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# Action Research and Efficient Maritime Transport Contract Negotiation

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*The contracting parties have to balance the legal risks of the affreightment contracts considering their legitimate economic interests in a varied contractual framework set up in contract-types such as the charter parties and the Bills of Lading (B/L). The problem comprises the issue of reaching a consensus on how shipping contracts should be interpreted under the contract's freedom. Action Research may offer an improvement for effective negotiations by dialogical means.*

## 1. Introduction

Successful negotiations are time and money saved. These are some of the benefits of reaching an agreement and solving contractual problems between carriers, ship-owners and third parties like cargo owners. In order to set out the research questions of this article must be considered the issue of reaching a consensus in the interpretation of maritime transport contracts. One example is found in the *The Channel Ranger* case<sup>1</sup>. An incorrect incorporation of the charter party terms referred to *English Law and the exclusive jurisdiction of the High Court of Justice of England and Wales*, while the B/L terms drawn included a generic *law and arbitration clause*. The *MV Channel Ranger* vessel carried coal from the Netherlands to Morocco, and the cargo was damaged during the boat ride. In June 2011, the vessel owners started proceedings in England in order to not be declared liable of any cargo damage, while the cargo insurers commenced

1. Caresse Navigation Ltd. v. Office National de l'Electricité & Ors [2013] EWHC 3081.

proceedings against them alleging that there was no incorporation of the English law and jurisdiction in the B/L. The English High Court considered that the intention of the parties in the charter party clause prevailed over that of the B/L being applicable the Hague-Visby rules,<sup>2</sup> and did not consider the *prorogatio fori*. An anti-suit injunction was issued, taking down the possibility of the Moroccan courts being competent to solve it. The Court of Appeal confirmed it,<sup>3</sup> but in each case the wording used for such law and jurisdiction clause incorporation of the B/L will be considered in every case.

This article presents a conceptual approach to relevant Action Research (AR) theories, methods and processes. Further, considering the intersection between Private International Maritime Law and AR, the question of how we can address and understand the major challenges and reflections regarding these topics. The aim is creating a successful negotiation, benefiting all parties involved through reaching an agreement that would address all parties' underlying needs. What has Action Research (AR) to offer in order to avoid an unsuccessful contractual terms bargaining? AR is an efficient tool in channelling affreightment contract negotiations through dialogical interaction during the bargaining process, when two or more parties are participating in communication for the purpose of influencing the other's decision, avoiding incompatible term clauses as in the aforementioned case.<sup>4</sup>

AR is defined as a participatory democratic process concerned with developing practical knowledge in the pursuit of worthwhile human purposes, grounded in a participatory worldview.<sup>5</sup> It aims to solve pertinent problems in a given context through a democratic enquiry where professional researchers collaborate with participants in the effort to seek

2. International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Brussels, 1924), and amended by the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading in 1968 and the amendment of the SDR Protocol in 1979.
3. *Caresse Navigation Ltd. V. Zurich Assurances MAROC & Ors* [2014] EWCA Civ. 1366.
4. Fisher suggests that a negotiator needs to possess the knowledge about the people and interests involved, as well as the facts to strengthen his/her ability to exert influence, Roger Fisher, *Negotiating Power Getting and using Influence*, *American Behavioral Scientist* 27, no. 2 (1983), pp. 149-166.
5. Peter Reason and Hilary Bradbury, *Handbook of action research: Participative inquiry and practice*, 2001, pp. 1-14.

and enact solutions to problems of major importance to local people.<sup>6</sup> AR can contribute to solve this question, constituting an orientation to enquiry of the business partners involved rather than a methodology<sup>7</sup> or a method<sup>8</sup> (the comparative legal one<sup>9</sup> as the Private International conflict rules of the forum leading to the application of domestic substantive law rules may vary from one State to another). This article attempts to foster the relationship between AR, law, companies and the main business organizations in order to collaborately settle upon an agreement concerning the protection of the ship-owners' interests, as enhancers of international trade.

