp end and so, if nothing else it can be cost effective for the company to be more proactive. I'm not saying it's always philanthropic but there's a bottom line advantage for companies to do it which is why a lot of them are doing it. (KI-4- shipowners' group).

The mechanisms for including seafarers under the ISM Code, are in keeping with this perspective. They are aimed at allowing seafarers to bring operational and technical safety issues to the attention of the shipowner. In the interviews, it emerged that representation might be understood from the shipowners' group's perspective in terms of protecting shipowners' interests by preventing costly incidents. This was seen as a strong motivator for shipowners to seek seafarers' input. Attempts have been made in land-based industries to motivate employers to fulfil their health and safety obligations by promoting a business case for health and safety (Cutler and James, 1996).

The business case has however been questioned as management decisions are not necessarily determined by costs (Sampson, 2016; Hart, 2010; Cutler and James, 1996). Management is also bound by the need to make short term profits and so may defer decisions on health and safety expenditures (Gunningham and Johnstone, 1999: 4-5). Additionally, workers may take risks to keep production going (Nichols, 1997; Cutler and James, 1996). Some decisions also appear to be idiosyncratic and are not explained solely by the production and profit theory, as

Cutler and James (1996) demonstrated in their analysis of the *Herald of Free Enterprise* casualty.⁴⁵

Examples of this nature underscore the argument that the business case is not a reliable basis to expect that safety and health will be addressed, and also that workers require a countervailing force to management. In the *Herald of Free Enterprise* case, although the seafarers had made recommendations to enhance safety they were dismissed, suggesting that they needed a countervailing force. This seems absent for the shipboard work environment in many instances (Xue, et. al. 2017; Walters and Bailey, 2013; Bhattacharaya, 2012a). The architects' responses were therefore, not fully consistent with the complexities of business decisions in the industry. They applied a rather narrow albeit rational view to shipowners' motivation to include seafarers, contrary to the reality.

In addition to the business case, including seafarers' in on board practices is seen as a protective strategy for shipowners:

...we've always seen safety as a reciprocal thing. If there is gonna be worries about accident prevention at sea, then you can't just say – we have another accident because of those nasty employers – you are going to say – hey your guy was on that committee as well. (KI-2- shipowners' group).

These understandings of representation are more reflective of direct participatory practices with no guarantee of consultation (as the evidence for the seafarers' experiences shows in Chapter 8). This response carries elements of responsabilization, if not blame, for workers having no authority to impact decisions. While representation, and the MLC more generally, is prominently placed as a tripartite regime, and the importance of social dialogue towards achieving decent work was espoused during the MLC development, there was an

⁴⁵ This casualty resulted from the bow door being left open causing the vessel to be flooded. The operational procedures included manual checking of the bow doors. However, seafarers' experiences suggested that a warning system that can be monitored from the bridge be installed. This was recommended to management but was dismissed because they claim it was a workplace matter as they had paid staff to see to this (Cutler and James, 1996).

absence of a follow through on ensuring a strong regulatory lead for participatory arrangements at the shipboard level.

This lack of consideration for how representation was to be made effective on ships, might be a symptom of the difficulty of obtaining shipowners' acquiescence on this matter. A seafarers' group member indicated that representation on ships is discussed at the international level when the ITF negotiates their Collective Bargaining Agreement (CBA). Article 30 of the CBA provides for safety committees on ships in a manner consistent with existing requirements for accident prevention. In respect of representation, the CBA states:

The Company acknowledges the right of the crew to elect a safety representative to the on board Safety and Health Committee. Such a representative shall be entitled to the same protections as the liaison representative as provided for in 31.5...(CBA, Article 30, para 30.3: 17).

Article 31 provides for a "liaison representative." This appears to be a case of semantics as the wording is consistent with representation:

The Company acknowledges the right of the seafarers to elect a liaison representative from among the crew who shall not be dismissed nor be subject to any disciplinary proceedings as a result of the seafarer's duties as a liaison representative unless the Union has been given adequate notice of the dismissal and the agreed Grievance procedure has been observed (CBA, Article 31, para 31.5: 17-18).

It is perhaps then a case of having to secure this "right" privately, despite challenges, rather than through the ILO's public form of regulation, in order for it to take effect on ships. However, not all shipowners have agreement with the ITF and furthermore there remain challenges even where representation is negotiated. As a seafarers' group respondent reported:

Frankly, it [representation] doesn't work, whatever is said. If it is a national flag and you have 90% national crew, it works, if you have multi-national

crew, it doesn't work. We have CBAs for 11,000 ships, and the CBAs says ok the crew has the right to elect their own representatives we have...very few cases where the crew was able to elect their own representatives...Even before the MLC and even now after the implementation of the MLC, we're having trouble to implement the idea of the election of the safety representative on board. (KI-1).

The respondent pointed out that some shipowners are resistant to representation, even though it is provided for in their collective bargaining agreement (CBA) with the ITF. He explained that some argue that representation is not practical, while "good shipowners," faced with the same challenges appoint representatives, although the ITF prefers them to be elected:

The owners say they have the problems because it is multi-national crew and they are on a temporary basis, they have 50% of the crew changing the company and they are on board for 6 months or 4 months on 4 months off, they don't know each other, they are coming from different countries, they don't get effectively trade union meetings on board... so what is happening... you have the safety committee which operates on a monthly basis....good companies they say ok, every other month or every 3 months, the safety committee will discuss safety and health issues, and then since no union meetings are taking place, no election is taking place, then you have in the procedures that the captain has the right to appoint safety representatives, so in the safety committee they have appointed already maybe the boatswain or somebody from the engine room as member of the safety committee...(KI-1 – seafarers' group).

This section highlighted perspectives on representation as reported by the architects of the MLC. It was revealed that there are different perceptions of representation divided between the employers' and employees' groups. The section underscores previous analysis of the need for a shared understanding of the meaning of representation and how it is to be operationalized. While the architects reported that the provisions were not discussed because they were

uncontroversial, the evidence suggests this was not the case. Importantly, the explanations focussed on the protection of shipowners rather than seafarers.

6.5. Conclusion

This chapter presented the findings from the interviews with the architects of the convention. It showed that there is an absence of clarity about representation. Importantly, supports were not considered for its on board implementation and practice during the MLC negotiations. The findings support the documentary analysis in Chapter 5 that representation was not discussed and added further to an understanding as to why this was not the case. Key themes arising from this chapter is the traditional approach to representation with heavy reliance on the ILO institutional tripartite structure and land-based approaches. These perpetuated the *status quo* with a lack of innovation to reflect the contemporary realities of the shipboard work environment.

The findings revealed contradictory thinking in the architects' reports as to the reason for not discussing the provisions. They claim that it was uncontroversial which was surprising as their testimonies revealed otherwise. An apparent tension between the ISM Code and the MLC emerged in these findings as it was also reported that the ISM system was adequate and therefore the MLC provisions were not needed. This is further developed in Chapter 8. Representation at this developmental level needs to be clarified as it was not defined in the MLC and a shared understanding seems to have been taken for granted but which does not exist. Finally, there were no supports provided for effective representation, relying only on the notion of the "good shipowner" and the business case.

Operationalizing Standards for Representation on Ships

The MLC, 2006, is seen by seafarers as a “charter of rights” that will help ensure “Decent Work” ...no matter where ships sail and no matter which flag they fly. Shipowners also support the MLC, 2006, as it is seen as an important new tool to help ensure a level playing field for quality shipowners that may have to compete with ships that have substandard conditions. The MLC, 2006, is also important for governments because it brings together nearly 70 international legal instruments in one comprehensive modern document that covers almost every aspect of decent work in this sector. (ILO (2009). Preface. *Guidelines for Flag State Inspections Under the Maritime Labour Convention, 2006*).

7.1. Introduction

With the aspirations outlined in the flag State inspection guidelines quoted above, this chapter examines the regulatory steer by drawing on the findings from the documentary analysis and interviews with senior administrators and operations personnel (inspectors) in the UK case study. The UK was chosen as a critical case (Yin, 2014) in order to further explore the ILO’s claims that the MLC is a firm response to the decent work deficit on ships, focussing on seafarers’ representation. The chapter is divided into two main sections. The first section presents findings on the regulatory lead as one precondition for effective representation. It examines how the MLC provisions were operationalized in UK’s laws and policies and assesses what statutory adjustments were made to comply with the MLC. The second section presents the findings on compliance and enforcement at the shipboard level and how representation is supported. No shipowner participated at this level, insights into their perspective is restricted to data obtained from the inspectors and the union official.

7.2. Operationalizing the Regulatory Lead

The UK ratified the MLC in 2013, which came into effect for the country in 2014. This section explores how the UK operationalized representation for its ships as a flag State and also what enforcement it applies to ships visiting its ports which is

also useful in exploring whether these provisions for representation are the “firm response” envisaged.

The findings reveal a high level of compatibility between the UK’s requirements for representation and those in the MLC framework. The respondents reported that this compatibility, is related to the UK being a member of the EU and having to comply with EU directives, as well as ILO conventions that the UK had ratified, and the UK’s own national requirements for OHS. Chapter 6 (Section 6.3.1) presented findings that suggest the EU was influential in ensuring the text of the MLC was consistent with its own requirements, which was later underscored by its sanctioning of the MLC as a directive. In explaining the connection with the EU’s requirements, a senior inspector said:

We were quite fortunate, because our safety regulations stem from the EU directive, so it came into force years ago, 1997, so we were well ahead of the process because what the MLC requires is not too different to what we’ve already got in place. (KI-10).

The responses of the senior policy officers also corroborate this explanation:

We have a lot in health and safety legislation. It comes from the EU and the framework directive and daughter directives on health and safety, which apply across the board in Europe. We’d already implemented those for UK ships. ...we had risk assessment requirements, and requirements for reporting and investigation of accidents, we had requirements for health and safety policy on board ships. (KI-11).

As founding members of the ILO, advanced economies in Europe have always influenced standard making at the international level (Van Daele, 2008). Commentators have argued that this continues with key decision-making positions, such as in its Governing Body, occupied by the major industrialized countries in Europe (Van Daele, 2008: 491). This argument is also important to note for further discussions on the UK’s compatibility with the MLC.

The other source of inspiration for the UK's provisions on representation as reported by the policy makers, is the ILO. It was explained that the UK would have been in compliance with the MLC requirements as it was already applying a number of ILO maritime conventions, chief of which for regulating health and safety were Conventions 134, 147, 178 and 180. Figure 7.1 briefly describes these instruments.

Figure 7.1: ILO Maritime OHS Conventions Influencing UK's Compliance Regime

<p>Convention 134 - Prevention of Accidents (Seafarers) Convention, 1970. Entry into force, 17 February, 1973. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C134</p>	<p>Makes general references for a person to be appointed, or a committee, who is responsible for accident prevention. Establishment of OHS programmes should be done in cooperation with the social partners and that such programmes should be organized so that they can play an active part. Also provides for training in OHS and sharing of information on hazards. (Articles 7 to 9).</p>
<p>Convention 147 - Merchant Shipping (Minimum Standards) Convention, 1976. Entry into force 28 November, 1981. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C147</p>	<p>Speaks to ratifying States having laws for safety standards, social security, living and working conditions on board. Also, agreement between shipowners' and seafarers' organizations to adhere to provisions for freedom of association and collective bargaining, for mechanisms to address seafarers' complaints both on foreign ships and flag-ships. Minimal provisions for port State inspection of working and living conditions.</p>
<p>Convention 178 - Labour Inspection (Seafarers) Convention, 1996. Entry into force 22 April, 2000. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C178</p>	<p>Provides for flag State inspection of working and living conditions. For the appointment of inspectors with requisite qualifications and statutory support to board and inspect ships and require deficiencies to be remedied. Article 9 has requirements for inspection reports to be sent to the ship's master and a copy posted on the ship's notice board for the attention of the seafarers or be sent to their representatives.</p>
<p>Convention 180 - Seafarers' Hours of Work and the Manning of Ships Convention, 1996. Entry into force 08 August, 2002. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C180</p>	<p>Sets conditions for maximum hours of work and minimum hours or rest and how these <i>shall</i> be managed.</p>

Source: Author – compiled from the respective ILO websites

In Chapter 6 (6.2.1.) it emerged that the proposal to consolidate previous conventions was initially resisted by the ILO. One reason for this resistance was to prevent the lowering of standards as some States were already applying these

individual conventions. The UK however, maintained those standards, which meant the country was already in compliance with the ILO health and safety provisions, including requirements for representation. Other researchers have noted in cross-national comparisons of inspection regimes that the UK was the most consistent in inspecting living and working conditions (eg. Bloor et. al. 2005). Convention 134 in particular, covers accident prevention and has requirements for safety representatives, or safety committees. As the senior inspector noted:

Convention 134 was subsumed into the MLC. A lot of Convention 134 that is not that old would be repeated verbatim in here [in the MLC] and updated slightly. I will give you another example, Convention 180 would get the same in the MLC, the whole text of 180 is in here, and that would've been covered by convention 147 for foreign ships and 178 for UK ships. (KI-10).

In addition to the ILO's influence, interviewees further identified the UK's own developments in influencing provisions for OHSM on ships.

...we already had requirements for health and safety guidelines to be provided for ships. We had the Code of Safe Working Practices for Merchant Seamen which had been around since about the 1970s and updated regularly, so that was already in place, so we broadly comply, it was just a question of bringing the legislation fully in line. (KI-11: senior policy officer).

This interviewee explained that these requirements were stimulated by the requirements for health and safety in UK's land-based industries:

The land-based HSW 1974 Act covers shore-based regulations and the HSE⁴⁶, the other government body, they implement legislation for shore-based industries under the act... so maritime and coastguard agency and

⁴⁶ Health and Safety Executive (HSE), is the land-based agency for policy making and enforcement of health and safety regulations in land-based enterprises in Great Britain. Northern Ireland has its own agency that carries out the same functions. However, the maritime administration (UK Marine and Coast Guard Agency [UKMCA]) covers the entire UK, as explained by a senior policy officer (KI – 11).

its predecessors have basically implemented parallel legislation for shipping. (KI-11).

This view was also supported by the senior inspector who indicated that:

It was agreed with the Health and Safety Executive that their work would stop at the gangway, and our work would start at the gangway...so the wording of the regulations, the scope of the regulations is very similar between the two, so you can draw direct parallels between what you have to do ashore and what you do at sea (KI-10).

The application of land-based requirements to situations at sea is somewhat of a concern. Although parallels exist in terms of how globalization has affected other workplaces and there are suggestions that seafarers could benefit from practices such as representation (eg. Walters, 2005), it is also recognized that shipping has its own idiosyncrasies. This recognition is emphasized in the preamble to the MLC (2006: 1): “given the global nature of the shipping industry, seafarers need special protection....” The evidence did not show, from the UK’s case, where special arrangements or adjustments were made to ensure the viability of these land-based provisions in the shipping context.

The respondents’ accounts corroborated each other on the UK’s preparations to comply with the requirements of the MLC and influences on the UK’s statutory provisions for representation. Further, these accounts for the origins and rationale for representation in the MLC as understood by those at the UK level, echo those explanations at the developmental level. The UK’s laws and policies already satisfied the MLC requirements and only minor adjustments were made to its regulations in order to give effect to the MLC framework for representation (and OHS requirements in general). As the interviewees revealed, adjustments were made in the UK’s regulations and policy to:

- Reflect the widened definition of a seafarer to include non-technical maritime crew;
- Adjust the wording to reflect the requirements for safety committees. The UK regulations previously provided for the establishment of a safety

committee on a ship with “more than 5” seafarers. The MLC requires a committee to be established where there are “5 or more” seafarers;

- Include regulations for reporting occupational diseases as previously there were regulations only to report accidents.

These points reflect the extent to which the MLC provisions impacted on health and safety arrangements and representation for seafarers in the UK. This is hardly surprising when one learned that the UK was heavily involved in the development of the MLC as a member country, and subsequently in the drafting of flag and port State guidelines and the development of the MLC health and safety guidelines. The interviewees’ accounts told a story of “business as usual” and a smooth transition for ships on the UK flag and also in its PSC regime.

7.2.1. The UK’s Regulatory Steer for Representation on Ships

The UK has documented its regulatory steer for OHSM and seafarers’ representation in the Code of Safety Working Practices for Merchant Seamen (COSWP). According to a senior inspector, this is the “Bible” for health and safety practices on UK ships, which is also used by other flag States:

...we’ve always had this on UK merchant ships... so this is the Bible for practices on board that we insist that UK flag ships always have this...most ships in the world will have a copy of this safe working practices, whether they are UK ships or not. This has become the sort of international Bible of how you should operate safety on board ships... (KI-13).

The COSWP is a little over 500-pages long and gives details of how to implement and manage health and safety on ships. It is regarded among the most important codes in the maritime industry.⁴⁷ Respondents indicated that it was developed in the 1970s and periodically revised with the latest revision at the time of the interviews being 2015. The Code was next revised in 2017, but with no

⁴⁷ See for example a blog by a deck officer, Shilavadra Bhattacharjee (2017) who considers the COSWP among 23 important maritime codes used in the shipping industry. None of these include any ILO codes. Marine Insight website: <https://www.marineinsight.com/maritime-law/21-important-codes-used-in-the-shipping-industry/>

changes to the section on representation. The UK system requires that copies are made available on all its ships and accessible to all crew members. The document covers a wide range of subject matter from the social to the highly technical. The COSWP speaks specifically to safety but is intended as a “health and safety” code. This underscores the observations by others that seafarers’ health is somewhat given less attention than safety as they critique the industry’s heavy focus on technical and operational safety (eg. Bloor et. al. 2005; Nielsen and Panayides, 2005).

Although codes of practice are usually voluntary, the UK gives the COSWP legal status by referencing it in the UK regulations (The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997; Part I, Section 2, paragraph 2) and cross-referenced with respective parts of these regulations (demonstrated in Figure 7.2 below). As a senior inspector explained: “...for these regulations... the Code means the Code of Safe Working Practices, so the regulations say you must comply with the Code, so that’s how they bring it into force.” (KI-13).

Safety representatives are listed among safety officials in Chapter 13 of the COSWP. It contains broad statements requiring full cooperation of all those concerned in creating and maintaining a safe working environment:

As described in Chapter 1, Managing occupational health and safety, the development of a positive ‘safety culture’ and the achievement of high standards of safety depend on good organisation and the whole-hearted support of management and all seafarers. Those with specific safety responsibilities are more likely to perform well when management is clearly committed to health and safety. It is also important that procedures are in place so that all seafarers can cooperate and participate in establishing and maintaining safe working conditions and practices. (COSWP; 13.1.3: 149).

This is a clear statement in the UK’s regulatory steer acknowledging the importance of management commitment to an effective participatory system.

Figure 7.2 presents the general guidance in the COSWP for management to engage with representatives. The corresponding regulations which give them effect, are shown above each paragraph (COSWP: 13.2.4-13.2.7).

Figure 7.2: Provisions for Representation as written in the UK's COSWP

<p><i>Reg. 19(1)</i></p> <p>13.2.4 The employer is required to consult workers or their elected representatives on health and safety matters, in particular: arrangements for the appointment of a competent person; the findings of the risk assessment; arrangements for health and safety training; and the introduction of new technology.</p> <p><i>Reg. 20(1)</i></p> <p>The matters to be discussed might also include the selection of work equipment and/or protective clothing and equipment, installation of safety signs, follow-up to accidents and other incidents, and arrangements for health surveillance.</p> <p>13.2.5 Seafarers and other workers on board or their elected representatives must be allowed to make representations to the Company or their employer about health and safety matters without disadvantage to themselves. Such representations should be given adequate consideration, perhaps in conjunction with the safety committee, and any agreed measures to improve safety implemented as soon as reasonably practicable.</p> <p>13.2.6 It is also the Company's and the employer's responsibility to ensure that workers or their elected representatives have access to relevant information and advice about health and safety matters from inspection agencies and health and safety authorities and, from their own records, about accidents, serious injuries and dangerous occurrences.</p> <p><i>Reg. 20(3)</i></p> <p>13.2.7 The Company and the employer must give elected representatives adequate time off normal duties, without loss of pay, to enable them to exercise their rights and carry out their function effectively. Safety representatives must not suffer any disadvantage for undertaking this function.</p>
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Source: UK Government Website⁴⁸

⁴⁸Gov.UK <https://www.gov.uk/government/publications/code-of-safe-working-practices-for-merchant-seafarers-coswp>.

Employers' duties include consultation with workers or their representatives. The code outlines the matters on which seafarers' representatives should be consulted such as the purchasing of equipment. Employers also have a duty to facilitate the functioning of representation, by making arrangements for the election of representatives: "On every ship on which five or more seafarers are working, the Company must make arrangements for the election of safety representatives..." (COSWP: 13.3.3.1). This section goes on to say the company should make rules for such elections in consultation with the seafarers' organization and consideration should be given to the number of seafarers on the ship, the departments or working groups so that there is effective representation on board. Section 13.3.8 speaks to effective two-way communication between the company and representatives and the need to keep them informed of developments on matters which they have brought to the company's attention. While these provisions are similar to the MLC framework, these have been given statutory weight by the UK, unlike the MLC provisions that are in non-mandatory guidelines.

On closer examination however, the UK's system presents some inconsistency. Although it outlines details for election of representatives, that section ends by saying the master "must record the election or appointment of every safety representative in writing..." (COSWP: 13.3.3.4). This wording suggests that representatives may be elected or appointed, but the text of the COSWP is not clear as it combines both. There are no details as to how the appointment should take place and under what conditions. Elected representatives cannot be terminated by the employer, the company or the master and the COSWP indicates that where changes take place on board, the master must remind seafarers of their rights to elect new representatives. However, in the event of an appointed representative, it is not clear for example, who should appoint these and whether they can be terminated by the employer. This is a point needing clarification considering the inspectors reported that most of the representatives are appointed by the shipowner.

Further, the major role is that of the safety officer. A distinction is made between the “responsibilities” of the safety officer and the “powers” of the representative. The safety officer is responsible for safety practices on board. This person has to maintain a relationship with the safety committee and the safety representative. They carry out risk assessment, keep all parties informed, and ensure seafarers are knowledgeable in the ships’ safety policy and practices. The safety officer also “...has a duty to stop dangerous work in progress...” (COSWP: 13.4.6) and should encourage other seafarers to stop work that they believe could cause an accident (COSWP: 13.4.6.3).

In some land-based jurisdictions, such as Australia (Johnstone, 2009: 43) and Spain (Garcia et. al. 2009: 87), representatives are given statutory rights to stop dangerous work. Commentators are of the opinion that the right to stop dangerous work is as much an actual empowerment tool, as well as a symbolic one, and serves to strengthen representatives’ position (eg. Walters, 2006). The MLC framework has references in its guidelines to seafarers removing themselves from dangerous situations. The COPAP (para 2.5.2: 8), says “seafarers should have the right to remove themselves from dangerous situations or operations when they have good reason to believe that there is an imminent and serious danger to their safety and health.” Section 4.4 of the MOSH (2014: 37) guidelines, repeats verbatim, this text in the COPAP. As guidelines, these documents do not have any statutory weight. Refusing dangerous work is an important workers’ right under international labour law (Hilgert, 2013) and it was surprising that the subject was not raised for the MLC despite claims of updating the provisions and innovation.

In contrast to the safety officers’ role, the text of the COSWP: Section 13.5, on powers of safety representatives, is curiously worded:

13.5.1 Unlike the safety officer, the safety representative has ***powers not duties***, although membership of the safety committee imposes certain obligations. [Emphasis added].

13.5.2 Safety representatives may, with the agreement of the safety officer, participate in investigations and inspections carried out by the

safety officer or, after notifying the master or a nominated deputy, may carry out their own investigation or inspection.

13.5.3 They may also make representations to the Company or the relevant employer on potential hazards and dangerous occurrences, and to the master, Company or employer on general health and safety matters, such as the findings of the risk assessment, health and safety training, and the introduction of new technology.

13.5.4 They may request, through the safety committee, that the safety officer undertakes an investigation and reports back to them, and may inspect any of the records the safety officer is required to keep under the regulations. They should ensure that they see all incident reports submitted to the MAIB under the accident reporting regulations (see section 13.3.8.4).

This text suggests that these activities are left to the discretion of the representatives, who *may*, or as implied, *may not* exercise these powers. Although “powers” may suggest a stronger position, an absence of specific duties and support in a precarious and hierarchical working context such as the shipboard environment, might be less empowering as the representative might be wary of exercising powers in ambiguous situations.

The COSWP was developed in the spirit of tripartism led by UK policy makers and included seafarers’ and shipowners’ groups. The interviewees who are currently responsible for administering and updating the Code were also involved in aspects of the MLC process as advisers on national committees and/or at the international level where the various guidelines were developed to support the MLC provisions, including the MOSH guidelines. The COSWP is an articulation of the model of representation envisaged by the UK, which is also similar to the MLC. As the senior inspector explained:

The Code of Safe Working Practices for Merchant Seamen, COSWP...that’s the basis really of what we expect to happen on board a ship, that’s what we want them to adhere to. That was also used as a guide for the ILO MLC

health and safety guidelines, we were happy for them ...those developing the MOSH... to refer to them...the COSWP guidelines. The idea of COSWP...it is a practical guide to the seafarer and every ship has to carry one, and that sets out the roles of safety officers, the roles of safety representatives and what's expected and what training they need, so in many ways that was already in place for the UK. (KI-10).

These findings support previous analysis (in Chapter 6) of the perpetuation of the *status quo* in setting the standards for representation on ships. The customary practices for representation were re-cycled from one document to another without apparent thought for their relevance or of the supports required to make them effective. As it was found that the UK's and wider EU and ILO practices were used as guidelines for the MLC framework, it became clear that the MLC provisions had no new or innovative standards for representation that could stimulate changes in how representation is approached at the UK level and subsequently on ships.

