Questions unanswered, stories untold

Reviewing the New Zealand Government's response to
Foreign Charter Vessel Allegations

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Masters thesis, Victoria University of Wellington

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Abstract

The seafood industry is New Zealand's fifth largest export sector by value and a major contributor to the nation's economy. However, for decades a sizeable portion of annual total industry catch within the Exclusive Economic Zone has been caught by overseas flagged vessels ('Foreign Charter Fishing Vessels' or 'FCVs') crewed by foreign guestworkers on contract to New Zealand based fishing quota holders. Concerns relating to guestworker welfare, working conditions aboard vessels, and regulatory compliance have characterised their controversial presence in New Zealand waters.

In July 2011 the New Zealand Ministers for Labour and Primary Industries jointly announced the establishment of a Ministerial Inquiry to consider the use and operation of FCVs in New Zealand's waters following the emergence of reports of widespread exploitation of guestworkers aboard vessels. In August 2011 a high profile report by University of Auckland researchers detailed allegations raised by groups of FCV guestworkers who claimed they had been the victims of sustained physical, sexual, and emotional abuse at sea. The implication is that many guestworkers had been 'trafficked' into the industry to labour for little or no remuneration.

The terms of reference for the Ministerial Inquiry directed the Inquiry Panel to review the use of FCVs against the Government's articulated priorities for the industry. These priorities were to 'protect New Zealand's international reputation and trade access'; 'maximise economic return to New Zealand from fisheries resources'; and to 'ensure acceptable and equitable labour standards are applied on vessels operating in New Zealand's fisheries waters'.

This thesis applies critical discourse analysis methodology to analyse the establishment of the Ministerial Inquiry, the Inquiry's public consultation process, and the public policy recommendations contained in its final report to Government in order to examine how the experiences and allegations of

guestworkers were framed, ordered, and considered throughout the Inquiry process. The research findings suggest that the Inquiry process has marginalised guestworker perspectives and that this has implications for the pursuit of social justice. As such the thesis contributes to an emerging academic literature on the experiences of guestworkers in the New Zealand fishing industry and the ways in which allegations of exploitation and mistreatment have been viewed and responded to by the New Zealand authorities.

Introduction

The motivation for writing this thesis comes from the stories of men like ‘Yusril’ and a desire to understand the challenges people who have experienced exploitation - enabled by a particular governmental policy regime - face in their pursuit of social justice.. E. Benjamin Skinner, a Senior Fellow at Schuster Institute for Investigative Journalism at Brandeis University, recorded Yusril’s story in a widely publicised article for *Bloomberg Weekly*. It is a story of exploitation, fear, isolation, and danger and it is set just beyond New Zealand’s shoreline:

On March 25, 2011, Yusril became a slave. That afternoon he went to the East Jakarta offices of Indah Megah Sari (IMS), an agency that hires crews to work on foreign fishing vessels. He was offered a job on the *Melilla 203*, a South Korea-flagged ship that trawls in the waters off New Zealand. “Hurry up,” said the agent, holding a pen over a thick stack of contracts in a windowless conference room with water-stained walls. Waving at a pile of green Indonesian passports of other prospective fishermen, he added: “You really can’t waste time reading this. There are a lot of others waiting, and the plane leaves tomorrow.”

Yusril is 28, with brooding looks and a swagger that belies his slight frame. (Yusril asked that his real name not be used out of concern for his safety.) He was desperate for the promised monthly salary of \$260, plus bonuses, for unloading fish. His wife was eight months pregnant, and he had put his name on a waiting list for the job nine months earlier. After taking a daylong bus ride to Jakarta, he had given the agent a \$225 fee he borrowed from his brother-in-law. The agent rushed him through signing the contracts, at least one of which was in English, which Yusril does not read.

The terms of the first contract, the “real” one, would later haunt him. In it, IMS spelled out terms with no rights. In addition to the agent’s commission, Yusril would surrender 30 percent of his salary, which IMS would hold unless the work was completed. He would be paid nothing for the first three months, and if the job were not finished to the fishing company’s satisfaction, Yusril would be sent home and charged more than \$1,000 for the airfare. The meaning of “satisfactory” was left vague. The contract said only that Yusril would have to work whatever hours the boat operators demanded.

The last line of the contract, in bold, warned that Yusril’s family would owe nearly \$3,500 if he were to run away from the ship. The amount was greater than his net worth, and he had earlier submitted title to his land as collateral for that bond. Additionally, he had provided IMS with the names and addresses of his family members. He was locked in.

... Hours after Yusril arrived in Dunedin, New Zealand, the *Melilla 203* officers put him to work unloading squid on the 193-foot, 26-year-old trawler. (Skinner, 2012).

According to Skinner, Yusril and other shipmates were subjected to a harrowing eight months aboard the *Melilla 203* in New Zealand waters that saw them experience physical and sexual abuse by the ship’s officers. In

addition to violence officers threatened crew members that any resistance would see them sent home to their ‘manning agent’ who would ‘take their due’ (Skinner, 2012). So extreme were the conditions aboard the *Melilla 203* that in November 2011 Yusril and 26 other crew members walked off the vessel in Lyttelton. Assisted by the Lyttelton Union Parish Church and human rights lawyer Craig Tuck their experiences were widely reported by a New Zealand news media already familiar with FCV issues following the sinking and loss of life on the Korean trawler *Oyang 70*, and a similar walk off staged by crew of the *Shin Ji* in Auckland in 2009 over allegations of mistreatment. Crew members from the *Melilla 203* claimed they were owed in excess of \$1 million New Zealand dollars in unpaid wages calculated in line with a New Zealand Government directive¹ that New Zealand minimum wage rates must be paid to FCV crew (H. Clark, 2011). Crew members insisted that rather than receiving the minimum wage they had received only \$240 U.S. dollars per month (H. Clark, 2011).

Yusril had been recruited by an Indonesian ‘manning agent’ acting on behalf of a South Korean fishing firm. The Korean company was contracted to a New Zealand company that possessed rights to fish in New Zealand’s ‘Exclusive Economic Zone’ – an area of sea and seabed that extends from 12 to 200 nautical miles off New Zealand’s coast over which New Zealand exercises sovereign rights to exploit fisheries resources in line with the United Nations Convention on the Law of Sea (Ministry for the Environment, 2014). Under the terms of their contract the Korean firm would supply a fishing vessel and all the necessary crew to fish in New Zealand waters on behalf of the New Zealand company. Such vessels are known in New Zealand as ‘Foreign Charter Vessels’ (FCVs).

¹ The 2006 ‘Code of Practice on Foreign Fishing Crew’. The Code was established between the Department of Labour, the New Zealand Fishing Industry Guild, and the New Zealand Seafood Industry Council. The Code required all FCV guestworkers to be paid above the New Zealand minimum wage. The Code is not underpinned by New Zealand legislation and its enforceability has been severely questioned.

Unfortunately the experiences of Yusril and crewmates aboard the *Melilla 203* are indicative of a widespread structural system of exploitation of fishing vessel guestworkers labouring in New Zealand waters and in many other parts of the world. It has been estimated that up to 50 FCVs have been operating in New Zealand in any given year over the past three decades with up to 2500 guestworkers serving as crew at any one time.² Further investigations by Skinner, University of Auckland researchers Dr Christina Stringer and Daren Coulston, and investigative journalist Michael Field have produced a significant volume of information on the extent of guestworker exploitation, including interview materials with individual guestworkers and political and industry actors. Their collective works have informed and influenced the structure of this thesis and their examples and conclusions are drawn upon widely throughout its analysis.

In July 2011 the New Zealand Ministers for Labour and Primary Industries jointly announced the establishment of a Ministerial Inquiry to consider the use and operation of FCVs in New Zealand's waters following the emergence of reports of widespread exploitation of guestworkers aboard vessels. Building on the academic contributions of Stringer et al (2011) as well as the legal analyses of Devlin (2009) and Harré (2013), this thesis focuses directly on the Ministerial Inquiry process in order to examine how the experiences and allegations of guestworkers were framed, ordered, and considered throughout the Inquiry process.

Thesis rationale

This thesis analyses the New Zealand Government's public policy response to serious allegations of abuse experienced by guestworkers³ labouring aboard

² Immigration New Zealand, (2004). *Employment Conditions in the Fishing Industry - Final Report on Foreign Crew on New Zealand Fishing Vessels*. [Released to the author under the Official Information Act 1982].

³ See Surak (2013). Surak differentiates 'guestworkers' from 'migrants' through an analysis of temporary migrant-worker programmes in which guestworkers are dependent on 'state-organised schem[a]' for the import of foreign labourers, admitted on a temporary basis for the purpose of work, and granted limited or no option for changing this status (2013, pp. 84–85).

FCVs operating within New Zealand's Exclusive Economic Zone (EEZ). Central to this research are the experiences of guestworker crews and how a variety of fishing industry and government actors have neglected the promotion of social justice for exploited crews. Within this the role of the Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels (the Ministerial Inquiry) is analysed as a primary site of discursive production in response to allegations. In subsequent chapters a discourse analysis approach, informed by the approaches of Stone (1989), Hajer (1997) and Fischer (2003) will be deployed in order to critically review the discursive claims of actors who contributed to the Ministerial Inquiry's public consultation process and the influence of particular discursive claims in the development of Ministerial Inquiry's recommendations to government. The Ministerial Inquiry process was a social activity involving a range of actors, played out in a specific geographical and political context, and shaped by an overarching public policy development habitus in which professional public policy advisors undertake their work. Through the application of a discourse analysis approach the thesis will demonstrate that the New Zealand Government's policy and discursive responses to significant and serious allegations by guestworkers, informed through the Ministerial Inquiry process, have not to date directly recognised the legitimacy of guestworker grievances nor moved to meaningfully address questions of social justice.

Situating the thesis

This thesis places at its centre the experiences of guestworkers in the New Zealand fishing industry and their numerous allegations of abuse. The exact number of guestworkers who have worked within the New Zealand fishing industry aboard FCVs in the past three decades is unknown, as is the full extent of guestworker exploitation. In spite of a lack of a complete picture this thesis holds as valid the academic research undertaken with respect to FCV guestworker experiences put forward in the qualitative interview research undertaken by Stringer et al (2011), the legal analyses of Harré (2013) and Devlin, (2009), and the investigative reporting of E. Benjamin Skinner and

freelance New Zealand journalist Michael Field. This research seeks to make a contribution to a small but expanding body of academic work analysing social, legal, and commercial dimensions of the operations of FCVs and guestworker experiences. The contribution of this thesis is to explore ethical questions surrounding the undertaking of the Ministerial Inquiry by way of analysing how specific discursive logics and forms have been privileged through the Inquiry's discursive production process. 'Discourse', as will be examined in chapter three, ultimately shapes reality by way of constructing courses of action deemed appropriate and inappropriate. Such a process takes place through complex interactions that can result in the development of public policy that may marginalise certain perspectives, and as a result potentially obfuscate moves towards social injustice for demonstrably marginalised groups. As a discursive process located in a governmental context the public policy recommendations that have to date resulted from the Ministerial Inquiry have significant consequences. Most certainly this involves direct consequences for guestworkers who have experienced mistreatment while labouring in New Zealand waters and broader subsidiary consequences relating to the pursuit of social justice in the public sphere.

One aim of the methodological approach taken will be an analysis that seeks to demonstrate the need for a greater response to guestworker allegations from actors such as the New Zealand Government. As has been demonstrated, and will be related in subsequent chapters, an on-going systematic system of exploitation within the fishing industry appears to have been in operation for many years. While researchers such as Harré (2013) have demonstrated that instances of guest worker mistreatment could on current available evidence amount to criminal conduct, it is argued here that the pursuit of meaningful social justice may require the pursuit of a political solution over and above case by case or *ad hoc* interventions and responses from individual government agencies within the New Zealand criminal justice system. A full exposition that centres on guestworker experience that allows present and former crew members a direct entry point to the political discursive structures surrounding the use of FCVs appears to be one clear way of pursuing social justice.

Ultimately the purpose of this thesis is to demonstrate how the Ministerial Inquiry process as a central project of the Government's response has marginalised guestworker experiences while focusing on the specific needs of industry such as the maintenance of global supply chain access. Methodologically central, then, is the application of discourse analysis methodology to research the epistemological assumptions behind the wider response process and to highlight the response process as a socially produced phenomenon that reflects a particular political economic context and a set of underlying values that construct the social world in such a way as to privilege some actors and courses of action while marginalising others.

It should be noted that research into the experiences of FCV guest workers in this domain remains in a fledgling stage of development. It is highly likely that further crew testimony and allegations will emerge in future as well as further information held by other actors. No discourse analytical research can ever take account of all relevant material presently available or that may come subsequently come to light; this thesis is offered as a contribution to scholarship on the basis of current available material.