We have to consider the actors that develop the *Lex Mercatoria* (The Baltic and International Maritime Council (BIMCO), The International Association of Independent Tanker Owners (INTERTANKO), and The International Association of Dry Cargo Ship-owners known as INTER-CARGO, etc.), ship-owners, shipping companies, freight forwarders, carriers, and the public organizations such as national maritime administrations, in the decision-making process in the EU and international institutions in the development of Maritime Law.

The relevance of the customs and practices generated in the maritime environment has formed a specific *Lex Mercatoria* in this sector as a consequence of a *flexibilisation* process of the clauses that routinely appear in shipping documents and serve both to determine which court will become competent (arbitral or jurisdictional one), and to clarify which legal

6. Davydd J. Greenwood and Morten Levin, Introduction to action research: Social research for social change, 2006.
7. »The study of the direction and implications of empirical research, or of the suitability of the techniques employed in it« different from method, or more generally, »a method or body of methods used in a particular field of study or activity«.
8. According to the Oxford English Dictionary method is defined as »a special form of procedure or characteristic set of procedures employed (more or less systematically) in an intellectual discipline or field of study as a mode of investigation and inquiry, or of teaching and exposition«. It concerns »what you actually do to enhance your knowledge, test your thesis, or answer your research question«.
9. Samuel seeks to demonstrate that it is neither possible nor appropriate to draw a distinction between »method« and »perspective« in the field of Comparative Law. »Method is in fact central to comparative law but ... in understanding what is meant by »method« in this domain one must have a commitment both to theory and to interdisciplinarity«. Chapter 6 (Comparative law and its methodology) by Geoffrey Samuel on »Governance Theory and Practice. A Cross-Disciplinary Approach, Vasudha Chhotray and Gerry Stoker (2008).

regime delimit the potential liabilities following the execution of international shipping contracts. It poses the same problems of validity and effectiveness, as invoked against third parties or against the contracting parties. These rules have been gradually accepted by participants in the maritime transport sector as well as by courts. The real challenge is the interpretation of the arbitration and jurisdiction clauses typically included in the shipping contracts or documents (both in liner and tramp traffic) as the *leit motiv* of lawsuits and claims. These contracts are subject to customs and practices, that clearly mark not only the resolution of such disputes whether by way of arbitration jurisdiction of national standard, but also the determination of the applicable law in this area.<sup>10</sup>

AR is presented as a potentially appropriate model for acquiring further knowledge during the negotiation process.<sup>11</sup> Merging the research process with language restructuring creates shared social meanings, helping to link and boosting the interaction between the people. This tool introduces communication to make the research socially significant while generating knowledge.<sup>12</sup> Negotiation<sup>13</sup> is the action or process of conferring, discussing, or bargaining to reach agreement.<sup>14</sup> It constitutes the

10. For instance, the article 9.6 of the Spanish Arbitration Act (Law 60/2003) has introduced a number of innovations that may have some relevance to the interpretation of maritime arbitration clauses. It refers to the validity of the agreement and the arbitrability of the dispute (rules applicable to the merits of the dispute) in a similar way to the article 178 of the Swiss Private International Law Act. Under this reference it refers to the set of uses and specific practices of the maritime sector including the B/L clauses, charter parties or other transport documents (forum and B/L clauses, Paramount clauses, *electio iuris*, etc.); Rosario Espinosa Calabuig, «Las cláusulas arbitrales marítimas a la luz de los usos del tráfico internacional», *Revista electrónica de estudios internacionales* no. 13 (2007).
11. Mesut Akdere, *The Action Research Paradigm: An Alternative Approach in Negotiation*, *Systemic Practice and Action Research* 16, no. 5 (2003), pp. 339-354.
12. Language cannot be restructured without a parallel restructuring of practice. The construction of language (dialogues) takes place linked to understanding and practice, and mediates in every theory, which depends on every days meaning. There is a strategic collaboration, which turns in a continuous circle, between the changes in communication patterns, in the subject development depending on how the work is performed, in the work organization, and in the selection and configuration of technological elements. Björn Gustavsen, *Dialogue and Development: Theory of Communication, Action Research and the Restructuring of Working Life* (1992).
13. According to the *American Heritage Dictionary of the English Language* (2003).
14. Negotiation is also the process by which one deals with the opposing side in war, with terrorists, with labour or management, with buyers and sellers of goods, ser-