7.3. Implementing and Enforcing the Standards for Representation

This section furthers the analysis as to the strength and viability of the MLC provisions on representation by examining the findings relating to its implementation and enforcement on ships. Countries that ratify the MLC, in their roles as flag and/or port States,⁴⁹ are required to have arrangements in place to ensure the requirements of the MLC are applied to ships on their registry and/or those calling at their ports. The common practice in the maritime industry is to have a maritime administration with an inspectorate to implement and enforce the obligations the convention places on the State. This form of horizontal governance is the source of some of the criticisms levied against the ILO's governance regime as countries may not have the will and/or the capacity to implement standards (Thomas, 2018; Biffi and Isaac, 2002).

⁴⁹ Not all flag States are port States, eg. Bolivia and Mongolia, 2 land-locked countries also have international ship registers.

A part of the MLC which is considered innovative for an ILO convention, is the requirement for the certification of compliance measures (Charbonneau and Chaumette, 2010; Bolle, 2006). The compliance system requires the completion of a Declaration of Maritime Labour Compliance (DMLC) Parts I and II. Part I refers to the responsibility of the competent authority⁵⁰ within the State. The DMLC Part I (MLC, Appendix A5-II: 95-97), is to be completed by the competent authority outlining the national requirements giving effect to each of the subject matter as per the following list (MLC, Appendix A5-I: 91):

- Minimum age
- Medical certification
- Qualifications of seafarers
- Seafarers' employment agreements
- Use of any licensed or certified or regulated private recruitment and placement services
- Hours of work or rest
- Manning levels for the ship
- Accommodation
- On-board recreational facilities
- Food and catering
- Health and safety and accident prevention
- On-board medical care
- On-board complaint procedures
- Payment of wages

In the DMLC Part II, the shipowner is required to indicate measures adopted to comply with each of the items listed in the DMLC Part I (MLC Appendix A5-II: 98-99). After inspection, the competent authority issues a Maritime Labour Certificate (MLC, Appendix A5-II: 92-94), indicating that the ship has been

⁵⁰ The competent authority is defined in the MLC as the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned. (MLC 2006: 2).

inspected and the measures the shipowner have indicated comply with the national requirements for giving effect to the MLC. These documents are to be kept on board and inspected during subsequent flag and port State inspections.

These documents have a 5-year validity. Flag State inspections occur at the initial stage to verify the measures adopted by the shipowner prior to issuing the certificate. An interim inspection takes place half-way through the validity period to ensure the standards are being maintained, and then a renewal inspection for re-issuing of the certificate. There are other circumstances requiring inspections such as, change of registry, change of owner or modifications to the ship. Port State control inspections take place depending on the policy of the inspectorate and their obligations under the port State control memorandum of understanding area in which they are located.⁵¹

7.3.1. Inspecting for Representation

The findings in Chapter 5 indicated that there was agreement among the architects of the MLC that compliance and enforcement were important for an effective convention. Compliance and enforcement are the purview of national administrations or the organization identified as the competent authority. An inspection regime is an important precondition for effective representation (Walters and Nichols, 2007). Health and safety is one of the key areas to be inspected in the MLC regime. In the UK, arrangements for representation are inspected as it falls under health and safety. As the senior inspector reported: “health and safety is one of the 14 items listed in the annex to health and safety

⁵¹These are regional agreements on the inspection of foreign ships entering the ports of countries in particular geographic regions that have signed to be a part of such agreements, for example the Paris Memorandum of Understanding on Port State Control (Paris MOU on PSC), for western Europe in particular or the Caribbean MOU on PSC. Countries agree to inspect 25% of ships calling at their ports and to maintain a database of these inspections and cooperate towards eliminating substandard ships from their region. Individual countries use this database to determine which ship to target for PSC so as not to duplicate efforts and also to identify high risk ships. (<https://www.marineinsight.com/maritime-law/what-lead-to-the-formation-of-paris-memorandum-of-understanding-mou-in-the-shipping-industry/>).

and accident prevention, so we have to inspect it [representation], it is a mandatory item” (KI-10). He further explained:

The idea of the DMLC Part II is thatso we have an input and an output, and the process in the middle. The input is the MLC, the mandatory part of the MLC, the DMLC Part II transforms that into practical application, so it says that you must have a safety committee...with X number of members, the captain will chair it, and have representatives from each department of the ship, you will meet once a month and minutes will be provided. (KI-10).

Such details are to be found in guidelines in the MLC framework and appear to be a re-cycling of existing approaches in the UK and elsewhere.

In inspecting for the functioning of the OHS committee, inspectors verify that a committee is established with the required positions of a safety officer, seafarers’ representative and the captain as the chair. Inspecting for compliance entails looking at documentation, walking around the ship and speaking with seafarers. This is more feasible when inspecting ships registered in the UK.

Inspections are normally conducted with the master or his/her representative, who is normally the safety officer. Comparable studies on inspections are limited but Hutter (1993), for example, in examining inspection practices in land-based industries in the UK, noted similar behaviours in the inspection of workplaces. Less emphasis is placed on the representatives and inspectors tend to focus on the manager or his/her representative (this is elaborated on in section 7.3.2). In their study shadowing PSC inspectors, Bloor et. al. (2005) observed a similar pattern of checking documentation and walking around the ship.

Inspectors in this study explained several approaches to inspections due to the nature of shipping. A distinction was made with inspecting large ships and small ships. For example, the senior inspector noted that:

So the way I did that when I was doing the cruise ships, they got a large safety committee...is we got them all together, all the health and safety committee members without senior officers, so the Master is out and the Chief is out, so you have junior officers and ratings and we went through...what problems have you got...Talking to seafarers is quite a big part of this. If you look at the minutes you will see where the action has been closed out and check how effective the committee is on the minutes, any outstanding items they've got how much has gone to the office ashore and what the responses are. The minutes of the health and safety committee will also review any accidents, so the accident reports and investigations...whether they changed the practices and did training. So there is a lot of documentation you can look at which confirms that the actual MLC requirements is being adhered to or implemented. But underpinning all that is talking to the seafarers. (KI-10).

For smaller ships, while there are specific criteria against which the inspections are conducted, the inspectors indicated that more discretion is involved. As such, there might be deviations in application of the regulations that are accommodated during an inspection:

It varies from company to company. The tendency is if you go to a smaller ship, let's say you got a crew of 7 or 8 the safety committee usually consists of everyone, and 9 times out of 10 they talk about health and safety anyway in conversations, because it is so close-knit, you don't necessarily need a meeting to discuss health and safety and in some ways it works better that way. But also smaller ships tend to be a lot more informal so the practices that go on might not necessarily be as good as they should be because people tend to cut corners. (KI-10 – senior inspector).

Small ships tend to have all crew as representatives, and therefore the policy of electing or appointing a representative is not strictly adhered to: "A lot of ships hold safety meetings with all crew, so the representative role does not work well. With larger crews it does." (KI-10 – senior inspector). These responses

reveal that there is a culture of dealing with smaller vessels and some assumptions are made particularly in flag State inspections:

We assume they have safety meetings...they have minutes so we still have that documentation...but the actual everyday practices, may not be as rigid as you would find on a larger ship, because it is not that level of discipline...so there's more likely to be accidents on smaller ships, and statistics prove that. (KI-10 – senior inspector).

In respect of PSC, inspections appear to offer less of a certainty that health and safety committees are functioning. From the inspectors' experiences there are differences in how flag States exercise jurisdictions over their ships:

The effectiveness of the convention is dependent very much on how dynamic the flag State is. Now we don't delegate⁵² flag State inspections we do them ourselves...if you take other countries, the one that comes to mind is the one that the canal goes through it connecting the Caribbean and the Pacific, they're not dynamic at all and they delegate everything to classification societies...they don't take complaints. We've had a lot of complaints related to their ships in the UK...so if you look at safety committees, it could be perceived that they are likely to be less effective on ships where the flag State does not take any interest, than where a flag State does take an interest because we're monitoring what they are doing. (KI-10 – senior inspector).

Bloor et. al. (2005) discovered such differences in their study of inspection regimes. They refer to the "regulatory character" of flag States and how this affects approaches to PSC. It is not solely the "regulatory character" of the flag States however, as practices in the maritime industry also influence how ships are inspected. Although the MLC requires similar topics to be inspected in PSC inspections as for flag State, inspectors have less authority to deviate from

⁵²The compliance and enforcement regime developed for the MLC allow States to delegate flag State inspections to recognized organizations, although this does not take away the responsibility of the flag State.

checking documentation when undertaking PSC inspections. In explaining how the system works, the senior inspector said:

The guidelines for PSC are clear. Unless there are clear grounds then we only do an initial inspection. We check paperwork and walk through. If we have clear grounds we will do more detailed inspections in the area we found but to the limit of the requirements of MLC. In UK then if we found problems in MLC we would apply no more favourable treatment⁵³ than what we expect on UK ships. The application of MLC should universally be the same. However we see that other flags may not be as rigorous as we are in application. (KI-10).

For PSC, documents are use as *prima facie* evidence for compliance and unless clear grounds exist, inspectors do not necessarily conduct a more detailed inspection. Documents are sometimes falsified on ships (Bloor et. al., 2005: 19-20). The inspectors interviewed indicated that the walk-through is an important addition, although it may (or may not) give clues as to the working conditions on the ship as sometimes the documentation is not a true reflection of the status of the ship. One inspector noted that:

...so you would have to walk around the ship and see...you know...trip hazards...in some ways you have to go for the obvious...the obvious ones would be, let's say you go to the galley, the galley is dirty, you go to the store room you find no vegetables, you start asking the crew when did you have your last fire drill, safety drill, you find walkways obstructed...the obvious, what you can see. It is very difficult to go to the soft parts, the human factors part...the issue of people wishing to talk so you have to go for the obvious... cause what you don't want to do is by your actions make the life of the crew worse. (KI-13).

⁵³The “no more favourable treatment” clause was introduced in the MLC compliance and enforcement mechanism to ensure the standards are uniformity applied across countries. As the governance regime relies on State regulations, the architects deemed it necessary to insert this clause to ensure ships are not inspected against different criteria.

When conducting flag State inspections, speaking to seafarers is an important element of this walk through. However, speaking to seafarers has its challenges, as discussed in the next section.

7.3.2. Relationship Between Inspectors and Representatives

The MLC inspection regime makes some general provisions for linking representation with inspections where inspection reports are to be sent to the master and a copy *shall* be placed on the ship's notice board for the attention of seafarers *or* be sent to their representatives upon request (MLC, Standard A5.1.4. para 12: 81). This provision was previously in Convention 178. With the introduction of the DMLC and the Maritime Labour Certificate, provisions were also included in the MLC for copies of these to be placed on the ship's notice board for the attention of seafarers, and made available to inspectors, seafarers' representatives and other relevant organizations (MLC, Standard A5.1.3. para 12: 78). Additionally, inspections and verifications carried out subsequent to issuing the Maritime Labour Certificate and any significant deficiencies found *shall* be recorded and copies made available to seafarers, flag State inspectors and other relevant persons/organizations, including shipowners' and seafarers' representatives (MLC, Standard A5.1.3. para 11: 78).

The UK also has requirements for a relationship between inspectors and seafarers or their representatives. Although the COSWP does not have this provision (perhaps as it is mainly targeted at seafarers), Merchant Shipping Notice (MSN) 1848 (2017: 4)⁵⁴ indicates that inspectors should send reports of their inspections to the ship's master and a copy is to be posted on the notice board for seafarers' information, and a copy may also be sent to the seafarers' organization. However, the reciprocal provisions are not in place for seafarers or their representatives to interact with inspectors as in some land-based provisions, where representatives may accompany inspectors during inspections or where representatives have the right to contact the inspectorate (Hutter, 1993). Such

⁵⁴ MSNs are official notices sent out by the UK to advise the shipping industry as to how the UK inspects for maritime compliance.

contact with external authorities has been individualized through the MLC complaints mechanism.

Details of the role of representatives are found in the non-mandatory guidelines and ILO Codes. These are limited provisions for representatives' roles, particularly when compared to some land-based provisions (Chapter 5). Much of the duties that would be assigned to representatives in land-based enterprises, have mostly been assigned to the safety officer and some to a lesser extent to the OHS committee in the MLC framework. In the UK's COSWP, these duties are assigned mostly to the safety officer (Section 7.2.1).

In practice, the inspectors interviewed reported that the written report is sent to the master of the ship, via the owner, and a copy is to be posted in the crew area, however there is no way to verify that this is done. In terms of engaging with representatives, there is no systematic practice. Furthermore, as the inspectors repeatedly pointed out, on smaller vessels, this is more difficult as each member of the crew is considered to be a representative, so the system does not work well. Without any relationship with a crew representative, inspectors explained that during inspections, members of the crew are questioned when they are encountered. However, this is challenging as they find problems with seafarers being willing to speak:

We tend to find that very few seafarers will speak out directly to us. It will normally come through another route. In 100% of cases it is always about wages and repatriation not health and safety. Naturally if it is UK seafarers there is a more open conversation as they know our organisation is honest and fair. To foreign seafarers we may be considered Police-like and best not say anything... In Eastern Europe you don't say anything against the State. So you go on board the ship and say "what's the food like on here?" "Oh it's great, great." When as a matter of fact it's rubbish. Unfortunately the industry is small and no one wants to stand out of line for fear of recrimination. So as inspectors we need to be careful about how we approach these matters to avoid targeting individuals. (KI-10 – senior inspector).

The work environment, particularly on small ships, does not allow for seafarers to be privately approached. This experience refers to both foreign ships in UK waters and on UK-registered ships. Issues of seafarers' precariousness that inhibit "speaking" out become relevant in efforts at enforcing standards. Others have found that some inspectors are careful in how they gather information from seafarers so that they are not compromised, while seafarers who wish to bring situations to the attention of inspectors are also wary (eg. Bloor et. al. 2005). In this study, the inspectors' reports corroborate each other on some seafarers' reluctance to engage with State officials. As one explained, "I could just leave a ship and they say everything is great and then the welfare centre phones me up to say something is wrong" (KI-13). He continued:

Well, they're afraid of us you know. I suppose they just see us as police you know, and I suppose they're quite afraid of being victimized. No matter how they tell us everything is ok...they're just afraid of stepping out you know so we will hear about it in a reverse way...(KI-13).

The inspectors noted that there was more openness with British nationals on UK ships, and explained that culture may account for differences in seafarers' willingness to speak:

...culture yes is an issue. I think for example, if we were on a ferry, you know a local ferry, and if it was a total UK crew, we guarantee we would have quite a number of people who would be quite engaging with us about safety and issues, because there is a culture of openness on board, you know the UK society, that's maybe not there in other societies...I suppose there is a clashing of cultures...not clashing, I think there is some subservience between cultures on multinational crew ships (KI-13).

Nevertheless, there are instances where British nationals are also reluctant to speak, as seen from this account by the union official:

So there is a mix, some seafarers you will find out are not afraid to speak their minds, but a lot of them are cautious just in terms of being noticed as a trouble maker. Particularly among our young members we have young

cadets who would be afraid as their career is starting they would be afraid to cause any trouble and junior officers climbing their way up, the more senior you are the more likely you are to raise an issue directly with the company. (KI-15).

This finding is not unlike discussions in Chapter 3 (Section 3.2) where those lower in rank are less likely to get involved, although they may be more vulnerable to health and safety risks due to their social positions on board (Bhattacharya, 2012a; Kahveci and Nichols, 2006). Workers' social, material and personal resources are important determinants of their level of vulnerability to work stressors and therefore their health (Scott-Marshall, 2010: 316-319). The traditional hierarchical structure is an important factor influencing work relations on board ships and seafarers' willingness to lodge a complaint. The senior inspector noted:

...there is still the perception that the master is God and we've had issues with complaints, a lot of seafarers don't complain even though there are provisions within the MLC for complaints, they are frightened to complain because the repercussions that may occur, and there is evidence to suggest that's happening. (KI-10).

This is a factor recognized in the industry and one example was given of how a particular UK company sought to address the issue to mitigate the master's influence on the crew's willingness to participate in OHS meetings:

One company we go with believe the captain shouldn't be the chairman of the safety committee because the captain is the leader, so if the leader sat in the room will anybody challenge the leader? So a lot of the captains...the captain sometimes is almost like a dictator on board, so if the captain is there nobody is going to speak up because the captain enforces the policy so when the captain is present...there is no free speech. (KI-13).

Under the UK system, this was a deviation from the policy where the captain is to chair the OHS committee meetings. This deviation is considered a non-conformity in the language of inspection. It is particularly associated with

audit systems to indicate where practices deviate from procedures. In this example, the shipowners' deviation from the UK's policy for constituting the safety committee was recorded as a non-conformity, but as was explained, an exemption was later granted for the company to modify the requirements in this way. This example might have been an opportunity for the policy makers to revisit the regulations in recognition that the theory and practice may not align. At this level, the research finds more perpetuation of customary practices rather than active engagement for continuous improvement with how representation might be crafted to benefit the shipboard work environment.

7.3.3. Selecting Representatives: Appointment versus Election

The MLC and UK systems allow for the election or appointment of representatives. From the inspectors' experiences, it appears challenging on merchant ships with few crew members to elect representatives. Participants explained that on cruise ships with many departments and a more structured system, workers elect their representatives. On merchant ships, it is more likely that representatives are appointed. An inspector explained that:

...what should happen is that they should elect the safety representatives, what tends to happen is..., in multinational crew..., for example, yesterday...here we got minutes of the meeting, on the last ship inspected yesterday, right, this ship...this is the minutes of the safety committee, so there was only a crew of 15, so what happens on a ship is nobody wants to be the safety rep...it tends to be that what we see is that unless people are told to go to these meetings, they don't go, so in theory, they are to elect a safety rep and it tends in practice to be the case of who would like to be the safety rep...so on this ship there are 15 crew members, so the whole crew attends. (KI13).

During the interviews, the architects also reveal some awareness of seafarers' lack of willingness to participate. This awareness was not reflected in the meeting discussions at the time of the negotiations to suggest that the provisions for representation might be problematic. One of the architects from

the shipowners' group thought that refusals to participate should be considered as a disciplinary matter (KI-2). Such a perception lacks understanding of the factors that determine participation which might explain why seafarers do not wish to be representatives or participate in general (eg. Bhattacharya, 2012a). The most common practice therefore, also substantiated by the seafarers' experiences (Chapter 8), is to consider everyone a member of the safety committee.

Other means by which representatives are selected is by job description (discussed further in Chapter 8). This method was not an option in any of the policy documents or regulations. As the senior inspector explained:

The representatives are supposed to be elected, 9 times out of 10 that doesn't happen. It goes with the job, if you are the second mate you are the deck officer representative on the safety committee. If you are the second cook, you are the catering representative. So the elections do not really happen, that's your job. (KI-10 – senior inspector).

Selecting representatives based on their job descriptions is also problematic for ensuring the type of representation envisaged in the MLC. This practice is experienced for both UK-flagged ships and others inspected in UK waters. In consideration of the findings so far, the likelihood is greater that representation in situations where representatives are appointed based on job functions, might serve the shipowners' interests rather than seafarers.' A management appointed representative is perhaps more consistent with management initiatives to "involve" workers (Lansbury and Wailes, 2008), particularly when associated with job description. This might also create confusion among seafarers, as Chapter 8 will further show.

7.4. Union Involvement On Board

The thesis findings have established that the MLC is set within the tripartite governance structure of the ILO where all its measures to address decent work should be developed through social dialogue. The provisions for representation have been established with the same philosophy of social dialogue where

shipowners *shall* involve seafarers, or their representatives in on board practices to safeguard seafarers' health and safety. Likewise, the UK takes a tripartite approach to developing its maritime policies consistent with ILO requirements. The UK also has a national bipartite committee of shipowners' and seafarers' representatives, to which senior government policy makers are invited although they do not contribute to decision-making. However, the inspectors' experiences show that representation as envisaged in theory is disconnected from the practices on board. Workplace democracy is not typically a feature on ships. Consistent with the theory for effective representation, the thesis asserts that an absence of unions on ships, is an important aspect of the disconnect.

The findings in this study showed that union officials are faced with several difficulties in penetrating the shipboard work environment. "They're far away and we rarely get to visit them" (KI-15) is a lament by the senior union official interviewed. Changes in the nature of shipping has undermined union involvement at the shipboard level for countries such as the UK (Walters and Bailey, 2013). Where there remains some union involvement, the difficulties are limited engagement with members due to the remoteness of shipping, lack of recognition by shipowners and the fragmentation of members across ships and flag States. There was some influence in the cruise sector, where unions have recognition by shipowners, but for the most part, the social dialogue espoused in the meeting documents and in the MLC framework seems to end at the national policy level in the UK.

Where unions are recognised by a shipowner and have members on board particular ships, there is the possibility of having union members as representatives. Additionally, some shipowners are amenable to unions assisting in organizing the participatory systems on ships. However, as was explained, there is no statutory requirement for union recognition:

...yes it can be in some companies but you will find as well there is no requirement for health and safety committee to be organized by the union or to be full of union members, but yes, we will certainly be involved where ever possible. (KI-15 – senior union official).

This lack of union involvement deprives seafarers of an important source of support. Unions provide training to support representatives in their role (James and Walters, 1997; Nichols, 1997). They have the resources to provide the type of training in the legal requirements for OHS and the issues involved in being a representative. This study found that unions are also limited in this area. The union in question engages with its members remotely through mailing of information, providing training videos and through their websites:

...we've done some publications in the past, our role is promoting by literature in the main, and get some things on our website to promote these issues, but our role is also one of education in the lack of company focus... companies in the main concentrate on safety rather than the broader health issues...so we hope the information is reaching the seafarers if we're sending stuff out. We do bulk mailing to the ships, but the idea is for them to receive the guides we develop for our seafarers in the mail they get. (KI-15 – senior union official).

While the unions attempt to work within the constraints, it is a problematic mode of providing information. Receiving information individually may help to reinforce the individualization of health (Chapter 8). Others have found that seafarers engage in self-medication and are inclined not to report health matters (Acejo et. al. 2011) which might be a consequence of this individualization. Attention in the industry seemed more focused on those issues that immediately impact commercial activities, for example, fatigue. Unions might have also contributed to this skewed focus: “We very much push fatigue...project horizon...that's a good example of something where the union was in the forefront of pushing an issue onto the agenda.” (KI-15 – senior union official). As the union official continued to explain, strategic choices are made to focus on areas where it is believed results may be achieved:

It is a question of priority isn't it? The main reasons are you are focussing on something where you can achieve success and again prioritising. A lot of it is relying on our members to tell us what is important to them. Fatigue was a big issue overtime. Lifeboats is an issue we are in the forefront of

changes there because it was an issue that was brought to our attention. If an issue is raised with us and we are aware there is a problem, then we will take it on and raise it wherever possible with the shipowners, with the government, with international authorities or with the regulators. (KI-15).

Operating from outside the shipboard work environment might therefore have unintended consequences of neglect. The reliance on seafarers to bring issues to the attention of unions without the support and training necessary to create awareness of potential issues is limiting. As the senior inspector said, comparing his experiences as an enforcement officer with time spent at sea, unions are far less involved, and the reluctance of seafarers to be involved is a constraint on how much assistance unions can offer:

You don't hear much talk of unions at all these days, it tended to be more so when I sailed...when I was at sea, yes, when I mostly sailed on ferries. The element of unionization is gone, the only union involvement seems to be in generating collective bargaining agreements on behalf of seafarers...unions may get involved...the ITF...and also it usually occurs after the event...and often it's a case of don't rock the boat for most seafarers you know...so things don't get out. (KI-10 – senior inspector).

Union decline has been discussed across industries and countries as a feature of contemporary work (Boxall, 2008; Biffi and Isaac, 2002). Economic and political forces that similarly focus on de-regulation and workforce fragmentation are also implicated in union decline (Boxall, 2008). In enabling business practices that create precarious work, the system has also created workers who are either wary of, or lack the knowledge, to individually take up their statutory rights (Lewchuk, 2013a; Quinlan et. al. 2001). The seafaring workforce has been particularly affected by these changes that have undermined unions' effectiveness in the shipboard work environment (Walters and Bailey, 2013; Kahveci and Nichols, 2006).

7.5. Conclusion

In this chapter the findings showed that the MLC provisions did not offer a strong regulatory lead to ensure the implementation of more robust practices in the UK. The provisions were similar to what already existed in the UK and made little difference in regulating for the effective implementation and practice of representation. As with the developmental stage, the regulation of representation continued according to customary practices. The findings showed that the UK has influenced the MLC requirements more than they have affected any changes at the UK level. Although in theory the UK offers what might be considered a relatively strong lead overall, as its regulatory guidelines speak to management commitment, consultation, information sharing and two-way communication with seafarers or their representatives, the limited provisions for representatives' role raise questions as to the extent it is embraced as a viable mechanism in OHSM.

The regulatory steer is constrained by customary practices that limit the extent to which inspectors can perform their duties. Furthermore, factors such as the ship's size and seafarers' capacity to participate, challenge attempts at a strong regulatory steer. Seafarers' reluctance to speak out presents a paradox as they are relied on to assist in enforcing the standards by offering information to State officials and unions. There is no evidence that these factors were given consideration in operationalizing the provisions for representation. While tripartism seems to be well developed at the national level, employers resist union recognition on ships, with union representatives restricted primarily to the cruise sector. The next chapter focuses on the experiences of seafarers and explores representation in practice to further understand the subject.

Experiencing the Regulatory Lead

Seafarers' literally live at the point of convergence of the decisions and procedures emanating from the interlaced network of national and international organisations and institutions which define, and then attempt to enforce, the regulatory framework of the maritime industry. Although most international conventions and regulations are of course aimed at ship owners, the very fact that few ships ever spend more than 20% of their operating time in ports and that very few owners ever sail on the ships they own, means that seafarers are the only actors within the industry who have practical day to day experience of the outcomes of these attempts at regulation (Alderton and Winchester, 2002a, p.35).

8.1. Introduction

The three previous findings chapters focussed on the development and administration of provisions for representation. They examined the nature and strength of the regulatory lead from perspectives external to the workplace. A common theme across both the developmental and administrative levels is that representation was taken as a customary practice without much consideration for its viability in the current context and supports to direct its implementation and practice. This chapter focuses on the workplace level. It examines seafarers' experiences and perceptions of representation drawing on the findings from interviews with seafarers working on a range of ships, including a small number serving on UK-flagged ships. Responses of the seafarers on UK ships were not qualitatively different from the other seafarers and therefore their responses are not reported separately.