Primary research questions

Drawing on contemporary critical sociological and political theory and through close analysis of discourse generated by key actors this thesis will focus on the following series of research questions:

- *What epistemological and ideological assumptions underpinned the government's initial decision to instigate a Ministerial Inquiry?*
- *How can the application of discourse analysis methodology describe and explain the complex power relations involved in the broader government response?*
- *How was the subjectivity of FCV guestworkers discursively constructed and conveyed at various stages of the Ministerial Inquiry process?*
- *How were the experiences of guestworkers discursively constructed at each stage of the State's response?*

- *What barriers did FCV crew face in accessing discourse with respect to the Ministerial Inquiry? Why did they face such barriers?*
- *Did the State's response produce or reproduce a discourse of 'otherness' regarding FCV migrant workers?*
- *What can contemporary social theory contribute to understanding how or why the government has responded in the way it did to guestworker abuse claims?*

Thesis structure

This thesis is divided into five chapters. Chapter one presents significant contextual information upon which the wider argument of the thesis is based upon. Information in this chapter is arranged in order to further two aims. The first aim is to describe and explain existing research on FCV guestworker experiences and the political economy of New Zealand's fishing industry to comprehensively relate the claims of guestworkers and how the New Zealand fishing industry has been structured to facilitate their presence and use of their labour. The second aim is to provide a review of literature on guestworker exploitation, particularly in reference to theoretical discussions around criminality and the constitution of 'human trafficking' and 'modern day slavery'. Following this theoretical analysis specific legal research relating to the experiences of FCV guestworkers in the New Zealand context will be examined. Chapter two presents the methodological approach of the thesis and the specific research methods and design used throughout the research process. Particular emphasis is placed on explaining and describing discourse analysis methodology and the contributions of discourse scholars who focus particularly on the application of discourse analysis in critically analysing public policy.

Having articulated research methodology and methods chapters three, four, and five each provide a particular strand of analysis relating to the Ministerial Inquiry. Chapter three analyses the developmental context of the Ministerial Inquiry, and the way in which key issues relating to FCV use and guestworkers were understood and framed by politicians and officials in the development of the Ministerial Inquiry's terms of reference and the appointment of the Inquiry

Panel’s personnel. Chapter four focuses on the ‘public consultation’ phase of the Ministerial Inquiry’s work which saw a variety of actors providing a total of 72 written submissions for the Panel’s consideration. By employing Hajer’s discourse coalition analysis approach key discursive ‘storylines’ are identified and analysed to demonstrate the diverse range of discursive perspectives present in the debate around the use and operation of FCVs and how different actors conceived of the purpose, role, and favoured outcomes of the Ministerial Inquiry. The persuasiveness of particular storylines with respect to the final recommendations produced by the Ministerial Inquiry Panel are considered in chapter five through an analysis of the Report of the Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels. A concluding section assessing the implications of the key research findings completes the thesis.

“Yusril” fishing on a small boat on the Java Sea⁴

⁴ Photo credit: Sanjit Das (2012), Bloomberg Business Week.

Chapter One

Definitions, contexts, and a review of relevant literature

This thesis relates to the New Zealand Government's response to allegations of exploitation and abuse raised by workers recruited outside of New Zealand to work aboard Foreign Charter Fishing Vessels (FCVs) in New Zealand's Exclusive Economic Zone (EEZ). Specifically within the purview of the thesis are the discourses produced in the course of the Government's instigation of a Ministerial Inquiry into the use and operation of Foreign Charter Fishing Vessels and the resulting public submissions to the Inquiry Panel and the Inquiry Panel's final recommendations. Within this frame a number of questions are proposed - what epistemological and ideological assumptions underpinned the response of the New Zealand government in its initial forming of the Ministerial Inquiry; how can the application of critical discourse analysis methodology describe and explain the complex power relations involved in the State's response; how were their experiences discursively constructed at each stage of the State's response; what barriers did FCV crew face in accessing discourse with respect to the Ministerial Inquiry's investigations and why did they face such barriers; what can contemporary debates in the sociology of ethics contribute to understanding how or why the State responded in the way it did to claims of abuse by these migrant workers? In order to put forward considered responses to these questions a scoping literature review is required to both situate the thesis within contemporary sociological research and as a means of establishing a theoretical and ideational beachhead for the wider thesis to proceed from.

Literature Review as Process

Literature reviews assist in positioning a thesis in relation to existing scholarship in a wider discipline while also clearly setting forth which perspectives, ideas, and texts are most relevant to the topic of the thesis and the intellectual contribution it seeks to make. Jesson et al (2011) discuss how the

literature review process, in the form of a ‘scoping review’ can assist in clarifying the research project and setting out an agenda from which to build upon. A ‘scoping review’ in their understanding lays out existing knowledge in the field and then within this sets out to identify “gaps, niches, disputes, blank and blind spots” while also clearly stating important conceptual and theoretical points to both demonstrate why a particular approach has been selected and to provide the reader with a precise understanding of the research question in order to justify the intended purpose of the thesis. Flexibility exists in the literature review process for the researcher to pick out and discuss material that, through the course of undertaking the research, has emerged as most meaningful and relevant to the wider thesis.

Sociological projects frequently take as their subject complex social phenomena which are an interplay of particular dynamics of history, ideology, legal contexts, and political economic factors. Describing and explaining the impact of such factors presents a challenge to the scholar producing work on a particular topic for which comparatively little literature has been published in the sociological disciplinary frame. One tangible contribution a thesis can attempt to provide in an emerging field of study is to identify themes relevant to the topic and within thematic areas identify key knowledge and literature that when ordered allows the thesis and the topic to be linked in a wider body of scholarship. This literature review, therefore, introduces relevant scholarship to both inform and situate the broader thesis within a body of work theorising labour migration, exploitation, ethnicity, policy, and discourse with an emphasis on the New Zealand context. The purpose of this chapter is to bring to forward specific themes and debates around migration policy and worker exploitation in New Zealand, the role of the state in shaping and administering migration regimes, and the emergence of forms of knowledge around migration and coercion that now shape and influence contemporary migration globally. Through a systematic relating of relevant scholarship this review will frame the wider thesis by providing the basis for which the ideological, epistemological, and political economic factors that have shaped the New Zealand government’s discursive and policy responses to allegations of abuse raised by FCV workers

aboard vessels fishing in New Zealand's Exclusive Economic Zone can be analysed.

Exploitation and Abuse aboard FCVs in New Zealand Waters

Foreign Charter Vessels (FCVs) crewed by foreign guestworkers have been operating in New Zealand's Exclusive Economic Zone (EEZ) for over three decades with in excess of 2500 offshore FCV crew working in the EEZ in any given year (Dawson & Hunt, 2011, p. 211). FCVs typically have the following characteristics – they are not New Zealand flagged vessels or directly owned by New Zealand companies, they engage crew from particular source countries, their ability to operate in New Zealand's EEZ is enabled through a complex system of commercial contracting arrangement with New Zealand based fisheries quota holders an arrangement enabled through a broader fragmented, multilayered, and an ambiguous legal context as will be further described below. Reports regarding the working conditions and treatment of FCV guestworkers have attracted the attention of policy makers, journalists, and the wider New Zealand public sporadically over many years. In the recent past tragic events such as the August 2010 sinking of the Korean flagged FCV the *Oyang 70*, in which six crew members lost their lives, and actions of crew members of the *Melilla 203*, the *Shin Ji* and the *Oyang 75* who in 2011 walked off their vessels alleging human rights violations and gross contractual breaches resulted in considerable international media attention.

In both the academic frame and in the public sphere the research and reporting of University of Auckland academic Christina Stringer and associates Glenn Simmons and Daren Coulston have provided the most significant contribution to the limited body of qualitative primary literature on FCV crew experience. Di Nicola (2007) relates that a key challenge for researchers wishing to undertake research in the area of forced labour and trafficking is that victims constitute a 'hidden population' as they are usually not accessible or easily traceable thus 'what we see or know is only part of the entire population, probably just the tip of the iceberg' (2007, p. 53). In the context of this thesis the work of

Stringer et al is of high importance and as such their findings and interview materials require in-depth relating as they describe in disturbing detail examples of everyday realities of abuse and exploitation aboard some FCVs. Entitled *Not in New Zealand's Waters, Surely? Labour and Human Rights Abuses aboard Foreign Fishing Vessels* the report of Stringer et al⁵ examined the complex context of FCV operations in order to assess which institutions can be held to be responsible for the working conditions of 'an important but largely invisible and vulnerable workforce on FCVs fishing in New Zealand waters' (2011, p. 4). Within this they employ as case studies the examples of the *Oyang 70* and *Oyang 75* to explore culpability for exploitation and abuse through a questioning of what responsibility rested with Oyang Corporation Ltd (the employer of guestworkers and vessel owner) or 'SSF' (the New Zealand Charter Party commercially contracting the services of the Oyang Corporation) with respect to the protection of crew. Further questioned was the role of New Zealand institutions and New Zealand law in preventing exploitation and ensuring human rights violations do not take place in the EEZ (2011, p. 4). Reflecting the disciplinary frame of the authors the report employs a 'global value chain' (GVC) and 'global production network'⁶ (GPN) analysis in order to 'examine the role of institutions governing the global fisheries industry in relation to labour conditions' while also seeking to 'bring labour back into GVC/GPN analysis' as 'crew members had become invisibilised and consequently abused through a combination of a) value chain positions, company strategies and business models; b) 'cascade' employment strategies; and c) institutional gaps and confusions' (2011, p. 5). While seeking to deploy an analysis of institutions a large component of their research focused on giving voice to the experiences of FCV guestworkers.

Stringer et al conducted 144 'semi-structured' interviews with New Zealand fishing industry insiders and with FCV crew from number of vessels (2011, p.

⁵ The report of Stringer et al was first published by the University of Auckland's New Zealand Asia Institute as a 'working paper'. It has subsequently been published online, following peer review, in the *Journal of Economic Geography* (full inclusion forthcoming).

⁶ For a full account of the 'global production network' approach as methodology see Coe, Dicken, & Hess, (2008). According to Coe et al perspectives within this approach are multi-disciplinary and epistemologically concerned with examining and explaining 'the social and developmental dynamics of contemporary capitalism at the global-local nexus' (2008, p. 268).

4). A variety of official documents and reports produced by New Zealand government agencies and released under the *Official Information Act 1982* also informed their research. In the context of this review it is their March 2011 interviews in Indonesia with surviving crew members of the *Oyang 70* and family members of those had died at sea that demonstrates the extent of abuse allegations and the very real human misery experienced by some guestworkers. Excerpts of interviews pertaining to employment conditions, sub-standard ship conditions, abuse, and harassment were clearly illustrated in their report. Stringer et al relate the following from interview participants:

Stringer et al on FCV vessel conditions (Adapted from Stringer et al 2011, p.13)	
➤	Aboard the <i>Oyang 70</i> crew reported that their accommodation was frequently wet and had no heating available, cockroaches and bedbugs were also common (Interviewees 1 and 6). Conditions such as these are widespread with interview participants relating that they had been forced to use old blankets in lieu of mattresses.
➤	FCVs have been described as “A floating freezer...absolutely appalling conditions just like a slum...there are definitely human rights abuses out there, they are slave ships” (Interviewee 13) wherein workers “live like rats” (Interviewee 10).
➤	Workers were required to bathe in salt water and would often find that the water heater was switched off after their shift had ended (Interviewee 20). Drinking water for crew was a rusty colour and unboiled while the officers enjoyed boiled or bottled water” (Interviewee 6).
➤	“A number of interviewees complained of food being inadequate in quality and quantity and after about 20 days in a 40 day voyage food supplies were rationed and the galley locked (Interviewees 20, 34, 38, and 40). Often crews were just fed fish and rice or indeed in the case of one entire crew they were fed rotten fish bait” (Interviewees 4, 35, 38 and 39).

Stringer et al further reported gruelling working hours and negligent attitudes towards crew health and safety resulted in serious incidents:

➤	“A crew member had a finger cut off by a saw due to fatigue, another crushed his fingers after a 36 hour shift: “I saw that [Sxxxx] was sleepy in front of the fish cutting machinery and his hand was cut. I, myself, got cut by the wire when I worked on the deck when I was sleepy and I even fainted that time. Accidents like this happen frequently, especially, on the fish season.” (Interviewee 84).
➤	Other incidents include fingers being crushed in conveyer belts, fingers crushed between

frozen 12kg pans of fish, chest injuries from falls, being caught, tripped, and somersaulted by a wire when pulling nets. In the majority of cases, the injured crews were only given band aids, expired medicine or refused treatment and the accidents were not recorded in the ships logs or reported to Maritime New Zealand (Interviewees 43, 52 and 62, 2011). Often injured crew were instructed by officers to remain in their quarters while the vessel was in port, so that New Zealanders would not see their injuries (Interviewees 35, 36, 39 and 40)

Stringer et al on incidents of serious abuse and violence:

- Officers are vicious bastards...factory manager just rapped this 12kg stainless steel pan over his [Indonesian crew member] head, split the top of his head, blood pissing out everywhere...I told the Master can't leave him cause he's bleeding all over the squid. He said "oh no no he's Indonesian no touchy no touchy". Took him to the bridge and third mate said "Indonesian no stichy no stichy". I ended up giving him over 26 stitches...bit of a mess" (Interviewee NZ 6, in Stringer et al 2011).
- One Indonesian crew member was eating lunch, when without cause the Bosun placed a rice sack over his head from behind and proceeded to punch the back of his head until he had trouble breathing" (Interviewee 62)
- ...saw the factory manager and the second in charge kicking Indonesian workers on the ground with steel capped boots...saw Indonesian helmsman kicked in the genitals by an officer, because he turned the vessel the wrong way...bleeding and needed medical attention" (Interviewee NZ 15, in Stringer et al 2011).