most pervasive and diverse approach to dispute resolution<sup>15</sup>. AR unifies inquiry, performance improvement, and the development of persons in their professional roles<sup>16</sup>. The negotiation is a process of producing wise agreements for the endless variety of disputes and efficiently improving the relationship between the parties.<sup>17</sup> AR, which is usually participative, could be an applicable and helpful model to foster and enhance learning in the negotiation process through negotiators. Some challenges researchers face arises out of the maritime contract negotiation process due to the ethics required, e.g. the A.P. Moller – Maersk third-party code of conduct.<sup>18</sup> These normally include the social acceptance of such agreements, the environmental implications derived, and how will benefit the development of the economy in a socially respectful way, considering the *ex ante* contract drafting and agreement, as well as the *ex post* performance of it. This is a reflection of the conventional separation between practice and ethics, reconciled by Aristotle's framework of politics and ethics.<sup>19</sup> Politics

vices, and real estate, with governmental agencies, and with one's clients, acquaintances, and family. White, J.J. (1980). Machiavelli and the bar: Ethical limitations on lying in negotiations. *Am. Bar Found. Res. J.* 921(3), pp. 926-938.

15. Folberg, J., and Taylor, A. (1984). *Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation*.
16. Elliott, J. (1991). *Action Research for Educational Change*.
17. People may have interests that conflict, but their ability to deal with those conflicting interests at minimum risk and minimum cost is enhanced by a good working relationship. Fisher, R. (1983). *Negotiating power: Getting and using influence*. *Am. Behav. Sci.* 27(2), pp. 135-147.
18. This includes »The Maersk Group Policies«, the core values of the company, promoting responsible practices with their partners and the worldwide supply chain. They strive to continually improve within the areas of human rights, labour standards and the environment and to work against any form of corruption. It reflects their commitment to the UN Global Compact and the respect for universally recognized normative standards such as the United Nations Universal Declaration of Human Rights and the core labour conventions of the International Labour Organisation. For more information, visit [www.maersk.com](http://www.maersk.com).
19. For Aristotle, human beings are not born ethical. They become ethical through interaction with other people, in other words, through practice, deliberation and negotiation. Aristotle (1976). *The Nichomachean ethics* (J.A.K. Thomson, trans.), pp. 1098b-1099a; An ethical state evolves from role-play to becoming »natural« that is, to becoming embodied. Aristotle named this ethical condition »phronesis«, which corresponds in modern English to prudence, or practical common sense. Aristotle (1976). *The Nichomachean ethics* (J.A.K. Thomson, trans.), pp. 1141a-1142b; The building of character (virtue) and the work of cooperative deliberation to enhance

for Aristotle is therefore not about devious strategies to impose one's will on or to dominate the other; an assumption sometimes played out in the research world by ethics committees striving to protect participants they see as vulnerable. Rather, politics is seen by Aristotle as the noble and character developing work of contributing to public life.

Through critical AR, that combines critical theory plus AR, I can analyse the challenges facing the negotiators, e.g. sea carriers and ship-owners, in order to give my opinion about the most effective solutions to ease the process. It is an unusual argument, as normally one would associate AR with contexts where dialogue has potential as a developmental tool. Positional bargaining and negotiations are normally not situations where dialogue has much of a role.<sup>20</sup> The aim of this paper is to shed light on the following issues, attempting to discuss and problematize them under the glasses of AR. The paper is structured as follows: the importance of AR in shipping bargaining, the AR traditions in use, how the shipping market is configured, and the participative and collaborative interventions, to finalize with the conclusions.

