

Representation of seafarers' occupational safety and health: Limits of the Maritime Labour Convention

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Abstract

This article assesses the regulatory steer provided by the Maritime Labour Convention 2006, against the research evidence as to what works in making for effective worker representation and consultation on occupational safety and health. Based on the testimony of seafarers and regulatory agencies, it demonstrates that the Maritime Labour Convention provisions lack the necessary elements for an effective regulatory steer. This is because the conditions shown to support this form of representation are absent from or underdeveloped in the shipboard work environment. The article concludes with some suggested ways to enhance the Convention's provisions to achieve a more positive effect for seafarers.

JEL Codes: J28, J53, J83

Keywords

Maritime industry, Maritime Labour Convention, occupational safety and health, seafarers' safety and health, worker representation

Introduction

Shipping is among the most dangerous of industries (International Labour Organization (ILO), 2004). Seafarers face a combination of risks in ways that do not occur in other

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industries (Walters and Bailey, 2013). Worker representation and consultation on occupational safety and health (OSH) has been a long-standing institution with a proven contribution to improving OSH arrangements and outcomes in dangerous work environments (European Agency for Health and Safety at Work (EU-OSHA), 2017). Worker representation and consultation features significantly in the regulatory provisions on OSH in most countries and at the global level. It appears, for example, in ILO conventions on OSH such as ILO 155, as well as in some sector specific conventions such as those on mining and agriculture. Worker representation and consultation is a key feature of the more process-based, systematic approaches to regulating OSH that have emerged over several decades. They contribute to a more balanced participation in the creation and operation of arrangements for managing OSH, without detracting from the overall obligations on employers to provide for the safety and health of their workers. By the time global requirements on representation and consultation on board ships were introduced by the Maritime Labour Convention (MLC) 2006, they were following a regulatory strategy that was well-established in other global industries.

Land-based research shows worker participation on OSH can contribute to improved arrangements and outcomes, but also suggests a set of conditions that need to be in place to support effectiveness. A strong regulatory steer is one such condition, supported by senior management commitment, institutions of organised labour (such as trade unions and works councils), both inside and outside workplaces and an inspection regime. In combination, these conditions help ensure the presence of competent worker representatives with the necessary capacities to act as 'knowledge activists' (Hall et al., 2006) and represent and consult effectively on behalf of their constituents (EU-OSHA, 2017). It follows that workplace size is another precondition for effective representation and consultation, since competent management, the presence of organised labour and institutions for workplace labour relations are all normally associated with larger establishments.

Regulatory standards on representation and consultation help legitimise the role of worker representatives in the eyes of employers and workers. They also provide the framework within which representatives act and generally provide worker representatives with a number of basic statutory rights. These include rights to paid time off to enable appropriate training and role performance, including investigating workers' OSH complaints; inspecting workplaces, access to information; participation in accident investigation, being consulted over OSH arrangements including future plans; accompanying inspectors when they visit workplaces; and making representations on behalf of workers to managers (EU-OSHA, 2017). In some jurisdictions, further rights are allowed such as the ability to stop dangerous work and issue remedial notices to employers (Johnstone, 2009). Regulations also contain provisions to protect representatives from victimisation or discrimination when performing these roles.

While research has established the conditions for effective functioning of representation and consultation on OSH in different land-based industries, there has been little study of the extent of its implementation and practice in the maritime industry. Prior to widespread flagging out (the practice of registering ships in countries where their owners and managers are not necessarily domiciled) which characterises the modern industry globally, statutory measures on OSH representation and consultation in some national jurisdictions included seafarers in their coverage. However, there is little information

available on how these measures actually operated. Walters and Bailey (2013) discuss some limited exceptions. Today however, work in the global maritime industry appears, for the most part, beyond the reach of such measures. Therefore unsurprisingly, there is no research literature addressing the representation and consultation of seafarers on OSH. Nevertheless, studies concerning the structure, organisation and control of work on board ships suggest a number of factors that might not support OSH representation and consultation on vessels while at sea (Bhattacharya, 2012a, 2012b; Xue et al., 2017). For example, hierarchical human resource management, job insecurity and the fear of speaking out – commonly experienced by seafarers – do little to support workplace democracy under existing regulatory frameworks for OSH on ships (Bhattacharya, 2012b). Moreover, historically there is a strong convention within the maritime industry whereby a narrow margin exists between what might be seen as the constructive representation of seafarers interests in their safety and health while on board a ship, and what might be regarded as mutinous behaviour (Quinlan, 2013). This article therefore explores how, and to what extent, standards for representation and consultation on OSH on ships, found in the MLC, provide effective mechanisms to support the implementation and operation of representative participation in improving seafarers' OSH.