This chapter consists of three sections. The first section focuses on who the seafarers considered to be their representatives and the implications for representation. The second section deals with seafarers' perceptions of representation and the practices found on board for seafarers' input and how these are experienced. The third section explores support on board for representation. The chapter ends with a conclusion highlighting the main elements of these findings.

8.2. Who Represents the Seafarer On Board?

Provisions in the MLC framework are geared towards improving working conditions on ships, an important element of which is health and safety. The MLC framework mandates the participation of seafarers' representatives on health and safety committees and provides for a participatory system that includes consultation, information sharing, risk assessment and training. The thesis presumes that the standards aim to give seafarers a collective "say" in health and safety, as is the nature of such standards in other industries and evidenced by the text within the MLC framework. This section deals with seafarers' awareness of the MLC and the provisions for their representation. It is important that the beneficiaries know of the purpose of the MLC and how it is envisaged that their working conditions will be improved by deploying these standards. This could be said to be the first step in assessing the viability of these provisions.

8.2.1. Knowledge of the MLC

All the seafarers interviewed had a general awareness of the MLC and a basic knowledge of its purpose. The general response was that the MLC was about seafarers' rights and working and living conditions. In terms of knowledge about health and safety, the focus was work/rest hours, which is driven by the industry in the context of fatigue and is found in Title 2. Representation (Section 8.2.2.) was more complicated.

It was surprising that there were officers who admitted to not knowing much about the MLC, including Title 4 on health and safety management. For example, Eddie, a Chief Engineer reported that he was not exactly familiar with the health and safety section, but he knew a few parts regarding hygiene on board such as clean cabins, cleanliness of the galley, and the quality of the food. These are in fact provisions under Title 3 for accommodation, recreational facilities and food and catering, although they go along with health and safety. Others gave similar responses regarding working conditions, with quality of food, work/rest hours and being paid on time, among the common responses. Winston, a Wiper⁵⁵

⁵⁵ Rating position in the engine room, below the Oiler. Keeps engines and machinery clean.

indicated that: “The MLC is the convention where the seafarers are required to follow it, it is about their working hours on board.” A Captain, in explaining that the MLC was about crew rights and welfare was somewhat dramatic in his response:

A seafarer should be treated like a human, not like a slave and not like a robot, which previously used to happen... they were all [like] prisoners used to be sent on board... the MLC change the whole face of the shipping industry, because it was for the first time, without getting any monetary return from the ship, they had to implement things (Nigel – Captain).

This Captain was of the opinion that the compliance and enforcement standards were the elements that contributed to the MLC making this difference as ships could now be detained for labour standards violation.

Seafarers learnt about the MLC mainly through on board experiences. This could be in a safety meeting, through work experience, reading material or computer-based training (CBT). Notes from Eva’s interview, a Fourth Engineer, indicated that she learnt about the MLC in the company, and thought it was through CBT. Sam, a Second Officer, indicated that he learnt about the MLC through his company and during his studies to upgrade his seafarers’ certificate:

Yes, company gave out information booklet about a year ago. I also ensure I was up to date with new regulations and as I am studying for my next certificate of competency, I like to stay appraised of what’s new. (Sam)

Others indicated learning through familiarization on first joining the ship or in health and safety committee meetings. For example, Mark, a Junior Officer explained:

We have a safety meeting every month including about the MLC. The Captain teaches us about working hours, safety, about the food...this Captain tells us what is our right and benefits of the MLC.

Mark also reported that before joining the vessel he attended a maritime labour seminar in the Philippines. Others learnt about the MLC through personal

interest. For example, Stanley, a Steward, when asked about his knowledge of the MLC said:

Yes of course, yes, yes. Since the MLC enforce about 2013, yes I am familiar because I always read about the rules and regulations on the ship. I read on my own because it is very important because it affects my life at sea. Mostly my friends they don't care, because they don't know ...they don't understand most of my friends...

Although not common, the point about seafarers educating themselves raises the question as to whether some seafarers are receiving adequate education on the MLC. This was evidenced by the limited knowledge among some of the interviewees, and the attitudes of others towards the MLC. For example, Frank, a Fitter who thought he would learn about the MLC if it becomes necessary for him to do so. He pointed out that:

The MLC is about working conditions, rights of seafarers, getting paid on time, good quality food... I never had problems and conflict situations, so my knowledge is minimal because I don't need to know. If I need it I will find more information. You work according to the ISM. When you join the ship they tell you about the MLC but it is not part of everyday work so you forget. (Written notes).

Another seafarer also claimed to have learnt about the MLC but had forgotten (Archie, Acting 2nd Engineer). Forgetting about the MLC, not seeing it as integral to daily work or having only basic knowledge, raise questions about the role this convention might play in improving working conditions on ships. The foregrounding of the ISM may be a reason for the neglect of the MLC. Other seafarers indicated that they work according to the ISM while the MLC has not made much of a difference in practices on board. Sam, the Second Officer, was of the opinion that both the ISM and MLC could co-exist but believed there was insufficient understanding of the MLC:

I would say there is scope for them to go hand in hand. Although I do not think there is enough understanding of MLC at present and it is often seen negatively as it just causes more paperwork, inspections etc.

In support of Sam's opinion, a few seafarers did express some resistance to the MLC. For example, Ezie, an Electro-Technical Officer (ETO), complained that the MLC was an added burden. He noted:

For me, I'm an old guy you know, for me it's too much. We have to do everyday, how many hours of work, so many things, paperwork. The MLC is added paperwork, it's too much, it's too much.

This lament might have to do with how work is organized and the company's control of work, seen in Ezie's expanded comments:

They say you have to find something which is related to safety. And the ship who is producing this thing maybe every day is good ship, if it was old then maybe if it was not a good ship, but this is a good ship so maybe there is nothing, maybe you leave safety, but you must find something, something broken...this risk assessment... you have to produce even if it's not there...it is not ok when you must do this, you must produce paperwork. If you don't find it means you're not so good.

A Third Engineer who reported not being knowledgeable about the MLC also thought that maritime regulating was "too much:"

Only thing I know about the MLC is yes, it's the maritime labour convention and I know they are looking at hours of work, fatigue, health and safety, all these kinds of things, but I couldn't be more in-depth about it because there are so many different conventions and so many...for a seafarer there are so many abbreviations and conventions and... to be honest with you it is a bit of an overload, it really is...IMO, the MCA, the MLC, the SMS, the ISM, the ISPS, the IOPP, SOPP, it goes on and on and on...the MARPOL, the STCW, SOLAS...it is a bit much. (Earl – 3rd Engineer).

It was revealing that this seafarer thought the MLC was an instrument of the IMO. After explaining to him, he continued:

I don't know too much about it. Nobody's really said oh, this is the MLC and this is what you need to know, if it's not enforced then nobody is gonna be...ah it's another abbreviation...Somebody comes up in 2006 with a new Convention, well unless it's really implemented like the STCW, because everybody's got to do it, ...then it's just gonna be there. (Earl— 3rd Engineer).

It appears from these accounts that the MLC has not been effectively introduced to some seafarers. Some of the responses were from ratings but also officers, who one might have expected to have comparatively better knowledge of regulations governing their work. Alternately, it may naturally be only those regulations that are deemed important that are given attention, such as the ISM Code. A response from Sam, the Second Officer, offers some insight into what the problem might be:

A main constraint is that health and safety guidelines produced are often fleet wide...these aren't always relevant for our ship type. There's been a huge increase in paperwork and I think this uses time which could be used for promoting health and safety and on board training. Many more junior crew and ranks often see health and safety as the company trying to control them, rather than actually understanding why it is important for them as individuals.

There was much discussion in the negotiations regarding compliance and enforcement and the training of inspectors in inspecting labour standards, as it was recognized that there were deficiencies in this area. It was suggested that the ILO offer technical assistance in training inspectors which would also be useful in encouraging States to implement the convention (Chapter 5). Yet there was an absence of discussions on educating seafarers on the MLC. In the guidelines, training is a requirement under the shipowners' obligations, nevertheless, as the seafarers' testimonies showed, this is not systematic and sustained and seems inadequate where it was mentioned.

8.2.2. Supervision versus Representation

Knowledge and awareness of the standards for representation are important for implementation and practice. Land-based studies show that when workers are aware of having representatives it helps to stimulate positive attitudes and health and safety practices in the workplace (Olle-Espulga, 2015). Representatives also rely on constituents' support as an important contribution to being effective in their role (Garcia et. al., 2007). As such, employees should be made aware of the arrangements for their representation through training. Some seafarers had difficulties identifying their representatives. The difficulties arose from seafarers not understanding the concept of representation and/or there were no representatives on board. In these cases, the safety or the medical officer were identified as the representative. For example:

The Second Mate, so he makes sure everybody knows about safety and know what to do if there is a fire, like that, he is the one who explains to us, the Second Mate, so if the Second Mate cannot answer or have difficulty about safety, he will ask for the Chief Mate, and if the Chief Mate cannot solve the problem, then the Master. (Stanley – Steward).

On this particular ship, there were separate officers for health (medical health), safety and security. There were no representatives on this ship, underscored by the above response which mirrors the complaints procedure. Another seafarer's response further corroborates the tendency to identify the safety officer in situations without representatives:

The Chief Mate is the safety representative. He is in charge of safety. There is nobody from among the crew as representative like that. The counterpart of the Chief Mate in the engine room is the 2nd Engineer. It is company policy to have this. (Winston – Wiper).

Subsequent to an explanation to those who were uncertain of what representation meant in the research,⁵⁶ seafarers identified the Boatswain as

⁵⁶ The person elected from among the crew to bring the crew's health and safety concerns to the senior officers or the company if needs be, the one who 'speaks' on behalf of the crew on any matter.

their representative. Yet, the role of the Boatswain as representative turned out to be the job function as supervisor of the deck ratings. Oliver, an Ordinary Seafarer (OS) reported:

Yes, the Boatswain, he is our leader...and the Chief Officer, if you have some questions or something's not... you can talk directly to the Chief Officer. The Chief Officer is in charge of safety and for medical, you don't have to directly talk to the Boatswain.

He continued to explain:

For example, if the Chief Mate has a job order, the Boatswain will take it and will tell the crew, the deck crew, the ratings what to do. This is usually the Boatswain, that is the position (Oliver – OS).

Oscar, another OS, described how on a previous ship the Boatswain was the representative who would take the crew's concerns to the health and safety meetings. An example of such concerns was use of the recreational fund. On his current ship they had no representative in the manner described. Although he said the Boatswain was the crew representative, he was also aware that this was in his supervisory position. He indicated that:

The Second Mate is in charge of health. If someone is sick he gives them medicine and takes care of injuries. There is no safety representative in that way. The Boatswain is for working safely. (Written notes).

However, the issues that were brought to the Boatswain's attention in Oscar's previous and current situations were not much different and had to do with "domestic" matters. At the time of the interview, they had requested gym equipment.

Therefore, in most instances, those identified as representatives were in positions that were designed to serve the interest of the company. Eva's response succinctly describes the status of those identified as representatives:

The role of the Boatswain and the Fitter [representative for the engine room ratings], is to motivate the crew in their work, but I don't see much

situations for them to do anything special. No experience of that. In the meetings the Boatswain raises his hands and most of the time speaks for the crew. Some Boatswains are quiet, so it depends on him but on this ship the Boatswain is dependable and trustworthy. (Written notes).

Although she identified the Boatswain as dependable, Eva also reported that they can all “speak” in the safety meetings. It is the practice on most ships for all the crew to attend safety meetings.

The reports on representation may be summed up in Eva’s words, “nothing special.” Even in situations where seafarers elected their representatives and there was a clear understanding of their role, activities were limited. Joseph, a Captain also indicated that the representative role on his ship was “nothing special.” As he said: “In practice they don’t do anything different from what everyone else does. Perhaps they take on a bit more of a role, but they don’t do an awful lot.” Expanding his comments also indicated that the focus was safety.

That role has never been a proactive role. I think in the past the safety representative was seen as somebody who the crew could go to, to report something but we’ve changed the way we report internally on board and rather than wait 6 weeks for a meeting or a month for a meeting, we have what we call safety observation cards, it is an avenue for anybody on board to actually report something safety related. (Joseph – Captain).

A clearer representative system was described by Chief Officer Christine who explained that the elected representative was for the entire crew, including the officers:

...so on my vessel it happens to be the person that we call the boatswain. That person would be elected by the crew. ... The crew representative would cover everybody, even the officers. Yes... crew being everybody barring the Captain.

She worked on an anchor handing vessel in the offshore sector. The offshore sector might be different from other shipping sectors with respect to

representation. Woolfson (2013) for example, outlined how some high-profile accidents in this sector led to the tightening of regulations for workers' representation. Although these standards seemed to have been resisted by business interests and the result was weaker standards than envisaged. Perhaps this explains why Carl, a Chief Officer, who worked on a similar ship-type, said there was no need for representatives because all the crew "can speak." As seen in the inspectors' accounts as well as those of some seafarers, there are ships where all the crew is considered representatives. The difference may be company practices, but more so, it highlights the tendency for flexibility in self-regulatory practices that allow companies in the same sector to implement different practices. Carl's ship does have a health and safety committee where all the crew attends meetings. These two seafarers however stressed the flat structure on their ships and thought it was a unique characteristic of the offshore industry having worked in other sectors. They thought less hierarchy was useful in managing health and safety. This makes for interesting reflections on the possibilities for effective representation owing to the issues of hierarchy raised in this study and other research.

In explaining the practices on her ship, Christine pointed out that the representative was elected informally, "perhaps done over coffee." But she also reported working on a "good ship" with an open culture where seafarers were able to speak to anyone if they had any problems. The representative system was informal, and the representative decided how to engage with the crew:

It would be up to him to basically have a discussion. He would be told, normally a few days' notice, he would be told when the meeting's going to be, operations depending, and it would be up to him. Everybody knows about him, they approach him, he approaches them, it is very much an open culture. Then if he has anything to bring up, he brings it up then. (Christine – Chief Officer).

Another instance of a representative system showed the selection of the Boatswain as informal and based on customary practice. Nigel, the Captain explained: "...everyone knows who is responsible for what, everyone knows he is

the boatswain he is in charge of the crew.” This was a bulk carrier, and the practice seemed more a function of leadership style. Nigel, reported that the Boatswain would bring the crew’s interest to the meetings “they used to tell OK, this is right this is wrong this can be implemented this cannot be...we want these things...this kind of food.” In this example, it appeared that the Boatswain was active in bringing crew concerns to the officers:

Safety representatives is like a union, it’s like a factory where you have the mill workers and you have a union and you have a union leader. The same thing. You have crew members and they select one person and they tell him in advance, if there is a meeting you write it down, we want to discuss this, we want this food, we want this, so basically that person is very powerful. When he comes up and he sits with us [the officers] he will bring up the rights of the crew members... (Nigel – Captain).

This account shows a more functional representative role than other experiences described, although the prevalence of such practices is not known, and the experiences of the other seafarers seemed to be the rule. That is, representation within the meaning of the MLC (and land-based practices) was little understood or experienced by most seafarers in this study. The second key point arising regarding representation on ships was that even where they existed, the role was not fully developed and functional.

8.3. Participation Practices on Ships

In exploring the MLC provisions for representation, the previous sections showed they were not established in the envisaged manner. Those reporting some limited form of representation pointed out that these systems were in place prior to the MLC. A common response among the seafarers is that they “can all speak” and this was the basis on which representation was typically seen as unnecessary. This section explores the seafarers’ claims of being able to participate and speak out, and the nature of this participation.

8.3.1. “We Can All Speak”

All the seafarers interviewed indicated that they were not afraid to “speak out.” For example, Stanley, the Steward said:

I don’t know about that [when asked about seafarers being afraid to speak]. I just speak according to my experience, about that I don’t know, generally I don’t know, this is my personal experience. As far as I know in this company, people are comfortable to talk. This is my 4th contract with this company.

The “atmosphere” on the ship seems an important factor in seafarers saying they were not afraid to speak. For example, Eva, the Fourth Engineer said *“the relationship on the ship is good. There is a formal system for complaints, but you can also go to somebody you are comfortable with to speak”* (Written notes). According to another:

Seafarers express their opinions... If they have good connections with the Captain and officers, I think they speak. Long time ago maybe [he has been on ships where seafarers were afraid to speak] but now it’s better...I have good relations I can talk [to the Captain] but usually I talk to the Chief Engineer (Ezie – ETO).

The importance of the Captain in creating the atmosphere is underscored by Captain Joseph’s response. He claimed that on his ship seafarers are given the opportunity to speak. In reference to whether seafarers were willing to speak up in the safety committee meetings, he explained that:

Yes, and they’re all given equal voice. On my ship, it’s up to the Master of the ship how he wants to run it, but there is an agenda which is set by the company we discuss from previous meetings and we would look at our safety records on board, any incidents or any reports that come in and we are given an opportunity to raise any matters that we want to be addressed by the company, which would then require them [the seafarers] to respond.

Likewise, Captain Nigel indicated that:

We have monthly meetings...it's not a safety meeting...in that everyone has a right to speak out, and people speak, very honestly they speak, - we want this – and again I am telling you it totally depends upon the Captain of the ship how comfortable he'll make the crew. If they're comfortable they'll speak out.

In addition to leadership, working on a “good ship” is another factor that seems to promote seafarers' participation and helps to discount or dismiss the need for representation. Some of the seafarers point to an open structure on their ship which encourages participation. For example, Carl, the Chief Officer who reported that there was no representative on his ship, thought there was no need for representation as intended by the MLC. When asked about seafarers on his ship having representatives he said:

No, because they can all speak at the meetings themselves. So anything that's raised beforehand is discussed during the meeting... Anything they can raise it with myself, the captain or any of the officers and it will get brought up to me and it gets added to the meeting agenda, so they can approach anyone on board...at the end of the meeting you go around and check with every single person that they don't have anything further to add. It's very open and informal so people can say what they want to say.

This lack of seeing anything special about the role of the representative is likely to be connected to the seafarers overall understanding of representation and their limited knowledge of the MLC in general. Carl's perception provides an example as to how seafarers might view representation. He said:

How I understand it, the health and safety committee as described in the MLC, is that you just have 5 guys, the head of each department go off and have their own meeting. Because we are less departmentalised than that, we just have one with all the crew and everyone all present, I think that actually, then you don't need one [a representative], if everyone's involved with it and everyone raises their own point. (Carl – Chief Officer).

While Carl also thought that there might be those who would not participate in the meetings, he was of the opinion that their work environment, which was open, and where relations were less hierarchical, would naturally provide avenues for those persons to “speak.” He continued: “There’s always people who...say someone’s shy and they don’t want to speak up, then they’ll speak to one of their friends maybe and then he can do it.” This perception is problematic as it does not consider structural issues that might account for a seafarer’s reluctance to speak out. Speaking out is individualized. Like being “shy,” others suggest that if a seafarer does not wish to speak, it is a personal, or a personality issue. Eva the Fourth Engineer indicated that on her ship:

...people may be afraid to speak, but it depends on the person if they feel afraid, but they can find somebody who they are comfortable with and speak to them (Written notes).

Another seafarer was of the opinion that seafarers being afraid to speak was in the past:

It depends on the person some people are open...It is different from person to person, but I have the feeling people nowadays are more intellectual, and more well-read, so they know their own rights...and always say what is wrong. (Eddie – 2nd Engineer).

In other studies, the concerns with seafarers’ participation highlight social factors that inhibit their input. Factors such as employment arrangements, hierarchy on board and multi-nationality, influenced seafarers’ participation on board (Xue et. al., 2017; Bhattacharya, 2009). Perhaps having a culture of openness and camaraderie on board is helpful in giving seafarers the impetus to speak. The question however is whether this is a sustainable means of ensuring seafarers’ participation in health and safety? The experiences described by these seafarers are consistent with Cullinane’s and Dundon’s (2014) analysis of how paternalism is used to justify employers’ unitarist approach to workplace relations, and therefore their maintenance of control in the workplace. The findings, up to

this point, and to be discussed, reveal that shipowners are not committed to representation.

Although, the seafarers interviewed did not relay any personal fear of speaking out, there was an admittance of the possibility. One of the basic reasons for representation is to provide some balance of power between workers and management that might mitigate this fear factor. Chapter 3 explained that seafarers are considered precarious workers and studies into land-based workplaces show that such workers do not make effective use of individual measures to safeguard their health and safety (Lewchuk, 2013a). Perhaps in situations where workers are treated well, they might also feel obligated not to complain.

The seafarers' views on representation might be influenced by the lack of organizational support for representation to educate the seafarers on its role and benefits. Yet in abstract terms, the general perception favoured representation. For those who thought the role went a bit further than the supervision of work, it was seen as a good thing to have someone as intermediary between seafarers and the officers. However, the scope of this representation is limited as previously noted. For example, Ezie, the ETO, explained some of the issues seafarers speak about to their representatives:

It is better, it is good to have the Boatswain, like the ratings they talk in the mess room and they say what they want to do, some movies and they have this money and they say what they like.

Other seafarers were of the perception that representation would be important for solving conflicts. For example, Oscar explained that it was good to have the Boatswain as representative (i.e. supervisor), as the ratings were able to speak freely with him, and he in turn spoke with the officers. He gave an example in the event of a conflict or an officer *"hurts someone's feelings he can tell the Boatswain who would discuss this with the officer."* The seafarer indicated that they were not afraid to speak to the Boatswain. As he said, *"if you keep it in, it will affect your mind, it is good to speak."* (Oscar – OS).

8.3.2. Consultation

Effective representation is associated with meaningful communication (James and Walters, 2002). Requirements for consultation is explicitly stated in regulations to ensure workers without unions have statutory support to ensure management consults with them (eg. the EU Framework Directive 89/391, and the UK's HSC regulations). Without representation on board, the seafarers in this study were asked about participatory activities and how they exercised "voice" on board. Seafarers described making suggestions and using the mechanisms in place to report issues, such as suggestion boxes, observation cards and the ships' notice boards.

These experiences described by the seafarers were in keeping with managerialist approaches to soliciting workers' views. Seafarers did not report any systematic process for two-way meaningful communication with an understanding that they would be listened to. For example, Winston the Wiper, explained: "...seafarers, can suggest, but the officer in charge will decide. Everyone can give suggestions. They say that in the safety meetings."

Seafarers' views were solicited at the end of safety meetings, or as some described, informally "over coffee" or via the notice boards. Issues were raised by being posted on the board, using observation cards, or approaching an officer. Oniel, a Second Officer, explained how he would bring issues to the attention of management: "The Chief Officer makes us aware if there are issues to write it on the notice board before the meeting is to take place, so I would know to write it there." The main channel for communication on this particular ship was the notice board. As such, minutes of meetings with outcomes and other information the company wished to convey were placed on the notice board.

Other mechanisms on board reveal a behaviour-based approach to OHSM. This is consistent with the ISM Code system already discussed. Seafarers reported that they work according to the ISM and it is much a part of their daily lives more so than the MLC. Behaviour-based approaches are underpinned by psychological notions of the accident-prone worker and therefore to address these flaws, mechanisms are developed to correct faulty behaviour. One of the instances in

which seafarers' input is considered, comes from observation cards. This system is a mechanism to report positive and/or negative safety practices and is consistent with "safe behaviour programmes" described for land-based sectors (Hopkins, 2006: 584). This behaviour-based approach seems to promote responsabilization (Gray, 2009) where everyone on board is said to be responsible for safety. It may also encourage blame and punishment of workers, and certainly does not address structural issues influencing workers' behaviours (Hopkins, 2006; Nichols, 1997).

In this study, seafarers reported that they are given cards on which they record shipmates' behaviours that they perceive as either promoting or jeopardizing safety. Christine explained for her experience, this anonymous system is geared towards a "no blame culture:"

We do have a system in place where people can, we call it a safety observation in our company and basically if anybody on board the ship sees anything you could say, whether it be positive or negative, we have like a little note pad for that, that people fill in and it goes into, I suppose you could say a little collection box and these are read and discussed on a weekly basis. (Christine – Chief Officer).

Captain Joseph explained that observation cards were introduced to change reporting practices on his vessel, which used to be via the representatives: "...we have what we call safety observation cards, it is an avenue for anybody on board to actually report something safety related." These cards should be completed anonymously both for the seafarer reporting and the person thought to be committing the violation. These are discussed in safety meetings as best practices and lessons to be learnt. Whether such measures are positive for creating a healthy and trustworthy work environment on board is not known. Attempts at developing a no-blame culture in the maritime industry has been challenging particularly for the behaviour-based managerial practices associated with the ISM Code (Bhattacharya, 2012a; 2012b; Bailey 2006).

8.3.3. Participating in Decision-Making

Consultation also implies some influence in decision-making. This research explored the extent to which seafarers participated in decision-making to ascertain what scope existed for influencing decisions and therefore the nature and substance of their participation. The findings showed that much of this participation takes place at the “domestic level.” Ratings reported being able to make suggestions relating to welfare matters, for example diet (type of food), entertainment and exercise equipment, as previously reported. In elaborating on the ways seafarers influence their work environment, Eddie, the Second Engineer explained:

They, the ratings, talk about what they want to have on board to make themselves feel good...

[Interviewer: Like?]

Filipino crew, they always say we need a karaoke system on board

[Interviewer: will the company do it?]

It depends on the Master how he manages the fund and gets the stuff for them. For this ship it goes to the office, but it will come back to the Master... why hasn't it been done so far if the people are asking for it? Usually the Master tries to do as soon as possible before it goes to the office. I've seen the change, before nobody bothered about how the seafarer is doing on board, whether they are getting what they want or not, what's the quality of the food, now with the MLC its better.

Examples of this nature show that the MLC has had some influence on some ships in bringing social issues into the global regulatory regime. Other seafarers also noted that the MLC had made a difference in food quality, increased attention to work/rest hours and recreation equipment. Although in some instances, the seafarer was not sure if this was due to the MLC or general changes taking place. Archie, the Acting Second Engineer, explained that attention is paid to diet and healthy lifestyle: “they talk about health and the food...because we

have different nationalities on the ship...it's partly because of the MLC and then everything is changing.”