Interview participants further related that abuse Muslim crew were referred to in ways highly offensive to their religion, and that cruel punishments such as exposure to the elements during stormy weather were used to discipline crew (2011, p. 13). Allegations of serious incidents of sexual harassment and violence were also recorded. Stringer et al recall the following descriptions of incidents from their interview participants:

- ...the captain ask us one by one to give him a massage...from head to toe...we don't want to do it, but am pressured to do it...every day" (Interviewees NZ, 2011).
- ...galley boy, good looking boy on a Korean boat was raped by four Chinese crew who got him...Did see the cook with a meat cleaver a couple days later and they never bothered the boy after that" (Interviewee NZ 6, 2011).
- While eating dinner, one crew member was confronted by the Bosun who pulled out his penis and pushed it into the crew member trying to get the crew member to touch it;

another frequently had his clothes stolen when in the shower by the same Bosun; others were frequently mooned by the Bosun during meal time” (Interviewees NZ, 2011).

Stringer et al relate that the survivors of the *Oyang 70* were rescued by a New Zealand flagged and crewed vessel the *Amatil Atlantis* and that their observations demonstrates the contrast in experience:

“This boat was like some kind of hotel. Whoa it was good – clean, beautiful, safe, sweet smelling...[the New Zealand crew] showed extreme compassion from the highest to the lowest – even the deckhands showed compassion to me, an Indonesian” (Interviewee 100)

Stringer et al conclude that crew believed that ‘ruthless acts of random violence and punishments’ were designed to ‘control them with fear’(2011, p. 14).

In addition to abuse and dangerous employment working conditions Stringer et al identified that many FCV crew were not receiving their wage entitlements and that many had been recruited through dubious methods. Stringer et al identify in their research that ‘manning agents’ are the key actors responsible for crew recruitment. They relate that in order for many FCV workers to gain employment from manning agents in the first instance requires a monetary deposit or collateral such as a house or land (2011, p. 9). Secondly they relate that standard salary payments to averaged \$US250-\$500 (according to Stringer et al this works out to be in the vicinity of \$NZ6700-\$NZ11600 per annum – considerably less than the basic yearly New Zealand minimum wage of \$28080 stipulated in the *Code of Practice*), all of which was paid directly to manning agents who would not pay out until the completion of a two year contract. According to one interview participant: “manning agents use our guarantees and salary to control us and our families so they can pressure us to conform During a two year contract no days off were offered, and working weeks could consist of up 112 hours per week” (16 hours per day) (Interviewee in Stringer et al 2011). Of further concern were research participants relating that signatures on New Zealand employment contracts required by the Code of Practice were forged, and that a fine of up to \$10000 was applied for ‘abandoning contract’, even if such an act was to flee violence or exploitation (2011, p. 9). Such practices have raised considerable discussion as some groups, academics, and

activists would assert that guestworker crewshave, on a *prima facie* basis, been the victims of human trafficking practices, a notion elaborated on below. While Stringer et al's work is highly informative and offers the most accessible summation of worker experiences aboard FCVs they do not provide an analysis of the Ministerial Inquiry process as their work predates its establishment.

Political Economy of New Zealand Fisheries

Sutch describes the history of economic organisation in New Zealand as one of on-going deference to foreign interests based on colonial relations of power and a need for capital investment not readily available within the small isolated country, thus necessitating the importing of overseas capital, technology, and expertise (Sutch, 1972). He describes the organisation and regulation of the New Zealand economy in the post-war period and identifies that successive New Zealand governments neglected to invest in fisheries infrastructure that would place capacity to industrially fish New Zealand waters in the hands of domestic enterprise and workers (Sutch, 1972, p. 52). Sutch relates that international interests have long been active agents in the harvesting and processing of New Zealand fish stocks, specifically referencing significant Japanese investments in trawling and processing operations (out of Christchurch and Nelson) in the 1960s and early 1970s (Sutch, 1972, p. 79). Where domestic policy and investment failed to capitalise on fisheries potential international interests have long been organised to gain. Opposition to this state of affairs in the form of a 'New Zealandisation' agenda for the fisheries sector is described and explained in subsequent chapters.

Central to the current political economy of New Zealand fisheries are the shifts in New Zealand's territorial boundaries in the later decades of the twentieth century. Before the 1970s New Zealand's territorial sea legally extended three miles beyond the shore rendering fisheries legally open for exploitation by foreign flagged fishing vessels (Ministry of Fisheries, 2012). Such a limit was extended to 12 miles ahead of the Third United Nations Conference on the Law of the Sea in 1974 (Mansfield, 2009). The Third Law of the Sea Conference

directed the establishment of a special committee to consider and make recommendations on territorial limit rules and the establishment of 'Exclusive Economic Zones' (based on continental shelf size) for inclusion in a United Nations protocol to form the basis of new international law (UN Office of Legal Affairs, 2009). Exclusive Economic Zones would confer to each coastal state rights to exploit resources within the zone, but would not constitute a legal extension of 'territorial waters' (Mansfield, 2009) New Zealand was an active supporter of the establishment of Exclusive Economic Zones (EEZ) based on a clear benefit existing in asserting control over the potential mineral, petroleum, and fish reserves in its surrounding waters (Mansfield, 2009). In line with the development of a consensus on the question of establishing EEZ the New Zealand Parliament passed the 'Territorial Sea, Contiguous Zone, and Exclusive Economic Zone' Act into law in 1977 – creating an EEZ extending 200 nautical miles from the New Zealand shoreline (Mansfield, 2009). In 1982 the United Nations Convention on the Law of the Sea (UNCLOS) recognised New Zealand's EEZ claim in international law confirming 'limited sovereign rights – primarily the right to exploit and manage fisheries and other natural resources and to protect the marine environment' (Ministry of Fisheries, 2012, p. 13). In 2008 the 21-member UN Commission on the Limits of the Continental Shelf approved an extension to New Zealand's EEZ claim by confirming an additional 1.7 million square kilometres of seabed after a \$44 million dollar bid by the New Zealand government (Clark, 2008). As previously related, the domestic capacity of the New Zealand fishing industry was particularly small, in the context of the enormous increase in New Zealand's geo-economic space governments immediately set about licensing Japanese, Russian, and Korean vessels to fish the EEZ and to process fish out of New Zealand, however this was perceived to be a stop gap measure on the road towards takeover by an expanded domestic industry (Ministry of Fisheries, 2012, p. 13). This regime was displaced for a new model of management in the 1980s and early 1990s in line with a broader moment of radical social and economic change in New Zealand. According to Kelsey:

“The fourth Labour government of 1984-1990 was committed to 'opening up' the economy. It lifted exchange controls, deregulated the financial markets, and floated the

dollar. Price stability was made the Reserve Bank's sole objective. Foreign investment rules were relaxed, and state assets (notably telecommunications, forests, and the Post Office Savings Bank) were sold to foreign companies. Domestic subsidies were withdrawn and domestic markets deregulated. Tariffs were reduced, and other trade protections were removed. Internationally, the Labour government pursued a vigorous free trade position in the Uruguay Round negotiations on the GATT, the extension of the Closer Economic Relations Trade Agreement with Australia (CER), and the birth of APEC. The National government displayed equal fervour when it came to power in late 1990 (Kelsey, 1999, p. 10).

We can understand this period of time in New Zealand history as a turn towards a 'neoliberal' philosophy both in economic organisation and in a redefined role of the state. According to Harvey 'neoliberalism' is a:

"...theory of political economic practice that proposes that human well-being can be best advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterised by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices" (Harvey, 2005, p. 2).

There would be no major government investment in the development of the New Zealand domestic fishing industry in the new regime. Instead the 'Quota Management System' (QMS) was introduced by the Labour government in 1986 (Ministry of Fisheries, 2012, p. 13). QMS introduced tradable 'property rights' within fisheries stocks allowing private companies and individuals to own shares in particular stocks and to catch in accordance with annual quantity limits set by the Minister of Fisheries (2012, p. 14). The significance of the QMS system would be writ large in the 1990s in the context of Treaty of Waitangi settlements and wider processes of Māori experiencing and reacting to neoliberalism and globalisation. Thus according to Kelsey:

"...the globalisation-cum-deregulation agenda posed a conundrum for Māori. On the one hand, it weakened the grip of the colonial nation state, opening up new political spaces, new ways of defining identity outside state-centred nationalism, and new opportunities for alliances. On the other hand, it would transfer some of the colonial state's power to the more distant hands of international capital, reduce the leverage of the Treaty of Waitangi, and remove the buffer that the welfare state provided for the Māori working class and unemployed poor. Consequently, Māori responses varied. Entrepreneurs positively welcomed the decline of the nation-based economy, and sought to advance their interests by embracing free market capitalism and supporting economic deregulation. Some Māori leaders with access to a large natural resource base and financial settlements from their Treaty claims believed they could now bypass the national economy and operate independently on the world stage" (Kelsey, 1999, p. 20).

The Waitangi Tribunal, responding to a Ngai Tahu claim, reported in 1992 that Māori "had a right to participate in the use of all New Zealand's fisheries resources subject to the QMS" (Ministry of Fisheries, 2012, p. 14). Such a

conclusion set in motion a considerable restructuring of fisheries control including partial Māori ownership of the Sealord Fishing Company, a 20 percent share of any new QMS stocks post-settlement, and the forming of a Commission to act as trustees for iwi fisheries assets and to ensure distribution for Māori benefit (2012, p. 14). Such an arrangement was described in terms of its potential for ensuing income to be spent on ‘education, cultural, and development programmes’ (Kelsey, 1999, p. 21). As of 2002 Iwi controlled 37 percent of total tradeable fishing quota assets in New Zealand (NZIER, 2007, p. 29). Research conducted on behalf of Te Puni Kokiri estimates that this translates to an asset value in excess of \$1 billion dollars (BERL Economic Research, 2011, p. 29). For the purposes of this thesis with its wider aim of identifying points of interest in establishing a sociological perspective of human trafficking and FCV use the significance of these arrangements becomes extremely clear when it is considered that Foreign Charter Vessels with foreign crew catch 80 percent of iwi fisheries quota (Seafood Industry Council, 2012). Their use is justified by the Seafood Industry Council, an industry lobby group, in the following way:

“Most deep water fish are caught and processed at sea, but the equipment needed to do this is very expensive. A modern new factory freezer trawler with the technology to process and freeze fish would cost over \$50 million. Many New Zealand operators couldn't afford this kind of cost and still make a profit”. (Seafood Industry Council, 2012)

The use of FCVs and foreign guestworkers are justified here in purely economic terms. Such political economic aspects are of central importance in understanding how and why FCVs are used and why their use has been defended for so long. Through complex legal frameworks relating to the international law of the sea, deployment of discourse justifying FCV use by linking them to Māori commercial development, and a historical lack of domestic fishing capacity in a nation with a relatively recent mass expansion of its exclusive economic zone has meant the interests of those who own and control New Zealand’s fisheries have been able to recruit guestworker labour to realise the value of their property rights.

‘Human trafficking’ – Definitions and Characteristics

This section discusses the definitions of ‘human trafficking’. The relevance of this discussion is derived from the frequent use of the concept in characterisations of FCV guestworker experiences. A definition of human trafficking is notably put forward in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (TIP Protocol) developed as part of the Convention Against Transnational Crime (Bales, 2007, p. 270) . Specifically Article Three of the Protocol states that:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used (United Nations, 2000).

The definition of human trafficking in the Protocol is generally held as standard by governments and civil society organisations. Sociologist and founder of the NGO ‘Free the Slaves’ Kevin Bales reminds us that while the ratification of the Protocol has been an important step, it does not provide an ‘exhaustive definition’ and that it “applies to the ‘prevention, investigation and prosecution’ of Protocol offences, but only where these are ‘transnational’ in nature and involve an ‘organised criminal group’(Bales, 2007, p. 271). Bales stresses the need for other instruments and methods to be developed noting that countries must take a ‘criminological’ approach to combat all forms of trafficking such as that which occurs domestically or on a smaller scale outside of organised crime networks (2007, p.271). Crucially Bales puts forward a sociological project for the understanding of trafficking. Specifically he comments:

“If we are achieving agreement on what trafficking is, we still have only a partial understanding of what drives it. We know that poverty and vulnerability are powerful predictors of whether a person will be trafficked. We know that governmental corruption plays an important part, that ‘pull-factors’ entice the vulnerable and ‘push-factors,’ like lack of employment opportunity, propel them across borders and into the grey zone where they become controlled by traffickers. But which of these factors is the most important? Clearly, the answer to this question will vary from country to country,

but trafficking is a global phenomenon, and it is also worth trying to find a global answer.” (Bales, 2007, p. 271)

Towards a ‘global answer’, Bales relates that slavery: “is an economic crime. People do not enslave people to be mean to them, they do it to make a profit” (Kevin Bales, 2010). If slavery, and by extension the practice of human trafficking, are influenced by the economic then a consideration of global economic organisation and its social effects are necessary. In this respect the observations el-Ojeili & Hayden provide are useful:

At present, around 1.2 billion human beings live on less than \$1 a day, and 2.8 billion people worldwide live on less than \$2 a day (Perrons, 2004). Further, around 840 million people are malnourished, although 80 per cent of the malnourished in the developing world live in countries with food surpluses (New Internationalist, 2000), and 1.3 billion people lack access to clean water (Shalom, 1999). This inequality is not evenly distributed across countries. In 1998, the per capita GDP of OECD countries stood at \$20,357, compared to Latin America’s \$6,510, Eastern Europe’s \$6,200, \$4,140 for the Arab states, \$2,112 for South Asia, and \$1,607 for Sub-Saharan Africa (Kennedy, 2002). While those in the West (955 million people) enjoy about 86 per cent of the global product, 79 per cent of world income, consume 58 per cent of world energy, and own and control 74 per cent of world telephone lines, the poorest 1.2 billion people have only 1.3 per cent of the global product, consume only 4 per cent of world energy, 5 per cent of world fish and meat consumption, and own only 1.5 per cent of world telephone lines (Held, 2004b). (el-Ojeili & Hayden, 2006, p. 76).