The article begins with an overview of the relevant literature demonstrating the effectiveness of representation and consultation on OSH and what supports such effectiveness. The studies indirectly showing the challenges with representation in shipping are then reviewed. An account of this study's research methodology is followed by an overview of the MLC and presentation of the empirical findings. A discussion of these findings concludes with an outline of possible ways of addressing the weaknesses they identify.

Representation and consultation on OSH: Evidence for its effectiveness

Representation and consultation provide an opportunity for workers to present their interests and concerns on OSH to employers and managers. It generally operates through workplace institutions such as health and safety representatives autonomously selected by workers and/or their organisations, joint safety and health committees, and/or the engagement of more general institutions of workplace representation such as works councils. It contrasts with other forms of participation such as the direct participation of individuals on OSH. Such direct participatory mechanisms are often favoured by managers, but have been found to be limited for a number of reasons, largely to do with the weak organisational and labour market positions of individual workers and the limited protections available to them should they 'speak out' on the management of OSH (Walters and Nichols, 2007). Practices associated with direct participation such as 'involvement' and 'engagement' have been criticised for being unilateral, based on managerial assumptions concerning the unitary nature of labour relations and for failing to allow workers much impact on OSH decisions (Lansbury and Wailes, 2008). It has even been suggested that direct participation has factored in the deterioration of workers' safety and health (Frost, 2008). Direct participation has been found especially unsuited to situations in which workers' employment is precarious, which is increasingly the case

in modern employment and work organisational practices (Lewchuk, 2013; Quinlan et al., 2001).

By contrast, there is strong research evidence concerning the effectiveness of worker representation and consultation aligned with labour relations practices. For both direct and indirect OSH measures, workplaces with representatives fare better (EU-OSHA, 2017; Gallagher and Underhill, 2012; Milgate et al., 2002). However, the preconditions referred to previously are required to achieve such effectiveness.

As one of the preconditions, regulatory provisions help define the roles and obligations of employers in providing facilities and resources to ensure representatives can be elected and carry out their functions. Regulations also provide redress if employers do not fulfil these obligations. However, there is considerable variation in the extent of such practice, leading to comments that such rights are often ancillary and depend for their effectiveness on the regulatory authority vested in the relevant institutions of workplace labour relations (EU-OSHA, 2017). Research has shown that such vested authority with regulatory support may facilitate effective representation even in situations where employers are hostile (Walters et al., 2016).

Representation and consultation on ships

Studies on workplace representation on ships are limited, although activism for regulations to improve employment and working conditions for seafarers is well documented, particularly for advanced market economies (Carter, 2014; MacFarlane, 1970; Quinlan, 2013). Safety representation is also found in global maritime standards such as the ILO Convention 134, dated 1970, but is not widely ratified. In this respect, statutory support for representation on ships is not new. The United Kingdom (UK), among other countries, has had provisions since the 1960s for crews to select their representatives, whose duties encompassed representation on general employment and working conditions including safety and health (MacFarlane, 1970; Walters and Bailey, 2013: 173–177). But, economic globalisation and neoliberal business practices in the industry have contributed to a weakening and, more often than not, the complete demise of such structures on board ships (Alderton and Winchester, 2002; ILO, 2004).

In the current context, research has noted that the maritime industry continues to struggle with establishing an acceptable level of OSH management on ships (Bailey, 2006; Bhattacharya, 2012a, 2012b; Xue et al., 2017). As far as seafarers' engagement is concerned, research further shows that direct forms of participation on OSH are predominant and maintained through standards mandated by the International Safety Management (ISM) Code (Anderson, 2003). The ISM Code is a maritime management standard developed by the International Maritime Organization (IMO) to regulate the shipboard work environment, including seafarers' OSH. It has been found to be limited in its capacity to elicit seafarers' genuine participation (Bhattacharya, 2012a, 2012b).

The ISM system seems to have bred mistrust and heightened negative relations between seafarers and their managers (Bhattacharya, 2012b), thus compromising management commitment as an important precondition for effective participation. Rather than the 'no blame' culture espoused by the maritime industry in pursuing OSH on ships

by way of the ISM Code, Bhattacharya (2012a, 2012b) found blame to be palpable, even among those managers who had some awareness of its negative effects.