Stanley, the Steward however was certain the MLC made a difference. As his example illustrates:

In our company, before MLC was enforced we had to buy water and also food. Now we have MLC...you know different countries have different food... sometimes we have difficulty to accept this kind of food and the Chief Cook sometimes they don't care about it. When the MLC in force the cook changed, you now have this rule, if you don't like the food you can complain to the Chief Cook and the Chief Cook must provide what you can eat. Before the MLC we could not do that, whatever is cooked you have to eat whether you like it or not. And also water, before you had to buy water, now it is free because MLC it states, water must be provided free of charge. The policy is coming from the company because the company must follow the MLC you know, before the MLC we have to buy everything.

While these examples may not be decision-making in the strictest sense, they serve to demonstrate the areas of influence for seafarers. Welfare issues have gained prominence in the maritime industry (see Sampson 2013), and these examples were readily provided in demonstrating where seafarers had a “say” and were able to influence working and living conditions on board, with the passage of the MLC, particularly as these are now grounds for detaining a ship.

Exploring other types of decisions however, showed minimal involvement. Procuring safety equipment, these were controlled at company level, even on the few UK ships, although the COSWP indicates that seafarers are to be consulted on type of equipment to be purchased (Chapter 7, Section 7.2.1). Sam, the Second Officer on a UK ship reported that they rarely participate in decisions: “ships are often just advised of changes.” Enroy, a Third Engineer, explained that his company uses research data and industry information, as well as best practices within its fleet, to determine what was needed on the ship and seafarers did not participate in those decisions. Another Second Officer noted that seafarers are

rarely involved in any decisions affecting the ship, they are often just advised of changes. In instances where seafarers reported making requests to the company or giving feedback on equipment, there were no assurances as to the outcome. Carl, the Chief Officer, in explaining the level of participation in decision-making said:

...anything that gets purchased for the ship, we choose what we want and then we'll put that to the company and they approve or don't approve. Safety equipment like the helmets and body suits etc. are done by the company, we just request a certain amount and they'll give it to you. If we've got feedback on them we can send that to the company.

[Interviewer: for example?]

Say...we use custom boiler suits which are good and they are good quality, if they were sub-standard quality for any reason, we could feed that back to the company

[Interviewer: would they make any changes?]

They would certainly take that into account, I don't know if they would change them.

Nigel, the Captain also explained that seafarers do not necessarily participate in decisions. The decision-making position on a ship is with the Captain and this relates to his position as the person with full responsibility for the ship. He noted:

When you get any orders from the company you are deemed to follow those orders. You are... a Master is the representative of the company,... as per ISM code, so it's his duty to implement all company's ideas, ideologies, work and everything on board, again as per ISM. The Master is a person who is sole responsibility for the safety of the ship, safety of the people, safety of cargo. The Master has overriding authority over everything. If he sees things going wrong he has overriding responsibility over the company and the company will support him for that,...Apart from

those kinds of decisions there is no participation in decisions, it's the company, they will tell us what to do. (Nigel – Captain).

The company making decisions without consulting seafarers seems the standard practice for relations between the company and the ship. One rationale for participation in decision-making is to ensure employers tap into workers' knowledge and experiences (Walters and Nichols, 2009). There is also the underlying ethical principle regarding social dialogue that is embedded in the MLC philosophy (Chapter 5). However, such philosophy is not consistent with the traditional relations on ships which is hierarchical and undemocratic in their structures and practices (Quinlan, 2013b; McFarlane, 1970). With a unitarist model embedded in the shipping culture and perpetuated by the managerialist ISM's health and safety management system, it is difficult to imagine how certain aspects of the MLC, with its pluralist philosophy, might gain any traction without a firm regulatory lead and the other preconditions, for support. It appears from this section that the aspects of the MLC that do not overlap with the ISM are providing some support to seafarers, however provisions such as representation might not be implemented, particularly as shipowners might feel they have an adequate OHSM system in place (Chapter 6, Section 6.3.3.).

8.3.4. The Complaints Procedure

The complaints procedure featured prominently in seafarers' narratives of being able to express concerns and make complaints. This is the chief means of representing interests separate from those relating to the ship. This mechanism exists under the ISM Code. Although the MLC framework includes a complaints mechanism, this was not referred to by the seafarers. They only made references to contacting the company's Designated Person Ashore (DPA), should they have any problems that cannot be solved on board the ship rather than any other authority suggested in the MLC. For example, Stanley the Steward explained that:

...the 3rd Officer is for health and the Second Mate's duty is safety, security is the Chief Mate's duty...and they also have the DPA. So, if the 3rd Mate or Second Mate or Chief Mate cannot solve a problem, they call this DPA.

This seafarer outlined the complaints procedure as a mechanism where they can represent their interest particularly in solving individual problems. Chapter 5 (Section 5.2.2.2.) explained the shipowners' reluctance to having a more autonomous complaints mechanism during the MLC negotiations. The compromise made, which is reflected in the MLC, is that a seafarer with a complaint must first exhaust the shipowners' complaints procedures before appealing to other authorities. The seafarers' accounts however revealed that the procedure under the ISM is well engrained, which underscores shipowners' commitment to the unitarist OHSM approach.

For some seafarers, the complaints mechanism is the overall system for representing their interest and the Boatswain as supervisor is one step in that process. For example, Oliver who identified the Boatswain as the leader, explained being represented in the event of having an issue, as follows:

We have only one system, it is step-by-step. If you have a problem you will go to the Boatswain first and then the Chief Mate and then the Captain...it is step-by-step. If you have disagreement or whatever you go to the Boatswain first and you go like that, step-by-step. (Oliver – OS).

In this sense the Boatswain is the supervisor, and not the representative who would take this issue forward as would be expected of a mechanism for representation. For others, the Boatswain is not part of the procedure, which begins with the Safety Officer. As Stanley, the Steward further explained:

If I have a problem about safety, I can talk to the Second Mate, this is the chain of command. You cannot go directly to the Captain or Chief Mate because they have somebody in charge, so you first speak to the Second Mate and if the Second Mate explains everything and I am satisfied with the explanation I don't need to go to the Chief Mate. If the Second Mate's explanation is not satisfactory, I can go the next level, like that...I have no choice. It is the chain of command, if in the ship I am not satisfied I can call the DPA representative. That is the company policy.

The MLC framework, in contrast, seeks to provide additional support to the seafarer by making provisions for the seafarer to be accompanied by a representative or a friend in making a complaint. Yet none of the seafarers described this as one of the steps, which shows that a piecemeal approach is taken to implementing some aspects of the MLC. Except for one seafarer, none of the others reported using the complaints mechanism. According to Oscar, “this is a good ship, we do not complain” (Oscar – OS). Nigel reported using the complaints mechanism while he was a Chief Officer:

I’ve used it because I was not getting signed off. I was due for my sign off, after one month passed they were not signing me off. I rang up the DPA and within 2 days I got signed off. (Nigel – Captain).

For this same ship, Nigel explained a complaints procedure similar to other seafarers, “step-by-step” – the Boatswain, the Chief Officer, the Captain and then the DPA. In his position as Chief Officer, he was able to telephone the DPA as the second step, rather than a rating who would have had to proceed through all the steps. Additionally, such actions as Nigel’s were dependent on individuals and were not an organizational feature where everyone felt empowered to use the system. Nigel admitted that often seafarers were afraid to use this system for reasons, also found in other studies (Bhattacharya 2009). As he explained: “People are scared that they will not get a job, that’s what they are scared about, they will not get a job, they will not return to sea, their families will suffer.” Although the seafarers in this study did not report themselves being afraid to ‘speak,’ they did admit in various ways that such possibility existed.

8.3.5. Health and Safety Committees

The health and safety committee is the other avenue for direct participation as well as representative participation. These committees existed prior to the MLC, but the MLC has made them mandatory. Like other areas of shipboard practices, the MLC provisions did not have much impact in this respect. Except for one example, none of the seafarers reported any difference in practices relating to the

committees, which they could say was stimulated by the MLC. In this example, Nigel explained:

As the safety officer I had to make sure everyone knew about the amendments to the SMS when they came. So in 2012 they were making preparations for 2013 for the MLC. So this is what some good companies do because they will start inspecting in 2013. We had an audit for MLC and then it was implemented. The company sent the materials, the QMS department, sent the documentation which was incorporated in the SMS, part of the SMS system. Safety committee as per the MLC was one area added. The SMS was amended and sent to the ship and it was implemented and everyone should know. (Nigel – Captain).

In exploring the functioning of OHS committees it was established that these are safety committees and seafarers rarely used the term ‘health and safety.’ Although one seafarer explained that it was for convenience, the skewed focus on safety in the committee meetings and on board generally, demonstrates that it is the reality of practice.

This is perhaps unsurprising as health and safety committee meetings are dominated by operational safety matters. The findings revealed a variety of configurations for types of health and safety committees, frequency of meetings, attendance and topics discussed. Some seafarers reported weekly meetings and then one large meeting at less frequent intervals. Others reported a monthly health and safety meeting but explained that daily “tool box” meetings are held. Tool box meetings were described as brief morning meetings specific to the jobs to be done for the day in question. In some experiences, tool box meetings were only held if non-routine work was to take place such as drills. Extraordinary meetings were also possible depending on prevailing circumstances, such as a disease threat or a casualty or near miss or other information that the company wished to bring to the seafarers’ immediate attention. On some ships, it was customary to have special meetings depending on the port of call. Here seafarers were briefed as to ship preparations for particular ports.

There were also variations in how the meetings were conducted and what was discussed. Depending on the rank of the seafarer being interviewed, and whether it was a tool box or monthly safety meeting, they may or may not know how meetings are conducted. This might be because all seafarers do not attend the OHS committee meetings even if this was the policy. Attendance was dictated by the work schedule. When this happened, on some ships, seafarers may be asked to sign the minutes of the safety meeting to indicate they had seen them. Stanley, the Steward explained:

Yes, there is a health and safety committee. Only some people go, it is supposed to be everybody but you have duty you know, so we have some representative from the crew, one person. We have meeting every month. Different people go randomly, but I never go, but every month come from the Chief Mate that we have meeting...They explain in the paper [minutes] what was discussed and so I sign...in my company it is like this.

The ship's schedule may also determine when meetings are held which can be haphazard:

We have health and safety meetings. We have weekly or once a month. If there is not time, if the crew is working then once a month. If we are at sea it is not so busy so once a week. The Captain calls us together like in the recreation area on Sundays in the afternoon when not much work is going on. (Frank- Fitter).

Some seafarers' explanations showed that OHS meetings are dominated by the company. Although issues raised on the ships were discussed, the meetings described, underscored the dominance of the company in setting the meeting agenda. For example, Christine, the Chief Officer, who indicated she worked on a well-run ship noted:

The weekly meetings tend to be any information that is coming in from the office and what we call Alerts and any...vessel sharing incidents, anything that maybe come up from other institutions like the MAIB or the safety

forum and ... It would tend to be any sort of like, information that's coming in from the office because there tends to be a lot of that.

Much emphasis was placed on organizational learning and behaviour-based safety management in the meetings. All the seafarers reported the discussion of company flashes and alerts from among their fleet of both negative and positive information, incidents that occurred and how to avoid future occurrences, as well as best practices from which they could learn. Incidents arising from the specific ship were also discussed:

Firstly, you go through the previous minutes, discuss anything raised in the last meeting, make sure anything that is closed out should be closed out and discuss what's been done about the previous points. Then we have a monthly safety flyer or a report from the company and the important points from that get raised. Then something like a positive safety observation, which are good points and the best ones from the company are in that, so we read them out and discuss them... ones that were raised on board and the best ones from the company. (Carl – Chief Officer).

Although all seafarers reported health and safety committees, these bear little resemblance in practice to what is envisaged in joint participatory arrangements where *health* and safety should be discussed. These committee meetings were a continuation of what was happening prior the MLC, and while its coming into effect might have made health and safety committees mandatory, it did not appear to have influenced practices.

In relation to health issues, seafarers found it challenging to give examples which had to be provided by the researcher. The MLC speaks to a few health issues (Standard B4.3.1: 62) and the industry is expressing concern for seafarers' mental health. Yet these did not come readily to the minds of seafarers. The continued focus on safety in these findings and supported by other evidence (eg. Bloor et.al. 2005) show that a comprehensive approach to OHSM is missing in practice.

Health issues, for the most part, are not discussed in the committee meetings. Examples of addressing health at the end of safety meetings show a casual approach. For example:

Yes, the captain asks after the meeting “everybody feel good; alright; any problem about yourself, your family? We talk about each other...to have good bonding on the ship, we are like a whole family there, and the Captain is like your father (Mark – Junior Officer).

Seafarers rely on the open culture and camaraderie on board as a means of addressing some health issues. For example, when asked about issues such as depression, mental health problems or bullying, these were not discussed in health and safety meetings but were left to be treated should an issue arise. For example, Christine (Chief Officer) explained:

You find if you work on a good ship, and every ship is so very different, you know, in the case of the vessel that I’m on now, it is actually quite easy to see if somebody has any issue, because you work and live with these people all the time, so you take a very informal approach to it and you’d deal with it on a one-to-one basis. I would say that comes down to the people you work with...if I was to see somebody with what I thought was potential problems then it would be addressed on a much more informal private basis, and it would probably be dealt with directly with the Captain, in all fairness it wouldn’t really go any further...it isn’t something that is openly discussed, we don’t have telephone numbers or anything on the notice boards to say if you have a problem call this number.

Seafarers do not have an equivalent to the DPA ashore for health. Eva, the Fourth Engineer was explicit in her response: “*we don’t talk about that*” she said. She continued to explain that health issues and those of a psychosocial nature such as depression and isolation, is up to the individual to manage. “*You are the best help for yourself. You are alone even though you have friends to talk to.*” These findings reflect an individualizing of health issues. A few seafarers introduced the “healthy seafarer effect” raised in other studies (eg. Acejo et. al.,

2011). They explained that seafarers are healthy as they undergo an extensive medical before joining a ship and therefore, they were in good health (Russel, 3rd Engineer).

It is surprising that seafarers' knowledge on health issues that might affect their lives is quite limited, particularly when compared with the narratives in the shipping industry on mental issues, bullying, depression, stress and other illnesses. Seafarers in this study individualize health and are not aware of their employers' responsibility in that respect. This is another failure of the regulatory regime to deliver comprehensive protection for this workforce.

8.4. Selective Partnership and Social Dialogue

This final section reflects on the broader idea of social dialogue seen as essential to achieving decent work. From the previous data chapters, social dialogue stopped at the national level. The seafarers' accounts in this chapter underscore those findings that social dialogue is not a feature on the ships where the seafarers who participated in this study worked, and it is likely that this pattern is replicated on many other ships. The findings showed that arguably the two most important preconditions, organized labour and management commitment, are not met to support representation.

The seafarers' reports revealed that they were not treated collectively. As the ISM is the dominant OHSM system which uses a direct participatory approach, it became evident that a pluralist approach to health and safety is absent from their experiences. However, this did not preclude shipowners,' or companies' commitment to safety and seafarers' welfare. As the seafarers explained, they worked on "good ships." In most instances this meant being treated well and receiving wages on time. For example, Oscar, the OS said:

This company is good. They pay attention to rest hours...the food is good. The Chief Cook is good and we can request the meal we want. He is Filipino so he knows what we eat. We also receive our pay on time. (Written notes).

Ashton, an Able-bodied Seafarer (AB) indicated that:

The company was not so good not so bad, but it was better than his previous companies. He receives his pay on time and its more than on previous ships. This was important as he had a daughter in school and there was no work ashore for him. (Written notes).

Seafarers thought that there was a commitment to safety in reference to the practice of organizational learning discussed in Section 8.3.5 on health and safety committee meetings and working safely in their immediate working environment. Safety is seen as a priority which involves following the SMS and being conscious of safety practices. Alfred, an AB reported “*they are serious about safety on board. Like sometimes I don’t wear my hard hat and the Chief Mate will say you are not wearing it.*” Winston, the Wiper also noted “*Like using chemicals for cleaning...you use safety goggles, safety gloves.*” Working safely is discussed in tool box meetings.

This study has reported fairly positive experiences from the seafarers who participated despite a lack of autonomous support. Union presence on board was absent as discussed in Chapter 7. For those who reported being in a union, they were individually engaged. Christine, for example explained that her union had company representatives but none on board:

Every company would have a [name of union] representative, so I know who my contact would be within [union name] if I had any issues with the company...the contact would mainly be down to email, you don’t tend to find meetings are held. (Christine - Chief Officer).

Likewise, Captain Joseph reported being a member of a union and he receives information via email and a monthly newsletter sent to his home:

I’m a member of [union name]. I get information by email and a monthly newspaper delivered to my home. Union is not involved in organizing representation or selection of representatives for health and safety committee. Unions really have minimal daily influence in safety on board.

Captain Nigel, also explained that many seafarers are unionized but there was no on board involvement to support representation:

Yes, I am a member of a union, an officers' union. Everyone on board is in a union, national union, it is mandatory. The governments of India and the Philippines make this mandatory. ITF combines them all. Anyone can approach ITF at any time... No, there's no union on board involvement, only if you're having problems you can contact the union.

Structural changes in shipping, as discussed in Chapter 3, have weakened union direct involvement in shipboard operations for those traditional maritime countries. Unions may have members on ships, but not necessarily union recognition. The seafarers' experiences substantiate those findings from the union official and inspectors about the limited level of union involvement on ships. As an important precondition, union support is missing from seafarers' experiences. Further, the management commitment described is skewed towards a managerialist approach and excludes dialogue. In this study, the shipboard work environment is driven by management with a unitarist approach which has most likely contributed to the ways in which seafarers experience and think about participation.

8.5. Conclusion

This chapter examined the findings for seafarers' experiences of representation in health and safety management on ships. Representation as a formal structure to ensure seafarers exercise this right and do not have to individually navigate their way through work relations, is absent from their experiences. The findings reveal that the Boatswain is most often identified as the safety representative for the ratings. However, this is primarily related to duties as their supervisor. The few instances where some resemblance of representation in the pluralist sense exists, were also underdeveloped.

Mechanisms, such as the complaints procedure, the organization and functioning of the safety committee, and schemes to solicit seafarers' input, were

the means through which seafarers exercised “voice.” These mechanisms were claimed to be supported by an organizational culture of openness where everyone was encouraged to participate by raising issues. As such a theme of “we can speak” was prominent in the seafarers’ accounts, contributing to representation being discounted. Given the hierarchical and undemocratic traditions on ships (Quinlan, 2013), the extent of openness needs to be questioned. The research shows that the issues on which seafarers speak were limited, while consultation and participation in decision-making were below what would be expected in an effective participatory system. The next chapter brings together the different levels of data collection to draw out the central findings and implications of the study.

Problems with Standards for Representation On Board

The importance of representation is about workers having “*actual influence, not feeling of influence*” [original italics]. Strauss’ (2006: 779).

[There are] injurious consequences of management alone determining health and safety... (Nichols, 1997: 149).

9.1. Introduction

The findings in the preceding chapters reveal that representation as envisaged in the MLC framework was not implemented on ships. The analysis offers an explanation within the context of the lack of the preconditions, the nature, organization and control of work on board, as well as the tensions due to the different frames influencing the workplace. Furthermore, in examining the provisions for representation within the context of the requirements for a “firm” regulatory lead, they were found to be inadequate. The thesis argues that the inadequacy is aligned with a number of key findings that emerged in the research related to *how* and *what* the architects thought (or not thought) about regulating representation on ships. This chapter discusses these findings in order to go some way towards answering the research question: *Are the MLC provisions for seafarers’ representative participation in OHS a firm response to poor working conditions on ships?*

Four key findings in the preceding chapters (5-8) affirm that the MLC provisions are not the firm response envisaged. First, both meeting documents and interview responses at the developmental level, provided empirical evidence that representation was not discussed. The research reveal that the standards for representation were influenced by traditional approaches associated with the institutional structure of the ILO as a tripartite body, and land-based practices found in developed countries, rather than any conscious decision to include representation as an institution to give seafarers influence over their high risk working conditions.

The second key finding is at the administrative level and shows the inaction surrounding representation for seafarers. Policy officers and inspectors explained that the UK was largely compliant with the MLC prior to its coming into effect (Chapter 7). The findings reveal that the UK was actively involved in the development of the MLC and its guidelines and assisted in providing a regulatory lead consistent with what was already in place. The provisions were therefore a perpetuation of the *status quo* rather than a re-think of longstanding measures towards developing standards suited to address how seafaring work had changed.

At the shipboard level, the third key finding also confirms the analysis behind the first key finding that participation was not thoroughly thought through and therefore had no impact on board. In examining seafarers' experiences, the study found representation as a practice in disarray. There were tensions between existing unitary safety management systems implemented to satisfy the ISM Code and the MLC pluralist provisions for representation. These tensions undoubtedly account for some of the confusion found among seafarers, as the ISM framework supposedly makes allowances for representation in requiring the appointment of seafarers' representatives to serve on shipboard OHS committees. However, the dominant form of representation the ISM supports in practice is individual and direct, rather than collective and autonomous.

The final key finding indicates that in reality, seafarers discount the importance of representation. While hypothetically most of those interviewed believed representation to be a good thing, they did not regard it as an important aspect of their work relations. Representation was overshadowed by direct participation and so was dismissed as unnecessary in some instances and in others it was regarded as "nothing special" because the seafarers felt they already had a "say" through the managerial means established under the ISM system.

This chapter brings together the key issues emerging from these findings in relation to the research aim to explore and understand the viability of the provisions on representation in the MLC framework. The first section synthesises the findings from the documentary research and comments on the text of the provisions which the thesis argues do not provide a firm regulatory lead. The

second section of the chapter focuses on the accompanying preconditions for effective representation: management commitment, organized labour and the regulatory steer. It discusses how weaknesses in these preconditions might have contributed to failures to effectively implement representation on ships.

9.2. Negotiating Standards

The MLC is the product of the ILO's tripartite regime where cooperation, compromise and consensus guide negotiations for developing standards. The documents revealed that producing the MLC might have been unprecedented as the employers' and employees' groups had agreed on the instrument and basic elements before joining forces to convince the governments of the need for the convention. It appears from other accounts of negotiations at the ILO, that employers are not usually as cooperative in the setting of standards (Thomas, 2018; Thomas and Turnbull, 2018). This research found that employers were willing to cooperate in a re-regulation of the industry consistent with their interest of addressing unfair competition. This is not unique to the ILO maritime efforts as DeSombre (2006) for example, has recorded instances of some shipowners' willingness to accept some regulatory oversight in order to prevent a "race to the bottom" in maritime standards established by the IMO.

However, cooperation, consensus and compromise also have their drawbacks as Chapter 5 demonstrated. Although popular accounts of the MLC as the seafarers' "bill of rights" and a "firm response" to poor working conditions might paint the picture that seafarers are the main beneficiaries, this research evidence has somewhat tempered those claims in reference to representation. In order to develop an instrument to satisfy the various interests, areas of the MLC were much weaker than the seafarers' group would have liked. The documents showed that the MLC was developed as a framework convention with the minimum requirements, while much of the substantive elements were outlined in non-mandatory guidelines to the satisfaction of governments and the employers. Such is the nature of the ILO tripartite system for developing standards where provisions are traded off to find the best compromise, otherwise, the convention

might not have been adopted (Trebilcock, 2009). The ILO model has attracted criticism from some writers, who question the value of standards developed to satisfy the more powerful negotiators rather than being relevant to the situation they are meant to address (Standing, 2008).

Additionally, the text of the provision is not consistent with a firm regulatory lead as a precondition for effective representation. This finding further highlights the weakness in the ILO's governance regime. The ILO relies on member States to implement its provisions without any real means of ensuring compliance (Bauer, 2008: 649; Biffi and Isaac, 2002: 9). Developing a framework convention, which relies on its horizontal governance mechanism to ensure a firm regulatory steer, seems inadequate from the evidence of this research. The framework approach lacks the necessary details and allows flexibility. Although the architects were of the view that the guidelines provided the substance which should be given "due" consideration, the research found no more substantial provisions were developed in the case of the UK that might have demonstrated the force of the guidelines. Besides, the UK's provisions were more substantial than those in the MLC, although in practice, these also failed to ensure effective representation. These arguments surrounding the lack of firmness in the negotiated standards and other findings of the neglect of developing representation to the level to have some effect, raise questions regarding the value placed on these provisions as a means to contribute to alleviating poor employment and working conditions for seafarers.

Besides the weakness in the regulatory lead, there are also weaknesses in ensuring compliance. The compliance and enforcement regime is regarded as one of the strong elements of the MLC that will ensure its effectiveness (Lillie, 2008; Bolle, 2006). In negotiating the standards for compliance and enforcement, it appears that the architects expected this element to be one of the significant areas of the MLC. Nevertheless, a different picture where inspectors are challenged in carrying out their duties in general, and also with enforcing the requirements in respect of representation emerged in the study. The enforcement system relies on traditional approaches that use documentary evidence which are not usually

an accurate reflection of reality. The other means of verification is the seafarers who are also unreliable as they may be wary of speaking to State officials (Section 9.3.4). In negotiating the standards, the challenges of enforcement at the shipboard level were not adequately considered. Others have shown how seafarers in particular are wary of engaging with inspectors and this may leave important matters uninspected (Bloor, et. al. 2005).

In pulling these findings together, it was shown that while representation was not featured prominently in the negotiations, the general experiences in that respect, suggest that the overall strength of the MLC might have been compromised due to the need to satisfy the varying interests and develop a document that would be adopted. Representation was one area where the substantive elements were relegated to guidelines that, despite the architects' beliefs, turned out to be less effective than envisaged.

9.3. Supports for Effective Representation

The study is guided by the view evident in the literature that for representation to be effective, certain preconditions must be in place (Walters and Nichols, 2007; Walters et. al. 2005). This section discusses the findings on the status of the preconditions to support representation on ships according to the MLC framework to further develop previous discussion on the lack of interest shown for seafarers' representation, and therefore the likely reasons for the seafarers' experiences.

