

EXPLORING THE REGULATORY IMPACT OF CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007 ON OFFSHORE HEALTH AND SAFETY CORPORATE CULTURE

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Abstract

The Corporate Manslaughter and Corporate Homicide Act (CMCHA) 2007, despite its hotly contested shortcomings, have a potential impact on offshore corporate health and safety culture. In probing this impact, this work will draw inspirations on how corporate failings located within an organisation's culture-procedures, behaviours, systems and perceptions etc. were largely contributory to the offshore disasters witnessed in recent times. This work contends that, since corporate recklessness could be located within a corporation's culture of lack of precautions, unwholesome procedures, policies and values, the CMCHA's "senior management test" the relevant duty of care together with the Sentencing Guidelines inter alia, have the potential ability of provoking holistic overhaul of a corporation's offshore health and safety related attitudes and perhaps reinforcing the need for sound corporate culture through an effective leadership in the offshore oil and gas industry.

Keywords: Criminal Liability, Corporate Manslaughter, Health and Safety, Homicide, Offshore Corporate Culture, United Kingdom

INTRODUCTION

As the demands and prices of oil and gas are surging high all over the world, the onshore 'easy-to-tap' resources are in contrast dwindling.¹ With the fear of depletion of reserves onshore, the quest for oil and gas has increasingly gravitated towards offshore.² Oil and Gas industry has been driven to more complicated geological and geographical frontiers estimated to be beyond 5,000 ft deep-water exploration.³ As the operators venture into these newest frontiers, the task is not less daunting as the potentiality of risks and accidents intensifies.⁴ The piper alpha disaster in the UK and the recent macondo disaster in the US underscore these nervous challenges. However, public inquiries and media investigations into these disasters have revealed that preventable corporate fault and "troubling corporate culture" played major roles⁵. History also

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¹Katie Mazerov, 'Risk Management' (2008) Drilling Contractor 116.

² ibid.

³ ibid.

⁴ ibid.

⁵James Gobert, 'The Corporate Manslaughter and Corporate Homicide Act 2007-Thirteen Years in the Making but was it Worth the Wait?' (2008) 71(3) MLR 413, 431.

suggests that ordinary civil regulatory and criminal sanctions appear to be insufficient in 'vindicating the interest of the society in the punishment of companies who cause deaths in each of such above instances'.⁶ While accepting that the UK's safety case regime have to a very appreciable extent addressed these inadequacies, some doubts still remain as to whether or not it has actually "impact[ed] on the offshore environment, in terms of changing workers' attitudes, perceptions and behaviours".⁷ So beyond the transformation brought about by the safety case regime, this work examines the potential capacity of CMCHA 2007 to reinforcing the need for sound corporate culture through an effective leadership in the offshore oil and gas industry.

This work is structured into five sections. In section I, the work commences with a brief overview of corporate criminal liability prior to the CMCHA 2007. Given that corporations are legal constructs, distinct in identity of the shareholders who created them⁸, the main task was how to identify the "directing mind" of a corporation.⁹ This section will thus examine briefly the fundamental obstacles and common law failings that led to a dearth of prosecutions for corporate manslaughter/homicide which in turn necessitated the call for reforms. The section will also consider the key features of CMCHA 2007. Among the issues that will be considered are senior management failure, aggregation theory, duty of care, secondary liability, sentencing etc., in contrast with the situation before the advent of the Act. Thus the radical changes introduced by the Act to mark the end of the common law rules on the offence of corporate manslaughter by negligence shall be examined. It is recognised that safety, both of people and environment are culturally driven, i.e. people will unlikely change, unless you work on their attitudes, norms and values.¹⁰ It is in this light that section II examines the concept of corporate culture. Definitions, doctrinal and theoretical basis of corporate culture will be briefly evaluated. This section will also examine corporate culture in the offshore oil and gas industry. Section III analyses the potential implication and capacity of CMCHA 2007 to influence the creation of sound model of offshore corporate culture. Although the new Act has been criticised for not producing new health and safety law and as well as not highlighting the problem of corporate killing¹¹, this chapter contends however, that the new Act has the potentiality of altering dominant unacceptable organisational behaviours in offshore industry. The section contends further that the Act would act as a catalyst for corporations to move away from the mentality of

⁶ James Harlow, 'Corporate Criminal Liability for Homicide: A Statutory Framework' (2011-2012) 61 Duke L. J 123, 126.

⁷ Kathryn Mearns and others, 'Human and Organisational Factors in Offshore Safety' (2001) 15(2) Work and Stress: An International Journal of Work, Health & Organisations 144, 145.

⁸ *Salamon v Salamon* (1897).

⁹ *Tesco Supermarket v Natrass* (1972) AC 153.

¹⁰ Louise Robb, 'It Ain't What You Say...' (2008) JLSS 52.

¹¹ Stephen Griffin, 'Corporate Manslaughter: A Radical Reform?' (2007) 71(2) J. Crim. L. 151, 160.

system compliance towards attitudinal safety and influencing the behaviours of employees.¹² In addition, the section will analyse the overlap of other health and safety legislations such as Health and Safety Act 1974 and Health and Safety (Offences) Act 2008. This is important because the prove as to whether an alleged gross breach has been committed would involve the extent to which an organisation has complied with health and safety legislations and the nature of safety culture to managing risks.¹³ In the final section IV recommendations will be offered and a conclusion will be drawn accordingly. The need to take seriously the prosecution for offshore corporate recklessness, in particular corporate manslaughter/homicide will form the basis of the recommendations. This, in the mind of the author, is a major way of ensuring a sound corporate leadership which in turn leads to an acceptable offshore corporate culture.

SECTION I

The Common Law Offence of Corporate Manslaughter

The imposition of criminal liability on companies continues to generate intense controversies in the field of Criminal Law.¹⁴ In the early sixteenth and seventeenth centuries, it was generally inconceivable and often considered unnecessary for corporations to be held liable for a crime due to their artificial nature.¹⁵ According to Blackstone “a corporation cannot commit treason or a felony or other crime in its corporate capacity though its members may in their distinct individual capacities.”¹⁶ Chief Justice Holt also agreed that “a corporation is not indictable but its members are.”¹⁷ As a result, the concept of corporate criminal liability encountered two major obstacles.¹⁸ First, the legal endowment of corporate personality which separates a company from its shareholders¹⁹ meant that imposing criminal liability on companies would defeat the essence of the legal formalism of a company as an artificial entity.²⁰ Second, there was no rule of attribution whereby a company could be vicariously liable for the criminal acts of others given that *actus non facit reum nisi mens sit rea* (i.e. an act does not render one guilty unless the mind is guilty).²¹ Under the common law however, a solution was derived from the civil law

¹²CMCHA s 8.

¹³ *ibid.*

¹⁴ Jonathan Clough, ‘Bridging the Gap: The Search for a Realist Model of Corporate Criminal Liability’ (2007) 18 *Crim. L. F.* 267.

¹⁵V S Khanna, ‘Corporate Criminal Liability: What Purpose Does it Serve?’ (1996) 109 *Harvard Law Review* 1479. See also Blackstone Commentaries 18, section 12 and Anonymous, 12 *Mod.* 559, 88 *Eng. Rep.* 1518 (KB 1901).

¹⁶Commentaries 18, section 12.

¹⁷ Anonymous, 12 *Mod.* 559, 88 *Eng. Rep.* 1518 (KB 1901).

¹⁸Khanna (n15) 1479-1480.

¹⁹*Salamon v Salamon* (n8).

²⁰Andrew Weissman and David Newman, ‘Rethinking Criminal Corporate Liability’ (2007) 48 *Indiana Law Journal* 411, 418. See also Smith and Horgan, *Criminal Law Cases and Materials* (Butterworth 1996) 149.

²¹*PearksGunston & Tea Ltd v Ward* (1902) 2 *K B* 1.

respondeatsuperior doctrine and 'in the context of strict liability for nonfeasance offences which do not require the proof of *mens rea*'.²² While in misfeasance offences that require the proof of *mens rea*, corporations were held vicariously liable but only immune from traditional crimes against the person such as involuntary manslaughter.²³

Under the common law therefore, corporations were immune from certain human offences such as: murder, manslaughter, assault and rape given that, "...the only punishment the court can impose is corporal, the basis of which the exception rests being that the court will not stultify itself by embarking on a trial in which if a verdict of guilty is returned, no effective order by way of sentence can be made."²⁴ According to Stephen Griffin "[A] corporate entity may not be convicted of murder as the sentence for that offence, namely, a mandatory penalty of life imprisonment, is incapable of being imposed against an artificial entity."²⁵ However, the statement of Bingham LJ in the *Herald of Free Enterprise* (*R v East Kent Coroner ex p Spooner and Others*)²⁶ suggested a tacit acceptance of the possibility of holding a corporation liable for the offence of manslaughter when he held that in appropriate cases:

[T]he *mens rea* required for manslaughter can be established against the corporation. I see no reason in principle why such a charge should not be established...Whether the defendant is a corporation or a personal defendant, the ingredients of manslaughter must be established by proving the necessary *mens rea* and *actus reus* of manslaughter against it or him by evidence properly relied on against it or him".²⁷

Accordingly corporations could be convicted of involuntary manslaughter, albeit by gross negligence.²⁸ However, given the "legal formalism attendant to corporation-as-person metaphor"²⁹ which made a corporation incapable of committing the *actus reus* necessary for the finding of involuntary manslaughter, corporate criminal liability for involuntary manslaughter was ascertained in accordance with the "identification principle".³⁰ Under the identification principle, a company could only be convicted of manslaughter when an individual member of the company identified as the embodiment of company itself has been found guilty of

²² Clough (n14) 270 and Weissman and Newman (n19) 419. See the English cases of *DPP v Kent & Sussex Contractors Ltd* (1944) KB 146; *R v ICR Haulage Ltd* (1944) KB 551 and *Moore v Brestlet Ltd* (1944) 2 AER 515.6

²³ *The Queen v Great North of England Railway Co.* US Eng. Rep. 1294 (QB 1846).