Seafarers' participation is also shown to be inhibited by the nature, organisation and control of work on board. Xue et al. (2017), for example, demonstrated how the control of work at sea by shore-based management was often driven by production targets, a finding also emphasised by Sampson et al. (2016). Seafarers have often been found to feel stressed by communication with shore-based management and tended to deal with such stress through withholding information, including making efforts to self-manage personal injuries rather than report them (Acejo et al., 2011). These studies all indicate seafarers' reluctance to question shore management's decisions and instead accept OSH risks in their efforts to meet what they perceive as productivity requirements from shore-based staff. Seafarers' so-called 'silence' is a common theme in the literature on participation on ships. It has been associated with concern for their jobs, a concern for professional reputation and the ethos of the industry generally.

Seafarers are also often precarious workers (Sampson, 2013; Walters and Bailey, 2013) which, together with the factors above, may further help explain why they play down or underreport safety matters, in order that they may present a positive picture of themselves and/or the operations of their ship (Bhattacharya, 2012b; Xue et al., 2017). While the maritime industry may aspire to achieve organisational learning from incident reporting as one principle of building a safety culture (Graham, 2008; Manuel, 2011), the conditions described by this body of research on work at sea suggest significant challenges.

Finally, seafarers also do not benefit much from the presence of workplace institutions of organised labour, a presence highly dependent on the involvement of trade unions (Walters and Nichols, 2007) or works councils. Such workplace representation is rare on board the ships of the global merchant fleet, as a number of studies have shown (Bailey, 2006; Bhattacharya, 2012b; Walters and Bailey, 2013). 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).

The number of seafarers employed on board most merchant ships, along with the labour turnover, is a further constraint to their participation. In land-based terms, most merchant vessels would be deemed micro or very small workplaces based on the number of workers employed on board (average crew sizes are 20–30 people even on quite large vessels). Workplace size and continuity of employment are well-known determinants of the presence of representative institutions for organised labour. Organised labour is far more likely to be present in larger workplaces with relatively permanent workforces than in smaller ones, especially so if labour turnover in such enterprises is high. In addition, a few studies have also found deliberate attempts by shipowners to prevent seafarers from seeking union representation (Alderton and Winchester, 2002; Kahveci and Nichols, 2006).

With the absence of either trade union or management support for representation and consultation on shipboard OSH, arguably mechanisms to ensure a firm regulatory steer could be seen as all the more important. However, as studies into regulatory compliance

reveal, this is also a challenge. Findings suggest that despite the regulatory lead found in global and national standards, the means to achieve compliance are weak and inconsistent (Bloor et al., 2005). Therefore, an important question can be asked as to what mechanisms have been established under the 'new' MLC to create the support for its provisions for representation and consultation to deliver the improvements on OSH noted in land-based studies.

The study methods

This study explored the origins and development of the standards for representation in the MLC and those found in supporting guidelines: in the Code of Practice on Accident Prevention on Board Ship at Sea and in Port, 1996 (COPAP) (Section 2.8.4: 12), Maritime Occupational Safety and Health Guidelines, 2014 (MOSH) (Section 5.5: 43–45) and the ILO/MLC/ITF Guidance about the Safety and Health on board Ships, 2016 (Section 8: 12). These together are referred to in this study as the MLC Framework for representative participation and consultation on ships.

Data were gathered using documentary analysis and in-depth interviews with key informants. Key informants were selected according to the three levels at which international conventions operate:

1. At the international regulatory level where the standards were developed, in this case, at the ILO;
2. The national maritime administrative level where the standards were operationalised. For this study, the UK was selected as a case study to examine the operationalisation and administration of the MLC standards for representation on ships;
3. At the workplace level where the standards were implemented and practised by seafarers on board ships.

The documents that were examined spanned the period 2000–2006. They included relevant materials from the Joint Maritime Commission (JMC) documenting discussions prior to the MLC meetings, various submissions and meeting minutes during the MLC meetings and documents written subsequent to the completion of the meetings and adoption of the convention. The JMC is the ILO's maritime committee where employers' and employees' representatives discuss relevant matters pertaining to wages and working conditions on ships. Prior to the development of the MLC, the committee was charged with recommending revisions for the ILO maritime conventions. It recommended the consolidation of existing conventions that led to the development of the MLC.