9.3.1. Management Commitment in Theory

Management commitment is one of the important preconditions for effective representation. Chapter 6 explains that this thesis has adopted the MLC's definition of a shipowner which places obligations for satisfying its requirements on the shipowner or any person or entity agreeing to take responsibility for the operation of the ship. The generic term "shipowner" is used in the MLC in reference to this responsible person or entity and was used in conducting the interviews. As such, references in this discussion to the shipowner should also be

taken as a reference to management and its commitment whether the term “shipowner” or “the company” is used.

There are layers of management influencing the shipboard work environment which extends from the shore-based office to the ship (Xue et. al. 2017; Bhattacharya and Tang, 2013). Senior management (i.e. the shipowner) was the main source of support the architects envisioned for representation on ships, and therefore determined the focus of this discussion on management commitment. However, it emerged in this study that shipboard management, particularly the Captain, has some influence in the practice of representation. Studies conducted on ships, stress the importance of line managers in creating an enabling (or an inhibiting) environment for seafarers’ participation in OHSM (Bhattacharya and Tang, 2013; Bhattacharya, 2012b). The following sections discuss the main issues surrounding management commitment as found in this research, such as drivers of commitment, the nature of this commitment in practice and the consequences of the type of commitment found.

9.3.1.1. Paternalism and Enlightened Self-Interest as Commitment

Paternalism in terms of the “good shipowner” and enlightened self-interest with respect to cost considerations, were the main motivators articulated for management commitment to representation on board. This representation was consistent with direct participation rather than seafarers’ autonomous and collective involvement. The “good shipowner,” the “good ship” and “the good company” were used as assurances and explanations as to why shipowners would be amenable to implementing the MLC provisions on representation. At the administrative level, the “good company” and the “good ship” were used to indicate where satisfactory efforts were being made to follow the OHSM rules as per the UK’s regulations. Seafarers also used these terms to indicate their satisfaction with their working conditions and to emphasize why they thought representation was unnecessary.

The “good shipowners” were characterized as those whom the architects represented at international fora, who wished to be compliant with regulations

(Chapter 6). These were the ones who were involved in the MLC's development for whom sub-standard shipping was a problem and who were also to benefit from this attempt at regulating labour standards. As explained in Chapter 5, the MLC also serves to "create a level playing field" for good shipowners.⁵⁷ At the UK level, good shipowners were actively involved in the national maritime committees and in consultations with their social partners to set standards. On board, demonstration of this commitment from the inspectors' perspective, was for example, having OHS committee meetings and detailed minutes showing where issues raised were addressed. For seafarers, the "good company" or the "good ship" meant that they were paid on time and working conditions were satisfactory in terms of having culturally appropriate, quality food in sufficient quantity; recreation facilities; medical care; and having a "say" in OHS matters. Overall, the study found that there was a general perception across the research levels that "good shipowners" were not the targets of the MLC.

The "goodness factor" suggests some amount of paternalism might also be in operation consistent with some forms of unitary framing of the workplace (Budd and Bhawe, 2008). This "goodness factor" in this research resonates with Cullinane's and Dundon's (2014) perspective of paternalism as a unitarist view of the workplace, which can discourage workplace representation. Paternalism, they note, legitimises the employer's control of the workplace through showing care for employees. Unions are seen as disruptive to the familial atmosphere and unnecessary as the employer will attend to the welfare of the employees. As this study found, seafarers reported that their welfare, including health and safety, were being addressed by the "good company."

Paternalism, as a reason to expect shipowners to be committed to representation is problematic. The seafarers' experiences showed that management commitment in practice was inconsistent with the architects' expectations for shipowners to support representation. Despite the apparent care

⁵⁷As a reminder, the less publicized rationale for the MLC was to assist in creating a 'level playing field' for 'good shipowners,' recalling the continuing campaign against sub-standard shipping and attempts to stymie the "race to the bottom" in working standards on ships by eliminating competition on labour standards (DeSombre, 2006; 2008; Lillie, 2006).

for seafarers, the study found that a number of important areas of seafarers' OHS protection were deficient (discussed in Section 9.3).

Management commitment requires concrete actions to mobilize resources and activities for representation (Menendez, et. al. 2009; Walters and Nichols, 2007). These include time and training to support representatives in their role; active two-way communication and consultation of representatives; and ensuring representatives are safeguarded from victimization associated with their role. The MLC framework is similar in these respects, except those details are in the non-mandatory guidelines. Despite the architects' confidence that these were "more than just guidelines," none of these activities had taken place in their entirety in respect of the ships on which the seafarers in this study worked.

The situation examined at the UK level was not much different. Although the UK inspectors reported some level of compliance on ships (in both flag and port State inspections), they also confirmed that the practice was below what their regulations required. This is not surprising when compared with similar findings in land-based studies (eg. EU-OSHA, 2012; Walters et. al. 2005). Management's commitment is demonstrated not only by their capacity to provide resources, but also their will (Walters and Nichols, 2007). While this study is limited in responses from shipowners or managers, sufficient evidence emerged to suggest that shipowners' will to implement representation is lacking. Shipowners' will is towards maintaining the ISM Code system. Indications are that this is a deliberate tactic to maintain control of the workplace. In the MLC deliberations, they resisted texts that suggested a sharing of authority on board (Chapter 5). In the seafarers' experiences, participation is direct, and management unilaterally controls health and safety despite claiming to establish joint OHS committees where seafarers are represented. In practice, seafarers are included to support the SMS and the safety of the ship, without any of the features suggestive of genuine participation.

Enlightened self-interest also proved an inadequate motivator for shipowners to support representation. The architects noted that it was in the shipowners' best interest to listen to seafarers in order to address situations before they escalated into costly incidents. On the one hand, this thinking reflects

the more practical rationale for representation as a means to tap into workers' day-to-day knowledge of their work processes with which management is not entirely familiar (Walters and Nichols, 2009). On the other hand, there is an ethical reasoning for including workers which is consistent with broader notions that labour is not a commodity and therefore workers ought to be given the opportunity to use their knowledge to contribute to their own protection (Robinson and Smallman, 2013). It appears however that the architects were speaking less to the practical and ethical element and more to the business case for health and safety management (Chapter 6).

The business case espouses that there are financial benefits of investing in health and safety (Cutler and James, 1996) and there is the received wisdom that workers should be included as a means of achieving the organizations' health and safety goals (RoSPA, 2010). Countries such as the UK embarked on national campaigns to promote the "safety pays" slogan. However, some researchers have argued that the evidence for a business case has not been proven. Smallman and John, (2001: 228) contends that if there is an argument that safety pays, it must be made clear for whom. Management decisions to spend are not necessarily related to cost but other reasons such as organizational reputation, or their own subjective thinking as to what is necessary expenditure (Sampson, 2011; 2016; Cutler and James, 1996). In other words, management's decision-making is not straightforward. Management is compelled by forces of competition and short-term profits, particularly small enterprises (Gunningham and Johnstone, 1999). In that respect, the business case is not necessarily a reliable basis for expecting regulatory compliance, as the following sections demonstrate.

9.3.2. Management Commitment in Practice

This section discusses key findings from the seafarers' experiences which substantiate the above analysis on the limitations of paternalism and enlightened self-interest to compel shipowners to implement representative practices. Among the key findings is that representation as per the MLC framework was not implemented. Where there were some practices, these were established prior to

the MLC. The evidence showed that the MLC provisions had little impact on OHSM practices on board. Firstly, the commitment to tripartism and social dialogue at the other two levels and which underpins the MLC, did not translate to the shipboard level. While OHS committee meetings were held, and seafarers' representatives were appointed in most instances, the practices did not reflect the kind of participation envisaged in a collective representative system.

9.3.2.1. Participation Under the ISM and the MLC

Chapter 5 explains that the ISM Code and the MLC provisions on representation are underpinned by conflicting philosophies. The ISM Code is unitary in its approach and in its practices of OHSM. It is a managerialist systems approach and OHS is managed in a top-down manner (Chapter 3, Section 3.4.1.). In contrast, the MLC provisions on representation have a pluralist tradition of seeking to coordinate conflicting interests in the workplace and where union involvement is implicit in its tripartism. However, representation becomes complicated in practice as the underpinning self-regulatory paradigm within which all this takes place is framed in a unitary way.⁵⁸ But without any deliberations of the provisions for representation by the architects, these issues were not unearthed for clarification. The MLC provisions were therefore introduced on ships with the existing unitary framework with an expectation that they would somehow integrate into the work practices.

The evidence at the development level suggests that the shipowners' intention was to maintain the *status quo* (Chapter 6, Section 6.3.3.). Although there is the recognition that activities to include workers in health and safety under the ISM may not be working, its provisions were nevertheless deemed to be sufficient. The ISM system has received criticism in previous studies for failing

⁵⁸ This refers to the "Robens Model" (discussed in Chapter 2) and the "common interest" assumption underlying self-regulation which saw no need for bargaining on OHS, which suggests no need for unions, and also advocates de-regulation. This left workers vulnerable to the decisions of management in terms of how workers would be included, as the self-regulatory framework offers the flexibility for managers to consult either directly with workers or through representatives (James and Walters, 2002). In situations where workers are not organized, as on ships, or do not have union support, also in contemporary precarious working conditions, workers are not able to make use of these arrangements.

to contribute significantly to OHSM on ships because its practices do not effectively incorporate seafarers' participation (Bhattacharya, 2012a; Bailey, 2006; Anderson, 2003). In supporting the ISM system, a respondent from the shipowners' group claimed that the problem of seafarers' lack of participation lies with shipowners' lack of education on how to effectively communicate with seafarers, rather than the mechanism for communication. This participant emphasized more education for shipowners rather having more regulations, contrary to research evidence that employers respond to regulations (eg. Walters and James, 1997).

Other research shows that management's willingness to share in the co-management of OHS is important for effective participation (Markey and Patmore, 2011; Milgate et. al. 2002). While this research found some recognition of value in participation, there was no evidence that shipowners typically supported representative participation. The instances of support mentioned for the cruise sector deserve their own study as this sector reflects characteristics of large workplaces and perhaps reputational prerogatives compel cruise ship employers to be more amenable to sharing management of the workplace.

For the seafarers interviewed, their experiences were of unilateral management where the company control OHSM. Seafarers were more knowledgeable on the ISM and its requirements and in comparison, had limited knowledge of the MLC. While it could be argued that the MLC is relatively new, the findings did not uncover any concerted effort to educate seafarers on participation, nor were there attempts to establish collective participatory practices that would suggest these practices would mature over time.

9.3.2.2. Direct Participation On Board

This section and those following draw on the empirical evidence to support the above analysis that co-management of OHS was not a feature in shipboard work relations. Seafarers in this study reported satisfaction with their experiences of direct participation. For them, working on a "good ship" or working with a "good company" facilitated their involvement through various managerialist

mechanisms, such as tool box meetings, safety observation cards and the complaints mechanism. These were methods they believed allowed them to have a “say” whereas representation was regarded as “nothing special.”

This finding initially seemed to contradict other research that seafarers’ participation is constrained by the nature, organization and control of work on ships (Xue et. al., 2017; Bhattacharya, 2012a; 2012b; Bailey, 2006). Evidence from this study, suggested that the issue is complex and there is reason to believe that seafarers are constrained in individually representing their interests due to fear of losing their jobs, not being able to secure future work or the leadership style on board. These are fears similar to those described for precarious workers in land-based industries (Lewchuk, 2013a; 2013b). Seafarers are characterised as precarious workers (Walters and Bailey, 2013; Sampson, 2013; DaCanay and Walters, 2011; ILO, 2004) and these findings on fear of speaking out suggest that it remains an issue and should be considered in developing regulatory provisions.

The importance of line managers was also raised by inspectors and a few seafarers. Particular mention was made by inspectors of the constraints on seafarers due to the persistence of traditional hierarchical structures, also confirmed in other research (eg. Sampson, 2013). The inspectors explained that this might prevent some seafarers from speaking up in OHS committee meetings, and it was one of the challenges they faced in carrying out inspections. Previous research shows the importance of on board management in facilitating seafarers’ “voice” and how strict hierarchy inhibits some seafarers’ participation (Bhattacharya and Tang, 2013). Simard and Marchand (1994) note that hierarchy has negative effects on workers’ OHS outcomes. Earlier commentators such as McFarlane (1970: 18) argued against continuing such strict hierarchy in the modern shipboard work environment for its negative effects on good employee relations. As he suggested, the era which gave rise to the need to invest the Captain with such powers to secure the interests of shipowners has long passed. Of the few examples in this research where representation was found, the seafarers indicated the importance of the Captain in facilitating its functioning.

9.3.2.3. Competence of Representatives and OHS Committee Members

The “good shipowner” narrative also comes under scrutiny in respect of the shipowners’ obligations to ensure competence of representatives and OHS committees. No seafarer could point to health and safety training in the manner to ensure that representatives or the OHS committee was competent in OHS matters. Providing resources, training in OHS and enlisting expertise, are some of the demonstrable evidence of senior management commitment to ensuring the competence of representatives and/or OHS committee members (Markey and Patmore, 2011; Garcia et. al., 2007; Milgate et. al., 2002).

The evidence presented in Chapter 8 indicated that in most instances, representatives were appointed for their occupational position, rather than for any consideration of their willingness or ability to carry out the role. For workers to make use of rights to representation, they have to be informed about those rights and have the necessary preconditions to ensure the provisions are implemented in the first place (Walters and Nichols, 2007). Delp and Riley (2015: 60) argue that, “Education enables workers to collectively recognize hazards and the impact on their health, understand their rights and identify violations of health and safety standards...”

The most prominent role on the safety committee was the safety officer. The MLC framework provides for the appointment of a safety officer, but again this was explained as carrying over from practices prior to the MLC. Under the ISM code, the safety officer is responsible for operational and technical safety issues and this appeared to have continued. Where seafarers indicated that they themselves were safety officers, they did not receive training specific to their role as members of the OHS committee consistent with the MLC guidelines. Additionally, these safety officers were unaware of any resources being provided to particularly target the health and safety responsibilities of the committee consistent with the MLC framework. The literature argues that representatives and OHS committee members need technical as well as legal knowledge on OHS, skills in negotiating with management, and in understanding complex health and

safety issues (Milgate et. al., 2002). From the seafarers' experiences, the safety committees on their ships were not reflective of such committees.

9.3.2.4. Health and Safety Management?

A recurring theme in this thesis is the skewed focus on safety to the extent that some seafarers were uncertain that they had a health *and* safety committee. Including the word "health" was confusing in some instances and it was discovered that the practice on ships was to say "safety" only. Health was understood mostly as medical care and occupational health issues were treated informally, particularly psychosocial health. On some ships, the small size and camaraderie among the crew were relied on as a means of managing psychosocial health. Others were clear in their responses that "we don't talk about that" in reference to health issues and in particular psychosocial health.

The MLC provisions stipulate that modern diseases such as HIV Aids and mental health illnesses should be taken into account, when policies and programmes are being developed (MLC B4.3.1 paragraphs 2-4: 62). These were not discussed in OHS committee meetings on board ships. Considering the combination of OHS risks seafarers face and increasing attention in the maritime press on mental illness among seafarers (eg. MAREX, 2017), this is a failure of the OHSM system to adequately address health and safety. Studies show that representatives can contribute to addressing traditional as well as non-traditional OHS concerns (eg. EU-OSHA, 2012: 17).

Seafarers in this study believed that it was their responsibility to care for their own health. This resonates with Gallagher's and Underhill's (2012: 237) assertion that there is an individualization of psychosocial health risks in the contemporary workplace, and an apparent return to previous narratives that individual behaviour and characteristics are the causes and solutions for issues such as work stress. Acejo et. al., (2011) came to a similar conclusion on the responsabilization of seafarers in their findings of high levels of self-medication among seafarers. In my study, the seafarers on "good ships" pointed out the availability of gym and entertainment equipment as a means to help individuals

safeguard their own mental health. While this thinking might be commendable as workers do have a responsibility to care for themselves, it abdicates the shipowner from his responsibility as the employer to safeguard his employees' OHS.

This abdication of the shipowner is underscored when the "healthy worker effect" (Acejo, et. al. 2011: 90-92) is assessed. It emerged from the seafarers' interviews that they might subscribe to the "healthy worker effect" as a way of substantiating their explanations that representation was unnecessary. Seafarers indicated that they had no problems on board with health because they were medically fit. As part of their employment requirements, seafarers are subjected to a comprehensive medical prior to joining a ship and they argued that this confirmed that they were healthy. Acejo, et. al., 2011 suggest that seafarers may downplay health problems to protect their employment and may not wish to make disclosures to researchers which they feel might compromise their employment. Although it was uncertain whether this was the case in my research, the study does point to deficiencies in seafarers' knowledge and understanding of occupational health and safety underscoring the need for effective OHS training. In effect, the seafarers dismissed representation on grounds of the "healthy worker" and safety on the grounds that they could "speak."

Seafarers' experiences of discussing health issues was *ad hoc*. In some instances, this was at the end of OHS committee meetings, or tool box meetings, when a general question was asked. For example, "Is everybody ok?"; "Everybody feel good, any problem about yourself, your family?" Overall, the findings did not show any sustained and systematic means of training, creating awareness or addressing health comprehensively. These are matters that might have been addressed with effective representation. Other studies show that where there are active representatives and a functioning participatory system, workers are more OHS conscious as representatives stimulate other activities such as training and the provision of information (EU-OSHA, 2012; Garcia, et. al., 2007; Milgate et. al. 2002). When the evidence in this study is considered, the high commitment to direct participation and established managerial practices do not adequately serve seafarers' OHS protection.

Nichols (1997: 149), argued that there are “injurious consequences of management alone determining health and safety.” The consequences that emerged in this research is that seafarers’ health was not given equal attention as ship safety and they lacked the knowledge or support to hold their employers’ accountable. The thinking behind the functioning of the system relied on the “good shipowner” to do the right thing which is not a strong and sustainable approach to OHSM. This thinking does not serve seafarers who might not be the beneficiaries of benevolent owners, neither is it sustainable in times of economic pressure (Gunningham and Johnstone, 1999).

9.3.3. Trade Union Involvement

This section discusses the findings on organized labour as one of the important supports for effective representation. It focuses on trade union activities on UK ships consistent with the data gathered (Chapter 4). Union activity on board is limited. The elements of representation that emerged from the findings, such as the establishment of OHS committees, existed prior to the MLC (Chapter 8). The section first discusses trade union involvement in the wider context of setting the standards, and then goes on to discuss barriers to on board organisation.

9.3.3.1. Mind the Gap: Selective Cooperation in OHSM

The findings revealed a paradox of tripartism and social dialogue which were espoused and practiced at the international and national levels but stopped short of being integrated in work relations on board. Instead, broad statements of involving seafarers *or* their representatives were made, despite trade unions being integral to the process of developing, operationalizing and enforcing maritime labour standards. Existing research provides convincing evidence that trade unions deliver the most effective representation at the workplace level whether specific to OHS or broader issues (Heery, 2010; Strauss, 2006; Walters, 2006; Milgate et. al. 2002; Nichols, 1997). Yet, the MLC provisions do not make direct reference to the involvement of trade unions to support the establishment and functioning of representation. Frick and Walters (2000: 45-46) argue that trade unions are most suited to enable joint OHS committees, the model of

representation adopted in the MLC framework. It might be argued that union involvement on ships is implicit in the MLC framework owing to the ILO as the “parent” organization where tripartism is emphasized, and that unions are involved at other levels. But, unless explicitly stated, broad statements are left to the interpretation of member States.

The MLC is a product of the ILO’s tripartite system where the social partners cooperate to produce these labour standards. Trade unions were integral to MLC’s development before and during the negotiations and continues to be involved in its continuous review. As Chapter 5 explained, the JMC was responsible for triggering the process leading to the MLC. At the UK level, seafarers’ unions are active in the national maritime OHS committee and in consultations to set policies and programmes nationally. The UK unions also feed into international and regional policy agendas as UK’s representatives or as advisers and experts to various regional and international committees. Yet, such depth and breadth of union involvement does not feature on UK ships.

The absence of union involvement on board might help to explain the disarray in representation that emerged in this study, and seafarers lack of knowledge. The presence of trade unions might help to address issues of fear of speaking out. Trade unions can contribute to a more comprehensive approach to OHSM which includes training and education for representatives and their constituents (EU-OSHA, 2012; Markey and Patmore, 2009). Unions are important in ensuring regulatory provisions for OHSM are complied with in the workplace and have the resource base to engage employers (Nichols, 1997).

9.3.3.2. A Long-Distance Relationship

The findings of limited union activity on ships can be understood through the lens of the fragmentation of the seafaring labour force and reorganizing of shipping business as a result of economic globalization (DeSombre, 2006; Lillie, 2004). One of the laments of the union official interviewed was that their members are scattered on different flag ships, so they rarely see them. The shipping industry is not unique in this regard as it reflects the broader context where union

involvement in workplaces has declined across most advanced economies (Delp and Riley, 2015; Biffi and Isaac, 2002; Quinlan et. al. 2001). Multinational hiring practices destroyed the common national identities that were found on single crew ships of traditional maritime States and so removed an important basis for union involvement on board (Kahveci and Nichols, 2006; Lillie, 2004; 2006).

Unions have also been criticized for their inertia to break from traditional organizing methods, which are not suited to the contemporary world of work. However, these reasons might be less significant when considered alongside shipowners' unwillingness to recognize unions on board. As explained by the union official in Chapter 7, the union had more leverage in the cruise sector compared with other shipping sectors because unions were recognized and were therefore involved in on board support, such as assisting with participatory arrangements and having union members as representatives on OHS committees.

Cruise ships resemble large workplaces which suggests that the small workplace characteristics of many ships is a factor to be considered in gaining union recognition. The union official explained that the cruise ship companies find it easier to bargain collectively as it saves time and resources. It may also be the nature of the cruise sector which is more visible in the public eye and for reputational reasons, would wish to appear as good employers (Smallman and John, 2001). Except for cruise ships, union involvement consisted of engagement with operators at the national level (in the UK) and using those opportunities to raise OHS concerns, whether or not they have recognition from a particular shipowner.

Lack of direct involvement on ships leaves unions with the option of relying on seafarers for information regarding issues to be resolved. This point underscores the importance of constituents who are active and aware of statutory requirements governing their work environment in order to bring breaches to the union's attention (Delp and Riley, 2015). The absence of representation on board makes active relationships with unions even more important in safeguarding seafarers' health and safety. Yet, if seafarers' participation is constrained, they become an unreliable source of information. While the union official did not

report this aspect as a special concern for his union, he explained that some members may be afraid to speak out on issues, particularly cadets, or junior officers at the beginning of their careers, who were reluctant to “stand out” or be seen as “trouble makers.” As such, he explained that seafarers preferred speaking with their unions and to remain anonymous. This underscores the importance of unions in creating a source of support for workers independent of the shipowners’ sphere of influence.

While this study does not claim generalization, there is consistency with previous work and discussions on limited union activity on board ships (Sampson, 2013, Walters and Bailey, 2013; Kahveci and Nichols, 2006). There are also similarities with experiences of many land-based industries where union involvement in workplaces has declined and individualization and responsabilization of workers’ rights take the place of collective practices (Hilgert, 2013; Lewchuk, 2013a; Gray, 2009; Quinlan et. al. 2001).

9.3.4 Challenges in Enforcing the Regulatory Lead

A firm regulatory lead requires a firm steer to ensure standards are effectively implemented and practised. This section discusses the compliance and enforcement regime for representation on ships. The evidence in Chapter 5 showed that those who developed the MLC sought to institute a strong compliance and enforcement regime to support the convention in general. Representation is to be subject to this regime as it falls under health and safety and accident prevention, which is listed among the areas that must be given attention in both flag and port State inspections (MLC, Appendices A5-1 and A5-111). The findings reveal that in practice, inspecting for representation is challenging.

The challenges begin with the limited role given to safety representatives relative to safety officers and the health and safety committee and is compounded by the lack of statutory weight. The only element strongly stated in the MLC framework is for representatives to be selected or appointed and to be given the authority to sit on OHS committees. As was the concern in the MLC deliberations

about having objective measures to enable inspections, these were two objective measures that could be inspected. The UK inspectors reported that they checked that OHS committees were established and that representatives and the other members of the committee were appointed, and this appointment was officially recorded according to the provisions. Beyond that, the regulatory lead is silent, and therefore inspections for representative practices are carried out in “good faith” according to the “rules of engagement” for inspections.

The “rules of engagement” require that documentary evidence is checked as *prima facie* evidence that a ship’s arrangements for health and safety comply with national regulations or with the requirements of the MLC. This should then be supplemented by a walk around the ship and speaking to seafarers to verify conditions. Inspectors are only allowed to do more detailed inspections if they have reasonable grounds to do so. This is mainly for port State inspections and followed the established practices in the industry (see Bloor et. al. 2005).

While the same rules apply to flag State inspections, inspectors have more powers on their own flag-ships as they are more intimately involved with their national systems and depending on the national regulations, can go beyond what is required for port State inspections. For port State, the standard practices do not allow for a closer inspection of the practice of representation. It is also not expected that under the circumstances of neglect of representation at the developmental stage, that it will be given much attention beyond the requirements for checking that committees are established and that key persons are appointed in the main roles.

The MLC provisions are said to have been influenced by land-based approaches, but these emerged as more limited than some land-based regimes, such as the UK. Elements that might have provided a strong regulatory lead were missing from the mandatory sections of the MLC, such as a stated relationship between inspectors and representatives and a role for unions. Commentators have noted that for land-based enterprises, where these elements do exist, they are rarely included in inspections as the focus has been on health and safety rather than workplace structures (Walters and Nichols, 2007: 115). By contrast, in

shipping, some attention is paid to the workplace structures, but the details to support the inspections are in non-binding guidelines.

Others have found that regulatory standards are not uniformly applied across countries even when there are specifications (Bloor et. al., 2005). Therefore, in the absence of details, it is more likely that representation will be further neglected in some jurisdictions. Efforts on the part of UK inspectors painted a slightly more optimistic picture for inspecting representation on ships, although they faced a number of challenges. These included challenges with verifying the documentary evidence by speaking with seafarers due to their frequent reluctance to speak, or that their responses might not tell the whole truth. This presents a paradox, as although seafarers' responses are important to verify the official reports, they can also be unreliable. Inspectors may therefore make subjective judgements which brings personal style, experience and conscientiousness into play.