## 2. Interactions between AR and Shipping Contractual Bargaining

### 2.1 Why AR is relevant for Shipping Bargaining?

I consider the question relevant because the EU shipping industry contributed directly with € 56 billion to the EU GDP and 615,000 employees, while the indirect impact was € 61 billion to the EU with GDP and 1.1 million jobs during 2013. The total economic impact is estimated to € 147 billion during that year.<sup>21</sup>

How can AR complement this process? It is valuable thinking why AR in an interactive process balances both problem-solving actions implemented in a collaborative context, with a data-driven (such as case law)

the life of one's political community is one and the same process. Aristotle. (1981). *The politics*. Saunders (Ed.), and Sinclair, trans.

20. William N. Isaacs, *Taking flight: Dialogue, collective thinking, and organizational learning*. *Organizational dynamics* 22.2 (1993), pp. 24-39.

21. Oxford Economics, *The Economic Value of the EU Shipping Industry* (2014).



collaborative analysis.<sup>22</sup> Moreover, the requirements of re-education and changing patterns of thinking as in individuals and in groups have also been considered as key elements in the process of AR.<sup>23</sup> But four ideas unify classic AR.<sup>24</sup> First, AR must rely on scientific methods.<sup>25</sup> Second, AR involves a cyclical research process beginning with joint problem identification and diagnosis. Next, guided by tentative hypotheses, the researcher designs the field study and collects and analyses the data. The final step of evaluation feeds into a new cycle of analysis and reflection. Both researchers and clients actively collaborate throughout this cyclical process. Clients offer practical knowledge forged through their struggle with real-world problems, and researchers contribute with theoretical knowledge.<sup>26</sup> Finally, the researcher and the client must forge a common understanding of the problem and its solution, and implement change in order to cope with the tentative design to put AR into practice in a retrospective and reflective account.

Along with the scientific underpinnings a distinction between realism and constructivism takes place. In an area in which bargaining and achievement of the optimal solution for the different agents involved in the process matter, Greenwood and Levin stress how AR privileges local knowledge unlike logical positivists and their qualitative techniques, and I agree in the need of contesting positive and rational choice models.<sup>27</sup>

## 2.2. The AR Tradition in Use: What, When, Who

AR is a particularly risky focus on the acquisition of practical – rather than theoretical – knowledge.<sup>28</sup> The use of critical AR is a key element in the practice architectures that enable and constrain a practice through *cultural-discursive*, *material-economic* and *social-political arrangements* that are

22. Hilary Bradbury and Peter Reason, Action Research an Opportunity for Revitalizing Research Purpose and Practices, *Qualitative Social Work* 2, no. 2 (2003), pp. 155-175.
23. Chris Argyris, Robert Putnam and Diana McLain Smith, *Action Science* (1985).
24. Julie L. Ozanne and Bige Saatcioglu, Participatory Action Research, *Journal of Consumer Research* 35, no. 3 (2008), pp. 423-439.
25. Kurt Lewin, Action Research and Minority Problems, *Journal of Social Issues* 2, no. 4 (1946), pp. 34-46.
26. Argyris, Putnam and Smith, *Action Science* (1985).
27. Davydd J. Greenwood and Morten Levin, *Introduction to Action Research: Social Research for Social Change*, (2006), p. 110.
28. Argyris, Putnam and Smith, *Action Science* (1985).

found in or brought to the site for practice. Over time, moreover, the practice may change or evolve. It may be part of a practice tradition that is, at the local level, *the way we do things around here*, or perhaps, as in the case of many professional practices, a manifestation of a widespread way of doing things. The test for the effectiveness of critical AR is whether equity has been increased in a meaningful way.<sup>29</sup> The traditional AR requires involvement, a secure personality and creativity as well as an initial *pre-understanding* of business practices.