Majority of the fieldwork was undertaken June 2015 to August 2016, while interviews with the seafarers were completed during 2017. Fifteen key participants were interviewed for their experience and specialist knowledge of the maritime industry. Nine of those were the architects of the MLC text representing the seafarers' and ship-owners' groups and the ILO. They were asked about the origins and rationale of the standards for representative participation in the MLC, and how they expected the standards to be effectively operationalised and implemented on ships. The remaining six key

participants were senior policy officers and inspectors who reported on the UK's case study. They were asked about how the UK operationalised and administered the MLC standards for representative participation and its implementation on ships registered in the UK.

Twenty-six seafarers were also interviewed as the beneficiaries of the standards of the convention. These seafarers worked on ships registered in different countries and were on various ship types that called at the port of Liverpool in the UK where the interviews took place. The seafarers held various ranks and nationalities. They were asked about their knowledge of the MLC and in particular its standards on representation and consultation and how this was implemented and practised on board the ships on which they worked.

Data analysis was standard qualitative thematic analysis where codes were developed based on the responses that spoke to the main aim of the study – to explore how and to what extent standards for representation and consultation on OSH on ships found in the MLC provide effective mechanisms to create the support for its implementation and operation. Analysis began with first-level descriptive coding, as outlined by Saldana (2016), and the data, organised into descriptive categories, were further grouped, cross-referenced and interrogated in order to draw out explanatory themes (Braun and Clarke, 2006).

The MLC and its provisions for representation

The MLC is a consolidating measure. Previous maritime conventions were not widely ratified and during a review process, the JMC recommended overhauling the maritime standards by consolidating them into one 'super convention', giving them enhanced compliance and enforcement measures, as well as a more responsive amendment procedure (ILO, 2006a). Much, while novel for the ILO, was borrowed from the structures and practices of the IMO. The IMO and the ILO are the two United Nations bodies that regulate the maritime industry through the development of conventions and codes of practices. The IMO is responsible for maritime technical standards which do not adequately address the social and labour employment relations issues arising within the shipboard work environment, making it necessary for the ILO to regulate those aspects of the employment relationship.

The MLC is set within the ILO's 'decent work agenda'. It is viewed as the seafarers' 'bill of rights' providing a 'firm but flexible' response to poor working conditions in global shipping. 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. It is considered to be the 'fourth pillar' in the international regulatory regime for quality shipping encompassing safety, security and marine pollution prevention (ILO, 2006a). The other three 'pillars' are conventions of 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.

Those who developed the MLC attempted to implement a strong regulatory lead which is evidenced by the emphasis placed on the compliance and enforcement regime set out in Title 5 of the MLC (ILO, 2006b). However, studies on whether the MLC is the firm response envisaged are slow in coming. To our knowledge, this research is the only one to date.

Much of the sparse literature on the MLC outlines its virtues and/or its legal implications (e.g. Bolle, 2006; Christodoulou-Varotsi, 2012; Lillie, 2008; McConnell et al., 2011). Few critical perspectives exist. Bauer (2008), for example, pointed out some limitations, particularly stressing the absence of any provisions on the right for seafarers to strike. Bauer interpreted the absence of such provisions as a weakness in the MLC regulatory lead and argued it to be worth some consideration because it would afford seafarers a means of exercising the other rights under the MLC. Bauer, however, stopped short of recommending union involvement as an important support for workers to access and exercise such rights. Yet as our review of previous literature demonstrates, precarious workers are least likely to exercise any employment rights without the effective support of organised labour (see, for example, Lewchuk, 2013).

The research evidence found that, in mandating the presence of safety representatives and the establishment of joint OSH committees, the architects of the MLC were drawing on the model of joint consultation already well-established in other sectors, as we have already pointed out. They mandated provisions for seafarers' safety representatives to be elected or appointed, for representatives to be given the authority to sit on OSH committees and for these committees to be established on ships where there are five or more seafarers (ILO, 2006b: MLC Standard A4.3 paragraphs 1c and 2d). Details are presented in the guidelines which establish this type of representation. The guidelines contain additional details of rights and roles such as time off for appropriate training and for representatives to carry out their duties without loss of pay, fear of dismissal or any other reprisals for their role, access to information, access to all parts of the ship, participation in inspections and investigations in the workplace, and representation of seafarers interests. Representatives are however not given the right to stop dangerous work, but seafarers are encouraged in the guidelines to remove themselves from dangerous situations. However, guidelines are not mandatory and the documentary evidence revealed that during the development stage, certain governments took pains to ensure that they were not legally bound by these guidelines – this is shown in Meeting Document TWGMLS/2003/10, for example.