²⁴ *ICR Haulage case* (n22). See also Stephen Griffin, 'Corporate Killing-the Corporate Manslaughter and Corporate Homicide Act 2007' (2009) LMCLQ 73, 74.

²⁵ GRIFFIN, S., "Corporate Killing-the Corporate Manslaughter and Corporate Homicide Act 2007" in *L.M.C.L.Q.*, 2009, p.72 at 74

²⁶ (1989) 88 Cr App R 10

²⁷ *ibid.* See also Mueller, 'Mens Rea and Corporation' (1957) 19 U P L. Rev. 21, 23 in Lefave and Others (eds.) *Criminal Law* (St Paul MNN USA West Publishing Company, 1986) 259.

²⁸ *R v Adomako* (1994) 3 All ER 79.

²⁹ *Weissman and Newman* (n20) 417.

³⁰ Attorney Generals Reference (No 2 of 1999) [2000] 3 All ER 82.

manslaughter.³¹ Aggregating the culpable conducts of the individual members of the company was therefore not possible; instead, the components elements constituting the offence must be attributable to a single individual representing the directing mind and will of the company.³² The acts of the directing mind were attributed and deemed to be the corporation's own acts.³³ Although individuals who were able to act "independently of instructions from the board of directors" were seen as the directing minds of a company³⁴, it was somewhat problematic because the hierarchical complex managerial structures of large corporations "often distort[ed] any causal link between a culpable employee and the directing mind thereby negating ordinarily the means of establishing corporate liability".³⁵ This difficulty of identifying the directing mind is fully illustrated by *Tesco Supermarket v Nattrass*³⁶ in which identification principle was distinguished from vicarious liability. Here, Tesco evaded liability simply because the individual store manager could not be treated as the directing mind of the company, nor had the store manager been delegated an authority by the directing mind to act in a manner contrary to the company's policy. The identification model therefore offered an "impenetrable defence" to corporations³⁷ given, particularly the lack of precise definition of the "directing mind" as well as the lack of a clear model of identifying the "directing mind".³⁸ Further, it could be recalled that under the common law, a corporation could be convicted of involuntary manslaughter by gross negligence where the corporation breached its duty of care it owed the victim.³⁹ However, while a company could be held liable for the acts of its principal members, the individual members owed no duty of care to the affected victim.⁴⁰ And the Health and Safety at Work Act 1974, considered merely regulatory, could not reflect the gravity of the harm caused in work-related fatalities.⁴¹ The composite result of these obstacles was of course the dearth of successful prosecutions.⁴² As has been estimated, between 1992 and 2005, 34 corporate gross negligence

³¹ibid. See also Alice Bercher, 'Corporate Killing as a Corporate Governance Issue' (2002) 10(1) Corporate Governance: An International Review 47.

³²R v P & O European Ferries (Dover) Ltd (1991) 93 Cr App R 72 (Central Criminal Ct).

³³ See *Lennard Carrying Company v Asiatic Petroleum Ltd* (1915) A C 705 and *H L Bolton (Engineering) Company Ltd v T J Gramham & Sons Ltd* (1956) 3 All ER 624, 630.

³⁴ *Tesco Supermarket* (n9).

³⁵ Stephen Griffin and Jon Moran, 'Accountability for Death Attributable to Gross Negligence Act or Omission of a Police Force: The Impact of Corporate Manslaughter and Corporate Homicide Act 2007' (2010) 74(4) J. Crim. L. 360.

³⁶ *Tesco Supermarket* (n9).

³⁷ *R v Redfern* (1993) Crim LR 43..

³⁸ ibid.

³⁹*R v Lawrence* (1981) 1 All ER 974.

⁴⁰*R v P* [2007] EWCA Crim 1973.

⁴¹Christopher Sargeant, 'Two Steps Forward, One Step Back-The Cautionary Tale of Corporate Manslaughter and Corporate Homicide Act 2007' (2012) 1 UK L. Students' Rev. 1, 6.

⁴²ibid 4.

manslaughter cases were prosecuted with only a diminutive number of 6 convictions.⁴³ Owing to the fact that in recent times there has been an upsurge of series of human disaster, accidents and deaths in which corporations have been found to be at fault⁴⁴ (though no major company has been convicted), the debate and call around the world for the reform of the legal principles governing corporate criminal liability in general and corporate manslaughter in particular, has gathered momentum. The UK recently responded to this call by the birth of 'Corporate Manslaughter and Corporate Homicide Act 2007' which was brought into force on April 6, 2008.

Corporate Manslaughter and Corporate Homicide Act 2007

The new Act abolishes the common law rules on the offence of manslaughter by gross negligence.⁴⁵ Liability is no longer dependent on the common law identification principle⁴⁶. Rather, liability for the new offence is contingent on a finding of gross negligence in the way in which the activities of the organisation are managed by the senior management.⁴⁷ As has been argued, identification principle appears to be 'further extended under the Act to permit corporate liability to be established by an aggregation of the cumulative conduct of a collective of senior managers of a company'.⁴⁸ In other words, the new Act appears to accept the concept of aggregation in limited form by its reference to senior management in s 1(3) and the linkage in s 1(4) of senior management to persons who play significant roles in the making or carrying out of corporate decisions.⁴⁹ So by section 1, the crime is committed where in particular circumstances; an organisation owes a duty to take reasonable care for a person's safety and the way in which the activities of the organisation have been managed or organised by senior managers amounts to a gross breach of that duty and causes the victim's death. Causation will be assessed in the usual manner; however what amounts to 'gross breach' may be daunting, but must not be far from a 'reprehensible conduct'.⁵⁰ The term reflects arguably the threshold for the common law offence of involuntary manslaughter by gross negligence.⁵¹ To allay the fears of its identification, the Act has fortunately identified it as an act of the corporation that falls far below what can reasonably be expected of the corporation in the circumstances.⁵² The manner in which the

⁴³ *ibid.*

⁴⁴ See for e.g., the UK's 1997 Southall Rail crash, in which seven persons died; the 1999 Paddington (Ladbroke Grove) crash, in which 31 people died as well as the 2000 Hatfield Rail crash, in which four persons died

⁴⁵ CMCHA s 20.

⁴⁶ CMCHA s 1.

⁴⁷ *ibid.*

⁴⁸ See E Lederman, 'Models for Imposing Corporate Criminal Liability: From Adaptation and Imitation Toward Aggregation and Search for Self-Identity' (2001) 4 Buffalo Criminal Law Review 661-666.

⁴⁹ Gobert (n5) 426.

⁵⁰ R v Misra & Srivastava (2005) 1 Cr App R 21.

⁵¹ Attorney-General's Reference (n30).

⁵² CMCHA s 1(4)(b).

activities of the organisation concerned were managed or organised by senior management must be a substantial element of the gross breach⁵³. Section 2 defines relevant duty in relation to an organization to mean any of the following duties owed by it under the law of negligence: a duty owed to its employees or to other persons working for the organisation or performing services for it; a duty owed in connection with—the carrying on by the organisation of any other activity on a commercial basis, or the use or keeping by the organisation of any plant, vehicle or other thing. By section 1(4)(c) “senior management”, in relation to an organisation, refers to the persons who play significant roles in: the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or the actual managing or organising of the whole or a substantial part of those activities. Under section 8, a clearer framework for the jury to assess an organisation’s culpability is provided for viz: if there was a failure, how serious that failure was and how much of a risk of death it posed.⁵⁴ The jury may also consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection 2, or to have produced tolerance of it and may also have regard to any health and safety guidance that relates to the alleged breach.⁵⁵ Secondary liability for the new offence is excluded under section 18. This means in general that a person cannot be convicted for the offence if he aided, abetted, counselled or procured the commissioning of the offence of corporate manslaughter.⁵⁶ This does not however affect an individual’s direct liability for offence of the common law gross negligence manslaughter, culpable homicide or health and safety offences where the relevant elements of those offences are made out.⁵⁷ Even where convicted for corporate manslaughter, an organisation can still be liable for health and safety offences arising out of some or all of the same circumstances.⁵⁸ A company’s punishment if convicted of corporate manslaughter takes the form of an unlimited financial fine payable to the state.⁵⁹ The court is also empowered to direct that a remedial order be made against a corporation convicted of corporate manslaughter and when the remedial order is issued; a company is required to take further specific step to remedy the cause of the breach.⁶⁰ Under section 10 the court is also empowered with the discretionary power to order a convicted corporation to publicize the fact that it has been convicted of corporate manslaughter; specified particulars of the offence; the

⁵³ CMCHA s 1(3).

⁵⁴ *ibid* s 8(2).

⁵⁵ *ibid* s 8(3)(a) & (b).

⁵⁶ *ibid* s 18(1) & (2).

⁵⁷ Rosemary Craig, ‘Thou shall Do no Murder: A Discussion Paper on the Corporate Manslaughter and Corporate Homicide Act 2007’ (2009) *Comp. Law* 19.