What is the role of an Action Researcher? AR is focused mainly on knowledge in action created through AR data interpretation and contextualisation. Action without reflection and understanding is blind, just as theory without action is meaningless.<sup>30</sup> The researcher is a change agent, who helps the client understand how he or she fits into a system, facing two goals or *imperatives*, solving a practical problem within an organization and generating new knowledge and understanding about other organizations.<sup>31</sup> The performative stances<sup>32</sup> engage the scholars in their critical management project rather than non-performative ones<sup>33</sup> in critical AR.

The questions in this context are: which values and patterns do the ship-owners and the sea-carriers use when they negotiate and conclude the contract? How is the relationship built between them *ex ante* and how can the contracts be tracked to avoid costly judicial proceedings *ex post*? Which cultural values are not acceptable during such process? How does the tracking system reflect socioeconomic realities in the maritime community in which they operate? How can the growth and development be placed in the centre of the decision-making process to achieve a positive solution for both parties?

29. Stephen Kemmis, Robin McTaggart and John Retallick, *The Action Research Planner*, (2004), p. 58.

30. Peter Reason and Hilary Bradbury, *Handbook of Action Research: Participative Inquiry and Practice* (2001).

31. Chad Perry and Evert Gummesson, *Action Research in Marketing*, *European Journal of Marketing* 38, no. 3/4 (2004), pp. 310-320.

32. André Spicer, Mats Alvesson and Dan Kärreman, *Critical Performativity: The Unfinished Business of Critical Management Studies*, *Human Relations* 62, no. 4 (2009), pp. 537-560.

33. Valerie Fournier and Chris Grey, *At the Critical Moment: Conditions and Prospects for Critical Management Studies*, *Human Relations* 53, no. 1 (2000), pp. 7-32.

### 3. How the Shipping Market is configured in order to let the Actors negotiate the Freight Rates?

Stability in maritime transport services can be achieved by *technical agreements, consortium and strategic alliances*. These cooperation arrangements between liner shipping lines that do not involve price fixing have increased in number and have an important share of the market in all major trades. Conferences operate alongside consortia, alliances and independent operators. Shippers must face different choices in order to negotiate the ocean freights. The biggest firms, covering 0.5% of the total consumers, shipped half of the overall industry volume by allocating a maximum of 40% of their capacity with a single carrier unlike the smallest ones. The key clients' predominant trend for the consolidation of supply chains has been slowed by the slow economy and the minimization of transportation costs. The major costs are represented by terminal costs, vessel costs, and fuel costs (considering the BAF).<sup>34</sup> The Strategic Alliances or Global Partnerships in container liner shipping have had an *impact on how the shipping services are structured*<sup>35</sup> since they started in 1994, to provide the worldwide services required under co-ordination and flexibility.<sup>36</sup> The major Strategic Alliances in 2015 are, in the following order: G6 (MOL, APL, Hyundai, Hapag-Lloyd, NYK, and OOCL), CKYH-The green alliance (COSCON, Hanjin, K Line, and Yang Ming), 2M alliance (Maersk Line and MSC), and Ocean Three Alliance (CMA-CGM, CSCL, and UASC).<sup>37</sup>

A larger contractual framework can economize transaction and production costs to avoid contract writing and regularly adapting expenses.<sup>38</sup> An iterative project implements active governance forms, adapting to

34. Reinhardt, Forest, Ramon Casadesus-Masanell, and Frederik Nellemann, Maersk Line and the Future of Container Shipping, Harvard Business School, no. Case 712-449 (2012).

35. Brian Slack, Claude Comtois and Robert McCalla, Strategic Alliances in the Container Shipping Industry: A Global Perspective, *Maritime Policy & Management* 29, no. 1 (01/01; 2014/10, 2002), pp. 65-76.