Challenges to representation under the MLC

Data gathered from meeting documents and key informants showed the provisions for representation and consultation on OSH were inserted late in the process of creating the MLC and as a reflection of customary practice rather than a conscious recognition of the potential of representation and consultation to contribute to improving OSH on ships. Nevertheless, several explanations were given by the key informants as to the influences

leading to their inclusion. They explained that the ILO institutional tripartite structure and the practice of tripartism in developing ILO instruments were especially influential. As one shipowner representative explained,

. . . 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.

Thus, reflecting the ILO's principles and orientation during the post-war period of reconstruction when advanced economy labour relations practices dominated policy thinking, labour was regarded as something more than a mere commodity (Hughes and Haworth, 2010). The MLC provisions were therefore following standard procedures in this respect such as those followed in previous ILO maritime conventions based on this history. A seafarer's representative explanation further supports this analysis. He noted,

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.

In addition, since the MLC consolidates previous ILO maritime conventions and there were provisions for representation in Convention 134 and other ILO maritime codes – in particular, the Code of Practice on Accident Prevention at Sea and in Ports, that was referenced in the MLC – it follows that such provisions would be included, as the interviewees further confirmed. Thus, developing the MLC was essentially a rationalisation exercise, although the thinking behind it was to make labour standards for the industry more effective in protecting seafarers' labour rights and eliminating 'unfair' competition among shipowners (ILO, 2001). However, how respondents who were involved in the development of the MLC imagined these provisions would operate in practice was less clear. These key informants were asked about the likely support for safety representatives, in keeping with the research evidence that some preconditions were important for their effectiveness.

The findings showed an adherence to the common narrative underlying self-regulation that employers would find it in their best interest to support seafarers' participation. As such, interviewees from the shipowners' group thought the cost of accidents and incidents at sea would motivate shipowners to include safety representatives in their arrangements. Responses from the seafarers' group were more mixed. On one hand, some thought that the tripartism at the developmental level would filter to the shipboard level, while others acknowledged that representation would not be effective in practice because the support mechanisms were not in place. As one union official explained, ' . . . safety reps should be preferably elected and be union reps; if not the union should be consulted'. In practice however, as the research evidence revealed, the dominant position in the industry was one that relied on management commitment through enlightened self-interest and a belief in the business case for safety, rather than a position which recognised the constraints posed by the nature and organisation of work at sea which necessitated deliberate actions

to support the effectiveness of representation. We therefore concluded that the MLC architects had included the measures in the MLC without any serious consideration of their potential to have an impact on practices on board.

Seafarers' interviews support this conclusion. The research revealed that the experience of seafarers in the period following implementation of the MLC provisions for worker representation and consultation was yet to be operationalised and practised in any manner resembling good practices in OSH seen in other sectors.

Seafarers, for the most part, were not very knowledgeable on the MLC in general and even less so on its provisions for their representation. There was confusion in many instances as to who their OSH representatives were, and in others, there were no representatives on board as intended by the MLC provisions. While some seafarers initially reported having such representatives, further inquiry indicated this was not actually the case and it was often understood that the whole crew were consulted on OSH since they all attended safety meetings and could individually speak up about issues they might have.

From interviews with seafarers, it appeared that direct approaches dominated on board mechanisms for participation on OSH. In this respect, the MLC provisions on representation and consultation on OSH were side-lined by the more established managerial practices under the ISM Code. Seafarers were also more attuned to the requirements of the ISM. While this might be unsurprising given that the ISM preceded the MLC, it also suggested that a provision, such as representation, found in the newer MLC promising some autonomy for seafarers in protecting their safety and health had not achieved much impact in practice. Seafarers' testimonies revealed mixed attitudes to the MLC suggesting a lack of knowledge and understanding as to its purpose. Some indicated it was not a part of their daily work on board. A few believed they did not need to know much about the MLC, and they would find out if the need arose. Others thought it was little more than another burdensome convention.