⁵⁸ CMCHA s 19(2).

⁵⁹ *ibid* s 1(6).

⁶⁰ *ibid* s 9.

amount of any fine imposed and the terms of any remedial order, failure of which will amount to a crime punishable by fine.

However, some of the perceived pitfalls of the Act deserve elaboration. The fact that corporate guilt is established via the senior management appears to subdue the supposed radical departure from the common law identification doctrine.⁶¹ Moreover, the agency rules may still apply to determine who is “clothed with the responsibility of a senior manager and therefore the senior management test may, in part be too closely aligned to the identification principle”.⁶² This argument may not however be sustainable given that liability under the senior management test will ‘no longer be established through an agency line of the authority between the culpable employee and the senior management’.⁶³ Although the Act would help to reactivate the health and safety corporate culture by increasing the number of crimes to which a corporation could be held responsible,⁶⁴ the kind of evidence required for a corporate conduct to be far below expectation as to be adjudged gross is however unclear.⁶⁵ Moreover, what is “substantial” or how “senior is senior” as used under Act appears regrettably vague.⁶⁶ This omission could even tempt some corporations to push failed responsibilities for health and safety down to lower levels of the management cadre⁶⁷ just to hide the senior management “behind such a cloak of darkness” that it may be difficult if not impossible for prosecutors to locate.⁶⁸ Avoiding this may be to insist that companies name a senior manager that would oversee matters relating to health and safety.⁶⁹ It is also argued that the Act will unlikely make any difference since it does not establish a new health and safety legislation and does not as well highlight the problem of corporate killing.⁷⁰ The exclusion of secondary liability and the inability to issue custodial sentence as a result⁷¹, as well the pessimism that the courts remedial order may be largely ineffective⁷² are further criticisms levelled against the Act. Nevertheless it is submitted that the perceived

⁶¹Griffin (n11) 156-157.

⁶²ibid 158.

⁶³ ibid.

⁶⁴ Andrew Hopwood and Others, ‘The Impact of Corporate Manslaughter and Corporate Homicide Act 2007 on Construction Industry in the UK’ <<http://ascpro0.ascweb.org/archives/cd/2010/paper/CPRT240002010.pdf>> accessed 25 July 2013.

⁶⁵ Trevor Douglas, ‘Master or Servant: A Corporation’s Liability for the Activities of a Ship’s Master’ (2008) 72(6) J. Crim. L. 497, 515.

⁶⁶Griffin (n11) 159.

⁶⁷ ibid.

⁶⁸ibid 160.

⁶⁹Weissman and Newman (n20) 447.

⁷⁰Griffin (n11) 160.

⁷¹Krystina Pilkington and Amy Edinborough, ‘Corporate Manslaughter-slaughtering the Law?’ 3 The Student Journal of Law <<http://www.sjol.co.uk/issue-3/corporate-manslaughter>> accessed 25 July 2013.

⁷² ibid.

shortcomings of the Act may not seriously affect the potential impact of the Act on offshore health and safety corporate culture extensively discussed in section III.

SECTION II

The Concept of Corporate Culture

The concept of corporate culture is drawn from diverse definitional and theoretical underpinnings which bring into context corporate culture in offshore oil and gas industry. The essence is to create the fertile ground upon which the dynamics of the central theme of the work shall be examined in section III. Given that the literature on the “conceptual labyrinths” of corporate culture is overwhelming such as to merit a book of its own⁷³ the intention here is to limit the discussion to the most relevant literature.

Definitional Problems

In order to understand corporate/organisational culture, it is first necessary to understand the meaning of “culture”.⁷⁴ One of the chronic issues that have flared up intense debate in the literature of social sciences is the definition of the word “culture”.⁷⁵ To some Scholars, defining the concept of culture is like unpacking “a Pandora’s box unleashing most social science concepts and, as a consequence, a host of analytical and definitional issues”.⁷⁶ This has led to “exasperation”⁷⁷, variety and plethora of definitions⁷⁸. In fact, it is recognised that the number of definitions of culture is well over 100.⁷⁹ Despite this significant number of definitions however, there is still no consensus on how to define culture.⁸⁰ And the more the number of definitions, the more the concept loses all “predictive validity”.⁸¹ Etymologically, the word “culture” is derived from the Latin word *colere*, meaning to grow or to process.⁸² Sociological Scholars see culture as shared values, beliefs, customs, norms and underlying assumptions.⁸³ But on the other hand, the social anthropological scholars adopt a broad definition of culture as including ‘the

⁷³Stian Antonsen, *Safety Culture: The Method and Improvement* (Ashgate Publishing Group 2009) 3.

⁷⁴ E H Schein, ‘Corporate Culture’ in *International Encyclopaedia of Social & Behavioral Science* (Elsevier Science 2001) 2788.

⁷⁵Antonsen (n73).

⁷⁶ *ibid.*

⁷⁷ R G Tharp, ‘A Perspective on Unifying Culture and Psychology: Some Philosophical and Scientific Issues’ (2007) 27 *Journal of Theoretical and Philosophical Psychological Review* 213, as quoted in Jason Edwards and Others, ‘Returning to the Roots of Culture: A Review and Re-Conceptualisation of Safety Culture’ (2013) 55 *Safety Science* 71.

⁷⁸ Joaquin Navajas and Others, ‘The Limits of Photographic Act as a Metaphor for the Assessment of Organisational Culture: An Ethnographic Study of a High Reliability Organisation’ (2013) 59 *Safety Science* 116.

⁷⁹Edwards and Others (n77) 72.

⁸⁰Andrew Hopkins, ‘Studying Organisational Cultures and their Effects on Safety’ (2006) 44 *Safety Science* 876.

⁸¹Edwards and Others (n77) 72.

⁸² *ibid.*

⁸³e.g. Schein (n74).

complex whole of knowledge, ethics, beliefs and customs'.⁸⁴ However, some scholars have criticised this wide definition of culture as running into the risk of including perhaps "everything" we do as culture.⁸⁵ Geertz has argued that such broad approach would affect culture's analytical value and therefore, he advocated for the distinguishing between culture and social system so that culture could be seen as an "ordered system of meaning".⁸⁶ Utilised this way, culture and social aspects of human life are isolated, enabling them to be treated as "independent variables, yet mutually interdependent factors".⁸⁷ The main advantage of this separation is to make 'it possible to analyse changes or absence of it, in the culture versus the social system'.⁸⁸ Geertz also added that "cultural systems must have a minimal degree of coherence; else we would not call them systems..."⁸⁹ Accordingly, culture should be the "fabric meaning in terms of which human beings interpret their experiences and guide their actions".⁹⁰ For him, "man is an animal suspended in webs of significance".⁹¹ And the interpretation of various symbols according to Haukelid helps to untangle man from these "webs of significance".⁹² As bearers of meanings, symbols are just like public weddings and could be as observable as agriculture.⁹³ Some scholars have however criticised Geertz's position. Keesing is mentioned to have argued that, the fact that there are always conflicts between sub-cultures, values, knowledge, truth, power and individuals shows that culture is not "a homogeneous whole".⁹⁴ He argues that culture does not just end in "webs of significance", but also includes ideologies and power.⁹⁵ So for scholars such as Keesing, the ultimate issue is the centrality of power.⁹⁶ Haukelid accepts Keesing's argument as valid, but he questions Keesing's "cultural conditions", which is like splitting hairs considering that culture is subject to change particularly when influenced by external forces.⁹⁷ Haukelid argues that Keesing falls into the fallacy of logic because while opposing Geertz's definition of culture, Keesing at the same time concedes that humans are suspended in "webs of significance".⁹⁸ In the broadest perspective, Antonsen has defined culture as everything that is not nature, and when viewed this way, the study of culture

⁸⁴Antonsen (n73) 10.

⁸⁵ C Geertz, *The Interpretation of Cultures Selected Essays* (Basic Books New York 1973).

⁸⁶ibid 144.

⁸⁷ ibid.

⁸⁸ K Haukelid, 'Theories of (Safety) Culture Revisited-An Anthropological Approach' (2008) 46 Safety Science 414.

⁸⁹Geertz (n85) 7.

⁹⁰ibid 145.

⁹¹Geertz (n85) 5.

⁹²Haukelid (n88).

⁹³ ibid.

⁹⁴ R M Keesing, 'Theories of Culture Revisited' in R Borofsky (ed.) *Assessing Cultural Anthropology* (Vol. XIX, McGraw-Hill New York 1994) 566s.

⁹⁵ ibid.

⁹⁶ ibid.

⁹⁷Haukelid (n88) 415.