36. Cariou Pierre and du Tertre, *Chemin de la Censive*, Strategic Alliances in Liner Shipping: An Analysis of operational Synergies (2000).

37. Pierre, C. Strategic alliances in Liner Shipping markets seminar, September 26, 2014, Copenhagen Business School.

38. Oliver E. Williamson, Transaction-Cost Economics: The Governance of Contractual Relations, *Journal of Law and Economics* 22, no. 2 (Oct. 1979), pp. 233-261.

project that contains specification of the customer's business needs and related business processes, the frames and constraints of the project, ranging the contractual tools, and measuring the collaboration, flexibility, maturity levels and limitations of the parties.<sup>39</sup> In liner shipping the terms of the contract are traditionally printed on the Bill of Lading (B/L), which is a receipt for the goods issued by the carrier. A charter party may be the type of contract, which is most appropriate where shiploads of cargo are involved. These options include time charter parties for long-term contracts eliminating the adjustment rates, providing a better service with a high demand. However, market volatility might alter the benefits especially in the container market. Regarding the short-term contracts, voyage charters and the spot market may be beneficial due to the use of freight forwarders with lower market rates. Index-linked contracts divide prices during the bargaining process, selecting preferably the index that follows the spot market. The shipper needs a steady volume in this case because of the maximum and minimum adjustment limits as well as the seasonal peaks. The conflict of interests lies in shippers' reluctance to suffer higher rates and vice versa for the carriers that would be stuck with lower fixed rates. Both shippers and carriers must be content to ensure an optimal business relationship, in order to reach good faith deals with fair prices for both parties.

#### 4. The participative and collaborative Intervention

Lewin's concept of AR focuses on a particular problem and seeks to provide assistance to the client system.<sup>40</sup> Moreover, it involves iterative cycles (to help improving them over the time) as well as identifying a problem, planning, acting and evaluating. Furthermore, typically involves re-

39. Proactive law constitutes under an innovative and interdisciplinary scope an approach to law in order to secure success to gain a competitive advantage, by aligning the contract design and the contract clauses with the attributes of the transaction through active clauses define certain actions that have to be taken, and passive clauses regulate what happens if a particular action is not taken, considering economic and management theories. It requires identifying the key business success factors through a deep understanding of the maritime transport business and materializing them as contractual tools in the form of a legal response. René Franz Henschel, *Iterative and Agile Contracts as Proactive Law Instruments* (2011).

40. Argyris, Putnam and Smith, *Action Science* (1985).

education that means changing patterns of thinking and action that are currently well established in individuals and groups. It challenges the status quo from a participative perspective, and it is intended to contribute simultaneously to basic knowledge in social science and to social action in everyday life. The AR process must be in harmony and linked with the purpose of making people aware of their potential to be agents of change and to create more-liberating social organizations.<sup>41</sup>

The AR process argues that AR is both a sequence of events and an approach to problem solving.<sup>42</sup> AR requires practical negotiation and deliberation, as a *form of collective, self-reflective inquiry that participants in social situations undertake to improve: (1) the rationality and justice of their own social or educational practices; and (2) the participants' understanding of these practices and the situations in which they carry out these practices.*<sup>43</sup> There might be interesting alternatives to enact solutions to economic and commercial problems or improve some situations under a more democratic and participative process. Traditional methods of hedging the choice of contract during ship operation<sup>44</sup> with the new carriage of goods by sea contracts have to be weighted with the different actors in presence: the ship-owner, who charter the ship to the charterer for a trip or a concrete period, and the shipper or transferor, who agrees with the carrier or transferee the transport of goods. In the first case the charter party should be signed, and in the last one the B/L will serve as a transferrable document with probatory force. Two types of contracts must be distinguished.