Discretion is an accepted element in PSC practices (Bloor et. al. 2005: 12). Inspectors' individual approaches and experiences feature in their inspection practices and account for inconsistencies in ship inspections (Bloor et. al. 2005), also observed in shore-based industries (Hutter, 1993). This is not a sustainable means of ensuring standards are universally applied, particularly where the regulatory lead is weak, and when the wider context of challenges in governing health and safety in the maritime industry are considered (see Bloor et. al. 2005).

One important challenge is the conventional approach to representation addressed in previous chapters. In applying the *status quo*, the UK's regime, likewise the MLC framework, turned out to be a perpetuation of traditional structures and practices that are unsuited to contemporary situations. The requirement for the Captain to chair the OHS committee for example, may prove a barrier to seafarers' participation (Bhattacharya 2012a), yet this was not given any consideration at the UK level despite inspectors' experiences and attempts by one shipowner to take a different approach (Chapter 7, Section 7.3.2.).

Relatedly, inspectors reported that most representatives were appointed rather than elected and the common practice was to name all crew members as representatives or appoint representatives based on their job descriptions. These practices were also reported by seafarers. In the conventional practice, inspectors focus on safety officers to verify functioning of the safety system. This continued, although for the UK, the MLC elements are merged with the ISM elements for inspection purposes and an *aide memoire* is used to ensure all the relevant aspects are inspected. The safety officer is a key position on the OHS committee and, providing this person has the competence in standards for health and safety, and that the inspectors check this knowledge, then the safety officer could give an account as to whether health and safety are effectively managed. However, the evidence in this research suggests otherwise, in that technical and operational safety continue to be the priority and that members of the OHS committee might not be receiving training in the labour aspects of OHSM.

Inspections are not stand-alone activities and as this study demonstrates, without the other supports, inspections were difficult and occurred at a superficial level despite inspectors' efforts. Inspectors are guided by regulations which are limited in both the MLC and the UK's provisions. While the UK provides for inspecting that representative structures are in place, the details are missing in terms of inspecting for the supports and processes such as the provision of training, consultation and receiving information. Including an explicit statement on the relationship between the inspectors and seafarers' representatives might have helped to raise the profile of representatives and assist in effective representation. Despite the challenges and barriers inspectors face, the practice of inspection continues along customary lines and opportunities to re-think the system have gone unheeded.

9.4. Conclusion

This chapter discussed the key findings of the research drawing together the three levels in the context of the theory for effective representation. Representation is regarded in this study as important for the shipping industry which is isolated and,

where workers are precariously employed and are generally silenced. A strong regulatory lead is needed which sets out the requirements for implementation and practice to ensure its effectiveness (Walters and Nichols, 2007; 118). Recent studies in coal mining shows that even where all the preconditions are not fully in place, a strong regulatory lead gives support to maintaining an effective representational structure (Walters et. al. 2016a).

While seafarers' participation is claimed to be important in the industry towards developing a "safety culture," and attempts at individual participation have not produced the desired results, a discussion on alternative approaches to on board work relations is not forthcoming. Neither is relevant discussions between ship and shore being raised sufficiently to address the lack of commitment to representation. This study found that the preconditions were not met to support the MLC model of representation. The findings show that the regulatory lead is weak, the regulatory steer is constrained, union involvement on ships is absent and management commitment to representation is lacking.

The thesis attributes these deficiencies in the MLC framework, to the neglect at the development phase where the architects failed to consider the viability of such a model in the context of the nature, organization and control of work on board. Although the architects were in possession of information on how economic globalization had affected seafarers' working and living conditions, this knowledge did not feature in developing the provisions for representation.

Developing the standards for representation on ships, required consideration of a number of factors that link theory and practice. It was not enough to impose the MLC provisions for representation on ships without considering possible barriers and supports for their implementation. With these gaps uncovered, the study raised uncertainty as to the value placed on representation in this latest international effort to improve seafarers' working conditions. Was seafarers' representation intended to be an integral part of regulating OHSM on ships or was it included solely to be consistent with tradition?

Conclusion: Understanding the Disconnect

Representation matters (Robinson and Smallman, 2013: 689).

10.1. Introduction

This study was motivated by personal experiences which gave rise to concerns regarding the difficulties some seafarers faced in resolving their OHS and general welfare matters. The coming into effect of the MLC 2006 presented an opportunity to explore a “new” set of labour standards developed to address such concerns. The MLC is promoted by the ILO as the seafarers “bill of rights” and a “firm but flexible” response to poor employment working conditions on ships. The basis of this study was the MLC framework for allowing seafarers some input in their health and safety protection. Previous research shows that seafarers lack of “voice” is a source of concern for health and safety on ships (Xue et. al., 2017; Bhattacharya, 2012a’ 2012b; Bailey, 2006).

Not being free to “speak” increases seafarers’ work risks as issues are not brought to the fore to be addressed (Xue et al., 2017). Such evidence of lack of participation, is contrary to the maritime industry’s pursuit of a safety culture and exposes the gap between the extent of such rhetoric and the on board realities of practice. The study therefore assumed that the MLC provisions to address the lack of seafarers’ participation was a positive development in the maritime industry. Nevertheless, it problematized these provisions and questions whether the standards for giving seafarers a “say” provide the “firm response” envisaged by the architects of the MLC.

The MLC’s development is framed in the context of the ILO’s decent work agenda which seeks to improve the situation of “human beings in the world of work” (STWGMLS/2002/5, p.1). Giving workers a “say” in determining their working conditions is an important aspect of decent work with broader ideological

notions of social justice, wellbeing and self-actualization of workers. Yet, the collective “voice” of the approximately 1.5 million seafarers worldwide, is muted in many instances, although they are exposed to above average risks in their workplaces (Walters and Bailey, 2013: 43-68; Nielsen and Panayides, 2005). This study explored whether the measures for representation in the MLC framework provided a viable means for addressing this gap.

This study was conducted by examining the three levels relevant to the development, administration and implementation of these provisions for representation. This chapter concludes the study. It reflects on the core findings and highlights their contribution towards understanding these standards for regulating representation on ships. It revisits the research question and objectives and discusses the shortcomings that were found at the developmental level and what influence these might have had on the findings at the administrative and shipboard levels. The implications for wider issues of global governance and the ILO’s ability to produce effective standards are highlighted. The chapter also identifies the study’s empirical and conceptual contributions, along with some policy implications. It ends with acknowledging the limitations of the study and points to areas for future research.

10.2. Research Summary and Key Findings

Scholars of the shipboard work environment emphasize the risks associated with lack of seafarers’ genuine participation (Xue et. al., 2017; Bhattacharya, 2012a; Bailey, 2006). One means of improving workers’ exposure to risks is to have suitable regulations for their autonomous representation that are effectively applied (James and Walters, 2002). Similar arguments have been made for the seafaring labour force regarding the potential for representation to improve working conditions (Walters, 2005). However, the supports to make this happen were shown to be poorly constituted for the maritime industry (Bhattacharya, 2012a; Bailey, 2006). Therefore, the study posed the central question: *Are the MLC provisions for seafarers’ representative participation in OHS a firm response to poor working conditions on ships?* Three key outcomes of the study suggested

that the provisions are not the firm response envisaged by the architects of the MLC.

First, the empirical evidence revealed that the seafarers in this study were not benefitting from representation as intended by the standards in the MLC framework, as representation was not implemented in the manner to influence health and safety practices. Second, the provisions were not viable in the kinds of shipboard environment described in the research. On the one hand, the standards did not present the regulatory lead to stimulate the practices associated with representation. On the other, the standards themselves were based on practices that were unsuited to current shipboard work environment. As one of the preconditions for effective representation, the regulatory lead was found to be weak. The third key finding was that the other preconditions for effective representation were not met. The study found that adhering to the traditional approach beset the regulatory steer, while management was committed to a unitarist approach, and unions support on board was for the most part absent.

The evidence at all three levels of the research pointed to several factors that challenged the development and operationalization of representation, and therefore accounted for the disconnect in its implementation and practice. Firstly, the architects claimed that the provisions were influenced by the ILO's institutional tripartite structure and its tradition of including representation in the instruments it developed, along with other influences from land-based approaches found in advanced countries. Secondly, some of them stated that representation was an uncontroversial issue in the MLC negotiations and "everyone accepted it" so there was no need to deliberate its inclusion. This finding was surprising considering the evidence in land-based studies that employers are resistant to representation, particularly as it is associated with unionisation (Cullinane and Dundon, 2014; James and Walters, 2002). Indeed, the third factor that challenged the development and operationalization of representation on ships was that shipowners were not amenable to union representation on board. These factors underscore the gap between the architects thinking and the realities on ships.

The architects' perspective on representation also contradicted the literature that shows representation as a contested area of workplace relations (eg. Walters et. al. 2005). In stating that representation was unanimously accepted, the architects seemingly assumed a "shared understanding" of what it meant and how it was to be practised, but this was not supported by the evidence. As representation is contested, a "shared understanding" is necessary. A "shared understanding" means all those involved in the development of such provisions agree on their meaning and therefore, how they are to be given effect (Frick and Walters, 2000).

The architects' testimonies showed that there were different understandings of representation. There was one view that it was akin to shop floor representation. Another dismissed shipowners' accepting any union-type programme on board, while a third view, saw representation in the pluralist sense with union involvement. Representation was not defined in the MLC, neither was it deliberated in the negotiations, so there is uncertainty as to the basis for the architects' claims that "everyone accepted it," other than they were invoking received wisdom about the importance of such arrangements. These contradictions in the architects' testimonies and the evidence that representation was not a priority agenda item in the MLC development, revealed how the provisions could lack the necessary elements to be considered a firm regulatory lead.

The arguments for the weakness of the regulatory lead at the developmental level are substantiated at the administrative level where the findings revealed a similar lack of attention to representation. In operationalizing the standards, there was a reliance on conventional approaches in policy and practice. It is therefore understandable that a disconnect existed between the national regulations and on board practices. As one of the key actors in the development of the MLC, the UK's arrangements for participation were already in compliance with these provisions for representation. The research evidence showed that instead of stimulating suitable practices, the MLC provisions

perpetuated the *status quo*. As such, the study revealed a case of the MLC framework being influenced by existing UK practices and not the reverse.

At the shipboard level, representation emerged as a practice in disarray. With the scant attention given to the text of the provisions and measures to support their implementation and practice, it was unsurprising that there was confusion and uncertainty among seafarers as to who their representatives were and the purpose of representation as intended in the MLC framework. Some seafarers were dismissive of representation because they claimed to have a “say” in health and safety matters. However, the evidence showed that this was not the autonomous participation envisaged in representative systems (Frick and Walters, 2000; Walters and Nichols, 2007). Details of the nature of the “voice” these seafarers claimed to have, revealed that it was confined to “domestic matters” or operational safety issues, and did not include consultation and decision-making as intended in situations reflecting genuine participation (Walters and Nichols 2007; James and Walters, 1997; 2002).

The skewed focus on safety in the seafarers’ experiences, underscored the weakness in the regulatory lead. Health was individualized, and its management left to informalities supported by the open work relationship on some ships rather than a comprehensive approach to OHS. This is an unsustainable approach to managing health as the extent of openness on these ships might be questionable and is certainly not universal. This study showed a continuation of practices in which seafarers’ health was neglected, as others have noted (Bhattacharya, 2009; Bloor et. al. 2005; Nielsen and Panayides, 2005). An effective representative practice entails attention to both health and safety, including difficult psychosocial matters (EU-OSHA, 2012), which are also of concern in the maritime industry.⁵⁹ Such neglect is likely to be the result of a lack of consideration for representation and the work context for its implementation, and unmet

⁵⁹ Examples of fairly recent news in the maritime press: <https://safety4sea.com/cm-addressing-seafarer-mental-health-issues/> ; <https://www.maritime-executive.com/article/bbc-looks-at-seafarer-mental-health>; <https://www.martek-marine.com/blog/mental-health-problems-at-sea-a-storm-is-brewing/>

preconditions to support the implementation of representation. These are reflected on in the next 2 sections.

10.2.1. Representation for Whom?

One of the main findings that emerged is the lack of thought that went into developing the provisions for representation. The absence of any recorded discussion, along with the testimonies of the architects, raised questions as to whether the architects intended the provision to have any real impact. As pointed out in Chapters 5, 6 and 7, the standards for representation were minimal. The thinking of the architects about its place in the regulatory regime reflected a more corporatist approach to assist shipowners to meet their safety objectives rather than a mechanism for seafarers to influence their working conditions. While meeting operational and technical safety objectives are important, the skewed focus on management's safety goals and simultaneous neglect of seafarers' health, are the kinds of evidence that support those arguments (on land and at sea) for autonomous representation backed by firm regulations to ensure workers' interests are not neglected.

The thinking that goes into formulating regulatory measures has implications for their viability in the context in which they are to operate. As Chapter 2 demonstrated, the unitarist thinking that underpinned the development of statutory provisions under the self-regulatory paradigm for OHSM, proved unsustainable as the nature and organization of worked changed. The thinking was also faulty in the conceptualization of the self-regulatory paradigm. This thinking regarding the nature of workplace injuries and common interests between workers and employers on health and safety, was inadequate to address the needs of workers as it ignored the power imbalances in the employment relationship and did not consider the production and profit priorities of management (eg. Beck and Woolfson, 2000; Nichols, 1997). This flawed thinking left a gap in regulatory measures to protect vulnerable workers. While a pluralist thinking was introduced in this regulatory regime due to the work of trade unions,

the unitarist mode prevailed, particularly as union membership and influence subsequently declined.

Similarly, in this study, the thinking (or lack thereof) had consequences for the standards developed for representation on ships. The MLC provisions proved to be inadequate for their purpose. The provisions were inspired by land-based practices on health and safety and bear elements of the unitarist thinking albeit cloaked in a pluralist framework. Like land-based provisions, the MLC framework makes references to seafarers *and/or* their representatives, making room for direct participation without autonomous representation, a practice already discussed as problematic (Chapter 2). The study found that tripartism and social dialogue were practised at the developmental and administrative levels and were espoused in the narratives during the MLC deliberations, but these principles and attendant practices did not materialize at the shipboard level. More suitable standards might have been produced if the architects had given consideration to these provisions and what impact they were intended to have on board.

To compound the matter, the study also found a clash of regimes where practices continued according to the ISM Code managerial standards, and the MLC labour standards in respect of representation were side-lined. The findings revealed a strong unitary approach in obtaining seafarers input. Similarly, others found that shipping management prefers to control OHS activities on board (Xue et. al., 2017; Bhattacharya, 2012a, 2012b). Practices for fully engaging workers were minimal as the evidence showed. Consultation did not appear to exist; training of the representatives and the OHS committee members to ensure their competence was not evident in the findings; OHS committee meetings were directed by the company; and in general, direct participation was the preferred mode of engaging workers. This distinction between the MLC pluralist orientation for autonomous collective representation (whether it is seafarers *and, or* their representatives), and the ISM unitarist orientation, needs to be reconciled if seafarers are to be given a mechanism to influence health and safety on board.

Seafarers' accounts of participation underscored the need for reconciliation of the two regimes. While seafarers in the study indicated

satisfaction with arrangements for their participation and noted that personally they had no fear of “speaking out,” there were also accounts of a reluctance which suggested some consistency with previous studies (eg. Bhattacharya, 2012a; Xue et. al., 2017). The seafarers admitted that others might be afraid to speak as a consequence of similar concerns for their jobs that previous research found (Bhattacharya, 2012a). Inspectors also expressed their concerns that seafarers were unwilling to speak, which challenged their (the inspectors) efforts at supporting the regulatory lead. The evidence showed that seafarers’ participation remains a concern. Furthermore, the study raises questions as to the nature and extent of the “voice” they claimed to have.

There may also be barriers of a historical nature to developing a strong regulatory lead for representation on ships. In the past, there was little scope for representation and for seafarers to speak out about their working conditions (Quinlan, 2013b; McFarlane, 1970). Quinlan (2013b: 285), for example, described how seafarers suffered severe penalties, such as long prison sentences for deserting oppressive working conditions under British maritime regulations. While the situation has much improved, ships still remain hierarchical and the captain’s leadership style plays a significant role in the practices on board. A few seafarers pointed to the importance of the captain in setting the tone for seafarers to speak out on their ships. The inspectors also reported continued perceptions of the captain as “God.” As such, management commitment at this level also has to be considered for effective representation alongside the tone set by shore management.

10.2.2. Unmet Preconditions

In drawing on the theoretical position of the research, a firm regulatory lead is to be supported by the other preconditions including: management commitment; organized labour and a firm regulatory steer. But in the maritime industry these can be seen to be underdeveloped and therefore limited in the ways they could support representation. The study showed that while efforts were made at developing a strong regulatory steer, through the MLC compliance and

enforcement mechanism, in practice they were beset by the nature of the shipboard work environment and the traditional approaches to ensuring regulatory compliance which constrained inspectors.

Management commitment for representation was absent. Participation under the ISM Code meant seafarers should follow the company's safety management system and seafarers reported they worked according to the ISM Code. In this study, health and safety meetings were dominated by the company's safety agenda. The literature argues that OHSM systems might not be geared towards workers autonomous representation of their interests but to serve management's agenda (Frick and Walters, 2000). Indeed, the ISM does not mention seafarers' participation in its functional requirements.

In the UK's case, union presence depends on shipowners' recognition and, except for the cruise sector, recognition to enable union involvement on board other ship types was not evidenced in the study. The union experienced further constraints by the isolated, mobile and multinational nature of the seafaring workforce. Others have argued that the fragmentation of the global seafaring labour force due to globalization has diminished union involvement on ships (Lillie, 2006). One of the important roles that unions play, is the education and training of representatives and constituents from a labour perspective (James and Walters, 1977; Walters, 1996; 1998). Seafarers' lack of knowledge on the MLC in general and their confusion regarding participation, are likely the consequences of union absence on board ships. Union absence may also explain some of their dismissive views on the relevance of participation.

Further, OHS training is an important element for effective representation (Geldard, et. al., 2010; Liu et. al. 2010) to ensure representatives are knowledgeable and competent in OHS matters. In such instances the representatives also help to educate their constituents on OHS matters. Seafarers' in this study had limited knowledge of health issues and tended to take an individual approach to addressing health.

In summary, the study found a set of provisions not fit for the purpose they were intended. Representation was absent on ships and the seafarers in this study were not beneficiaries, as its potential to contribute to positive OHSM was not being realized. It is important that regulations provide a strong lead and that the preconditions are in place to ensure effective implementation and practice (Walters et. al. 2005; Milgate et. al. 2002). These MLC provisions were found to be weakened by a number of factors beginning at the developmental level where it was not discussed and there was a false belief that consensus existed around its inclusion. Achieving consensus underpins the governance regime of the ILO which at times prove to be a barrier in developing effective global standards (Hilgert, 2013). The absence of a discussion on representation was interpreted by the architects as a sign of consensus on its inclusion, a consensus which did not impact on the practices on board.

10.3. Contributions of the Study

This section highlights the empirical and conceptual contributions of the study. The study has made an important contribution to the field of regulating representation on ships by being the first, to my knowledge, to explore these provisions in the MLC. Although the MLC is a consolidation of existing instruments, it is worth academic exploration as the previous instruments were not widely ratified, nor studied. The focus of existing empirical research on regulating the shipboard work environment has been the IMO conventions (eg. Bhattacharya, 2012a; Bailey, 2006; Anderson, 2003). Although there is a small body of literature on the MLC, these relate to legal opinions or are promotional in tone (eg. McConnell, 2011; Bolle, 2006). A few critical writings exist, but these mostly examine the MLC in general and speculate on its likely effects as they were published before the MLC came into effect (eg. Bauer, 2008; Lillie, 2008). The MLC has institutionalized representation for the global seafaring workforce and this study has contributed to closing a gap in the literature on representation on ships, while setting the stage for future research.

The study is important as it addresses a workplace mechanism to contribute to improved health and safety management on ships from a labour perspective. Seafarers face enormous risks at sea, and until the MLC, the focus has been mainly on the safety of ships. The MLC foregrounds seafarers' labour issues and makes provisions for their representation. Empirically, representation has been found to contribute to better working conditions. It was therefore important to explore the likelihood of this potential being realized for seafarers given the high-risk nature of their work.

Empirically, the study demonstrates that a disconnect exists between the theory of representation and its practice in the workplace. The evidence shows that the standard is not fit for purpose as it is conventional while there have been changes in the nature and structure of work at sea. The disconnect is linked to the nature of global governance where standards are negotiated to suit interests and perhaps less so the situation to be addressed. Representation was not discussed for its suitability because there was an assumption as to what it meant and how it could be implemented which did not align with the reality, based on the evidence of this research. This is a likely reason that it proved to be ineffective in the situation it was aimed to address.

The study also makes an empirical contribution in documenting inspection for representation on ships and the challenges this presents to inspectors. Inspecting representation is not a common practice for inspectorates (Walters, 1998), and the literature in this area is also quite limited. Much of the focus in the literature is on inspecting for OHS rather than representation.

Conceptually, the study challenges the ILO's claim that the MLC is a "firm response" to seafarers' poor working conditions in respect of representation. The study highlights that there are factors in the shipboard work environment that are inimical to representation. These need close monitoring to develop an understanding of the shipboard work environment that might lead to better standard making. The study shows that the shipboard work environment is void of the preconditions to support the effective implementation and practice of representation. The study exposes challenges to be addressed if seafarers are to

benefit from representation and if OHSM on ships is to be enhanced, consistent with the potential of representation (EU-OSHA, 2012).

The research highlights the tensions between the ISM and MLC that need to be reconciled if representation in any form is to be given effect on ships. Bhattacharya (2012a; 2009), for example, found that management's unitarist approach to OHSM under the ISM system is based on behaviour-based notions of accidents. Ship managers in this instance were authoritarian in their management style. In contrast, the MLC is based on pluralist ideas of tripartism and social dialogue requiring more democracy. The study did not find any evidence that the introduction of MLC on board was done in a manner to smoothly integrate the two.

The study also raises questions as to the appropriateness of the particular model of representation. With the absence of the preconditions, and the nature of shipping, it is difficult to envision the model in the MLC framework being effectively deployed on ships. Seafarers have been characterised as precarious workers (Sampson 2013; Walters and Bailey 2013) and precarious workers are least likely to exercise their rights (Lewchuk 2013a; Quinlan et. al. 2001). This study therefore interrogates the suitability of this model considering the nature, organization and control of work on board ships. The shipboard work environment is multinational, hierarchical and autocratic, despite examples of openness on some ships. Openness appears to be the exception and the model envisaged in the MLC is unsuited to such autocratic structures where there is lack of a collective identity among workers and where employment is typically precarious.

This study has sought to directly address standards for representation given the absence of seafarers' genuine input, their high-risk working conditions and the potential for representation to make a contribution. It reveals, both empirically and conceptually, that there are challenges to be addressed. It might be that additional provisions are required to strengthen the regulatory lead or a rethinking of the model of representation is necessary. Given the nature of

shipping, seafarers' autonomous representation should be considered despite the likely challenges uncovered in this study.

10.4. Limitations of the Study and Areas for Further Research

No one study can comprehensively deal with all the issues of concern to a topic, and as is the nature of PhD studies, the scope was limited due to time and resources constraints as well as access to key participants. Nevertheless, the study provides valuable insights in regulating representation on ships, demonstrates likely explanations as to why standards may fail to address problems in practice and sets the basis for a future research agenda.

The research is limited by an absence of the shipowners, particularly at the administrative level. Shipowners are key stakeholders, but few studies exist that focus on their role and perceptions and one of the reasons is that they are difficult to access. Their perceptions on the issues raised, such as the viability of the particular model of representation and the preconditions would have provided further understanding of the topic. Shipowners seem wary of unions on ships, as suggested in the study. Attempts at recruiting shipowners bore this out and two refusals in particular were telling, as they were made on the grounds that the shipowners feared that this research might be "hijacked by a militant union agenda" (Chapter 4, Section 4.5.1.).

The insights gained regarding seafarers' experiences of representation are valuable. They reveal some contradictions and highlight areas not commonly seen in the literature on representation such as workers dismissing its importance. This is an area to be understood in developing appropriate mechanisms. The apparent contradictions between this study and the literature surrounding seafarers' "voice," also present an area for future research if regulating representation is to be understood. Do seafarers' really have a voice and under what circumstances? As the sample size of this study is small, the thesis is not generalizing, but the insights gained raise issues for consideration.

The seafarers in this study expressed satisfaction with direct participation however, the study shows that areas of a genuine participatory mechanism are missing. The literature elsewhere discounts direct participation in situations of unequal power relations (eg. Walters and Nichols, 2007), but some workers have shown preference for direct participation in small workplaces. Nevertheless, owing to seafarers' precariousness, it might still be necessary to have autonomous representation. These are matters that could be explored in a future project.

Representatives on board ships were absent from the study and this leaves a gap to be filled by future research. The data already generated provides a reliable picture of the experiences of seafarers when triangulated with interviews at the other levels, and knowledge gained from the literature. The perceptions of representatives as an important sub-group of seafarers are valuable in furthering the understanding of their role where they might exist. Particularly, clarification on seafarers' willingness to serve as representatives is important. What are the dynamics involved? Under what conditions is this model viable, if at all? How do they (would they) relate to their constituents in a heterogenous and precarious work environment?

The architects of the MLC were clear that the MLC is geared towards the more substandard end of the shipping industry. This study is biased towards the better end of the industry with the UK as the case study and interviewing seafarers' coming into UK's ports, yet arrangements for representation did not conform to the MLC provisions. Further research should broaden this scope to assess the situation in open registries or countries with less capacity to administer the provisions. Jamaica, for example, has now ratified the convention, but a visit to their submission shows that the regulatory provisions are incomplete, and there are no provisions for representation.⁶⁰ A future study investigating different types of administrations and how they have given effect to representation will be

⁶⁰ ILO – Jamaica 2015. Labour laws for Jamaica Available at: https://www.ilo.org/dyn/legosh/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUB_CODE_CODE,P1100_YEAR:JAM,,2015:NO Accessed 10 August, 2018.

valuable for understanding the impact of the global policy and practice of representation.