⁹⁸ ibid.

deals with those aspects of human existence that are not associated with “biology or unprocessed physical environment”.⁹⁹ However, in between the sociological and social anthropological approaches, she defines culture as “the frames of reference through which information, symbols and behaviour are interpreted and conversions for behaviour, interaction and communication are generated”.¹⁰⁰ She sees culture both as individual and as public. Individual in the sense that it provides “the necessary frames through which action becomes meaningful”, and public because “it consists of patterns of meaning that are shared by members of a cultural unit but which nevertheless exist independently of any individual actor”.¹⁰¹ She therefore prefers culture as a “cognitive and symbolic phenomenon”.¹⁰²

Given its link with culture, organisational culture is no exception to this definitional problem. Organisational culture, being an inter-disciplinary phenomenon with sociological, anthropological and psychological connotations, also has similar definitional problems¹⁰³, mainly because “like Bacteria or X-rays or other invisible phenomenon, corporate culture is real but difficult to observe”.¹⁰⁴ Just like culture, there are more than 168 definitions of organisational culture.¹⁰⁵ Given that culture is the source of organisational culture, the definitional diversities of culture feature greatly in the definitions of organisational culture by different scholars. This explains such definitions as: espoused values, group norms, habits of thinking, shared meanings, rules of the game, underlying assumptions, climate, and embedded rules.¹⁰⁶ Uttal defined organisational culture as the “shared values and beliefs that interact with a company’s systems to produce behavioural norms”.¹⁰⁷ Organisational culture is also defined as ‘a complex framework of national, organisational and professional attitudes and values within which groups and individuals function’.¹⁰⁸ And according to Bercher, corporate culture is defined as ‘an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities take place’.¹⁰⁹ Implicit in this variety of

⁹⁹Antonsen (n73).

¹⁰⁰ibid.

¹⁰¹ ibid.

¹⁰² ibid.

¹⁰³ Dianne Lewis, ‘Competence-based Management and Corporate Culture: Two Theories with Common Flaws?’ (1998) 31(6) Long Range Planning 940.

¹⁰⁴Flamholtz Yvonne, *Corporate Culture: The Ultimate Strategic Asset* (Stanford Business Books 2011) 5.

¹⁰⁵ C J Fisher and R J Alford, ‘Consulting on Culture: A New Bottom Line’ (2000) 52 Consulting Psychology Journal: Practice and Research 206-217.

¹⁰⁶Edgard Schein, *Organizational Culture and Leadership* (2ndedn, Jossey-Bass San Francisco 1992) 8-9.

¹⁰⁷ B Uttal, *The Corporate Culture Cultures* (Fortune 1983) 66-72.

¹⁰⁸Dianne Parker and Others, ‘A Framework for Understanding the Development of Organisational Safety Culture’ (2006) 44 Safety Science 551.

¹⁰⁹ Alice Bercher, ‘Imagining how a Company Thinks: What is Corporate Culture?’ (2006) 11(2) Deakin L. Rev. 7.

definitions is the distinction between attitudes and behaviour.¹¹⁰ Put slightly differently, a mark of distinction between the various definitions of organisational culture appears to be their focus on the “way people think, or the way people behave”.¹¹¹ However, “the way we do things here” is arguably the most common and most accepted definition in the literature of organisational culture.¹¹² This is probably because the definition lays great emphasis on practices and connotes the rightness, appropriateness or accepted manner of doing things.¹¹³ In the opinion of Hofstede, ‘daily practices rather than shared perceptions should be the core of organisational culture’.¹¹⁴ Nevertheless, it is submitted in agreement with Hopkins that the definitional approaches in terms of practices do not necessarily displace the importance of values in the study of organisational culture.¹¹⁵ However defined, what is uniform is the general acceptance that culture or organisational culture is critical to the success or failure of any corporation.¹¹⁶

Theoretical Perspectives

The concept of organisational culture is viewed from different perspectives.¹¹⁷ In other words, organisational culture is not studied from the same epistemological, theoretical and methodological viewpoints.¹¹⁸ The literature on this subject has been dominated by two diametrically opposite perspectives, namely the “functionalist and interpretive” approaches.¹¹⁹

The functionalist scholars perceive organisational culture as critical or distinct variable which is outcome determinative in that it influences certain results such as safety and reliability.¹²⁰ The assumption in this approach is the ability to shape or manipulate organisational culture to support managerial strategies and ideologies.¹²¹ As such, emphasis is laid on the technique of ‘prediction and control’ whereby culture is employed as a weapon to “coerce and control”.¹²² According to Schein:

“[C]ulture and leadership...are two sides of the same coin, and neither can really be understood by itself. In fact, there is a possibility...that the only

¹¹⁰Hopkins (n80).

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ *ibid.*

¹¹⁴ G Hofstede, *Culture and Organisation* (McGraw-Hill New York 1997) 182-183.

¹¹⁵Hopkins (n80).

¹¹⁶A I Glendon and N A Stanton, ‘Perspectives on Safety Culture’ (2000) 24 *Safety Science* 193.

¹¹⁷Antonsen (n73) 27.

¹¹⁸ P J Frost and Others, *Reframing Organizational Culture* (Newbury Park Sage 1991) as quoted in Antonsen, *ibid.*

¹¹⁹ L Smircich, ‘Concepts of Culture and Organisational Analysis’ (1983) 28 *Administrative Science Quarterly* 339-359.

¹²⁰ Tor-Olav Naevestad, ‘Evaluating a Safety Culture Campaign: Some Lessons from a Norwegian Case’ (2010) 48 *Safety Science* 652.

¹²¹Glendon and Stanton (n116) 194.

¹²² *ibid.*

thing of real importance that leaders do is to create and manage culture, and that the unique talent of leaders is their ability to work with cultures".¹²³

The functionalist approach is therefore 'top down' since as stated above, "it serves the strategic imperatives of members of the controlling group".¹²⁴ The functionalists also conceive of culture as something which can be measured and managed in order to produce efficient outcomes¹²⁵ and ascribes to culture the role of "maintaining functions of internal integration and external adaptation by means of providing common identity, commitment and coordination".¹²⁶ However, it is arguable how culture could be shaped, manipulated or managed according to whim.¹²⁷ In support of this is the argument that, it would be unethical to speak of the management of culture given that leaders do not create culture¹²⁸ and the fact that culture is not an "ideological gimmick" imposed from the top, but rather 'a stubborn fact of human social organisation capable of scuttling the best corporate plans if not first considered'.¹²⁹ Aligned with this thought is therefore the interpretive perspective of organisational culture.

The interpretive scholars by contrast conceive of culture as a root metaphor.¹³⁰ In other words, they see culture not as a distinct entity, but instead treat organisation as culture and referring both as the same phenomenon.¹³¹ The interpretive approach is thus 'bottom up' and allows the existence of sub-cultures within an organisation.¹³² From this standpoint, culture could not be manipulated or owned by any group.¹³³ Rather, culture is created by all the members of the organisation.¹³⁴ Schein underscores this interpretive approach when he defined organisational culture as 'a pattern of assumptions developed by a group as it learns to adapt to its environment which is taught to new members as the framework for cognition and behaviours in response to problems'.¹³⁵ Without undermining the importance of leadership or management, it is submitted that, the interpretive scholars make valid points, after all, leaders may come and go but the organisational culture remains the same.¹³⁶

¹²³Edgard Schein, *Organizational Culture and Leadership* (Jossey-Bass San Francisco 1985) 2.

¹²⁴Bercher (n109) 10.

¹²⁵Navajas and Others (n78) 116.

¹²⁶Antonsen (n73) 27.

¹²⁷Haukelid (n88) 417.

¹²⁸ *ibid.*

¹²⁹ P C Reynolds, 'Corporate Culture on the Rocks' in H A Shibley (ed) *Anthropological Perspectives on Organisational Culture* (University Press of America 1994).

¹³⁰Smircich (n119).

¹³¹Antonsen (n73) 28.

¹³²Glendon and Stanton (n116) 194.

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵Edgard Schein, 'Organisational Culture' (1990) 45 *American Psychologist* 109.

¹³⁶Haukelid (n88) 416.

Organisational culture and safety culture

Analogous to organisational culture is safety culture. Arguably, safety culture cannot be divorced from the context of organisational culture being an integral and focused part of organisational culture.¹³⁷ The concept of safety culture first used to explain the 1986 Chernobyl nuclear disaster, has also been embroiled in imprecise definitions and theories.¹³⁸ In an attempt to separate it from organisational culture, most of the literature on safety culture reflects the divide between the functionalist and interpretive approaches to organisational culture.¹³⁹ Accordingly, it is seen as 'aspects of culture that affect safety, or shared attitudes, values beliefs, practices, behaviours necessary for controls and proficiency of the organisation's safety programmes'.¹⁴⁰ Though labelled variously as the "philosopher's stone, man of straw", "culture's confusion" and even seen as something in the 'state of grace and rarely attained'¹⁴¹, it can be submitted however that, safety culture is pivotal to the safety of any organisation and should be seen as traits of culture that affects a company's safety¹⁴². This is because disaster inquiries often identify safety-rated attitudes as very fundamental, particularly in the oil and gas industry.¹⁴³

It also bears mention the tension between safety culture and climate. Although both concepts are often used interchangeably, some scholars have argued for a "conceptual distinction" between safety culture and climate.¹⁴⁴ Safety climate is used to describe workers' impression or perceived quality of an organisation's internal environment.¹⁴⁵ To some scholars, safety climate is "an empirically measurable component of safety culture" which 'indexes essential determinants of safety such as safety knowledge' etc.¹⁴⁶ What appears most relevant however, is the linking of safety climate to performance and the fact that safety climate is a "snapshots of safety", thus "more superficial and transient than safety culture".¹⁴⁷

Organisational Culture in Offshore Oil and Gas Industry

The foregoing has shown the importance of corporate culture as a driven force for behaviour. However, notwithstanding that offshore deep-water exploration is inherently hazardous; the free

¹³⁷ *ibid.*

¹³⁸ Glendon and Stanton (n116) 201.

¹³⁹ Navajas and Others (n78) 652.

¹⁴⁰ Glendon and Stanton (n116) 201.

¹⁴¹ Hokpin (n80) 876.