Bales has conducted research to identify factors that are important in identifying likelihood of trafficking in a particular country. Methodologically this entailed the production of a dataset that compared social, political, and economic factors (including economic activity, extent of government corruption, food production) alongside available data on incidents of slavery in particular countries and trafficking across borders. He concludes that factors such as ‘governmental corruption’; ‘national infant mortality rates’; ‘proportion of population below age 14’; ‘population density’; and the prevalence of ‘conflict and social unrest’ are the most significant factors in predicting trafficking victims’ likely countries of domicile (Bales, 2007, p. 274). With respect to research focusing on labour exploitation, particularly in the global fishing industry a number of research barriers exist. Recent observations put forward recently by the International Labour Organisation (ILO) in a report on forced labour in the fishing industry stated that:

Research into deceptive and coercive labour practices in the fisheries sector is not comprehensive or coordinated. Rather, a common denominator of most empirical research conducted on forced labour and human trafficking in the fisheries sector is that it is case driven or coincidental to broader research questions into, for instance, conditions of migrant labourers or criminal activities at sea. The literature is therefore fragmented and often anecdotal, providing little insight into the prevalence of forced labour and human trafficking in the fisheries sector. The uncoordinated and coincidental nature of current research may explain why the focus of these reports is on identifying the victims, their experiences and, in a few instances, their abusers, but less attention (with notable exceptions) has been brought to this problem in the context of the global fishing industry...Hence, although the literature provides insight into the supply side of forced labour and human trafficking in the fisheries sector, there are still many unexplored issues pertaining to the demand side (cf. Stringer et al., 2011; Pearson et al., 2006ab). In particular, the current literature provides little insight into the marketplace for fish and the manner in which fisheries management and conservation regulations and trade in fish affects the vulnerability of the sector to forced labour and human trafficking. (International Labour Organisation, 2013, p. 12)

The ILO's observations also ring true with respect to how little critical research exists on the role of national governments as actors are implicated in maintaining environments in which forced labour can take place and how when abuse is identified they respond with respect to meaningful attempts at bringing about social justice. A substantial body of literature on this subject does not exist and it is in this space that this thesis is attempting to be situated. Another more general observation regarding research comes from Di Nicola who notes that research on 'trafficking for labour purposes' has tended to attract less scholarly interest, a situation he suggests is a partial reflection of where funding has been allocated in the trafficking research space to date (2007, p. 66).

New Zealand Research on Trafficking

Susan Glazebrook, a current sitting Justice on the bench of the Supreme Court of New Zealand, has produced an overview of international trafficking protocols and New Zealand's experience with incorporating international protocols into domestic law as well as a recent history of police and judicial handling of issues as they have arisen. Initially Glazebrook notes that although human trafficking is highly prevalent an 'international legal consensus on the nature of the human trafficking problem has been relatively recent' (Glazebrook, 2010, p. 2) stating that the United Nations General Assembly approved *Protocol to Prevent, Suppress and Punish Trafficking in Persons*,

Especially Women and Children only entered into force in 2003. New Zealand signed the *Protocol* in 2000 and ratified it on 19 July 2002 (2010, p. 3). Justice Glazebrook examines why this is so and proposes that human trafficking as a social phenomenon has been ‘lumped together’ with processes such as migrant smuggling. She further notes that what she terms “classical slavery” has in fact been explicitly prohibited under international conventions such as the 1926 Convention on Slavery, its 1956 Supplementary Convention, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Labour Organisation Forced Labour Conventions of 1930 and 1957 respectively.

Glazebrook moves to identify how states that cases have arisen where the New Zealand Police did not move to prosecute facilitators of trafficking despite significant evidence existing. Glazebrook gives one example of Thai women who arrived in New Zealand through debt financing expecting to undertake work in a restaurant only to have their passports removed, and forced into brothel work. Police had determined that there being no ‘bondage or physical restraints’ involved the women were free to leave the brothel (Glazebrook, 2010, p. 9). Glazebrook viewed the actions of the Police as problematic stating:

“I would suggest that the police were clearly wrong not to prosecute in that case in 2001. They did not need the trafficking amendments to the Crimes Act to do so. It seems to me that there had been any number of ordinary offences committed. For example, those involved could possibly have been charged with fraud, obtaining money by deception, kidnapping and perhaps even theft of the victims’ earnings” (Glazebrook, 2010, p. 9).

She further noted that it was ‘surely problematic where a trafficked person psychologically feels restrained even if no true physical barrier exists’.

Justice Glazebrook further critiqued the approach of the justice system to date and stated that there is “room for some creativity in using the legal system to sanction traffickers”. She further offered a warning regarding the delivery of justice stating:

“It is vital that the courts ensure that the appropriate legal frameworks are used to ensure protection of victims. If victims are sent back to their home countries without any assistance, they are very likely to find themselves in the same situation and thus are at real risk of re-trafficking. Moreover, it must be borne in mind that victims who are sent back to their home countries are unavailable as witnesses”(Glazebrook, 2010, p. 10).

Glazebrook demonstrates that in New Zealand the Police and wider justice system does have agency to seek out and prevent exploitation and abuse of migrant workers. Her comments are useful in the context of the wider thesis as they show concern at a high level towards issues relating to state agencies and justice for exploited workers.

Definitional difficulties – In Practice

New Zealand has acceded to a number of international protocols on human trafficking and has adopted a number of “anti-trafficking” provisions into domestic legislation. Identifying gaps and limitations with respect to statutes on the books and real lived experience of exploited mobile workers is an important task given the wider thesis focuses on critically analysing the response of the New Zealand government to allegations of exploitation of FCV workers. It is therefore useful in the context of the literature review process to identify scholarly research which analyses how governments have responded to claims of migrant worker abuse in differing, but comparable contexts and the limits of legal regimes to take account of their experiences. In this frame, limits of legislation to protect vulnerable and exploited workers uncovers a gap which can be understood as problematic to certain epistemological precepts underlying normative human trafficking discourse and its manifestations into codified regulations and agency operational practice. In this regard the research of Coghlan & Wylie (2011) stands out as a useful exposition of the limits of trafficking legislation to assist vulnerable and exploited workers within a global north country that is a destination country for migrants. Coghlan & Wylie examine to what extent Ireland’s enactment of legislation in 2008 to define and human trafficking meaningfully assists in delivering justice given their observation that “few cases ‘tick all the boxes’ of a rigid definition of trafficking, yet the exploitation of migrant workers is rife” (2011, p. 1513).

Their research employed a semi-structured interview approach of ‘24 key stakeholders’ from NGOs, unions, and state agencies working on human trafficking issues, migration, and employment protection and workers’ rights in order to detect differing understandings of what situations constituted instances of trafficking. Coghlan & Wylie’s approach involved asking participants to describe cases of which they were knowledgeable that involved cases that they would define as forced labour and where possible sought details of ‘conditions of recruitment, movement, and exploitation experienced by those trafficked’ (2011, p.1517). Analysing their interview responses they related that:

“...the series of scenarios presented to us in interviews... illustrate[s] is that many migrants are somewhere in a ‘continuum of exploitation’ between the poles of regular work with rights and remuneration and trafficking rigorously defined. As a consequence, many may well not satisfy the rigours of the administrative trafficking definition and, as such, the possibilities of protection for many vulnerable workers are very constrained”. (2011, p. 1519)

Coghlan & Wylie further observe that the current ‘anti-trafficking’ legislative regime and the understanding of how best to operationalise that regime into the work of state agencies such as the Garda Síochána ⁷ is problematic. They observe:

“Trafficking needs to be addressed but, as O’Connell Davidson and Anderson (2006) say, why does everyone talk about trafficking and not migrants’ rights? A true human rights approach to trafficking would be to place an ethical concern with exploitation at the heart of the response, finding ways to help all those on the continuum of exploitation” (2011, p. 1524)

Coghlan & Wylie’s critique of human trafficking discourse and their call for an approach centred on ethical concern for exploitation being at the heart of a particular response is highly relevant in the context of the wider thesis. In the New Zealand context while FCV guestworker abuse has long been identified no meaningful moves towards social justice for exploited workers have been mooted by the state. The response of the New Zealand government, in part due to a similarly restrictive legal definition of what constitutes ‘human trafficking’ as well as legal ambiguity casting doubt on jurisdiction appears to have contributed to ambivalence towards demonstrating meaningful ethical

⁷ The Irish Police force.

obligation of concern towards workers abused and exploited in the process of contributing to the commercial return of the New Zealand fishing industry. A point that will be investigated fully in the wider thesis.

Conducive contexts and trafficking

The work of Kelly (2007) provides a useful sociological analysis of the environments that give rise to circumstances in which abuse and exploitation of mobile migrants takes place. Kelly's analysis, based on research conducted in conjunction with the International Organisation for Migration (IOM), is concerned with experiences of men and women migrating within and beyond the five Central Asian Republics (CARs). Kelly explains that exploitation is rife when 'conducive contexts' exist. She defines 'conducive contexts' as the "social, economic and political contexts that are more or less conducive to trafficking, creating 'fertile fields' for exploitation" (Kelly, 2007, p. 81). In the context of the CARs she explains a particular set of factors combine together to produce such contexts – impoverishment; weak governance; corruption; and decline in the status of women. Kelly's work demonstrates how difficult demarcating and classifying particular experiences into categories are with respect to human rights abuse. Her research "highlights the difficulties of drawing clear and consistent boundaries between trafficking, smuggling and irregular migration alongside raising the question of whether the concept of a continuum might more accurately reflect the human rights abuses involved" (2007, p. 74). We can see this problem reflected when reviewing statements contained in the Report of the Ministerial Inquiry:

"The Panel heard allegations of human rights abuses of the crew on board foreign flagged FCVs both from submitters and from the former crew of an FCV. Although complaints to the New Zealand Police on such matters as human rights abuses of crew on board foreign flagged FCVs have been made in the past, no prosecutions or investigations have resulted. We are advised that the New Zealand Police position is that the principal issues are employment related and are more appropriately dealt with by DoL through civil remedies such as the Employment Court. The difficulty is compounded by the fact that New Zealand has limited criminal jurisdiction over foreign flagged vessels. However, it has proved difficult to deal with complaints of human rights abuses under the Code of Practice" (Ministry of Fisheries, 2012, p. 77).

We can see here a direct tension existing between claims of human rights abuse by FCV workers and the interpretation of experiences of the New Zealand Police and a meaningful ethical response. Despite clear and documented exploitation of FCV guestworkers their experience did not trigger the technical requirements for a human trafficking or forced labour investigation, rather the issues identified were interpreted as an 'employment relations' problem best suited for civil remedy through the court system despite legal research from Harré concluding that sufficient evidence exists with respect to some FCV operations for a charge of trafficking under the New Zealand Crimes Act 1961 to be fulfilled (2013). Nevertheless it appears that specific and tight definitions have the potential to create, grant, or withhold a specific subjectivity that is 'deserved' or 'undeserved' this is the wider point of Kelly (2007). The way in which this has been translated and used in the government's discursive response forms part of the wider thesis. To what extent have discursive claims by the government been informed by problematic technical ways of interpreting exploitation of workers and how has this process affected the construction of FCV guestworker subjectivity within discourse. Has a reliance on 'normative technical knowledge' enabled both the government and industry to create distance between state/industry actions and through employing a discursive strategy of 'seeking solutions' to maintain the reputation of industry while enacting technical changes that appear progressive.

We can see that FCV guestworkers have complained of significant pressure from manning agents and the use of debt bondage practices at the recruitment state; dubious employment agreements; gross miscalculations of hours worked and significant underpayment of wages; unsafe working conditions; and control through the use of physical and psychological abuse. It is impossible to know how much knowledge each actor involved in the above – be it manning agent, ship owner, officers, or the New Zealand charter party – knew of the actions of the others. Clearly these actions took place within a 'conducive context' but this did not trigger any Police investigation for the offence of 'human trafficking' or of other codified offences such as slavery under the Crimes Act 1961. Essentially a situation exists where the legal test for what constitutes trafficking

is very tight or in this instance New Zealand agencies did not interpret the experiences of workers in this frame. Avoiding the experiences of FCV guestworker being interpreted as a case of trafficking or slavery by state agencies has arguable allowed the New Zealand government to discursively steer clear of any complicity as well as distancing any potential complicity with respect to the fishing industry's role in maintaining this system because a charge of trafficking would be too difficult to be brought. Thus the problem of trafficking protocol comes to light - it is not based around whether exploitation has occurred on a spectrum but rather it is around a strict legal definition that requires evidence of multiple actors acting in deliberate and coordinated ways.