The *vessel oriented contracts* are defined as the usual for cargo vessels by which the ship-owner, in return for a sum of money, the freight, agrees to carry goods by sea, or to furnish the services of a vessel for the purpose of such carriage. These contracts encompass a heterogeneous mass of maritime agreements. An efficient communication and coordination between the different parties involved (chartering brokers, freight forwarders or liner agents) and the ports, the operations management during the afreightment period, and all the other managing functions between the ship managers and the sale and purchase brokers. The *cargo oriented con-*

41. Ozanne and Saatcioglu, *Participatory Action Research*, Vol. 35, (2008), pp. 423-439.

42. Teresa Brannick and David Coghlan, *Doing Action Research in Your Own Organization* (2010).

43. Robin McTaggart and Stephen Kemmis, *The Action Research Planner* (1988).

44. James Whiteside Gray, *Shipping Futures*, Lloyd's of London Press (1990).

*tracts* are the ones in which the B/L is issued to the shipper when the goods have been loaded on board, either by the master as the owner's or the carrier's representative, or on the master's behalf of the vessel's agents. If the vessel is chartered, the shipper may be, but is not necessarily, identical with the charterer.<sup>45</sup>

The role of intervention as an action researcher requires acquiring a strong role in the development work contacting different institutions such as BIMCO, INTERTANKO or INTERCARGO in a low and mid-term focusing on the acquisition of practical rather than theoretical knowledge<sup>46</sup> to analyse and understand the agreements for the endless variety of disputes and efficiently improving the relationship between the maritime parties, keeping in mind the interests that conflict and their ability to deal with those conflicting interests at minimum risk and minimum cost is enhanced by a good working relationship.<sup>47</sup> AR might improve the effectiveness of negotiations, since the systematic reflection is an effective way of learning in a participative process to foster and enhance learning in the negotiation process through negotiators. The reasons why a participative and collaborative intervention increases our understanding whereas a more traditional case study would not is because the communicative apparatuses of many business organizations and of organizations that rely on the specialist expertise of some participants for their operations, do not ordinarily qualify as public spheres. Participatory action researcher allows a mutual comprehension and allows participants to have a voice and play a part in reaching consensus about what to do.<sup>48</sup>

## 5. Conclusions

AR aims to develop the self-help competencies of people facing problems and contributes to the practical improvement of problem solving among the parties. The process of problem solving along with the process of de-

45. UNCTAD, Charter Parties, report by the Secretariat of UNCTAD, 1974, New York, UN.

46. Argyris, Putnam and Smith, Action Science (1985).

47. Fisher, R. (1983). Negotiating power: Getting and using influence. Am. Behav. Sci. 27(2), pp. 135-147.

48. Norman K. Denzin and Yvonna S. Lincoln, Collecting and Interpreting Qualitative Materials, Vol. 3 Sage, 2008).

cision-making is vital to negotiation. Negotiators need to foster attentiveness and sensitivity to enhance their practices to read the difference between what the other people says and what the other really means through AR.<sup>49</sup> It is recommendable letting the parties search for an agreement rather than achieving a resolution, because there may be costs involved when breaking off the relationships without reaching an agreement.

Furthermore, the parties are led to negotiate through the existence of interdependence. There are two different models. The *AR model* of Cummings and Worley consists of eight steps: (1) problem identification, (2) consultation with a behavioural science expert, (3) data gathering and preliminary diagnosis, (4) feedback to key client or group, (5) joint diagnosis of problem, (6) joint action planning, (7) action, and (8) data gathering after action.<sup>50</sup> The *principled negotiation process model* of Fisher and Ury<sup>51</sup> is a method of negotiation explicitly designed to produce wise outcomes efficiently and amicably. The four basic points of negotiation are: people (separate the people from the problem), interests (focus on interests, not positions), option (generate a variety of possibilities before deciding what to do), and criteria (insist that the result is based on some objective standard). But which are the desired changes that are being sought? The key dilemma is to maintain a close, high-trust relationship with actors in the field and on the other hand, to have sufficient distance or autonomy from them to be able to write critically about their engagement in the field. This means how to deal with collaborative relations and at the same time safeguard enough distance such that the generation of theoretical knowledge is not compromised.<sup>52</sup> The collaboration enables mutual understanding and consensus, democratic decision-making, and common action.<sup>53</sup> AR fosters a democratic approach to the decision-making process while empowering negotiators through participation in a collaborative, socially re-