¹⁴² *ibid.*

¹⁴³ Glendon and Stanton (n116) 193.

¹⁴⁴ Hokpin (n80) 877.

¹⁴⁵ Glendon and Stanton (n116) 198.

¹⁴⁶ Morten Birkeland Nielsen and Others, 'A Brief Safety Climate Inventory for Petro-Maritime Organisations' (2013) 58 *Safety Science* 81.

¹⁴⁷ Dordi Hoivik and Others, 'An Explorative Study of Health, Safety and Environment Culture in a Norwegian Petroleum Company (2009) 47 *Safety Science* 992, 993.

market forces appear to discourage companies from taking precautionary measures to guard against hazards and risks.¹⁴⁸ Due to these strong free market incentives, corporations with very weak cultures often ignore or underestimate the potency of these risks and hazards.¹⁴⁹ Before Lord Cullen's safety case regime, the UK oil and gas industry was noted to have a very casual attitude to offshore health, safety and environment.¹⁵⁰ As Louise Robb rightly wrote, the typical thinking at the time was, "who cares as long as we're not caught, just get on with the job. It's a risky business we're in. Sack the idiot who had the accident!"¹⁵¹ Thus the prevalent culture was cutting corners for production and profits at the expense of health, safety and environment.¹⁵² Robb also identified other attitudes prevalent at the time to include: reactive; calculative and generative attitudes.¹⁵³ He observed that, it was always at the event of a disaster that managers would attempt making safety the number one priority, 'but once the "dust settled", they went back to the business as usual with risks and safety put behind production'.¹⁵⁴ Calculative and generative relate to the culture of creating sophisticated management systems and training with 'top down' and 'bottom up' management of safety with no thought spared on human factors; but instead of accidents reducing, they plateaued.¹⁵⁵ According to Robb, it was at this stage that human factors were considered in the oil and gas industry as they were responsible for 96% of all the accidents.¹⁵⁶ Besides, the qualitative sociological studies of the UK and Norwegian oil and gas industry have demonstrated that 'unsafe behaviour i.e. violating procedures driven by pressure for production was the best 'predictor' of accidents and near misses.'¹⁵⁷ These studies also identified factors such as: "performance pressure, poor communication regarding safety-related issues and lack of formalised procedures" in an organisation, as major contributors to all the fatal offshore disasters.¹⁵⁸ In other words, failing corporate culture and poor attitudes towards risks and safety correlated with accidents.¹⁵⁹ Owing to this, and in particular when the delinquent organisational culture of Occidental Petroleum was uncovered during the Piper Alpha tragedy inquiry, Lord Cullen called for the "creat[ion] of a corporate atmosphere or culture in which safety is understood to be and accepted as, the number one priority".¹⁶⁰ With the transformation

¹⁴⁸Alyson Flournoy and others, 'The BP Catastrophe: When Hobbled Law and Hollow Regulation Leave Americans Unprotected' (2011) 1101 Centre for Progress Reform White Paper 1, 3.

¹⁴⁹ *ibid.*

¹⁵⁰Robb (n10).

¹⁵¹ *ibid.*

¹⁵² *ibid.*

¹⁵³ *ibid.*

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

¹⁵⁷Mearns and Others (n7) and DordiHoivik and Others (n147).

¹⁵⁸ *ibid.*

¹⁵⁹*ibid.*

¹⁶⁰Lord Cullen, The Public Inquiry into the Piper Alpha Disaster (Cm 1310, 1990), para 18.46.

brought by Cullen's safety regime, the oil and gas industry in UKCS has been making a steady improvement in the right direction.¹⁶¹

However, evidence from the UK Health and Safety Executive (HSE) has indicated substantial shortcomings in the maintenance management of offshore infrastructure as to cast significant doubts on Lord Cullen's permissive regime.¹⁶² As the KP3 findings of 2004-2007 revealed, there was "considerable variation both across the industry and between installations within the same company" with regard to maintenance management.¹⁶³ The findings noted the difficulties in keeping track record of which equipment was defective or overdue for maintenance as well as a poor understanding across the industry concerning the potential impact of degraded, non-safety-critical plant and utility systems on safety-critical elements in the event of a major disaster.¹⁶⁴ It was also indicated that the role of asset integrity as well as the concept of barriers in major hazard risk control was not well understood.¹⁶⁵ Concerning the state of offshore infrastructure as a whole, it was discovered that though structural integrity was well controlled and the main hydrocarbon boundary reasonably well controlled, however, other parts of the hydrocarbon infrastructure such as pipes and valves were in decline.¹⁶⁶ Low oil price was also noticed as prompting deferrals in the maintenance of infrastructures given the plans to sell off assets in the nearest future.¹⁶⁷ As well as having negative effects on the morale of the workforce, these revelations, as has been argued question the ongoing significance of the UK safety case as "a living document".¹⁶⁸ As the HSE also discovered, safety-critical elements were not sufficiently tested causing diminished reliability on them.¹⁶⁹

The reasons for the above mentioned deficiencies have been related to the underlying problems of learning, engineering function and leadership.¹⁷⁰ Learning was seen as a problem due to lack of adequate auditing, monitoring and processes to allow learning to be embedded.¹⁷¹ As regards the second, it was discovered that the relative strength of engineering function in

¹⁶¹Robb (n10).

¹⁶² A Stacey, 'KP4: Ageing & Life Extension Inspection Programme for Offshore Installations' Proceedings of the AME 2011 30th International Conference on Ocean Offshore and Arctic Engineering June 19-24, 2011, Rotterdam, The Netherlands.

¹⁶³John Paterson, 'Health and Safety at Work Offshore', in Greg Gordon and others (eds.) *Oil and Gas Law: Current Practice and Emerging Trends* (2ndedn, Dundee University Press 2012) 186, 220. See also Health and Safety Executive, Key Programme 3: Asset Integrity Programme: A Report of the Offshore Division of HSE's Hazardous Installations Directorate, November 2007 (KP3), p.5.

¹⁶⁴ KP3 11-13.

¹⁶⁵ *ibid.*

¹⁶⁶ *ibid* 6

¹⁶⁷Paterson (n163) 221.

¹⁶⁸ *ibid.*

¹⁶⁹KP3 7.

¹⁷⁰Paterson (n163) 221.

¹⁷¹KP3 8.

companies have declined to a worrying level.¹⁷² With regard to leadership, the senior management, while setting priorities on spending and balancing safety and financial risks often failed to understand the dangers of operating with degraded and safety-related equipment coupled with the fact that even these well-publicised HSE's findings were not being acted upon.¹⁷³ As has been observed, KP3 focused on the present condition of assets.¹⁷⁴ However, given the growing number of ageing installations and the increasing demand to use offshore facilities beyond their lifespan, it has become necessary to shift focus on the integrity management process for ageing installations with a view to ensuring that the associated risks are adequately managed.¹⁷⁵ To therefore address this issue, the HSE offshore division has embarked on a three-year inspection programme on ageing and life extension, designated 'KP4'. The main aim of KP4 is ensuring that the risks to asset integrity associated with ageing and life extension of offshore infrastructures are effectively controlled by the offshore industry.¹⁷⁶ But it also has some specific objectives which are as follows:

- to raise awareness within the offshore industry of the need for specific consideration of ageing issues as a distinct activity within the asset integrity management process and, in particular, of the need for senior management to demonstrate leadership and commitment to this matter;
- to define a programme of inspection of individual duty holder approaches to the management of ageing and life extension to ascertain the extent of compliance with the regulatory requirements;
- to identify shortcomings in duty holder practices on the management of ageing and life extension and enforce an appropriate programme of remedial action;
- to work with the offshore industry to develop a 'best practice' common approach to the management of ageing installations and life extension, including the development of long-term plans, for implementation in safety cases and thorough reviews, to ensure the continued safe operation of all ageing offshore installations on the UKCS.¹⁷⁷

One of the key issues covered by the KP4 programme is organisational factors. This is very essential as it recognises the importance of organisational safety. And this would require the: (a) demonstration that the organisation is aware of ageing challenges at all levels, including

¹⁷² *ibid.*

¹⁷³ Paterson (n163) 221-222.

¹⁷⁴ Stacey (n162) 2.

¹⁷⁵ *ibid.*

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*

senior management/ board level; (b) demonstration that the workforce has adequate understanding / knowledge, experience, competence and training to manage ageing issues; (c) definition of key responsibilities, management structure, communications and resources associated with the management of ageing and life extension, and (d) the specification of management measures that differentiate life extension from day-to-day problem shooting.¹⁷⁸ It remains essential therefore that the 'offshore industry's safety culture recognises the barrier to the catastrophic loss of integrity as provided by the risk based management systems, standards and technical specialists.'¹⁷⁹ Effective leadership is needed to ensure that suitable and sufficient resources are deployed which would attract HSE's offshore division in partnering with industry to ensure that leadership on ageing matters becomes embedded in the safety culture.¹⁸⁰

SECTION III

Impact of the Corporate Manslaughter and Corporate Homicide Act on Offshore Corporate Health and Safety Culture

Corporations, through their cultures can encourage the commission of crime.¹⁸¹ Once fatalities or crimes occur, enquiries will likely narrow down to corporate culture.¹⁸² As advanced hereunder, the CMCHA 2007 has the potential ability of restoring sound corporate health and safety culture in the offshore oil and gas industry.