Contemporary scholarship in this area shows that while some activities are certainly identified as constituting 'trafficking' there are far greater incidences of exploitation of mobile workers experienced with a 'conductive context' as a social process where risk is produced that at one point along the path could give rise to conditions of bonded labour, deceit, withholding of passports, restricted movement, abuse, harassment, threats, or violence. It is the precariousness of everyday life as a person whose life is constrained by significant structural walls that bring them into such situations. While various actors will contribute to bringing about the conditions for specific acts of trafficking behaviour to occur they are not necessarily coordinated - rather the whole structure of their social life has been geared to producing and allowing contexts for abuse to occur. 'Human trafficking' as a transnational crime relies on active agents rather than an understanding 'conductive contexts'. Dismantling 'conductive contexts' require structural solutions which are obviously question of wider social, economic, and political justice in a world divided with respect to development, income, wealth, and meaningful access to justice. The New Zealand government has anti-trafficking laws and policies that are in line with various international treaties and protocols; however they do not have exploitation - a product of structural inequities - as their basis. Their efficacy for protecting guestworkers has a human face - provided by the experiences of an exploited FCV labour force. A lack of police interest, a reluctance to discuss guestworker

experience as a potential example of trafficking, and the ambivalence of large players in the fishing industry confirms that an exploitation focus does not ground the thinking of key actors.

Ambiguities in law make it easier for human trafficking discourse not to enter the frame. Understanding this point allows the government's Ministerial Inquiry process to be critically reviewed through an analysis that has exploitation of workers and the question of meaningful justice at its centre. As will be later argued, the New Zealand Government's immigration system for FCV workers reproduced the social facts of what Kelly terms 'conducive contexts' by allowing entry to work in New Zealand territorial waters for the benefit of industry while denying workers the full protections of New Zealand law. The power dynamics and practices of these conducive contexts transfer easily to the small controlled environment of a vessel at sea - vessels certainly have very hierarchical ways of organising their social environments.

Chapter Two

Situating the thesis - methodology, and methods

This chapter will introduce the methodological approach of this thesis – public policy critical discourse analysis – and relate the ontological and epistemological precepts upon which this approach is based. Having established the theoretical base with respect to the methodological perspectives grounding the research a further section of this chapter will discuss the contours of the specific methods to be employed within the wider thesis. As part of this process a summary description of key materials analysed within the thesis will be highlighted alongside a timeline of events that will allow the reader to contextualise the material within a linear frame.

Ontological and epistemological perspective

‘Ontology’ and ‘epistemology’ are philosophical considerations that relate to specific understandings of reality and knowledge. Hoggart takes ontology to mean ‘that which can be known’; that is, the assumptions that underlie sets of ideas that organise the social world (Hoggart, 2002, p. 319). Epistemology reflects ‘a conception of what constitutes valid knowledge’ specifically with respect to the origin of such knowledge and how legitimacy of knowledge is developed (Hoggart, 2002, p. 317). Identifying and relating ontological and epistemological perspectives is therefore of significant importance to social research generally and specifically in the context of this project. While a full examination of ontological and epistemological perspectives vis-à-vis discourse analysis is beyond the scope of this thesis it is nevertheless important to describe in a circumspect manner the basic framework of knowledge underlying the so that key arguments can be understood as relating to an embedded epistemic perspective.

Broadly this project rejects ‘empiricism’ and the ‘positivist’ epistemological perspectives associated with empiricism. Specifically such an approach is characterised by a theory of knowledge that:

‘Holds that reality exists as an objective phenomenon and is driven by laws of cause and effect that can be discovered through empirical testing of hypotheses and deductive statements. Such inquiry has to be empirically objective and value-free, as the laws or generalizations exist independently of social and historical context. Science and its methods (particularly as they pertain to the physical sciences) are the only way to obtain valid knowledge. Objective, empirically defined facts are understood to be the objects of scientific observation. Empiricism emphasises the need to rigorously separate facts from values in the pursuit of valid, testable causal propositions about both physical and social reality’ (Fischer, 2003, p. 119)

Fischer further identifies that as an epistemological perspective empiricism is concerned with identifying ‘empirical regularities’ (‘when A occurs, then also B’) upon which future behaviour can be foreshadowed (Fischer, 2003, p. 118). Empiricism in the form of ‘neopositivism’ remains highly influential in

‘mainstream’ social science and, as Fischer identifies, specifically in the area of policy studies (Fischer, 2003). Neopositivist perspectives according to Fischer are ‘easily identified as the principles spelled out, both explicitly and tacitly, in the research methodology textbook’ privileging neopositivist approaches to research such as the promotion of ‘empirical research designs, the use of sampling techniques and data gathering procedures, the quantitative measurement of outcomes, and the development of causal models with predictive power’ (Miller 1991; Bobrow and Dryzek 1987 in Fischer, 2003, p. 122). With respect to the analysis of public policy such an approach promotes the generation of empirical generalisations ‘capable of explaining behaviour across social and historical contexts, whether communities, societies, or cultures, independently of specific times, places, or circumstances’ (Fischer, 2003, p. 122). According to neopositivist epistemology only such accounts can ‘count’ as legitimate knowledge.

In contrast to neopositivist perspectives ‘postempiricist’ perspectives, such as the approach adopted here conceive of the social world and of knowledge in a different way and in doing so question the legitimacy of neopositivist epistemology and research methodology. Fischer says that through a postempiricist lens ‘both the origins and the practices of modern science are rooted as much in social and historical considerations as they are in the disinterested pursuit of truth’ (Fischer, 2003, p. 123). Central, then, is the notion that what is held to be ‘objective truth’ in the neopositivist vein in fact arises from an ‘interplay of social and technical concerns’ – that is – through a process of social construction brought about by the privileging of some perspectives and values that constitute a particular way of interpreting the social world (Fischer, 2003). Fischer clearly articulates the implications of postempiricist epistemology with regards to public policy through the relation of a relevant example to this project:

“The findings of an inquiry are, as such, not a report of that which is ‘out there’ but rather part of a process that creates that particular version of reality. Knowledge, social knowledge in particular, ‘is a human construction never certifiable as ultimately true but problematic and ever changing’ (Guba 1990 : 26)” (Fischer, 2003, p. 124).

‘Social constructionism’ is an encompassing term for analytical perspectives built upon a postempiricist epistemological perspective. In describing the epistemological perspectives common to a social constructionist (and discourse analytical) understanding of the world Jorgensen & Phillips (2002) employ the accounts of Burr (1995) and Gergen (1985) in outlining four central social constructionist ‘premises’ (Jorgensen & Phillips, 2002, pp. 6–7):

Social constructionist premises:⁸

○ <i>A critical approach to taken-for-granted knowledge:</i>
Knowledge of the world should not be treated as objective truth. Reality is accessible to us through categories, so our knowledge and representations of the world are not reflections of the reality ‘out there’, but rather are products of our ways of categorising the world, or, in discursive analytical terms, products of discourse (Burr 1995: 3; Gergen 1985: 266–7 in Jorgensen & Phillips, 2002, pp. 6–7).
○ <i>Historical and cultural specificity:</i>
The ways in which we understand and represent the world are historically and culturally specific and contingent: our worldviews and our identities could have been different, and they can change over time. This view that all knowledge is contingent is an anti-foundationalist position that stands in opposition to the foundationalist-view that knowledge can be grounded on a solid metatheoretical base that transcends contingent human actions. Discourse is a form of social action that plays a part in producing the social world - including knowledge, identities and social relations - and thereby in maintaining specific social patterns.
○ <i>Link between knowledge and social processes:</i>
Our ways of understanding the world are created and maintained by social processes (Burr 1995: 4; Gergen 1985: 268). Knowledge is created through social interaction in which we construct common truths and compete about what is true and false.
○ <i>Link between knowledge and social action:</i>
Within a particular worldview, some forms of action become natural, others unthinkable. Different social understandings of the world lead to different social actions, and therefore the social construction of knowledge and truth has social consequences (Burr 1995: 5, Gergen 1985: 268–269).

The ‘premises’ described above posit a social constructionist view of the world that emphasises an understanding of knowledge as contingent on a complex interplay of social forces. Discourse analysis, as will be further explained, is an analytical approach in which such a view of the world is epistemically embedded.

A guest worker focused methodological approach

⁸ Adapted from Jorgensen & Phillips, (2002, pp. 6–7).

The experiences of FCV guest workers themselves are at the core of this research. Throughout the research process the experiences of crews, their stories, their subjectivities, and related political positioning before, during, and subsequent to the Ministerial Inquiry process are of ultimate analytic interest. It is necessary, therefore, to employ an appropriate methodological perspective that can serve as an overall matrix to enable and enhance a project interested in questions of social and political power and social justice. Researchers undertaking critical social research, and in particular, applying forms of discourse analysis recognise and encourage such aims. According to Fairclough & Wodak et al:

“It is a central concern and responsibility of critical social research to show the contingency of existing social arrangements: to expose to scrutiny claims of inevitability, claims that the way things are is the way they have to be. The critical objective is not only to identify and analyse the roots of social problems, but also to discern feasible ways of alleviating or resolving them” (2004, p. 1).

For van Dijk (1993) the role of discourse analysts is different to that of activists or political actors, in that a critical discursive analytic approach develops structural understandings of ‘fundamental causes, conditions, and consequences of [such] issues’. Scholars employing such an approach are interested in developing a contribution that aims to ‘get more insight into the crucial role of discourse in the reproduction of dominance and inequality’ (Dijk, 1993, p. 253). Such an aim is further articulated by Fischer who eloquently describes the demystifying potential of discourse analysis and in doing so reflects the aims of this project:

In the world of politics, the ‘real’ reasons and motives for an action – as opposed to those officially offered – are as important as the action itself. People want to know whether things happened for the reasons given. Were there underlying motives? Were they well-meaning? Or were the statements part of a strategic rhetoric designed to advance a particular group’s interests? (Fischer, 2003a, p. 142)

van Dijk also provides a reflexive commentary on the role of the individual discourse analyst by relating that the undertaking of critical research involves an inevitable political positioning and that the analyst should ‘spell out’ their point of view both as an exercise in intellectual honesty and as a recognition of

the role of the academy, though frequently modest in comparison to the role of primary actors, in contributing to social justice projects (van Dijk, 1993, p. 252). Articulating the focal point and underlying rationale for this project also goes some way to satisfy the views of Jorgensen & Phillips, who relate that it is wise for discourse analysts to “consider and make clear their position in relation to the particular discourses under investigation and assess the possible consequences of their contribution to the discursive production of the world” (Jorgensen & Phillips, 2002, p. 26). Such an exercise in reflexivity allows the researcher to reflect on their own positionality within the research process and to clearly acknowledge, rather than marginalise, the context in which a project is produced. Thus identifying the centrality and importance of FCV guest worker experience within this project enhances rather than detracts from the project.

Discourse analysis

‘Discourse’ plays an important role in the social construction of the social world and the ‘appropriateness’ of social, economic, and cultural public policy arrangements and ‘discourse analysis’ is an important social constructionist analytical approach. Specifically, it allows for insight into the way in which language and power are connected. Jorgensen & Phillips describe how discourse is a product of a language/power nexus:

“Discourse analytical approaches take as their starting point the claim of structuralist and poststructuralist linguistic philosophy that our access to reality is always through language. With language, we create representations of reality that are never mere reflections of a pre-existing reality but contribute to constructing reality. That does not mean that reality itself does not exist. Meanings and representations are real. Physical objects also exist, but they only gain meaning through discourse.” (Jorgensen & Phillips, 2002, pp. 10–11)

Defining ‘discourse’ is complex given the differing uses of the term in ‘anti-positivist’ traditions (hermeneutics, post-structuralism, and post-Marxist, etc.) (Fischer, 2003b, p. 73). Broadly ‘discourse’ can be understood as referring to ‘a specific ensemble of ideas, concepts, and categorizations that are produced, reproduced, and transformed to give meaning to physical and social relations’

(Hajer, 1995 in Fischer, 2003, p. 73) as well as ‘a way of speaking which gives meaning to experiences from a particular perspective’ (Jorgensen & Phillips, 2002, p.9). An alternative equally useful definition of discourse refers to ‘historically specific systems of meaning which form the identities of subjects and objects’ (Howarth, 2002 in Fischer, 2003, p. 73). Combining these definitions, discourse can be understood as justificatory accounts of the social world that influence both social organisation as well as how the social world is interpreted and perceived. The work of Michel Foucault has significantly contributed to the emergence of discourse analysis with his views of ‘truth’ as a construct of discourse and his understanding of social interplay and the productive role of power in creating subjectivity – an enduring theoretical precept remaining eminent in discourse theory (Jorgensen & Phillips, 2002, p. 14). Foucault’s theoretical approach, however, has been scrutinised for not emphasising the role of *discursive conflict* that is the process by which differing discourses ‘struggle for the right to define truth’ (Jorgensen & Phillips, 2002, p. 16). Scholars such as Fairclough depart from Foucault by emphasising a contrasting emancipatory vision for discourse analysis:

“Where Foucault’s main objective was ‘to create a history of the different modes by which, in our culture, human beings are made subjects’ (Foucault, 1982, p. 208), Fairclough’s interest, and the long-term concern of a great deal of work in critical discourse studies, has been how subjects might be emancipated from those same modalities” (Maingueneau & O’regan, 2006, p. 231).

Within this project discursive struggle is a focal point with competing discourses of different actors forming the site of analysis. Undertaking a critical discursive analysis allows insight into the ideological, epistemological, and ontological underpinnings of particular discursive formations put forward by such actors through a systematic process of interpretation, analysis, and reflection. Discursive analysis allows for an exposition of the consequences of discourse given the constitutive power discourse has in shaping reality. There are a variety of critical discourse analysis approaches each reflecting differing epistemological perspectives and methods. Indeed Hoggart is not far wrong in arguing that “discourse analysis is something like bike riding...which is not easy to render or describe in an explicit manner” (2002, p. 316). Jorgensen and Philips relay a

continuum of discourse analysis perspectives relating to the emphasis each identified approach places on ‘discursive and non-discursive’ phenomena in shaping social life. Approaches on the far right of their continuum actually reflect a rejection of discourse as a constitutive force, holding that other factors (for example economic concerns) determine discourse formation while those towards the left hold that discourse is ‘fully constitutive of the social’ meaning that discourse orders social life in an independent way (Jorgensen & Phillips, 2002, pp. 22–23).