49. Rubin, J.Z. (1983). Negotiation: An Introduction to some issues and themes. *Am. Behav. Sci.* 27(2), pp. 135-147.

50. Cummings, T.G., and Worley, C.G. (2001). *Organization Development and Change* (7th ed.), pp. 24-26.

51. Fisher, R., and Ury, W. (1981). *Getting to Yes: Negotiating Agreement Without Giving In*, pp. 10-11.

52. Tony Huzzard and Yvonne Johansson, *Critical Action Research, Critical Management Research-Reflections from the Field* (2014), pp. 81-100.

53. Oja, S., and Smulyan, L. (1989). *Collaborative Action Research: A Developmental Approach*.



sponsive research activity.<sup>54</sup> In the principled negotiation there is no place for a euphemism for cunning, self-serving manoeuvres that coerce other parties into unfair agreements. It aims at successful negotiation, which improves to the benefit of all parties involved, the terms of an agreement or relationship to effectively and maximally reach a profitable agreement addressing everyone's underlying needs. The negotiation process can benefit from these aspects of AR while aiming at achieving principled negotiation.<sup>55</sup>

There is a counter-intuitive element with regards to positional bargaining and negotiations are not normally situations in which dialogue has a main role, as a sustained, collective inquiry, into the processes, assumptions, and certainties that compose everyday experience, embodied in a community of people.<sup>56</sup> Following Akdere<sup>57</sup>, AR is normally suitable in situations of relative consensus rather than entrenched positions and clear conflicts of interest, having also potential in negotiation settings. Helping improve clients' problems takes the form of creating conditions in the behavioural world of the client system that are conducive to inquiry and learning. Lasting improvement requires that the participatory action researcher help clients to change themselves so that their interactions will create these conditions for inquiry and learning.<sup>58</sup> Despite there could be some conflicts between the parties it is important getting over the context-specific tensions that separate the involved actors and their activities, along with the relevance of cultural heritage that could reduce the tensions in the bargaining process as it happened in the case of the Nordic countries.<sup>59</sup>

54. Akdere, *The Action Research Paradigm: An Alternative Approach in Negotiation*, Vol. 16 (2003), pp. 339-354.
55. Mesut Akdere, *The Action Research Paradigm: An Alternative Approach in Negotiation*, *Systemic Practice and Action Research* 16, no. 5 (2003), pp. 339-354.
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How the *give and take* principle takes place avoiding the one-way communication? It is possible to gain understanding by engaging ship-owners and sea-carriers in the dialogue process within the same status and sharing experiences of each participant. This pragmatic concept developed in Scandinavia leads to a discursive arena including debate, deliberation, agreement and action, that lets individuals express their opinion but through a free and open communication.<sup>60</sup>

The remaining questions are, how can the problems be solved considering the different market power of the companies involved in the carriage of goods by sea and how to deal with the power structures to keep the democratic spirit of action or interactive research alive? How can the transparency in the bargaining process be achieved, considering the risks and secrecy imposed during negotiations and the imposed clause-types to the less powerful negotiating groups representing their clients or their own businesses? In the long run, the challenges that must be faced by companies like Maersk with an undoubtable Scandinavian origin in terms of equal treatment and consensus might change the perception of the market and innovate in the decision-making process during the contractual relations *ex ante* and specially *ex post* to avoid conflictive dispute resolution towards a more equitable and friendly alternative dispute settlement such as arbitration, mediation, or conciliation.

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