The Impact of the Senior Management Test

Given that the responsibility for the fate of a corporation when it commits a crime lies with the management, it becomes incumbent upon the management to encourage sound corporate culture so as to deter corporate crime.¹⁸³ In other words, to safeguard the company, the management must respond 'proactively with programmes and systems designed to discourage crimes'.¹⁸⁴ This is because 'genuine organisational wrongdoing is mostly found within the organisation's culture, procedures and systems'.¹⁸⁵ As already noted under the Act, corporate criminal liability is not contingent on the failure of the 'directing mind' but rather on the "senior management failure" which links corporate manslaughter with the activities of senior

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

¹⁸⁰ *ibid.*

¹⁸¹ Sally Simpson and Christopher Koper, 'Deterring Corporate Crime' (1992) 30(3) *Criminology* 350.

¹⁸² Bercher (n109) 10.

¹⁸³ Jennifer Arlen, 'Evolution of Corporate Criminal Liability: Implications for Managers' in Robert Gandossy and Jeffrey Sonnenfeld (eds.) *From Leadership and Governance from the Inside Out* (2004) 1.

¹⁸⁴ *ibid.*

¹⁸⁵ Bercher (n109) 4.

managers.¹⁸⁶ Such activities relate to organisational culture because under s 8(3)(a) of the Act, the jury for the first is to consider how organisational attitudes, policies, systems or accepted practices likely encouraged or produced the tolerance of organisational failure". As well as paying regard to any health and safety guidance that relates to the alleged offence¹⁸⁷, the jury is also empowered to consider the extent the organisation failed to comply with health and safety legislation, the seriousness of the offence and how much risk of death it posed.¹⁸⁸ The Act thus recognises corporate manslaughter on the basis of "intra-organisational bureaucratic failures"¹⁸⁹ which is indeed "a quantum leap in legal discourse" capable of 'reinforcing the culture of health and safety and ensuring that companies take issues of safety more seriously'¹⁹⁰ This, it can be argued, also imports the "aggregation doctrine", albeit in a restricted form.¹⁹¹ It is argued that the Act in effect endorses a version of aggregation principle; rather than pinning all the blame in one senior directing mind, the culpability of several senior managers is aggregated.¹⁹² The device of aggregation would now permit the summing up of the acts, omissions and knowledge of the senior members of the organisation to establish organisational failure.¹⁹³ It would also allow the combination of the *actus reus* of one individual with the *mens rea* of another thereby negating the notion that a case against a personal defendant cannot be fortified by the evidence against another defendant.¹⁹⁴ Inquiries into the macondo disaster for example, revealed that BP'S management culture prevented employees from raising safety concerns.¹⁹⁵ Production pressures, cost-cutting *inter alia* were said to have characterised BP 'executive managers' behaviours'.¹⁹⁶ BP's internal audit also discovered that "business unit manager's risk management process did not understand or control major hazards", nor did the senior executive show any good leadership on effective safety culture.¹⁹⁷ This problem of management still persists even with the safety case regime in the UK given the recent revelations of the KP3 and KP4.¹⁹⁸ So the possibility of the courts aggregating the fragmented faults of the senior managers as seen above would help to

¹⁸⁶CMCHA s 1(4).

¹⁸⁷ *ibid* s 8(3)(b).

¹⁸⁸*ibid* s 8(2).

¹⁸⁹Miller, 'Federal Sentencing Guidelines for Organisational Defendants' (1993) 46 Vand.L. Rev. 197, 210 as quoted in Sargeant (n41) 6.

¹⁹⁰ Celia Wells, 'Corporate Manslaughter: Why Does Reform Matter?' (2006) S. African L.J. 648, 653-654.

¹⁹¹ Sarah Field and Lucy Jones, 'Five Years on: The Impact of the Corporate Manslaughter and Corporate Homicide Act 2007: Plus Ca Change?' (2013) 24(6) ICCLR 245.

¹⁹² *ibid*.

¹⁹³ Aidan Ricketts and Heidi Avolio, 'Corporate Liability for Manslaughter: The Need for Further Reform' (2009-2010) 13 S. Cross U. L. Rev. 57, 69.

¹⁹⁴ Attorney-General's Reference (n30).

¹⁹⁵ Mark Cohen and Others, 'Deepwater Drilling: Law, Policy and Economics of Firm Organisation and Safety' (2011) 64 Vand. L. Rev. 1853, 1855 & 1865.

¹⁹⁶ *ibid*.

¹⁹⁷*ibid* 1865-1866.

¹⁹⁸Paterson (n163) 220-221.

alter unacceptable offshore health and safety corporate culture for the better. As Cohen has noted, it is the "...upper management [that] chooses internal policies that affect safety culture and makes decisions that embody it. Lower managers and other employees respond to incentives created by upper management thereby creating a link between safety culture and safety outcomes".¹⁹⁹ Thus the fate of cases such as Spooner²⁰⁰ would have been different today because the court would have been able to sum up the errors of the assistant boatswain; the captain; the senior master and the board of directors who in one way or the other failed to ensure the safety of the Herald of Free Enterprise when she capsized killing the 200 passengers on board.²⁰¹ However, due to the barriers of identification doctrine, the court could not attach any value to the "organisational sloppiness" or the "aggregated negligence" of the management as discovered by the inquiry.²⁰² Conversely, it has been argued that since aggregation under the Act does not look beyond individual members, it would not provide complete resolution of the corporate criminal liability law.²⁰³ However, the issue may not necessarily be whether liability can be "constructed from bits and pieces of information about individuals; rather whether it inheres in the organisation itself".²⁰⁴ Seen from this perspective, aggregation under the Act is meant to function as a "distinct but interlocking principle" and would therefore help to ease the prosecution of companies "as distinctly liable entities".²⁰⁵ The exclusion of secondary liability under the Act has also raised additional fears²⁰⁶; however, the fear of this exclusion can be assuaged by the fact that senior managers and other employees will continue to be liable under the common law offence and the health and safety laws.²⁰⁷

Besides, the crime of corporate manslaughter is 'conceptualized by the evidence of 'management failure' to control health and safety risks'.²⁰⁸ This is of great relevance to the offshore industry that is prone to high level of risks due to the inherently hazardous nature of the industry.²⁰⁹ By this, the government has simply responded to the "communicative power"

¹⁹⁹Cohen and Others (n195) 1856.

²⁰⁰ See n23.

²⁰¹Ricketts and Avolio (n193) 68.

²⁰²Herald of Free Enterprise (n32).

²⁰³Ricketts and Avolio (n193) 70.

²⁰⁴ *ibid.*

²⁰⁵ *ibid.*

²⁰⁶Pilkington and Edinborough (n71).

²⁰⁷Craig (n57).

²⁰⁸CMCHA s 8. See also Paul Almond, 'Understanding the Seriousness of Corporate Crime: Some Lessons for the New Corporate Manslaughter Offence' (2009) 9(2) Criminology and Criminal Justice 158.

²⁰⁹NimaKhakzad and Others, 'Qualitative Risk Analysis of Offshore Drilling Operations: A Bayesian Approach' (2013) 57 Safety Science 108.

inherent in recent disasters by transmitting the messages about risks to the wider populace.²¹⁰ It brings to the fore Innes Martin's "signal crimes perceptiveness", who argues that some crimes matter more than others in terms of shaping peoples' perception of risks and are interpreted as 'warning signals' concerning wider risks victimization.²¹¹ Martin's theory shows that establishing sound offshore corporate safety culture and insulating a company from corporate crime would depend *inter alia* on the willingness of the management to invest in effective compliance and enforcement programmes that would increase risks perception and deter crime.²¹² But this, it is argued, will unlikely happen without the additional influence of offences such as corporate manslaughter. Although some people are, by and large, law abiding; yet the spirit of obedience to law can be better achieved by the detection and punishment of high crimes.²¹³ As has been argued, "[t]he risks of indictment alone is devastating: a criminal indictment promises a swift market response, the ouster of leadership, millions of dollars in legal suits, and of course the possibility of conviction..."²¹⁴ Apart from facilitating prosecution, corporate manslaughter as heightened by the new Act's collective management failure test will likely make "archetypal big and newsworthy cases" and can reinforce the 'process of attitudinal realignment'²¹⁵ that will make companies take issues of health and safety more seriously from top to bottom.²¹⁶ In this era of advanced offshore oil and gas technological development, the fear of corporate manslaughter prosecution may increase the 'knowability and perception of risks that are imminent'.²¹⁷ Effective safety measures; effective monitoring compliance; education of employees; reactions to past violations; incentives and indemnities are all matters under the control of the management.²¹⁸ Managers may thus begin to review the safety implications of their attitudes that compromise offshore safety and effectively transmit same to other employees.²¹⁹ It can also add pressure upon the management to allocate sufficient efforts on issues of safety management and communication of risks in order to increase safety-consciousness and 'calculated acts of risks avoidance' in the offshore

²¹⁰ Paul Almond, 'Regulation Crisis: Evaluating the Potential Legitimizing Effects of Corporate Manslaughter Cases' (2007) 29(3) Law & Policy 293.

²¹¹ Martin Innes, 'Signal Crimes and Signal Disorders: Notes on Deviance as Communicative Action' (2000) 55(3) British Journal of Sociology 335, 336.

²¹² Arlen (n183) 1, 11-12.

²¹³ *ibid.*

²¹⁴ Edward Diskant, 'Comparative Corporate Criminal Liability: Exploring the Uniquely American Doctrine through Comparative Criminal Procedure' (2008) The Yale Law Journal 128-129.