Furthermore, some of the seafarers interviewed dismissed the need for representation because they were of the opinion that they worked for good companies and they were allowed to participate individually in matters on their ships. However, further probing of the participation to which they referred showed it to be concentrated on domestic needs such as choice of entertainment or gym equipment. When asked about participation in decisions about work, it was clear they were not involved. In their experiences, such matters were decided at company level. There was no evidence of their consultation on such matters, either as a feature of direct participation (as self-regulation intended), or as a feature of representation and consultation. These findings are almost identical to those reported in several studies on the form taken for worker participation on OSH in micro and small enterprises in various sectors on land. In these studies, both workers and owner managers express satisfaction with informal and direct forms of consultation (EU-OSHA, 2016, 2017; Trade Union Institute for Work, Environment and Health (ISTAS), 2018). But as Eakin (2010) has argued, such satisfaction ceases to be felt, once a work-related incident involving harm to a worker occurs.

When asked about participation in decisions, a chief officer reported that

. . . 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.

This suggests that officers may have a limited say in some matters that affect their safety and health, but caveats apply. First, as the quote indicated, such a say was indeed quite limited and decisions involving financial outlay remained beyond officers' influence. Second, the source of the quote was a First Officer, that is, someone occupying a senior rank on board a ship that is the maritime equivalent of a position in lower management, with a level of access to more senior shore-based managers that are unlikely to be available to ordinary seafarers.

Of further concern in respect of representation on OSH is that companies dominated the agendas of safety committee meetings. Where representatives were said to exist, they were considered 'nothing special', as one junior officer reported. Some seafarers in the study indicated that the safety and health meeting agenda was set by the company and focussed on safety. According to a chief officer,

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.

The seafarers interviewed indicted that health issues were not discussed to any great extent in OSH committee meetings. Indeed, they did not appear knowledgeable about occupational health or about their employers' responsibility to safeguard their health and the role of representation and consultation in this regard. According to one junior officer, 'you have to take care of yourself, you are the best help for yourself'. In short, health was 'responsibilized' (Gray, 2009) and experiences of ill-health were not seen as work-related.

Therefore, the evidence of the study suggests that the introduction of the MLC has had little impact on practices of representation and consultation on ships. It further suggests that conditions, well-known on board vessels and confirmed by previous research, were not considered seriously by the architects when they drafted the MLC and particularly, standards on representation. On-board experiences showed that the preconditions to support effective representative participation rarely exist on ships. Management commitment towards seafarer participation, such as it was, was found to be skewed towards

safety and the functioning of the ISM system and towards direct participation rather than towards the representation and consultation of seafarers in these processes.

Structural determinants of practice

As we have pointed out earlier in this article, there are several fundamental institutional and perceptual reasons for the situation reported in the previous section. They reflect the structural conditions of labour relations in the industry as well as the dominance of unitary notions concerning the operation and management of ships.

To begin with, the whole process of flagging out was undertaken, in part, to reduce the shipboard presence and influence of organised labour, which among the embedded maritime states¹ was regarded by the ownership and management of the industry as a significant factor determining high labour costs (ILO, 2004). The almost entire absence of workplace representation in the current global merchant fleet confirms the success of this strategy. Second, legal constraints around industrial action in the sector present a further significant barrier to the support for the development of workplace representation as Bauer (2008) has indicated. Third, the perceptions of owners and managers in the sector contribute to a dominant ethos in which the resurgence of workplace representation would be resisted, even on supposedly neutral matters such as safety and health. As one shipowner representative put it,

... 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.

Therefore, although the MLC provisions for the establishment of joint OSH committees and the selection of representatives were implemented to satisfy statutory requirements in some instances, it appeared that the ownership and management of the industry did not anticipate them to function in ways resembling those in other sectors. Further challenges were found when the study investigated union involvement and compliance issues at the national level, using the UK as a case. Here, findings showed that things were not functioning in ways that might have been anticipated from the findings regarding the preconditions for the effectiveness of representation and consultation on OSH in other sectors. For example, union involvement on board to support representation required recognition from shipowners. While this appeared to exist to some extent in the cruise industry, as reported by some interviewees, it was not so for merchant ships. For example, even though UK unions have members on these ships, they do not have recognition agreements with their employers that would allow union officials on board. This is in addition to the nature of shipping which creates mobile and distant workplaces, the organisation of workers as multinational crew, and the

hierarchical life on board, which all hinder unions' capacity to mobilise collective responses at the shipboard level.