The role of discourse in the constitution of the world⁹†

Discourse analytical approaches also differ with respect to the analytical emphasis placed on discursive features. A ‘linguistic tradition’ associated with critical linguists such as Fairclough, van Dijk, and Wodak view discourse as embedded in spoken language and in written texts as a result of social practices (Hewitt, 2009, p. 2). Research methods in this tradition emphasise linguistic analysis of texts which Hewitt describes as giving rise to a ‘linguistic turn’ in social science research (Hewitt, 2009, p. 2). Such approaches, when operationalised as method, frequently involve a close reading of blocks of text with a detailed review of grammar and syntax. Linguistic approaches, though sharing epistemic commonality, can be contrasted with the ‘macro’ approach of Hajer (1997) whose work “explore[s] the connections between narrative, positions and identity, through an understanding of social practices which goes beyond units of text, [as] adopted by other researchers” (Hewitt, 2009, p. 2). Fairclough et al (2004, p. 4) acknowledge multiple approaches to critical

⁹ Reproduced from Jorgensen & Phillips (2002, p. 23)

†Jorgensen & Phillips acknowledge that their schematic is a way of conveying complex information and advise that the ‘complexity of actual theories is bound to be reduced when they are placed on a single line’.

analysis but view a ‘basic division’ in the field as ‘between those who see discourse analysis as including detailed analysis of samples of actually occurring text and talk and those who do not’ (ibid, 2004, p.4).

Discourse analysis in the context of this thesis

This project applies an approach derived from Hajer (1997, 2005) while also drawing on critical discourse analysis approaches, especially with respect to emancipatory aims, to examine how competing knowledge and storylines throughout the Ministerial Inquiry have shaped the experiences of FCV guest workers process. Both textual form and broader social dynamics are central. A ‘curated’ approach is adopted that encompasses the methodological and method-technical approaches of multiple approaches of discourse analysis in earnest of the still very present debates in the realm of discourse analysis scholarship of the role of textual analysis as well as broader epistemic questions relating to the influence of material economic factors in the creation of discourse. As serious economic questions are to be highlighted within the scope of this thesis (profit of the fishing industry; labour exploitation) it would be unfruitful to dismiss theoretical claims that discourse is at least in part constituted by material concerns and the ability of powerful economic interests to put across discursive claims in an influential way. The project will therefore pay particular attention to the discursive claims of vested economic interests thus holding that material forces do influence, to a degree, the shape of discourse.

This thesis can be characterised as employing a discourse analytical framework to deliver a contribution within the field of policy sociology. Hajer provides an excellent framework for the undertaking of public policy focused critical discourse analysis. Hajer’s contribution to the field has consisted reviewing narrative, storylines, and metaphors deployed by actors within European ecological and environmental debates over a number of decades (Hajer, 2005). In particular Hajer introduces the idea of a ‘discourse coalition’ meaning ‘a group of actors that, in the context of an identifiable set of practices, shares the

usage of a particular set of storylines over a particular period of time' (2005, p. 302). Hajer elaborates on the political implications of discourse coalitions by providing a two pronged rubric to assess 'discursive influence':

Discourse structuration:

This occurs when a discourse starts to dominate the way a given social unit (a policy domain, a firm, a society – all depending on the research question) conceptualises the world.

Discourse institutionalisation:

If a discourse solidifies in particular institutional arrangements, say a measuring system for air pollution, and then we speak of discourse structuration.

If both criteria are fulfilled Hajer argues that a particular discourse is dominant.

(Hajer, 2005, p. 303)

Fischer relates a primary example of Hajer's public policy discursive analysis through a reference to discourse surrounding acid rain in Britain in the 1980s which demonstrates his approach:

... the acid rain controversy was a struggle between competing ways of framing environmental pollution problems that had dramatically different institutional implications. It was not the objective, measurable facts of the problem but rather the way of seeing the facts that became important. In this way, the acid rain controversy is interpretively read by a discourse analyst as an argumentative struggle to position other actors in terms of a particular policy discourse (assigning responsibility, blame, trust, and the like). It was framed as an effort to make others actors see that the environmental problem should be shifted to a higher level of societal deliberation, one that discursively engaged the legitimacy of basic social and political arrangements, rather than merely seeking pragmatic solutions for a particular pollution phenomenon, as the ACF¹⁰ conceptualizes the problem (Fischer 2003, p. 106).

The Ministerial Inquiry process can be understood as a phenomenon featuring different substantive content but similar discursive dynamics. Like Hajer's work on the environmental movement and the issue of acid rain in late 1980s Britain the Ministerial Inquiry process is a particular site of significance in an 'argumentative struggle to position other actors in terms of a particular policy

¹⁰ 'Advocacy Coalition Framework' an empirical framework for understanding interest group coalitions. See Sabatier and Jenkins-Smith (1993). *Policy Change and Learning*. Westview Press, Colorado.

discourse (assigning responsibility, blame, trust, and the like)’ (Fischer 2003, p. 106) .

Method

Method differs from methodology in that method is concerned with the research process (the ‘technical’ approach to undertaking the collection and analysis of data: Hoggart, 2002, p. 319). This project employs the instructive guidance of Fischer with respect to the tasks required by a discourse analyst in conducting a thorough analysis:

“Focusing on the relationship between discourse and social practices, the task of the discursive analyst is to explain how specific discourses become hegemonic, explicate the characteristics of discursive fields (including the nodal points that privilege some arguments over others), identify the defining claims of particular positions, clarify how individual discourses come to influence others, determine the structure of the arguments, identify which styles of discourse make them effective in given contexts, uncover the ways that the discursive resources are distributed across social systems, and show how particular socio-historical constellations serve to justify specific courses of action. Emphasising the ways discursive production socially constructs reality, such analysis examines the way hegemonic conceptions of reality are upheld and reproduced by key political groups, while oppositional groups seek argumentative strategies to challenge these dominant social constructs. Although discourses take place in pre-structured contexts that limit or impede the range of possible actions, persuasive discourses can even in the face of entrenched social and material forces open new paths to action” {Fischer, 2003, p90-91}

Hajer (2005) relates an ideal-type model for the undertaking of discourse analysis that consists of 10 particular steps for an analyst to undertake:

Table: Hajer's 10 steps for a discourse analysis

<p>1. Desk research: general survey of the documents and positions in a given field; newspaper analysis, analysis of news sections in relevant journals. This all to make a first chronology and come up with a first reading of events;</p> <p>2. 'Helicopter interviews': interviews with three or four actors ('helicopters') that are chosen because they have the overview of the field be it from different positions. They might comprise a well-informed journalist, a key advisor to the government, an expert-policy maker;</p> <p>3. Document analysis: Analysing documents for structuring concepts, ideas and categorisations; employment of story lines, metaphors, etc. This should result in a first attempt at defining structuring discourses in the discussion. At this stage one would get a basic notion of the process of events as well as the sites of discursive production;</p> <p>4. Interviews with key players: on the basis of the proceeding steps interviews can be conducted with central actors in the political process. The interviews can be used to generate more information on causal chains ('which led to what') that will always be the assumed core of the meeting on part of the interviewees, but the interviews might also be used to get a better understanding of the meaning of particular events for the interviewees. It then becomes a 'focused interview' (Flick, 1998). How did they interpret a particular event? By so doing one aims to reconstruct the discourse from which an actor approached the situation. We can also analyse how a particular cognitive shift came about. What led to the actual 'reframing'? Was it reading a report (which is not very likely)? Was it a meeting? A confrontation with a question to which the actor did not have an answer? It might also be possible to use an interview to find out what made a person recognize another perspective as valuable. What was the shift about? Was it about learning to know the people that uttered a particular point of view? Did it have to do with the practice in which people engaged (Forester, 1999)?</p> <p>5. Sites of argumentation: Searching for data not simply to reconstruct the arguments used but to account for the argumentative exchange. Examples might be parliamentary debates, minutes of inquiries (a very rich source), presentation and interpretation of evidence presented to a particular research commission, panel discussions at conferences,</p> <p>6. Analyse for positioning effects: actors can get 'caught up' in an interplay. They might force others to take up a particular role, but once others are aware of what is going on, they might also try to refuse it (indicators: 'No, that is not what I meant', 'That is not what it is about at all'). This positioning not only occurs on the level of persons but can of course also be found among institutions or even nation-states;</p> <p>7. Identification of key incidents: this would lead to the identification of key incidents that are essential to understand the discursive dynamics in the chosen case. As much as possible, these</p>

key incidents are then transcribed in more detail allowing for more insights in which determined their political effects;

8. Analysis of practices in particular cases of argumentation: rather than assuming coherence on part of particular actors, at this stage one goes back to the data to see if the meaning of what is being said can be related to the practices in which it was said.

9. Interpretation: on this basis one may find a discursive order that governed a particular domain in a particular time. Ideally, one should come up with an account of the discursive structures within a given discussion, as well as an interpretation of the practices, the sites of production that were of importance in explaining a particular course of events.

10. Second visit to key actors: discourses are inferred from reality by the analyst. Yet when respondents are confronted with the findings, they should at least recognize some of the hidden structures in language. Hence to revisit some key actors is a way of controlling if the analysis of the discursive space made sense.

Limitations in adopting Hajer's approach in the context of this thesis

It must be noted that Hajer's 10 points instruct the discourse analyst to undertake a number of steps that would represent an investment of time and resource not possible in the 12 month research window that characterises a master's thesis project. While the undertaking of formal recorded interviews would ultimately enhance and deepen the thesis the sheer volume of actors involved in the debates in which this thesis is situation would have gathering data logistically difficult.

It would have proved problematic to conduct interviews with key actors in multiple locations around New Zealand as well as with FCV guest workers at sea let alone in overseas locations such as Indonesia or Cambodia. Most certainly levels of resource, be it time or finances, contour every research project – this project is no different. While interviewing would have been enriching there is ample discursive material contained across media reports, individual submissions, and official correspondence to apply a discourse analytical approach to generate significant and important insight. Indeed Hajer suggests that sites of argumentation are of great importance and that 'inquir[ies] in

which a variety of actors can present written evidence' or 'a committee hearing' are very useful and rich data sources for analysis (Hajer, 2005, p. 306).

Research design

Analysis of a number of key texts produced before, during, and after the Ministerial Inquiry Process form the basis of the research design. These include:

- Terms of reference for the inquiry authored by departmental officials and given Ministerial approval;
- Written submissions to the Inquiry Panel, of which 72 were received (including submissions from fishing companies, unions, legal experts, and human rights NGOs);
- A 128 page report featuring 15 recommendations was produced by the Inquiry Panel and assisting officials.
- A number of key media reports and press releases are also analysed within the thesis.

All documents were either available publicly or have been released to the author through applications to relevant agencies under the Official Information Act 1982.

The content analysis process will apply tenets of Hajer's analytical approach to each key text with a special emphasis placed on the extent to which (if at all) the experiences of guest workers were discursively described within a text.

Event timeline

Table 1. Examples of reported cases of fishermen leaving ships due to abuse and exploitation (2005–2011)¹¹

Year	Incident
2005	
	<ul style="list-style-type: none"> ○ Six Indonesian fishermen deserted the Korean vessel Melilla 203 citing mistreatment.
	<ul style="list-style-type: none"> ○ Ten Indonesian fishermen fled the Korean vessel Sky 75 claiming abuse.
	<ul style="list-style-type: none"> ○ In a later incident, two Vietnamese fishermen fled Sky 75 also claiming abuse.
	<ul style="list-style-type: none"> ○ Four Chinese fishermen fled the Korean vessel Oyang 96 citing abuse.
	<ul style="list-style-type: none"> ○ Eight Indonesian fishermen fled the San Liberatore, a New Zealand owned vessel.
	<ul style="list-style-type: none"> ○ Crew jumped ship from the Korean vessel Melilla 201; this incident ‘revealed a history of death, injury and pollution on that ship and its sister ship the Melilla 203’ (MUNZ, 2011).
2006	
	<ul style="list-style-type: none"> ○ Nine Indonesian fishermen fled the Korean vessel Marinui claiming physical and mental abuse.
	<ul style="list-style-type: none"> ○ Twenty-seven crew aboard the Ukrainian vessel Malakhov Kurgan strike over a wage dispute.
	<ul style="list-style-type: none"> ○ Burmese crew aboard Sky 75 claim abusive treatment.
	<ul style="list-style-type: none"> ○ One crew deserted the Korean Dong Won 701.
	<ul style="list-style-type: none"> ○ One crew deserted the Dong Won 519.
2009	

¹¹ Reproduced from Stringer et al (2011). Source: MUNZ, 2011; Information obtained from OIA requests; Interview data; TV3 news, 2011.