²¹⁵ Almond (n210) 291 & 300.

²¹⁶ Wells (n190) 654.

²¹⁷ Almond (n210) 293

²¹⁸ Clough (n14) 276.

²¹⁹ Cohen and Others (n195) 1865-1866.

industry.²²⁰ And it ultimately implies that managers are “at greater peril than previously” as the responsibilities for the fate of their companies are now more on their shoulders.²²¹

The Impact of Duty of Care

The Act does not create a new duty of care, but establishes the circumstances under which a breach of duty of care under the law of negligence would amount to criminal crime of corporate manslaughter.²²² So the offence as earlier said is committed when an organisation owed a duty of care to the victim under the law of negligence either as an employee or other persons working for the organisation or performing services to it.²²³ This as has been observed, will include situations of offshore oil and gas installations where, apart from the employees of the operator, there may be other employees working for other contractors and subcontractors.²²⁴ Note also that the relevant duty of care further includes *inter alia* “the carrying on by the organisation of any construction or maintenance”, or “the use or keeping by the organisation of any plant, vehicle or other thing”.²²⁵ The senior management failure must amount to gross breach of duty of care owed to the deceased.²²⁶ A gross breach refers to a corporate conduct that “falls far below what can reasonably be expected of the organisation in the circumstances”.²²⁷ It thus “raises intriguing possibilities” in the event of prosecution resulting from fatalities in an offshore installation.²²⁸ This is because the operator would have detailed its behaviour in the safety case which would have provided the court with a ready reference as to what the operator considered reasonable in the circumstances.²²⁹ To establish gross negligence, latitude is also granted to the jury to consider ‘the failure to comply with health and safety legislation relating to the alleged breach; the seriousness of such failure and how much risk death it posed’²³⁰, including the extent “attitudes, policies, systems or accepted practices within the organisation that were likely encouraged or to have produced the tolerance [of such failure]” and “have regard to any health and safety guidance that relates to the alleged breach”.²³¹ This implies a consideration of the “corporate culture and policies that yield latent conditions as a component of the corporation’s

²²⁰ *ibid.*

²²¹ Arlen (n183) 1.

²²² Hopwood and Others (n64). See also CMCHA s 2.

²²³ CMCHA s 2(1)(a) & 2(4).

²²⁴ Paterson (n163) 223.

²²⁵ CMCHA s 2(1)(c).

²²⁶ See CMCHA s 2 and Craig (n57) 18.

²²⁷ CMCHA s 1(4)(b).

²²⁸ Paterson (n163) 223.

²²⁹ *ibid.*

²³⁰ CMCHA s 8(2).

²³¹ *ibid* s 8(3).

culpability".²³² It additionally shows that corporate governance now involves risk management policies and the embedment of same in the behaviour of workers thereby reflecting the situational and behavioural aspects of culture as defined by some scholars.²³³ And the twin requirements of the 'conduct falling far below expectation' and the 'substantial senior management role' "largely cabin the Act's reach to systemic failures".²³⁴ Admittedly, corporate manslaughter under the Act shares a close affinity with the common law gross negligence²³⁵. However, the Act recognises that recklessness could be located in a company's policies and practices so that if a corporate culture is seen to have influenced the commission of a crime, it could be easily inferred that the company foresaw the harm or that it created the risks of such harm or that the corporation was certain it would occur, albeit that, determining whether such policies and practices are 'defective enough as to be adjudged blameworthy' may remain a challenge to the UK courts²³⁶. Nevertheless, it can be submitted that the Act is potentially 'well adapted to a holistic appraisal of a company's performance in offshore health and safety matters'.²³⁷

The Impact of Fines, Publicity and Remedial Orders

As earlier said, the punishment for corporate manslaughter takes the form of an unlimited fine.²³⁸ The court also has the discretion to make publicity and remedial orders.²³⁹ With respect to fines, the Sentencing Guidelines as applicable to England and Wales provides for the criteria for assessing the seriousness of offence to include: how foreseeable was the serious injury?; how far short of the applicable standard did the defendant fall?; how common is this kind of breach in the organisation and how far up the organisation does the breach go?²⁴⁰ Other non-exhaustive factors are also to be considered as either aggravating or mitigating the offence. Among the aggravating factors, "cost-cutting at the expense of safety"; "failure to heed warnings or advice" or failure "to respond appropriately to near misses"²⁴¹ as has been observed, "stood out as particularly relevant to the offshore oil and gas industry in the light of the findings of KP3..."²⁴² Conversely, the mitigating factors include: "prompt acceptance of responsibility; high level of co-operation with investigation; genuine efforts to remedy defect and responsible attitude to health

²³²Harlow (n6) 151.

²³³Bercher (n109) 16.

²³⁴Harlow (n6) 151.

²³⁵A Simester and G Sullivan, *Criminal Law Theory and Doctrine* (Hart Publishing Oxford 2007) 267.

²³⁶Douglas (n65) 515.

²³⁷Simester and Sullivan (n235).

²³⁸CMCHA s 1(6).

²³⁹ibid ss 10 & 9.

²⁴⁰ Corporate Manslaughter & Health and Safety Offences Causing Death: Definitive Guideline 2010, para 6.

²⁴¹ibid para 7.

²⁴²Paterson (n163) 225.

and safety”.²⁴³ The fine to be imposed “will seldom be less than £500,000 and may be measured in millions of pounds”.²⁴⁴ Such represent very huge fine that will likely impact on the economic fortunes of multilateral companies in the oil and gas sector; though not an attempt to value human life in money, but to be sufficiently punitive to impact upon the corporate offender.²⁴⁵ It reflects the public disquiet at the harm caused by the corporation and to deter future similar occurrences.²⁴⁶ The same standard of behaviour is required of every organisation irrespective of size²⁴⁷ even though size might affect a corporation’s approach to safety such that “a large organisation may have less excuse for not dealing properly with matters affecting safety, since it may have greater access to experience, advice and training resources, whether in-house or otherwise”.²⁴⁸ It is also important to note that such fines are uninsurable risks for reasons of public policy.²⁴⁹

Aside from the economic impact of fines, the publicity and remedial orders are also aimed at both ‘punitive and deterrent’ impacts.²⁵⁰ Remedial order under the Act is also supported by the Sentencing Guideline which provides that, in order to merit mitigation; a defendant “ought by the time of sentencing to have remedied any specific failings involved in the offence”.²⁵¹ This is meant to have an important role where corporate manslaughter discloses a deficiency in a corporation’s health and safety policies, systems or practices and ensuring that the senior management understands the necessity for safe environment.²⁵² In the same vein, it is argued that the publicity order requiring a convicted corporation to “name and shame” itself will likely have the impact of changing corporate behaviour.²⁵³ As one of the new sanctions that expand the sentencer’s arsenal, shaming seems to have been introduced due to a general dissatisfaction with the traditional punishment options of the criminal justice system.²⁵⁴ According to psychological study, shame evokes the effect of dishonour, demotion, decrease in dignity and prestige or reduction to nothingness.²⁵⁵ The fact that the shaming will be public creates the anxiety of public abandonment, shunning and isolation.²⁵⁶ Invariably, the corporation’s “post-shunning social

²⁴³Sentencing Guideline (n240) para 8.

²⁴⁴ibid para 24.

²⁴⁵ibid paras 22 & 23.

²⁴⁶Gerald Forlin, ‘The Corporate Manslaughter and Homicide Act 2007’ (2208) Arch. News 6.

²⁴⁷Sentencing Guideline (n240) para 12.

²⁴⁸ Howard Fidderman, ‘Optimism over Sentencing for Deaths Fall at the Final Hurdle’ (2009) 384(13) HSB 1, 4.

²⁴⁹Field and Jones (n191) 243.

²⁵⁰Sentencing Guideline (n240) para 31.

²⁵¹ibid para 34.

²⁵²Fidderman (n248) 7, quoting The Sentencing Advisory Panel.

²⁵³Jayne Barnard, ‘Reintegrative Shaming in Corporate Sentencing’ (1998-199) 72 S. Cal L. Rev. 959, 969.

²⁵⁴ToniMassaro, ‘Shame Culture and American Criminal Law’ (1991) 89(7) Michigan Law Review 1880, 1883.

²⁵⁵ibid 1901.

²⁵⁶ ibid.

standing or idealized prior image” may be compromised.²⁵⁷ It will likely “communicate a roughly common sense of outrage at, or contempt for” the corporate offender²⁵⁸. So the practical effects of the shame associated with publicity order can even exceed that of fine as it can impact upon ‘corporation’s public reputation by damaging consumer confidence, lower share prices, equity value and create greater difficulty in recruitment and tendering for future jobs as well as ‘providing competitors with major or better advantages.’²⁵⁹ Given this, the Act’s publicity order can work wonders in motivating senior managers or CEOs in the oil and gas industry, who work as “status-conscious creatures”, to shape up their companies’ safety culture.²⁶⁰ In other words, influential and successful executives of multinational oil companies, who participate as distinguished speakers at public conferences and symposia, may be made to change how their companies operate because they are the people most likely to be concerned with ‘professional competence and accomplishment’.²⁶¹ In this light, it can be submitted that the Act will likely be effective by providing sanctions that would achieve two behavioural changes: preventive behaviour (aimed at forestalling future occurrences) and remedial behaviour (aimed at remedying the harm already caused).²⁶² Some would however argue that shaming is a “misguided spasms of judicial and legislative pique”, thus undesirable, particularly if “overloaded”.²⁶³ Nonetheless, it could be observed that much of the criticisms have been against the systems (e.g. the US) where an individual is singled out for the various shaming rituals.²⁶⁴ By contrast, the Act deals with corporate shaming involving just a publication of the fact of previous conviction.²⁶⁵ Therefore, none of the perceived criticisms of the American system of shaming would arguably devalue the essence of corporate shaming under the Act.