Despite the limitations, the data generated is of a quality to make conclusions in the context of this particular study and provides insights that are worth deliberating in attempts to understand representation on ships towards its effective implementation and practice. The study also points to wider issues of the ILO tripartite governance structure and its limits. While there is a body of literature on the ILO as an institution, there is limited research on the dynamics of negotiating standards. There is much scope for future research to develop the ideas on the limits of global regulations that this research raises.

10.6. Representation Going Forward

This research bears out one of the central postulates of the thesis that: there is a disconnect between the theory of representation as outlined in the MLC framework and the practices as seen through the seafarers' experiences. Representation is an important institution in modern regulatory requirements for workplace OHSM. The thesis began with the assumption that it is a welcomed element in measures to address health and safety on ships considering seafarers face above average work risks. As presented throughout the thesis, studies show that where representation is effectively implemented, it benefits OHSM in the workplace and workers' OHS outcomes.

Nevertheless, this study shows that the seafarers who participated did not benefit from representation, neither had it been considered a priority in the MLC development. This lack of consideration went alongside contradictory thinking and misunderstandings regarding representation amongst the architects of the MLC to produce a labour standard not fit for purpose. Also, there was a lack of consideration for the shipboard context for implementing representation. Issues that emerged as problematic included small workplace features, possible leadership issues, seafarers' reluctance to speak and the clash between the two regimes expected to address health and safety on ships, as well as absence of the preconditions known to impact effective representation. Taking these features

together suggests that it might be overly ambitious to implement a model which asks seafarers in precarious working conditions to become active constituents, to select representatives, or volunteer to be elected. These issues need careful consideration if seafarers are to have any influence on their working conditions and contribute towards positive OHSM practices and OHS outcomes.

In considering an appropriate model, seafarers who reported being satisfied with direct participation on board should not be dismissed. Nevertheless, the thesis has discussed the limitations of direct participation and has shown that some areas of seafarers' health and safety are neglected under direct participation. This matter will therefore require further study to closely examine direct participation on ships and determinants of its effectiveness. Although controversial, there is a clearer need for union support in the shipboard work environment as one of the preconditions which has been strongly supported in other studies, and which this study shows is lacking. Unions could therefore consider raising the issue of more union presence on board ships in their collective bargaining meetings with employers or making representation to government.

The findings of this thesis have shown that the development of the MLC provisions on representative participation in safety and health on ships were heavily influenced by conventional practices on land but stops short of union support. This development was undertaken without an adequate appreciation of the nature, organization and control of work on ships, and the legal and historical bases that might prevent a conventional land-based approach from simply being transferred to ships without careful thought about how such provisions might be modified to suit the shipping context. At the very least, the architects of the MLC might have taken the opportunity to ensure the viability of the measures they proposed by deliberating likely barriers and addressing measures for the on board support of representation. Perhaps then another model is needed to ensure seafarers participate as their input remains important considering that most of the activities leading to workplace harm occur at sea (Alderton and Winchester, 2002a: 35).

In that respect, the industry might wish to consider an adaptation of the “regional representative” Swedish model (Frick, 2009) that was developed to address the challenges of small workplaces. In this model representatives do not necessarily have to be physically attached to specific workplaces and union involvement is essential. The ITF already has the infrastructure with its global network of inspectors but has also discussed the idea of an independent body to address enforcement in the maritime industry (Bauer, 2008: 650).” These ideas could be further discussed by the Special Tripartite Committee of the MLC established to oversee the implementation and operation of the convention and make amendments.

As the MLC is publicized as the seafarers’ “bill of rights,” there is a reasonable expectation that what might make representation effective at sea would have been given some thought. The ILO has claimed that the MLC is an innovative instrument, “firm on rights and flexible on implementation.” With respect to representation, the evidence presented here suggests that in fact it has been rather more flexible than firm. And, as such, it is fair to conclude that in the development of the MLC an opportunity was missed to adequately address effective regulatory support for seafarers’ autonomous participation in health and safety.

However, the MLC is slated for continuous review under Article XIII. This provides some possibility that the implications of the findings discussed in this thesis might usefully inform a revisiting of its provisions on representation. In so doing, the findings might prove helpful in moving towards the adoption of a framework for seafarers’ autonomous representative participation that addresses the conditions of employment and safety and health, that are well-known features of work in the shipping industry.

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Glossary

This glossary clarifies and expands on some key terms and how they are understood and used in this thesis. The definitions have several sources as indicated, but mainly the MLC list of definitions, and the ILO's Frequently Asked Questions on the MLC.

Competent Authority: The competent authority is the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned. (MLC 2006: 2).

Flag States, Port States and Port State Control: A flag State refers to the nationality of a ship under international maritime law. Ships on a country's registry are subject to the laws of that country wherever in the world they are. States who receive foreign ships at its port facilities are port States. When a ship enters the port of another country, the country has certain legal rights to board and inspect for compliance with international maritime standards. Where States exercise their legal rights to do so, this is referred to as port State control (PSC) (see entry on *Port State Control Inspections*).

Flag State Inspections: When a Member (see entry on *Member*) carries out a maritime labour inspection (see entry on *Maritime Labour Inspection*) on its own ships.

Master/Captain: Any person having command and charge of a vessel (ship). (ILO 2011: *Manual for Drafting ILO Instrument*: 98).

Maritime Industry. The term "maritime industry" is commonly used interchangeably with the term "shipping industry" and is acceptable. However, these can also be differentiated. The maritime industry is technically a broader term than the shipping industry. Maritime suggests all things relating to shipping, which is the movement of cargo on ships, and all the other activities, both on land and at sea that are mobilized to facilitate the movement of cargo. Activities such as banking, insurance, brokering, and the host of professionals that are engaged in facilitating the transportation of cargo by sea and the consequences of this shipping such as pollution of air and sea, are said to fall under the ambit of maritime. Shipping is limited to the movement of cargo from port to port and the related activities to accomplish this.

Maritime Labour Inspection: The examination and assessment by qualified persons that conditions on board ships comply with established standards and regulations. It can be divided into two parts: the first concerns the physical items such as the seafarer accommodation and galley conditions, whilst the second relates to other elements of decent work or human and operational issues such as payment of wages, seafarer employment agreements, minimum age, medical certification and hours of work or rest. Some areas of concern, such as occupational safety and health, are mixed, involving physical aspects (protective equipment/construction) and operational practices on a ship. For a satisfactory inspection to be completed, it is likely that the inspector will need to employ different methods, including document review, visual observation, general discussions with seafarers and interviews with seafarers in private. When inspectors are interviewing seafarers, they will need to be sensitive on what may be considered to be

personal or potentially controversial matters. (ILO, 2009: *Guidelines for Flag State Inspections Under the Maritime Labour Convention, 2006*: 25-26).

Member/Member State/Member Country: Refers to countries that are Members of the ILO. In the context of the MLC, a reference to “Member” or “Each Member” should be understood as referring to countries that have ratified the Convention. (ILO, 2015b: MLC FAQ: 15).

No More Favourable Treatment: During port State control inspections, ships flying the flag of countries that have ratified the Convention will not be placed at a competitive disadvantage as compared with ships flying the flag of countries that have not ratified the MLC, 2006. This means that all ships will be held to the same standards in the MLC whether or not the country where the ship is registered have ratified the MLC. (ILO, 2015b: MLC FAQ: 6).

Occupational Health and Safety (OHS). OSH is generally defined as the science of anticipation, recognition, evaluation and control of hazards arising in or from the workplace that could impair the health and well-being of workers. ILO (2009b) https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_103485.pdf

Focus in this thesis is on the labour aspects of OHS having to do with working and living conditions and the OHS risks arising from these such as traditional slips, trips and falls but also including the issues addressed in the MLC such as accommodation, recreation, diet and exercise and psycho-social illnesses. The tendency in shipping is to focus on operational and technical safety to prevent major casualties and address ship safety issues and marine pollution incidents.

Port State Control Inspections: When a member carries out a maritime labour inspection on foreign ships calling at its ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.

With the coming into effect of the MLC, ships are also inspected for labour conditions. (IMO: <http://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx>).

Rating: A member of the crew other than a master or officer and includes a certificated seaman. (ILO 2011: *Manual for Drafting ILO Instrument*: 102).

Seafarer (can be substituted for crew, rating, officer, master): Any person who is employed or engaged or works in any capacity on board a ship to which the MLC Convention applies. (MLC, 2006: 2). Although the MLC covers other types of workers in its definition, such as cabin and cleaning personnel, bar staff, waiters, entertainers, singers, kitchen staff, casino personnel and aestheticians (ILO, 2015b: MLC FAQ: 22), this thesis is concerned only with seafarers directly responsible for the navigation of the ship and transport of cargo (although in some instances references are made to passenger ships where these arose in the interviews).

Seafarers’ Representatives: See entry for *Workers’ Representatives*.

Ship (also refer to as a vessel): A ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply. (MLC, 2006: 3). A State may choose to apply the MLC to domestic

shipping or other exempted ships. Article II, paragraph 4 of the MLC outlines the scope as “all ships whether publicly or privately owned, ordinarily engaged in commercial activities,” other than fishing or other similar vessels or traditional vessels (eg. dhows and junks). Warships and naval auxiliaries are also exempt.

Shipowner: The owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on ship-owners in accordance with the MLC Convention, regardless of whether any other organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. (MLC 2006: 2).

Social Dialogue: The ILO also includes *tripartism* in this definition. Sound industrial relations and effective social dialogue are a means to promote better wages and working conditions as well as peace and social justice. As instruments of good governance they foster cooperation and economic performance, helping to create an enabling environment for the realization of the objective of Decent Work at the national level. Social dialogue and tripartism covers:

- Negotiation, consultation and information exchange between and among the different actors;
- Collective bargaining;
- Dispute prevention and resolution; and
- Other instruments of social dialogue, including corporate social responsibility and international framework agreements.

Preconditions for sound social dialogue:

- Strong, independent workers' and employers' organizations with the technical capacity and access to relevant information to participate in social dialogue;
- Political will and commitment to engage in social dialogue on the part of all the parties;
- Respect for the fundamental rights of freedom of association and collective bargaining; and
- An enabling legal and institutional framework.

(ILO website: <https://www.ilo.org/global/topics/workers-and-employers-organizations-tripartism-and-social-dialogue/lang--en/index.htm>. [Accessed 24 August, 2018]).

Substantial Equivalence: Is one means of achieving flexibility in implementing the MLC provisions. If the Member concerned “satisfies itself” that the relevant legislation or other implementing measure “is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned” and “gives effect to the provision or provisions of Part A of the Code concerned”. The Member’s obligation is principally to “satisfy itself”, which nevertheless does not imply total autonomy, since it is incumbent on the authorities responsible for monitoring implementation at the national and international levels to determine not only whether the necessary procedure of “satisfying themselves” has been carried out, but also whether it has been carried out in good faith in such a way as to ensure that the objective of implementing the principles and rights set out in the Regulations is adequately achieved in some way other than that indicated in Part A of the Code. (ILO, 2015b: MLC FAQ: 9).

Where a flag State is not in a position to implement a particular requirement in Titles 1–4 of the MLC Convention in the manner set out in Part A of the Code (the

Standards), it is permitted, under Article VI, paragraph 3, of the MLC, 2006, to adopt a “substantially equivalent” provision in its national laws, regulations or other measures. Any substantially equivalent provisions that relate to matters that are subject to certification must be noted in Part I of the Declaration of Maritime Labour Compliance (DMLC). In considering the adoption of substantially equivalent provisions, the flag State must take account of Article VI, paragraph 4, of the MLC, 2006, which lays down that, for a national law or other measure to be considered as substantially equivalent, in the context of this Convention, the flag State must have satisfied itself that:

- (a) it is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned; and
- (b) it gives effect to the provision or provisions of Part A of the Code concerned.

(ILO (2009). *Guidelines for Flag State Inspections Under the Maritime Labour Convention, 2006*: 16-17; and MLC, 2006: 13).

Workers’ Representatives: Persons who are recognised as such under national law or practice, whether they are: (a) trade union representatives, namely representatives designated or elected by trade unions or by the members of such unions; or (b) elected representatives, namely representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. (ILO 2011: *Manual for Drafting ILO Instrument*: 106).

In the context of the thesis, these functions refer specifically to health and safety. The thesis however avoids the term *safety representatives* in recognition of the relatively limited attention to health and considering the broader elements of occupational health and safety including psychosocial and ergonomic elements.

Appendices

APPENDIX I

Report to the ILO on Abandoned Vessel

Ships Name: M/T Oceanic Power

IMO No. **8008280**

Ship name:	Oceanic Power
Flag:	Union of Comoros
7-digit IMO no.:	8008280
Type of vessel:	Gas Carrier
Port of abandonment:	Kingston, Jamaica
Circumstances:	Vessel was towed into Kingston as it lost power on its way to Greece from the Bahamas. Several promises by the owner to pay salaries and repatriate seafarers have not been fulfilled. Local agent has been supplying food and drinking water to seafarers from their own purse.
Abandonment date (date when ITF first made aware of the case):	Brought to the attention of the Registrar of Seafarers, Maritime Authority of Jamaica on January 9, 2012.
Date of notification to the flag State:	Email sent to Flag State contact found online (dptcomoros@abv.bg) on January 10, 2012. No response was received. Another email was sent to a third party who forwarded the information to the Head Office of the Union of Comoros Maritime Administration on behalf of the Maritime Authority of Jamaica. No response has been received to date of report, February 2.
Actions taken to resolve the case:	Registrar of Seafarers, Maritime Authority of Jamaica, from January 9 – February 2, 2012 has done the following: Contacted local agent to ascertain status of seafarers, requested meeting with Captain and some crew to ascertain condition. Contacted foreign affairs ministry, contacted Greek and Bangladeshi Consuls in Jamaica, spoke with prospective purchaser of vessel

	<p>indicating plight of seafarers and to ascertain a possible resolution date. Constant contact with agent and seafarers, two subsequent meetings with captain and members of the crew at the offices of the Maritime Authority of Jamaica. Spoke with owner who gave promises of resolution. Response from Bangladeshi Consul who indicated that the Government has been informed. Copies of crew passports have been scanned and sent to Consul.</p> <p>However up to February 2, 2012 no resolution, no response from Flag or country of nationality.</p>
Reporting Member Govt. or Org.:	Maritime Authority of Jamaica
No. of Seafarers:	9
Nationalities:	Greek (Captain) – 1 Bangladeshi - 8
Repatriation status:	Outstanding
Outstanding pay status:	At January 11 – US\$39,476 (crew) - EURO 9,600 (captain)
Comments:	Seafarers are contemplating arresting ship, however there is no definitive time frame for resolution if this route is taken. A local maritime lawyer was consulted. Also they need money to do this. Seafarers have been promised tickets by owner, and have been advised by Registrar of Seafarers to begin thinking about getting home as they cannot remain in the country indefinitely. However they are reluctant to leave vessel as they are worried that they will not receive salaries if they go home.

APPENDIX II

List of Key Documents Used in Documentary Analysis

ILO MEETING DOCUMENTS

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APPENDIX III

INTERVIEW GUIDE – Developmental Level

Preamble

My name is Carolyn, I am a student at Cardiff University, in the Seafarers International Research Centre. I am doing a PhD on the Maritime Labour Convention. The research focuses on the provisions for seafarers' representatives to participate in health and safety management on ships. I would like to know about the development of these provisions. Where these provisions came from, why they were included and how they are to be implemented on ships. I am also going to ask about some things that took place in the meetings.

Could I also have your permission to tape the interview, this is for my own purposes of recall and will not be used for any other purposes. Our university has strict policies on confidentiality and protection of research information. Your name will not be used in the writing up of the research, there will be no information to identify you. The information you give is only for my own research and is confidential.

If at any point you wish to stop the interview or if there is a question you do not wish to answer, please let me know. This is a consent form as part of the ethical requirements to say you understand what I have explained and you are willing to go ahead with the interview. Please read and sign.

Thank you.

Biography

- Before we get into the MLC could you tell me something of your background. How you got into the maritime industry?
- What is your job description and duties?
- How long have you been in this position?
- Do you sit on any committees at the international or national level?

MLC

- Were you involved in the development of the MLC?
- How were you involved?

Origins and Rationale for Representation in the MLC

- Do you recall how the provisions were introduced in the MLC? Who proposed them or where they were taken from?
- Why have these provisions in the MLC?
- Why was representation not discussed in the meetings?
- Why did shipowners not want safety management systems in the MLC?
- Why did seafarers not want the ISM model?

Supports for Representation

- How is it envisioned that representation will work on board?

- Will shipowners implement this provision?
- Will seafarers participate?
- What of issues with seafarers speaking out?

Perceptions of Representation

- What do you think about having this provision in the MLC?

Thank you for your time.

APPENDIX IV

INTERVIEW GUIDE – Administrative Level

Preamble

My name is Carolyn, I am a student at Cardiff University, in the Seafarers International Research Centre. I am doing a PhD on the Maritime Labour Convention. The research focuses on the provisions for seafarers' representatives to participate in health and safety management on ships. I would like to know about how these provisions are dealt with at the UK level. How they were implemented, if the UK had to adjust its laws etc.

Could I also have your permission to tape the interview, this is for my own purposes of recall and will not be used for any other purposes. Our university has strict policies on confidentiality and protection of research information. Your name will not be used in the writing up of the research, there will be no information to identify you. The information you give is only for my own research and is confidential.

If at any point you wish to stop the interview or if there is a question you do not wish to answer, please let me know. This is a consent form as part of the ethical requirements to say you understand what I have explained and you are willing to go ahead with the interview. Please read and sign.

Thank you.

Biography

- Before we get into the MLC could you tell me something of your background. How you got into the maritime industry?
- What is your job description and duties?
- How long have you been in this position?
- Do you sit on any committees at the international or national level?

MLC

- Were you involved in the actual development of the MLC?
- How were you involved?

For Unions: Stop here and go to the end of schedule

Implementing Representation in the MLC

- Please explain the UK's system for representation.
 - How did the UK prepare for compliance with the provision for representation?
 - How do the provisions for health and safety and representation relate to UK's existing laws?
 - Was representation discussed from the UK's perspective in preparing for compliance?
 - What is the relationship between land-based requirements and the MLC?

- How does the UK communicate its expectations for practicing representation to shipowners, how are instructions given?

Inspecting for Representation

- Where does representation and having a health and safety committee rank in conducting an inspection?
- What role do the Declarations and Certificate of Compliance play in an inspection?
- UK land-based regulations stipulates a relationship between inspectors and representatives to liaise with safety representatives and send copies or inspection reports, is this done for shipping? How would that work?
- How do you account for inspecting ISM and MLC requirements?
- Please describe how you conduct a PSC inspection? How is that different from a flag State inspection?

Supports for Representation

- How is it envision that representation will work on board?
- Will shipowners implement this provision?
- Will seafarers participate?
- What of issues with seafarers speaking out?

Perceptions of Representation

- What do you think about having this provision in the MLC?

UNION

- How does the MLC feature in what you do?
- Please explain your relationship with shipping companies?
- Is health and safety in the MLC discussed with shipowners?
- Do unions get involved with organizing representation on board?
- What is the unions' role in sensitizing seafarers to the MLC and health and safety issues?
- Seafarers deal with health individually and some do not have representatives other refers to the boatswain in his work capacity. What is the purpose of having this role for seafarers?
- Who determines the public health and safety agenda? Seafarers talk about fatigue, but are less knowledgeable on other occupational illnesses?
- Do you find seafarers willing to speak on issues to managers or shipowners?
- What do you think of having this provision in the MLC?
- What do you think about the focus on direct participation on ships?

Thank you for your time.

APPENDIX V

INTERVIEW GUIDE – Shipboard Level

Preamble

Hello, my name is Carolyn, I am a student at Cardiff University, in the Seafarers International Research Centre. I am doing a PhD. My research is on the Maritime Labour Convention. I want to know about health and safety practices on ships in terms of seafarers' input. The MLC says seafarers should participate in health and safety activities on board ships by having representation. Seafarers should be allowed to select their representatives (or one is appointed). The representative should have the authority to sit on the health and safety committee to ensure seafarers interests on health and safety are brought to management and that management will listen to what seafarers have to say in how health and safety is managed on board. I want to ask about those things and what your experiences are and what you think of this provision in the MLC.

Could I also have your permission to tape the interview, this is for my own purposes of recall and will not be used for any other purposes. Our university has strict policies on confidentiality and protection of research information. Your name or the ship you are on, neither the company, will not be used, there will be no information to identify you. The information you give is only for my own research and is confidential.

If at any point you wish to stop the interview or if there is a question you do not wish to answer, please let me know. This is a consent form as part of the ethical requirements to say you understand what I have explained and you are willing to go ahead with the interview. Please read and sign.

Thank you.

Biography

Before we get into the MLC could you tell me something of your seafaring background.

- Nationality
- When did you become a seafarer? Tell me about that.
- Current rank/position
- Type of ship and where registered
- Crew on current ship – number and nationality
- Any previous experience before current ship

MLC

Do you know about the MLC?

- What it is, what it is supposed to do?
- What about the health and safety section? Do you know there is a section that says seafarers' representatives must be on the safety committee? If yes... How did you learn about this provision?

Health and Safety Management and Representation

- Who is in charge of (health and) safety on the ship?
- What is the common term used on the ship – “health and safety” or “safety”.
- [If you say safety alone] is it understood that health issues are included? Please give some examples of health issues.
- Is there someone from the crew who is considered to be the representative of the crew on health and safety, someone who collects crew’s concerns and suggestions about health and safety and take these to the health and safety committee or to the officers.
- Who is this person, the representative?
- Is there a [health and] safety committee on your ship?
- Is this health and safety representative selected by the crew or is the person appointed by the captain or the company?
- Is this person different from the person in charge of safety?
- What are the duties of this representative?

Committee Meetings

- How often does the committee meet?
- Who goes to the committee meetings?
- Who sets the agenda for the committee meetings?
- What things are discussed in these meetings? Could you give examples please.
- Are things like loneliness, depression, HIV, mental issues discussed?

Perceptions of Representation

- What do you think about having a safety representative from among the crew?
 - Do you think it is helpful to have a representative?
 - [If one does not exist on the ship], do you think having such a person on your ship to represent the crew would be helpful? Please explain.
 - Do seafarers like to speak about health and safety matters to their supervisors or captain (or safety officer)?
- Do you get information about health and safety from the company?
 - What kind of information?
 - When the company makes decisions about health and safety for example buying safety equipment, developing procedures for how work should be done, do they ask the crew or the representative for their input? [Example?]
- Are the seafarers in any union or you yourself.
- How does the union function to support its members? Is the union involve in selecting the representative, giving information and training?
- Is there any other information on the subject that you believe is important to give me a better understanding of how your ship works in managing health and safety?

Thank you for your time.

APPENDIX VI

CARDIFF UNIVERSITY
SEAFARERS INTERNATIONAL RESEARCH CENTRE

RESEARCH PROJECT
CONSENT FORM

TITLE: Managing Occupational Health and Safety at Sea: Seafarers' representatives in the Maritime Labour Convention

I understand that this study forms a part of a PhD research. It is investigating the involvement of seafarers' representatives in the management of occupational health and safety on board ships as provided for in the Maritime Labour Convention, Standard A4.3, paragraph 1 (c). The information provided is purely for research purposes, all information will be held in the strictest of confidence. Names will be anonymised.

The study relates to an understanding of the role of seafarers' representatives in the management of health and safety on board ships from the perspective of those persons involved in the development, administration and operationalization of the provisions of the MLC. This aspect of the convention is of interest as it mandates the institution of safety representatives in the management of occupational health and safety on board ships. The study therefore investigates the thinking behind this provision: where did it come from; why was it included; how it is envisaged that this provision will be implemented and the supporting system necessary for its successful implementation.

I hereby consent to being interviewed regarding the subject matter. I understand that this is voluntary and I may opt out at any time or chose not to respond to a question. I also understand that the information is solely for research purposes and will be held in the strictest of confidence.