Further evidence of the absence of the necessary structures to support representation was found in limitations to the capacity of regulatory inspectors to effectively enforce such standards on ships. Their efforts were hindered in several ways. Generally, ships are inspected when they are in port, but port State inspections are bound by statutory practices to inspect documents and only if there are felt to be grounds for it, do they go beyond documentation. Practices vary and inspectors exercise individual judgement in accepting adjustments in flag State cases. In the case of representation and consultation practices, the study found two limiting factors were relevant. First, documentation often showed that some form of safety committee meetings occurred on ships, which inspectors indicated they regarded as sufficient evidence that the MLC provisions for representation functioned adequately. This was despite being aware that having proper documentation in place did not necessarily align with the realities of practice. Second however, while regulatory inspectors may walk around a ship and speak to seafarers to satisfy themselves concerning matters on board, in practice this too was of limited value because seafarers usually told them everything was 'OK', even when this was not the case. One inspector explained 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.

In the eyes of the inspectors, representation and consultation on OSH on ships fell into the category of such 'soft parts' and as inspectors did not anticipate probing such matters would lead to beneficial results, they were therefore treated circumspectly.

Differences among ship types were further acknowledged as proving some difficulty for representation and consultation. The inspectors and union officials reported that cruise ships were better organised in relation to representation. For the UK, unions have recognition to go on board some cruise ships and they support representatives in these instances. Perhaps the reputational imperatives of cruise ships, contributed to these findings. Also, similarly, as with land-based experiences, they were more likely to find the presence of union representation on cruise ships because they are larger, with a larger workforce than is commonly found on merchant ships. Indeed, most such merchant vessels could be regarded in similar ways to small workplaces on land, and as is well-established in the literature (EU-OSHA, 2016), and pointed out already, small workplaces are challenged more, both when implementing representation and when dealing with OSH more generally.

Conclusion and ways forward

The research reported here found an absence of mechanisms under the MLC to create support for operating the provisions for representation and consultation on workplace

OSH on ships. We argue that the origins of these measures in the MLC were the result of customary practices and ILO traditions rather than any serious considerations of structural or organisational arrangements on board ships. As a consequence, the MLC failed to account for the effects of such conditions. Thus, the MLC measures were limited in facilitating the potential of representative participation and consultation to contribute to improved working conditions on ships.

A further argument evidenced in the article is that there are some broad similarities between the attitudes and experiences on board ships in relation to these matters, and those commonly seen in land-based workplaces of comparable size. As such, there may be some indications of ways in which the challenges to the effective operation of the MLC's provisions might be addressed, to be found in some land-based cases. For example – in Sweden, and in Italy, as well as in some sectors such as construction in Norway, and by regional agreements in Spain and elsewhere – regulatory requirements make provision for the appointment of 'regional' safety and health representatives and grant them and the trade unions or joint union/employer bodies that appoint them access to workers and their employers in small workplaces. The evidence of their actions has long indicated they are effective in improving OSH awareness and arrangements in small firms (Walters, 2004) and recent research has indicated why this is so (EU-OSHA, 2018; ISTAS, 2018).

In some other countries too, comparable arrangements allow, for example, trade union officials and representatives outside workplaces access to their members within workplaces where they have safety or health concerns, such as, in mining in several countries, and in other sectors in Australia and South Africa, as well as in provisions that apply in the entertainment sector in the UK. Similar arrangements also exist by means of collective agreements in a host of other countries and sectors. They all offer practicable ways to support workers in small workplaces, where formal arrangements for representation and consultation on OSH are cumbersome and impracticable (see, for example, ISTAS, 2018, also EU-OSHA, 2018).

The findings of this research would seem to suggest that further examination of these arrangements from the perspective of the maritime industry may warrant consideration. As acknowledged above, for the most part, the workplaces of the maritime sector are small, the presence of workplace representation weak or non-existent, and labour relations practices are operational from outside workplaces. In all these respects, they resemble small land-based workplaces where special forms of representation and consultation on OSH have been shown to be highly successful. It may be, that lessons can be learned from these experiences that could be applied in support of the provisions of the MLC with positive outcomes to improving the OSH of seafarers.

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Note

1. That is, in the large fleets of mostly high-income countries in which the ownership and control of the industry was located along with ship registration, prior to ‘flagging out’, and where therefore, the industry was subject to national regulation and prevalent patterns of industrial relations of these countries.

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