<ul style="list-style-type: none"> ○ Eleven Indonesian fishermen fled the Korean vessel Shin Ji claiming physical and verbal abuse and the non-payment of wages.
<ul style="list-style-type: none"> ○ Four crew jump ship from the Melilla 201 citing abusive treatment and long shifts.
<ul style="list-style-type: none"> ○ Two desertions from the Korean vessel Pacinui.
2010
<ul style="list-style-type: none"> ○ Survivors of the Oyang 70 complain of physical and mental abuse as well as non-payment of wages.
2011
<ul style="list-style-type: none"> ○ Seven Indonesian crew leave the Shin Ji early following the drowning of the Bosun.
<ul style="list-style-type: none"> ○ Another seven crew fled the Shin Ji claiming abuse and non-payment of wages.
<ul style="list-style-type: none"> ○ Thirty-two crew fled the Oyang 75 claiming abuse and non-payment of wages.
<ul style="list-style-type: none"> ○ Twenty-seven Indonesian crew from the Melilla 203 left their vessel claiming non-payment of over \$NZ1 million in wages as well as sexual and physical abuse.

Chapter Three

Introduction

This chapter describes the emergence of allegations relating to guestworker experiences aboard FCVs and the initial discursive responses of key actors such as the New Zealand government, industry organisations and advocacy groups. This chapter demonstrates how the public discursive environment shaped the emergence of a governmental response in the form of the announcement of the Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels. Following an analysis of narratives and storylines of FCV crew experiences in the lead up to the announcement of the Ministerial Inquiry the chapter then focuses on how ‘FCV issues’, in the context of the development of the Ministerial Inquiry, were understood and framed by politicians and officials in the establishment of formal terms of reference for the Inquiry and the appointment of key personnel to the Inquiry Panel.¹² Central to the focus of this chapter are two particular analytical approaches. The first entails an investigation of the deployment of narratives, symbols, and storylines with respect to political discourse and the assignment of responsibility relating to issues of public concern by political actors. This approach will highlight key ‘causal stories’ in the public debate surrounding FCV guestworker allegations, and contextualise the emergence of the Ministerial Inquiry as a response to these. The organising logic of the Ministerial Inquiry’s formal terms of reference and its organisational structure will subsequently be reviewed in order to drill down into the Inquiry’s conceptualisation of the core issues, and the ways in which this conceptualisation was justified by the architects of the Inquiry.

Contextualising the emergence of the Ministerial Inquiry

This section discusses the emergence and public circulation of guestworker allegations and the consequential levelling of responsibility at the New Zealand

¹² Documents released under the Official Information Act and referenced in this chapter are listed in Appendix One.

Government with respect to its fisheries policies and the operational approach of various state agencies. In breaking down this process the work of Deborah Stone (1988, 1989) will be used to explain how responsibility was assigned discursively through the particular claims of actors engaged in debate. As explained earlier in the thesis, in-depth and well circulated media reporting of working conditions aboard some FCVs and allegations of violence and exploitation of guestworkers in early 2011 had characterised some FCVs as little more than floating 'sweatshops' (Field, 2011). Reports regarding the experiences of FCV guestworkers authored by academics, activists, investigative journalists, and the United States Department of State directed attention on the policies and practices of New Zealand government agencies in allowing exploitative conditions to emerge and the extent to which officials knew of the state of working conditions aboard vessels and allegations of abuse. The application of discursive pressure can be understood as delivering the primary impetus for the New Zealand Government to instigate the Ministerial Inquiry. In theorising how such pressure prompted action from political actors the theoretical contribution of Stone (1989) and her understanding of the role of 'causal stories' in political discourse informs this chapter.

Stories highlighting guestworker experiences aboard FCVs in New Zealand's waters were firmly in the public domain by 2011. Media reporting of allegations of mistreatment and abuse were circulating in both domestic and international news publications. Reports of crew statements following the sinking of the *Oyang 70* and in particular the claims of Stringer et al and the United States Department of State's trafficking in persons report characterised conditions aboard FCVs, particularly those registered in South Korea, as akin to 'modern day slavery'. The involvement of transnational agents in the recruitment and transportation of guestworkers and allegations of non- or under-payment saw guestworkers described as victims of 'human trafficking', a transnational crime outlawed by international convention and New Zealand domestic law. Calls were made for the New Zealand Government to take immediate action to protect guestworkers serving as FCV crew.

An important contributor to the production of discourse which interpreted guestworker experiences as constituting slavery and trafficking was the United States Government through its State Department Office to Monitor and Combat Trafficking in Persons. The Office is commonly referred to as “J/TIP”. Since 2001 J/TIP has released an annual report entitled the ‘Trafficking in Persons (TIP) Report’ which provides an assessment and ranking of the anti-trafficking efforts of all nations. The State Department summarises the TIP report initiative as:

...the world’s most comprehensive resource of governmental anti-human trafficking efforts... It represents an updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it” (US Department Of State, 2013).

The report is structured to include specific ‘country assessments’. Assessments are compiled with the assistance of officials working within US diplomatic posts as well as through direct consultation with governments, NGOs, media organisations, and individuals who have been trafficked (US Department Of State, 2011). In addition to providing policy assessments the TIP report is identified as having an explicit focus on fostering diplomatic exchange on trafficking issues:

“The U.S. Government uses the TIP Report to engage foreign governments in dialogues to advance anti-trafficking reforms and to combat trafficking and to target resources on prevention, protection and prosecution programs” (US Department Of State, 2013).

United States Federal law empowers the United States Government to apply a range of sanctions for non-compliance.¹³

The 2011 TIP report has particular significance in understanding the discursive context relating to FCV guestworker allegations with respect to the New Zealand Government’s position. It is argued here that the 2011 TIP report added significant pressure on New Zealand policy makers to review criticisms that had emerged, thus contributing to the move to establish the Ministerial Inquiry. The 2011 version of the report was released some weeks before the

¹³According to the State Department the William Wilberforce Trafficking Victims Protection Reauthorization Act authorises the US government to “withhold or withdraw nonhumanitarian, non-trade-related foreign assistance” and that “governments subject to sanctions would also face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions such as the International Monetary Fund (IMF) and the World Bank” (US Department Of State, 2011).

Ministerial Inquiry announcement and contained explicit reference to FCV crew allegations and characterised guestworker experience as that of forced labour:

“According to a press report and the United Nations Inter-Agency Project on human trafficking, there were concerns that some fishermen from Indonesia, Vietnam, and elsewhere in Southeast Asia are allegedly victims of forced labor in New Zealand waters; these men may have experienced conditions including passport confiscation, significant debts, physical violence and abuse, and are often forced to work a seven-day work week”. (US Department of State, 2011, p. 274).

The 2011 TIP report also provided a summative assessment of New Zealand’s approach to prosecution of trafficking crimes stating that while the New Zealand Government had taken some action, such as training programmes for public officials, New Zealand “did not make overall progress in its anti-trafficking law enforcement efforts during the past year” (US Department of State, 2011, p. 275). The TIP report further took aim at New Zealand’s legal framework with respect to trafficking. According to the report:

New Zealand does not have a comprehensive anti-trafficking law and the Government of New Zealand does not feel that such a law is necessary, relying instead on a definition of trafficking that focuses on the transnational movement of people in prostitution. Part 5 and various amendments of the Crimes Act of 1961 prohibit transnational sex and labor [sic] trafficking. Laws against sexual slavery, the receipt of financial gain from exploiting children in prostitution, and labor exploitation prohibit forms of internal trafficking. Such crimes are not specifically included within the anti-trafficking provisions of the Crimes Act and therefore cases of internal trafficking are not recognized or tracked by the government as trafficking crimes. (US Department of State, 2011, p. 275)

The TIP Report’s assessment of New Zealand, including its critical commentary regarding the experiences of fishing vessel guestworkers, was widely reported on by major New Zealand news media outlets in early July 2011, adding political pressure around the Government’s perceived inaction.¹⁴

Causal Stories

This section explores how the assignation of responsibility with respect to FCV guestworker allegations was constructed and contested as a social process through discourse. Through the circulation of media stories, academic research,

¹⁴ *NZ a destination for illegal prostitution – report* (New Zealand Press Association, 3 July 2014); *Surprise at NZ’s human trafficking status* (Television New Zealand, 4 July 2011); *Prostitutes Collective disputes trafficking claim* (Radio New Zealand News, 4 July 2011); *Under-age sex trafficking in NZ: Report* (New Zealand Herald, 4 July 2011); *NZ a destination for illegal prostitution – report* (New Zealand Press Association, 3 July 2014).

and union and NGO activism, responsibility for alleged mistreatment of FCV guestworkers was directed in part towards the New Zealand Government for its continued maintenance of a migration policy framework that allowed for the use of FCVs in the Exclusive Economic Zone and the recruitment of guestworkers to labour aboard them. Responsibility for the existence of the socio-legal context that allowed exploitative conditions to prevail unchallenged in the fishing industry was discursively constructed as a clear failure of New Zealand's political leaders and public officials within government agencies. Stories and reports highlighting allegations and reprimanding the New Zealand Government for inaction in the face of documented instances of abuse, unsafe working conditions, and slavery-like conditions can be understood as 'causal stories' within public political discourse on the use of FCVs and the experiences of guestworkers. Deborah Stone's (1988) view of the process by which issues come to the fore in the public sphere informs this chapter. Her insights into the politics of contestation with respect to public issues involving allegations and grievances provide a theoretical framework for understanding discursive claims to be analysed within this project. Stone introduces the idea of 'causal stories' which produce narratives of responsibility and assign such responsibility to particular actors:

Causal stories have both an empirical and a moral dimension. On the empirical level, they purport to demonstrate the mechanism by which one set of people brings about harms to another set. On the normative level, they blame one set of people for causing the suffering of others. On both levels, causal stories move situations intellectually from the realm of fate to the realm of human agency (Stone, 1989, p. 283).

Stone proposes that the emergence and circulation of causal stories act as a 'key trigger' in the enabling process for a particular issue to come into public (and therefore political) focus (1989, p.283). Important to this process are the persuasive and inherent qualitative properties that characterise 'causal stories', particularly the significance of symbols and narratives when these are deployed in for effect within a debate. 'Symbolic representation' according to Stone 'is a fundamental part of all discourse, political or other, and by conveying images of good and bad, right and wrong, suffering and relief, these devices are instruments in the struggle over public policy' (Stone, 1988, p. 122). The characterisation of guestworker experiences as akin to 'modern day slavery' and

of FCVs as ‘slave ships’ or ‘floating sweatshops’ by activists, NGOs, and foreign government agencies represented a powerful deployment of symbolic framing of the experiences of guestworkers and almost certainly expedited the New Zealand Government’s response in the form of announcing the establishment of the Ministerial Inquiry. Assigning responsibility publicly to a particular actor or set of actors through a narrative of cause and effect constitutes a powerful assertion of a particular interpretation of facts in a contentious debate. We can see the emergence of the Ministerial Inquiry, then, as a strategic act of political actors inside government responding to serious allegations and as part of an active strategic process to discursively manage the politics of responsibility for FCV guestworker treatment. As Stone relates:

...the competition to control causal stories does not stop once an issue reaches either the systemic or the formal agenda. Causal stories continue to be important in the formulation and selection of alternative policy responses, because they locate the burdens of reform very differently (Stone, 1989, p. 283).

Following sections of this chapter focus upon the development of the Ministerial Inquiry and the ways in which key actors in the ‘FCV debate’ produced specific knowledge over what the appropriate focus of the Inquiry should be and the operational parameters that the Inquiry should adopt. While a multiplicity of views were clearly articulated the terms of reference and procedures adopted by the Government in its establishment of the Inquiry did not hold universal appeal. In this thesis I argue that the politics of responsibility for the experiences of FCV guestworkers was strategically managed through the Ministerial Inquiry architecture and that the overarching focus of the Inquiry was be shaped by an organising logic not primarily concerned with the lived experience of aggrieved FCV guestworkers or wider questions of ethics and care.

Announcement of the Ministerial Inquiry

In understanding the strategy and organising logic of the Ministerial Inquiry it is necessary to review the particular moment and context in which the Ministerial Inquiry was announced and the key discursive elements included in

the announcement. The Ministerial Inquiry into Foreign Charter Vessels was announced on 14 July 2011 as a joint initiative of the Ministers of Labour and Fisheries. A media statement announcing the development of the Inquiry initiative included a particular frame of understanding of what issues relating to the use and operation of FCVs would form the core of its Inquiry's agenda. Such framing foreshadowed the extensive discursive claims contained in the Ministerial Inquiry's formal terms of reference documentation. The initial announcement release is a key text in that it represents an important discursive moment in the New Zealand Government's response to FCV guestworker allegations as well as to the causal stories of various actors who through their discursive claims had levelled responsibility for exploitation at the Government. In analysing this discursive moment it must be remembered, as outlined in chapter two, that an integral idea with respect to the epistemological foundations of discourse analysis as a social analysis approach is the notion that discourse shapes and orders the real world. Discourse is constitutive; it provides a conception of social facts that is not neutral but rather situated and contextual. The order of the ideas put forward in the media statement heralding the development of the Ministerial Inquiry are not neutral, they represent an ordering of the 'problem' of FCVs in line with particular ideas of the governmental responsibility and within a frame of logic that stresses the importance and priority of economic concerns. This can be seen in reference to the text itself reproduced below:

Excerpt

Media Release: Ministerial Inquiry into Foreign Charter Vessels, 14 July 2011

Mr Heatley says while full terms of reference for the inquiry have yet to be established, it is important for both the Government and our fishing sector to affirm New Zealand's international reputation as a world-leading fisheries manager.

"To do this we need to ensure we are getting the best economic return from our deep sea fisheries, that robust employment protection provisions available on land are reflected at sea, and that the monitoring of FCVs and domestic deep sea operators in our waters is adequate," says Mr Heatley.