Print Name: _____

Signature: _____

Date: _____

APPENDIX VII

CODES and THEMES

MEETING DOCUMENTS

	Sub-themes
• Role of the JMC	Consensus
• Geneva Accord	
• Agreement between Shipowners' and Seafarers' groups	
• Government's consent	
• Tripartism and Social Dialogue guiding principles	
• MLC – bill of rights; level playing field	<i>Economic fairness</i>
• Good shipowners	
• Good administrations	
• Globalization	
• Poor working conditions on ships	<i>Seafarers' OHS</i>
• Consolidation process	<i>Consolidation deal</i>
• Cooperation, consensus and compromise	<i>Cooperation</i>
• Flexible instrument	<i>Consolidation</i>
• Firm on rights; flexible on implementation	<i>Compromise</i>
• Framework convention	<i>Flexibility</i>
• Wide ratification	<i>Firm provisions</i>
• Inspection and enforcement regime	
• ISM approach	<i>Conflict/rejection</i>
• Certification of compliance	
• Relationship with IMO instruments	
• Representation not discussed	<i>Individual provisions</i>
• Health and safety committee established	
• Complaints mechanism	<i>direct participation</i>

DEVELOPMENTAL LEVEL

	Sub-themes
• Participants' Involvement in the MLC	
○ At the Joint Maritime Commission	<i>Greatly involved</i>
○ At the beginning in 2001	
○ After 2006	
• Origins and Rationale for Provisions for Representation	
○ ILO tradition	<i>Traditional</i>
○ ILO Tripartite structure	<i>Customary</i>
○ Other ILO conventions	
○ General changes in OHSM	<i>Taken-for-granted</i>
○ EU requirements/directives	<i>Received wisdom</i>

- Consolidation
- How things are done
- Requirements for Risk Assessment
- Implementation and Practice of the Provisions
 - Problems with the provision *No consideration*
 - Does not work as intended
 - Taken for granted that seafarers are included informally
- Negotiating the MLC Text
 - Joint Maritime Commission *Consolidation*
 - Consolidation *Cooperation, consensus*
 - Social dialogue *compromise*
 - Tripartism
 - Cooperation
- Discussing Representation
 - No need to discuss *Uncontroversial*
 - Acceptance unanimous *Taken for granted*
 - Uncontroversial *Status quo*
 - No problem with representation
 - Existing provision from consolidation
 - It was a given
- Support for Implementing Representation *Good shipowners*
 - Shipowners interest/costly accidents *Business case*
 - Good shipowners/well established companies were already doing
 - Part of ISM system
 - Education of Shipowners and fewer Regulations

ADMINISTRATIVE LEVEL

- | | Sub-themes |
|---|---------------------------------|
| ● Participants' Involvement in the MLC | |
| ○ Head of Maritime OHS Section | <i>Greatly involved</i> |
| ○ National Committees | <i>Wrote guidelines</i> |
| ○ International Committees | |
| ○ Drafting supporting guidelines | |
| ○ Operational duties, Compliance and Enforcement | |
| ● Origins and Rationale for Representation | |
| ○ ILO | <i>Status quo</i> |
| ○ EU | <i>Customary practices</i> |
| ○ UK | <i>Institutional influences</i> |
| ● Role of MLC provisions (Supports) | |
| ○ Up to recognition by shipowners | <i>No preconditions</i> |
| ○ Health and safety negotiated at national/sector level | |
| ○ Not fit for purpose | <i>Does not work</i> |
| ● Inspection Regime | |
| ○ Code of Safe Working Practices | <i>Status quo</i> |
| ○ Document checks | <i>Customary practices</i> |
| ○ Physical state of ship | <i>Challenging</i> |
| ○ Health and safety committees established | <i>In good faith</i> |

- Safety representative system challenging
- Seafarers are reluctant to become representatives
- Seafarers do not speak to inspectors
- Inspection in good faith
- Small ships versus large ships
- No relationship between inspectors and representatives

SHIPBOARD LEVEL

	Sub-themes
<ul style="list-style-type: none"> ● Knowledge about the MLC <ul style="list-style-type: none"> ○ Working conditions ○ Rights ○ Safety of Crew ○ Familiarization on ship ○ Learnt about the MLC ashore ○ Will learn when it is needed ○ Not important to daily activities ○ Work according to the ISM Code 	<p><i>Relatively limited</i></p> <p><i>Not systematic</i></p> <p><i>Unstructured</i></p> <p><i>Learn on a need to know</i></p>
<ul style="list-style-type: none"> ● Health and Safety Management and Representation <ul style="list-style-type: none"> ○ Health and safety personnel ○ Working safely ○ Crew Representative ○ Selection of representative ○ Safety officer ○ Medical officer ○ Boatswain ○ Duties of representative ○ Health and safety committee ○ Frequency of meetings ○ Attendance ○ Agenda items ○ Topics discussed in meetings 	<p><i>Operational safety focus</i></p> <p><i>Direct participation</i></p> <p><i>No representatives</i></p> <p><i>Work roles confused with representative role</i></p> <p><i>All crew are representatives</i></p> <p><i>Ad-hoc or systematic</i></p> <p><i>Safety focussed</i></p> <p><i>Company controlled</i></p>
<ul style="list-style-type: none"> ● Perceptions of Representation <ul style="list-style-type: none"> ○ Safety representative useful ○ Safety representative not necessary ○ We can speak out ○ Fear of speaking 	<p><i>Useful</i></p> <p><i>Unnecessary</i></p> <p><i>We can speak</i></p>
<ul style="list-style-type: none"> ● Participation in Decision Making <ul style="list-style-type: none"> ○ Recreational equipment ○ Food ○ Company decisions ○ Working safely 	<p><i>Domestic issues</i></p> <p><i>daily job briefings</i></p>
<ul style="list-style-type: none"> ● Mechanism for Participation <ul style="list-style-type: none"> ○ Complaints procedure ○ Direct participation 	<p><i>Individualized</i></p> <p><i>Direct participation</i></p>
<ul style="list-style-type: none"> ● Handling Non-technical Aspects of Safety <ul style="list-style-type: none"> ○ Informality ○ No discussion ○ Individual responsibility 	<p><i>Individualized</i></p> <p><i>We don't talk about that</i></p> <p><i>Responsibilization</i></p>

- Union Presence
 - Not on board
 - Contact through emails and publications
 - Benefits of the MLC
 - Food quality improved
 - Work/rest taken seriously
 - Protect seafarers
- Union absence*
- Beneficial*

APPENDIX VIII

Ethics Approval Letter

Cardiff School of Social Sciences
Head of School Professor Amanda Coffey FAcSS
Ysgol Gwyddorau Cymdeithasol Caerdydd
Pennaeth yr Ysgol Yr Athro Amanda Coffey FAcSS



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4th June 2015

Our ref: SREC/1520

Carolyn Graham
PhD Programme
SOCSI

Dear Carolyn

Your project entitled '*Regulating occupational health and safety management at sea: The place of seafarers' representatives in the Maritime Labour Convention*' has been approved by the School of Social Sciences Research Ethics Committee of Cardiff University, subject to the following:

- Data Security: Further to your response to Question 31, please note
 1. You should store your *electronic* data either on the University computing system, or if you are using a laptop or a home pc, the machine itself will need to be encrypted. Please contact the School Technicians with any queries on this, including general access, remote access or on increasing your personal h:\drive storage space allowance.
 2. You are advised to store your *hard copy* data in a lockable cabinet – please consult with your supervisor on this.

If you need clarification concerning this, please contact me.

If you make any substantial changes with ethical implications to the project as it progresses you need to inform the SREC about the nature of these changes. Such changes could be: 1) changes in the type of participants recruited (e.g. inclusion of a group of potentially vulnerable participants), 2) changes to questionnaires, interview guides etc. (e.g. including new questions on sensitive issues), 3) changes to the way data are handled (e.g. sharing of non-anonymised data with other researchers).

In addition, if anything occurs in your project from which you think the SREC might usefully learn, then please do share this information with us.

All ongoing projects will be monitored every 12 months and it is a condition of continued approval that you complete the monitoring form.

Please inform the SREC when the project has ended.

Registered Charity, 1136855 Elusen Gofrestredig

Please use the SREC's project reference number above in any future correspondence.

Yours sincerely



Professor Adam Hedgecoe
Chair of School of Social Sciences Research Ethics Committee

cc: C Perkins
Supervisors: D Walters
C Lloyd

APPENDIX IX

Maritime Labour Convention 2006 – Title 4

TITLE 4. HEALTH PROTECTION, MEDICAL CARE, WELFARE AND SOCIAL SECURITY PROTECTION

Regulation 4.3 – Health and safety protection and accident prevention

Purpose: To ensure that seafarers' work environment on board ships promotes occupational safety and health

- 1. Each Member shall ensure that seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment.
- 2. Each Member shall develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative shipowners' and seafarers' organizations and taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations.
- 3. Each Member shall adopt laws and regulations and other measures addressing the matters specified in the Code, taking into account relevant international instruments, and set standards for occupational safety and health protection and accident prevention on ships that fly its flag.

Standard A4.3 – Health and safety protection and accident prevention

- 1. The laws and regulations and other measures to be adopted in accordance with Regulation 4.3, paragraph 3, shall include the following subjects:
 - (a) the adoption and effective implementation and promotion of occupational safety and health policies and programmes on ships that fly the Member's flag, including risk evaluation as well as training and instruction of seafarers;
 - (b) reasonable precautions to prevent occupational accidents, injuries and diseases on board ship, including measures to reduce and prevent the risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may arise from the use of equipment and machinery on board ships;
 - (c) on-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection, involving seafarers' representatives and all other persons concerned in their implementation, taking account of preventive measures, including engineering and design control, substitution of processes and procedures for collective and individual tasks, and the use of personal protective equipment; and
 - (d) requirements for inspecting, reporting and correcting unsafe conditions and for investigating and reporting on-board occupational accidents.
- 2. The provisions referred to in paragraph 1 of this Standard shall:
 - (a) take account of relevant international instruments dealing with occupational safety and health protection in general and with specific risks, and address all matters relevant to the prevention of occupational accidents, injuries and diseases that may be applicable to the work of seafarers and particularly those which are specific to maritime employment;

- (b) clearly specify the obligation of shipowners, seafarers and others concerned to comply with the applicable standards and with the ship's occupational safety and health policy and programme with special attention being paid to the safety and health of seafarers under the age of 18;
 - (c) specify the duties of the master or a person designated by the master, or both, to take specific responsibility for the implementation of and compliance with the ship's occupational safety and health policy and programme; and
 - (d) specify the authority of the ship's seafarers appointed or elected as safety representatives to participate in meetings of the ship's safety committee. Such a committee shall be established on board a ship on which there are five or more seafarers.
- 3. The laws and regulations and other measures referred to in Regulation 4.3, paragraph 3, shall be regularly reviewed in consultation with the representatives of the shipowners' and seafarers' organizations and, if necessary, revised to take account of changes in technology and research in order to facilitate continuous improvement in occupational safety and health policies and programmes and to provide a safe occupational environment for seafarers on ships that fly the Member's flag.
 - 4. Compliance with the requirements of applicable international instruments on the acceptable levels of exposure to workplace hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes shall be considered as meeting the requirements of this Convention.
 - 5. The competent authority shall ensure that:
 - (a) occupational accidents, injuries and diseases are adequately reported, taking into account the guidance provided by the International Labour Organization with respect to the reporting and recording of occupational accidents and diseases;
 - (b) comprehensive statistics of such accidents and diseases are kept, analysed and published and, where appropriate, followed up by research into general trends and into the hazards identified; and
 - (c) occupational accidents are investigated.
 - 6. Reporting and investigation of occupational safety and health matters shall be designed to ensure the protection of seafarers' personal data, and shall take account of the guidance provided by the International Labour Organization on this matter.
 - 7. The competent authority shall cooperate with shipowners' and seafarers' organizations to take measures to bring to the attention of all seafarers information concerning particular hazards on board ships, for instance, by posting official notices containing relevant instructions.
 - 8. The competent authority shall require that shipowners conducting risk evaluation in relation to management of occupational safety and health refer to appropriate statistical information from their ships and from general statistics provided by the competent authority.

Guideline B4.3 – Health and safety protection and accident prevention

Guideline B4.3.1 – Provisions on occupational accidents, injuries and diseases

- 1. The provisions required under Standard A4.3 should take into account the ILO code of practice entitled Accident prevention on board ship at sea and in port, 1996, and subsequent versions and other related ILO and other international standards and guidelines and codes of practice regarding occupational safety and health protection, including any exposure levels that they may identify.
- 2. The competent authority should ensure that the national guidelines for the management of occupational safety and health address the following matters, in particular:

- (a) general and basic provisions;
 - (b) structural features of the ship, including means of access and asbestos-related risks;
 - (c) machinery;
 - (d) the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact;
 - (e) the effects of noise in the workplace and in shipboard accommodation;
 - (f) the effects of vibration in the workplace and in shipboard accommodation;
 - (g) the effects of ambient factors, other than those referred to in subparagraphs (e) and (f), in the workplace and in shipboard accommodation, including tobacco smoke;
 - (h) special safety measures on and below deck;
 - (i) loading and unloading equipment;
 - (j) fire prevention and fire-fighting;
 - (k) anchors, chains and lines;
 - (l) dangerous cargo and ballast;
 - (m) personal protective equipment for seafarers;
 - (n) work in enclosed spaces;
 - (o) physical and mental effects of fatigue;
 - (p) the effects of drug and alcohol dependency;
 - (q) HIV/AIDS protection and prevention; and
 - (r) emergency and accident response.
- 3. The assessment of risks and reduction of exposure on the matters referred to in paragraph 2 of this Guideline should take account of the physical occupational health effects, including manual handling of loads, noise and vibration, the chemical and biological occupational health effects, the mental occupational health effects, the physical and mental health effects of fatigue, and occupational accidents. The necessary measures should take due account of the preventive principle according to which, among other things, combating risk at the source, adapting work to the individual, especially as regards the design of workplaces, and replacing the dangerous by the non-dangerous or the less dangerous, have precedence over personal protective equipment for seafarers.
 - 4. In addition, the competent authority should ensure that the implications for health and safety are taken into account, particularly in the following areas:
 - (a) emergency and accident response;
 - (b) the effects of drug and alcohol dependency; and
 - (c) HIV/AIDS protection and prevention.

Guideline B4.3.2 – Exposure to noise

- 1. The competent authority, in conjunction with the competent international bodies and with representatives of shipowners' and seafarers' organizations concerned, should review on an ongoing basis the problem of noise on board ships with the objective of improving the protection of seafarers, in so far as practicable, from the adverse effects of exposure to noise.
- 2. The review referred to in paragraph 1 of this Guideline should take account of the adverse effects of exposure to excessive noise on the hearing, health and comfort of

seafarers and the measures to be prescribed or recommended to reduce shipboard noise to protect seafarers. The measures to be considered should include the following:

- (a) instruction of seafarers in the dangers to hearing and health of prolonged exposure to high noise levels and in the proper use of noise protection devices and equipment;
- (b) provision of approved hearing protection equipment to seafarers where necessary; and
- (c) assessment of risk and reduction of exposure levels to noise in all accommodation and recreational and catering facilities, as well as engine rooms and other machinery spaces.

Guideline B4.3.3 – Exposure to vibration

- 1. The competent authority, in conjunction with the competent international bodies and with representatives of shipowners' and seafarers' organizations concerned, and taking into account, as appropriate, relevant international standards, should review on an ongoing basis the problem of vibration on board ships with the objective of improving the protection of seafarers, in so far as practicable, from the adverse effects of vibration.
- 2. The review referred to in paragraph 1 of this Guideline should cover the effect of exposure to excessive vibration on the health and comfort of seafarers and the measures to be prescribed or recommended to reduce shipboard vibration to protect seafarers. The measures to be considered should include the following:
 - (a) instruction of seafarers in the dangers to their health of prolonged exposure to vibration;
 - (b) provision of approved personal protective equipment to seafarers where necessary; and
 - (c) assessment of risks and reduction of exposure to vibration in all accommodation and recreational and catering facilities by adopting measures in accordance with the guidance provided by the ILO code of practice entitled Ambient factors in the workplace, 2001, and any subsequent revisions, taking account of the difference between exposure in those areas and in the workplace.

Guideline B4.3.4 – Obligations of shipowners

- 1. Any obligation on the shipowner to provide protective equipment or other accident prevention safeguards should, in general, be accompanied by provisions requiring their use by seafarers and by a requirement for seafarers to comply with the relevant accident prevention and health protection measures.
- 2. Account should also be taken of Articles 7 and 11 of the Guarding of Machinery Convention, 1963 (No. 119), and the corresponding provisions of the Guarding of Machinery Recommendation, 1963 (No. 118), under which the obligation to ensure compliance with the requirement that machinery in use is properly guarded, and its use without appropriate guards prevented, rests on the employer, while there is an obligation on the worker not to use machinery without the guards being in position nor to make inoperative the guards provided.

Guideline B4.3.5 – Reporting and collection of statistics

- 1. All occupational accidents and occupational injuries and diseases should be reported so that they can be investigated and comprehensive statistics can be kept, analysed and published, taking account of protection of the personal data of the seafarers concerned. Reports should not be limited to fatalities or to accidents involving the ship.
- 2. The statistics referred to in paragraph 1 of this Guideline should record the numbers, nature, causes and effects of occupational accidents and occupational injuries and diseases, with a clear indication, as applicable, of the department on board a ship, the type of accident and whether at sea or in port.

- 3. Each Member should have due regard to any international system or model for recording accidents to seafarers which may have been established by the International Labour Organization.

Guideline B4.3.6 – Investigations

- 1. The competent authority should undertake investigations into the causes and circumstances of all occupational accidents and occupational injuries and diseases resulting in loss of life or serious personal injury, and such other cases as may be specified in national laws or regulations.
- 2. Consideration should be given to including the following as subjects of investigation:
 - (a) working environment, such as working surfaces, layout of machinery, means of access, lighting and methods of work;
 - (b) incidence in different age groups of occupational accidents and occupational injuries and diseases;
 - (c) special physiological or psychological problems created by the shipboard environment;
 - (d) problems arising from physical stress on board a ship, in particular as a consequence of increased workload;
 - (e) problems arising from and effects of technical developments and their influence on the composition of crews; and
 - (f) problems arising from any human failures.

Guideline B4.3.7 – National protection and prevention programmes

- 1. In order to provide a sound basis for measures to promote occupational safety and health protection and prevention of accidents, injuries and diseases which are due to particular hazards of maritime employment, research should be undertaken into general trends and into such hazards as are revealed by statistics.
- 2. The implementation of protection and prevention programmes for the promotion of occupational safety and health should be so organized that the competent authority, shipowners and seafarers or their representatives and other appropriate bodies may play an active role, including through such means as information sessions, on-board guidelines on maximum exposure levels to potentially harmful ambient workplace factors and other hazards or outcomes of a systematic risk evaluation process. In particular, national or local joint occupational safety and health protection and accident prevention committees or ad hoc working parties and on-board committees, on which shipowners' and seafarers' organizations concerned are represented, should be established.
- 3. Where such activity takes place at company level, the representation of seafarers on any safety committee on board that shipowner's ships should be considered.

Guideline B4.3.8 – Content of protection and prevention programmes

- 1. Consideration should be given to including the following in the functions of the committees and other bodies referred to in Guideline B4.3.7, paragraph 2:
 - (a) the preparation of national guidelines and policies for occupational safety and health management systems and for accident prevention provisions, rules and manuals;
 - (b) the organization of occupational safety and health protection and accident prevention training and programmes;
 - (c) the organization of publicity on occupational safety and health protection and accident prevention, including films, posters, notices and brochures; and
 - (d) the distribution of literature and information on occupational safety and health protection and accident prevention so that it reaches seafarers on board ships.

- 2. Relevant provisions or recommendations adopted by the appropriate national authorities or organizations or international organizations should be taken into account by those preparing texts of occupational safety and health protection and accident prevention measures or recommended practices.
- 3. In formulating occupational safety and health protection and accident prevention programmes, each Member should have due regard to any code of practice concerning the safety and health of seafarers which may have been published by the International Labour Organization.

Guideline B4.3.9 – Instruction in occupational safety and health protection and the prevention of occupational accidents

- 1. The curriculum for the training referred to in Standard A4.3, paragraph 1(a), should be reviewed periodically and brought up to date in the light of development in types and sizes of ships and in their equipment, as well as changes in manning practices, nationality, language and the organization of work on board ships.
- 2. There should be continuous occupational safety and health protection and accident prevention publicity. Such publicity might take the following forms:
 - (a) educational audiovisual material, such as films, for use in vocational training centres for seafarers and where possible shown on board ships;
 - (b) display of posters on board ships;
 - (c) inclusion in periodicals read by seafarers of articles on the hazards of maritime employment and on occupational safety and health protection and accident prevention measures; and
 - (d) special campaigns using various publicity media to instruct seafarers, including campaigns on safe working practices.
- 3. The publicity referred to in paragraph 2 of this Guideline should take account of the different nationalities, languages and cultures of seafarers on board ships.

Guideline B4.3.10 – Safety and health education of young seafarers

- 1. Safety and health regulations should refer to any general provisions on medical examinations before and during employment and on the prevention of accidents and the protection of health in employment, which may be applicable to the work of seafarers. Such regulations should specify measures which will minimize occupational dangers to young seafarers in the course of their duties.
- 2. Except where a young seafarer is recognized as fully qualified in a pertinent skill by the competent authority, the regulations should specify restrictions on young seafarers undertaking, without appropriate supervision and instruction, certain types of work presenting special risk of accident or of detrimental effect on their health or physical development, or requiring a particular degree of maturity, experience or skill. In determining the types of work to be restricted by the regulations, the competent authority might consider in particular work involving:
 - (a) the lifting, moving or carrying of heavy loads or objects;
 - (b) entry into boilers, tanks and cofferdams;
 - (c) exposure to harmful noise and vibration levels;
 - (d) operating hoisting and other power machinery and tools, or acting as signallers to operators of such equipment;
 - (e) handling mooring or tow lines or anchoring equipment;
 - (f) rigging;
 - (g) work aloft or on deck in heavy weather;
 - (h) nightwatch duties;

- (i) servicing of electrical equipment;
 - (j) exposure to potentially harmful materials, or harmful physical agents such as dangerous or toxic substances and ionizing radiations;
 - (k) the cleaning of catering machinery; and
 - (l) the handling or taking charge of ships' boats.
- 3. Practical measures should be taken by the competent authority or through the appropriate machinery to bring to the attention of young seafarers information concerning the prevention of accidents and the protection of their health on board ships. Such measures could include adequate instruction in courses, official accident prevention publicity intended for young persons and professional instruction and supervision of young seafarers.
 - 4. Education and training of young seafarers both ashore and on board ships should include guidance on the detrimental effects on their health and well-being of the abuse of alcohol and drugs and other potentially harmful substances, and the risk and concerns relating to HIV/AIDS and of other health risk related activities.

Guideline B4.3.11 – International cooperation

- 1. Members, with the assistance as appropriate of intergovernmental and other international organizations, should endeavour, in cooperation with each other, to achieve the greatest possible uniformity of action for the promotion of occupational safety and health protection and prevention of accidents.
- 2. In developing programmes for promoting occupational safety and health protection and prevention of accidents under Standard A4.3, each Member should have due regard to relevant codes of practice published by the International Labour Organization and the appropriate standards of international organizations.
- 3. Members should have regard to the need for international cooperation in the continuous promotion of activity related to occupational safety and health protection and prevention of occupational accidents. Such cooperation might take the form of:
 - (a) bilateral or multilateral arrangements for uniformity in occupational safety and health protection and accident prevention standards and safeguards;
 - (b) exchange of information on particular hazards affecting seafarers and on means of promoting occupational safety and health protection and preventing accidents;
 - (c) assistance in testing of equipment and inspection according to the national regulations of the flag State;
 - (d) collaboration in the preparation and dissemination of occupational safety and health protection and accident prevention provisions, rules or manuals;
 - (e) collaboration in the production and use of training aids; and
 - (f) joint facilities for, or mutual assistance in, the training of seafarers in occupational safety and health protection, accident prevention and safe working practices.

SOURCE: ILO website:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLCA_AMEND_A4 Accessed August 5, 2018.

APPENDIX X

RESOLUTION ON LINKING THE ISM CODE AND THE MLC

Resolution concerning the International Safety Management Code, submitted by the Government delegations of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liberia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom

The General Conference of the International Labour Organization,

Having adopted the Maritime Labour Convention, 2006,

Considering that this Convention aims to establish a new pillar of international legislation for the shipping industry,

Noting that the International Safety Management (ISM) Code of the International Maritime Organization (IMO) is an essential element of the safe operation of ships, and that the Code was developed to address the human element of operating ships safely, that both the Maritime Labour Convention and the ISM Code have common aims and objectives and should be linked more closely, and that a comparison of IMO Conventions and the Maritime Labour Convention shows that there is a great deal of common ground,

Recognizing the difficulty in trying to utilize the ISM Code to implement fully the Maritime Labour Convention at present, because of the apparent limitations in the scope of application of the ISM Code, and that both instruments would work more effectively if the scope of the ISM Code were extended to cover matters affecting seafarers' living and working conditions,

Noting that there are doubts as to whether the scope of the ISM Code is sufficiently broad to be applied to ILO matters, and that seeking to do so might lead to ambiguity, for example, in the preamble and more explicitly in section 1.2.1 of the ISM Code, which states its purpose and objectives as ensuring safety at sea, prevention of human injury or loss of life, and avoidance of damage to the marine environment and to property, whilst section 1.2.3 goes on to state: "The safety management system should ensure: (1) compliance with mandatory rules and regulations; and (2) that applicable codes, guidelines and standards recommended by the Organization, Administrations, classification societies and maritime industry organizations are taken into account", and that many therefore consider that the scope of the ISM Code does not permit audits of compliance with ILO matters relating to crew welfare, crew agreement, terms and conditions of employment, etc.,

Recognizing that ISM audits can at present deal with matters relating to crew qualifications, training, health and safety and some crew accommodation elements (relating to safety),

Noting that the main advantage of the ISM Code is that the company must implement the statutory requirements and can be held to account, and that if it fails to put into place measures to rectify serious deficiencies there is the ultimate sanction of withdrawing the Document of Compliance, effectively stopping all the ships of that company from operating,

Recognizing that many of the requirements laid down in the Maritime Labour Convention can be dealt with only at company level, which leads to far more effective implementation than that on board the ship only,

Recognizing that an extension of the scope of the ISM Code by the International Maritime Organization will not reduce the implementation or enforcement of the Maritime Labour Convention in any way (for example inspections of the ships according to the scope of Appendices A5-I and A5-III at regular intervals of not more than three years), but that it will provide more opportunity for inspectors and governments to ensure that the Convention is properly implemented, especially at the company level on a more regular basis, noting that the ISM company audits are required annually;

Invites the Governing Body of the International Labour Office to request the Director-General to invite the International Maritime Organization to review the ISM Code with a view to achieving these objectives, possibly by developing appropriate amendments to the Code, in order to ensure the effective global and uniform implementation and enforcement of both the Maritime Labour Convention and the ISM Code.

Source: ILO (2006) International Labour Conference. Provisional Record 6. 94th Maritime Session. Geneva.



'There are no simple answers,'
Voice grated, knife on rock,
'The true path's no open highway,
Good governance no wind-up clock.'

A gaunt figure stepped among them:
He gave each a piercing look.
His boots were worn, his cloak was stained,
And he bore a calf-bound book.

'Who art thou?' they cried in wonder,
'And what thing's your burden there?'
'I'm the Inspector,' spake the stranger,
'And the Law's my burden fair.'

....

Consumer viewed Inspector,
Eyes lit with wild surmise:
'It's up to you to punish,
Right wrongs, and nail their lies?'

'In truth, that *is* my duty –
The goal for all my kind –
But the journey is a long one,
And the road's not paved, nor signed.

Excerpt from: *The Rime of the Globalized Mariner: Part II*
Michael Bloor (2012).