Health and Safety at Work etc Act (HSWA) 1974 and Health and Safety (Offences) Act 2008

CMCHA overlaps with the HSWA, particularly in terms of its operation and jurisdictions. CMCHA provides that a conviction for corporate manslaughter does not bar a corporation from being convicted for health and safety offences arising from similar set of circumstances where the interest of justice demands.²⁶⁶ While under the HSWA, a corporation could be criminally liable for the death of an employee or another person if such death is caused by the undertaking

²⁵⁷ibid 1902-1903.

²⁵⁸ ibid 1901

²⁵⁹Forlin (n246).

²⁶⁰Barnard (n253) 961 & 967.

²⁶¹ibid 967 & 971.

²⁶² ibid.

²⁶³ ibid.

²⁶⁴Massaro (n254).

²⁶⁵CMCHA s 10.

²⁶⁶CMCHA s 19.

of the corporation.²⁶⁷ Also, under section 8 CMCHA, the jury in finding what amounts to gross breach may consider whether the evidence shows that the corporation failed to comply with health and safety legislations. Thus while linking the concept of gross negligent to health and safety legislations, the Act emphasises the “operation of safe systems which underlies the philosophy of HSWA”.²⁶⁸ Recall that under HSWA, it is not necessary establishing the defendant’s gross negligent conduct or that the defendant’s conduct caused any personal injury; rather the prosecution has only to prove that the defendant owed and breached its duty to obey the law.²⁶⁹ This may however lead to some difficulties in personal injuries cases if for instance “s 2 of HSWA is relied on by the prosecution then it will be necessary to show that the defendant was the employer of the victim unless the prosecution can show that in the circumstances there had been a risk to employees”.²⁷⁰ It is hoped that by expressly linking gross negligence with health and safety legislations the Act will make it easier for the jury to find a corporation guilty of corporate manslaughter.²⁷¹ Further, the Act does not preclude the conviction of an individual on the basis of secondary liability under section 37 of HSWA.²⁷² Though not imposing new individual liabilities, it will arguably ensure that existing liabilities are not relegated as “unintended consequences of the new offence”.²⁷³ It has been argued however, that CMCHA makes no differences in terms of its jurisdictional overlaps with health and safety legislations as it is closely related to common law gross negligence manslaughter and that it does not as well give new power for the prosecution of individuals for manslaughter cases.²⁷⁴ That notwithstanding, the stigma attached to a conviction for corporate manslaughter is heavier than the conviction under HSWA.²⁷⁵

While amending the HSWA 1974, the Health and Safety (Offences) Act 2008 on its part, has increased the punishment for the breach of duties under section 2 of HSWA from a fine not exceeding £20,000 to imprisonment for a period not exceeding 6 months or a fine not exceeding £20,000 or both.²⁷⁶ The punishment for conviction on indictment is increased from an unlimited fine to imprisonment for a period not exceeding 2 years or an unlimited fine or both.²⁷⁷ With

²⁶⁷ HSWA ss 2 & 3.

²⁶⁸ Brenda Barrett, ‘Liability for Safety Offences: Is the Law Still Fatally Flawed?’ (2008) 37 Industrial Law Journal 100, 113.

²⁶⁹ HSWA s 2.

²⁷⁰ Barrett (n268) 113-114.

²⁷¹ *ibid.*

²⁷² CMCHA s 19.

²⁷³ Craig (n57) 19.

²⁷⁴ Barrett (n268) 116-117.

²⁷⁵ *ibid.*

²⁷⁶ Sch 3A, para 1.

²⁷⁷ *ibid.*

respect to corporations under the HSWA offences, the Sentencing Guideline still applies.²⁷⁸ So this increment in conjunction with the provisions of HSWA, particularly section 37 will likely have a profound impact upon senior managers.²⁷⁹

There is though the panic that the above stringent features could scare away companies into other countries with less stringent legislations thereby increasing unemployment and reducing the government revenue.²⁸⁰ However, the likelihood of such happening is uncertain²⁸¹ given the preceding overall aim and counterbalancing/mitigating features of the regime and much also depend on how vigorously the Act is enforced and how “expansively or restrictively” the courts interpret the provisions of the Act.²⁸² Thus from the forgoing, notwithstanding the perceived drawbacks, the Act is potentially viable. The recent convictions of CostoldGeotech Holdings; JMW Farms and Lion Steel Equipment Ltd²⁸³ are also clear optimistic signals of the Act’s potential rewarding impact on offshore corporate health and safety culture, albeit that larger corporations such as in the oil and gas industry are yet to be convicted under the Act.

SECTION IV

Recommendations and Conclusion

Recommendations

The whole essence of the Act as indicated above is to facilitate the detection and punishment of corporate failings that occasion fatalities. It is however one thing to regulate and it is another thing for individuals or groups to comply with the regulation.²⁸⁴ Given that it may not be possible to secure maximum voluntary compliance, the need for effective prosecution and enforcement becomes very pertinent.²⁸⁵ Accordingly, the mission of the Act may be of no consequence in the absence of an effective enforcement of the provisions of the Act. In order to ensure fairness and deterrence, frantic efforts must be made by the law enforcement agencies so that those found wanting of corporate failings are timely detected and adequately punished.²⁸⁶ The assurance that corporations in voluntary compliance are not disadvantaged when compared

²⁷⁸Paterson (n163) 226.

²⁷⁹ibid 227.

²⁸⁰Gobert (n5) 432-433.

²⁸¹ ibid.

²⁸² ibid.

²⁸³ See 'Fourth Company Charged with Corporate Manslaughter-What Does this mean?' (2012) 18(6) H. S. at W 1-3.

²⁸⁴ J A Lofton, 'Environmental Enforcement: The Impact of Cultural Values and Attitudes on Social Regulation' (2001) 3 Environmental Law Reporter 10906.

²⁸⁵ ibid.

²⁸⁶EngoboEmeseh, 'Mainstreaming Enforcement for the Victims of Environmental Pollution: Towards Effective Allocation of Legislative Competence under Federal Constitution' (2012) 14(3) Env. L. Rev. 185, 188.

with corporate defaulters creates both a level-playing ground and deterrence since corporations would now be certain of prosecution if they default.²⁸⁷ As has been rightly argued, the possibility of addressing the criticisms trailing failed prosecutions of the recent fatalities in UK would largely depend on the ability of the prosecution to embrace and utilise the new offence as created by the Act.²⁸⁸ The court also has a very significant role to play in putting at proper interpretative perspectives, the terms used in the Act such as “senior management” in contrast to the common law “directing mind” principle.²⁸⁹ Now that the police are involved²⁹⁰, the enforcement of the new offence would perhaps prove the government’s alignment with the public disapprobation with corporate gross recklessness that causes work-related fatalities.²⁹¹ One believes that a vigorous prosecution for corporate manslaughter would bring to life the symbolic relevance of the new Act in the offshore industry and beyond.

Conclusion

This work set out to investigate the potential impact of CMCHA on offshore corporate health and safety culture. Traditionally, a corporation could not be held liable given its artificial nature. However the theory of vicarious liability and the identification theory led to the acknowledgement of corporate criminal liability albeit in a very limited sense. While the theory of vicarious liability may be seen to contradict the principle *of actus non facit reum nisi mens sit rea* as it cannot be used to hold a corporation criminally liable; the identification doctrine allows the senior management of large corporations to evade liability and makes it easier to hold small corporations criminally liable. Owing to the inability of the preceding regime to address recent high-profile work-related disasters in which corporations have been found culpable (though without major convictions), the CMCHA 2007 was enacted to mark a major legislative turning point in the development of corporate criminal liability law in English and Scots law. The new Act establishes the management failure test such that an organisation is guilty of the new offence if the way in which its activities are managed or organised by the senior management is a substantial element in the breach that led to the victim’s death. A major factor that has also been recognised as an immense contributor to some of the offshore fatalities (as exemplified by piper alpha and macondo disasters) is weak or delinquent organisational culture. It was on this note that Lord Cullen safety case regime was initiated to introduce a cultural change with respect to offshore industry’s approach to safety-related matters. With the findings of KP3 and KP4

²⁸⁷ *ibid.*

²⁸⁸ Field and Jones (n191) 245.

²⁸⁹ *ibid* 245-246.

²⁹⁰ CMCHA s 17.

²⁹¹ Almond (n210) 300.

however, the job is perhaps not yet over. Although the new Act is not without some shortcomings; however, as shown above, it has the potential for curbing corporate reckless behaviour that often lead to fatalities in the offshore industry. The work has also shown that the advantages of the Act arguably far outweigh the perceived disadvantages. It is not denied that the veracity of the claims in this work will hopefully be tested and confirmed when large corporations are prosecuted and convicted for corporate manslaughter/homicide. In other words, future cases are still necessary to navigate through the Act as yet 'uncharted waters'. Much also depends on effective prosecution for corporate manslaughter/homicide and how the courts interpret the key terms of the new Act. Nonetheless, the recent convictions are clear signs that the CMCHA is potentially strong to catch multinational corporations, including those in the offshore industry.