Labour Minister Kate Wilkinson says reports alleging the failure of some FCVs to comply with proper employment requirements, including crew working conditions, and vessel safety standards imposed by New Zealand had raised the Government's concern.

"We also acknowledge the recent concerns expressed by the Seafood Industry Council (SeaFIC) and others representing the interests of crew members regarding these issues," says Ms Wilkinson.

"We decided a Ministerial Inquiry was the appropriate course of action as a number of ministerial portfolios have an interest in FCV engagement and operation. Fisheries, labour, immigration, transport as well as foreign affairs and trade all have an involvement in this area," she says.

Cabinet will consider full terms of reference for the inquiry, independent candidates to lead the inquiry, resources and inquiry reporting time-frames over the next month.

Source: (Wilkinson & Heatley, 2011) (underlining emphasis added)

The influence of the 'causal story' claims of other actors can be seen through the reference in the excerpt to media reports and 'recent comments'. It can therefore be interpreted that the circulation of critical stories constituted political pressure which expedited the development and announcement of the Inquiry. While the full terms of reference for the Inquiry were yet to be finalised the construction of the statement clearly emphasises an economically focused agenda that will be concerned with 'affirming New Zealand's reputation' as a primary producer of seafood products as well as investigating whether the existing regime is 'ensur[ing] we are getting the best economic return from our deep sea fisheries'. 'Employment protection provisions', while clearly incorporated into the order of the statement are referenced as a secondary concern. The conclusion that can be reached from scrutinising the framing of the Inquiry in this statement is this: the Inquiry would not be focusing explicitly on the experiences of guestworkers. Their allegations would not be at the centre of the government's response. The logic underpinning the Inquiry would be economic in nature.

Other actors respond

The responses of other key actors such as trade unions, members of Parliament, and civil society organisations foreshadowed perspectives put forward by these organisations in their formal submissions to the Ministerial Inquiry Panel during its public consultation process. The identification and analysis of these submissions and the emergence of particular discourse coalitions within the

public debate on FCVs is examined fully in chapter five. However, one particular strain of discursive commonality identified between some trade union organisations and opposition members of Parliament in relation to the Inquiry announcement requires description here. The discursive reaction to the announcement of the Ministerial Inquiry by the Service and Food Workers Union, the New Zealand Labour Party, the Māori Party, and the Green Party reproduced pre-existing concerns regarding the structure of the fishing industry, particular with respect to the employment of New Zealand workers in the industry. Within the fishing industry policy sphere this concern is generally referred to as the ‘New Zealandisation’ agenda. ‘New Zealandisation’ in the context of the fishing industry refers to a desire for the industry to prioritise the employment of New Zealand local and the success of New Zealand owned companies who maintain their operations within New Zealand. Favourable public policy settings are held to be a necessary key factor in fulfilling goals associated with this agenda. New Zealandisation has been advocated for particularly by trade union organisations over a substantial period of time, long before the establishment of the Ministerial Inquiry, thus it is an important pre-existing domestic political concern. In 2010 the Service and Food Workers Union had launched a petition to the House of Representatives requesting the House:

Conduct an inquiry into the New Zealand Fishing Industry’s relationship with foreign fishing companies, foreign crewing of Joint Ventures, chartered and New Zealand fishing vessels, and its effects on sustainable fishing, employment, and the relevant communities within New Zealand (Service and Food Workers Union, 2010b)

The petition was supported by the New Zealand Labour Party, the Māori Party, and the Green Party of Aotearoa (Service and Food Workers Union, 2010a). In the Union’s press statement released shortly after the announcement of the Ministerial Inquiry, the Union’s New Zealandisation stance was clearly reproduced in its contribution: ...

The issues in the industry go much further than ending the disgraceful exploitation of foreign workers fishing within our economic zone. Thousands of New Zealanders have lost jobs in the industry in the past 10 years and any inquiry must investigate the causes and the lost opportunity for future employment. It must also consider measures to ensure New Zealand and New Zealanders benefit from our fishing industry... Upskilling of New Zealand workers, and the impact on employment and job skills of

Māori workers, who have traditionally made up a large percentage of the workforce, is a critical issue (Service and Food Workers Union, 2011).

The reintroduction of a pre-existing New Zealandisation discourse in the context of the establishment of the Ministerial Inquiry can be understood to focus discourse on domestic political economic questions. Such an approach can perhaps be viewed as tangentially marginalising guestworker experiences in the debate over what the Ministerial Inquiry was for and what outcomes it would recommend. More comment on the place of the New Zealandisation agenda in the course of the Inquiry is provided in chapter four.

Analysing the Ministerial Inquiry's Terms of Reference

The terms of reference of the Ministerial Inquiry is also an important site for analysis as the 'parameters' set by the terms of reference reflect a political framing of the purpose of the Inquiry and the outcomes being sought by Government. The argument of this thesis is that the production of the terms of reference of the Inquiry constructed particular knowledge of the experience of guestworkers and framed the 'proper' role of the New Zealand Government in approaching the use of FCVs and presence of FCV guestworkers in the fishing industry. While proposing a dialogical process emphasising 'public engagement' through the appointment of a panel consisting of private citizens, and a public consultation process that solicited formal written submissions, I contend that the Ministerial Inquiry, through its terms of reference, discursively reflected and reproduced a neoliberal view of the role of government in its consideration of FCV issues. This can be viewed as problematic as an emphasis on stabilising the market conditions of the industry is a priority rather than the meaningful investigation of FCV guestworker experiences, let alone consideration of questions of social justice. The analysis that follows deconstructs the economic logic underpinning the Ministerial Inquiry.

Analysis of the New Zealand Government's decision to establish the Ministerial Inquiry is informed by viewing the emergence of the Inquiry through the theoretical lens of Peter Skilling and his theoretical understanding of the nexus existing between public policy, discourse, neoliberalism, and governmentality in

contemporary New Zealand. Understanding the development of the Inquiry through frames of theoretical reference allows the qualitative content reflected upon in this chapter to be located within a broader socio-political context rather in isolation.

Skilling (2014) identifies ordering discourses that arrange activities of the state and determine public policy legitimacy. Central for Skilling is the notion that a discourse of ‘crisis’ – relating to a constructed view of New Zealand as an economically precarious and fragile nation – exists as a core organising logic underpinning the policy direction pursued by governments. Skilling contends that in our present moment the summative effect of this organising logic is the production and perpetuation of a ‘governmentality of unease’ driven by ideas of economic insecurity. The legitimacy of the state is accordingly tied to the efforts of governments to marshal societal resources in order to ensure ‘New Zealand Inc’ is competing in the global economic market effectively. The linking of economic security to the wider ontological security of the nation forms a powerful nexus.

Skilling sees this neoliberal organising logic of economic maximisation as pervasive within contemporary political discourse with dissenting opinions firmly in the minority. Skilling provides an example of this in his example of recent public policy debates over environmental protection regimes by members of the New Zealand Parliament. According to Skilling:

even when problems could be plausibly framed in terms of environmental protection, they are often transformed through the production of strategy into questions of potential economic advantage (Skilling, 2014, p. 69).

Skilling demonstrates that the pervasiveness of economic logic is not restricted to the thinking of the present government through his discursive evaluation of the position taken by Labour Party members of the New Zealand Parliament in their opposition to the National Party led government’s proposed changes to emissions regulations. In this particular instance, the National-led Government supported a bill to reduce the financial impacts of New Zealand’s emissions trading scheme on the agricultural sector of the economy. In opposing the changes, the Labour Party deployed a particular political narrative asserting

that their position would enhance economic competitiveness and strengthen industry to a greater degree than the governments. Skilling holds that a consensus around economic gains as an organising logic of government has important political effects, as it serves to regulate what public policies are viewed as legitimate and necessary. New proposals will draw upon economic security narratives in order to be deemed appropriate.

Discourse and pre-metanarratives and the New Zealand context

Skilling further outlines the process through which economic concerns are prioritised in policy making through his discussion of the role of ‘pre-metanarratives’ in legitimising political narratives. According to policy scholars Bridgman & Barry ‘metanarratives not only serve as derivative texts, but as foundational frameworks, archetypally inspiring or shaping those narratives which are built on their shoulders’ (Bridgman & Barry, 2002, p. 142). This has significant implications for public policy development as metanarratives ‘serve to “condition ... the thinking of all involved”, shaping thereby the narratives that actors create’ (Bridgman and Barry 2002, p. 156 in Skilling 2014). Skilling further elaborates on his understanding of the role of pre-metanarratives:

pre-metanarratives can usefully be thought of as situated, culturally specific masterplots (Abbott 2002, pp. 42–43). Abbott (p. 42) defines masterplots as stories ‘that we tell over and over’ and that connect vitally with our deepest values, wishes and fears. ‘To the extent that our values and identities are linked to a masterplot’, he continues, ‘that masterplot can have strong rhetorical impact (Abbott 2002, p. 42 in Skilling 2014).

For Skilling the notion of economic crisis as an organising logic in New Zealand is bound up with pre-metanarratives ‘associated with the rise of neoliberalism’ that are also ‘culturally situated and derive their power by articulating themselves with deep cultural assumptions’ (Skilling, 2014, p. 63). For Skilling, ‘deep cultural assumptions’ in the New Zealand context refers to a nexus of ‘historical, geographical and cultural factors [that] have been used to normalise a sense of vulnerability, anxiety and unease regarding the nation’s economic viability’ (Skilling, 2014, p. 69). Thus according to Skilling:

National security in New Zealand has long been defined in terms of economic competitiveness. In consequence, the government has historically been accorded a

central role in coordinating a national-level response to the country's economic vulnerabilities of (small) size and (vast) distances from major population centres (Hawke 1985) (Skilling, 2014, p. 69).

Indeed Skilling reflects that the post 1984 neoliberal reforms were enacted on 'pragmatic grounds – on their ability to promote putatively shared national interests in a competitive environment' (Skilling, 2014, p. 68). Skilling further contends that a discourse of 'permanent crisis' with respect to the economic viability of the nation has been deployed in an ongoing way by political actors. Within this discourse configuration Skilling contends that 'the primary risk (drawing on tropes salient for a small, remote island nation) is that of being out of sight, out of mind vis-à-vis the global economy' (Skilling, 2014, p. 69). Skilling concludes that 'the problems that dominate in moments of unease and strategy in contemporary New Zealand discourse are economic in nature: 'problems of productivity, efficiency and flexibility, for example. Indeed, economic considerations often elide and preclude other plausible constructions of policy problems' (Skilling, 2014, p. 69).

In applying Skilling's understanding of discursive pre-metanarratives we can understand that the Ministerial Inquiry's terms of reference have at their core an economic management agenda that seeks to minimise 'risk' to industry and the nation while seeking to maximise economic 'value'. The difficulty, in the context of this research, is that the actions of the Ministerial Inquiry were construed as a direct action to 'clean up the industry' when in fact economic concerns were privileged ahead of calls for social justice for guestworkers whose exploitation had been allowed to continue unhindered. We can therefore understand the framing of the Ministerial Inquiry as influenced by the dominant neoliberal organising framework that characterises New Zealand's public policy making process – thus we see a focus on the economic as the first order priorities of the Ministerial Inquiry process.

The appointment of the Ministerial Inquiry Panel: experts and expertise

Central to this thesis is an examination of the politics of knowledge, within the context of FCV use and guestworker experience, as a social process of contestation. Within this process an important factor is the question of discursive authority. One aspect of the production of discursive authority and credibility lies in the ability of particular actors to deploy the skills of ‘experts’. As the terms of reference of the Inquiry were drafted by government agency officials in collaboration with ministers, the role of expertise is an important consideration in critically analysing the formation of the Inquiry. In placing an emphasis on interactions between officials and ministers this chapter echoes the understanding of Skilling in his views of the importance of analysing the actions of political actors:

...I focus in large part on explicitly political actors. Such actors typically articulate problems and advocate strategy in more explicit ways: it is part of the expectation of their role that they do so, and they are typically seen as more legitimate in doing so than, say, business leaders (Skilling, 2014, p. 68) (Skilling, 2014, p. 68).

Skilling notes in his discussion of contemporary economic discourse that argumentative legitimacy is in part secured by referencing the ‘authoritative status of qualified experts’ with respect to the ‘regimes of measurement, ranking and reporting that these experts construct or refer to’ (Skilling, 2014, p. 71). Further to this, and pertinent in the case of the decision to instigate a Ministerial Inquiry is the consequence of technocratic decision making on access to discourse for groups not recognised as possessing ‘technical expertise’. In this respect ‘expert status’ is a form of social capital that has a framing effect on what narratives and storylines are deemed appropriate, what the boundaries of ‘inquiry’ will be, and what policy reforms will be held to be acceptable. Assertion of professional status and the associated prestige this is held to signify has significant implications for the ability of ‘non-experts’ to participate in discursive contestation of issues of which they are intimately involved. The importance of this is further enhanced when personnel appointment decisions themselves are made by public officials in consultation with relevant ministers as in the case of the Ministerial Inquiry. Thus in part neoliberal market

discourse and the ‘pre-metanarrative’ perspectives put forward by Skilling are reproduced and reinforced through the selection of individuals with an appropriate ‘skill set’ and ‘expertise’ that will see hegemonic discourse, and power relations reproduced. As Skilling contends:

Assertions of the status of qualified people, institutions, and artifacts also serve to establish distinctions between those deemed able to contribute meaningfully to the strategic project, and those who are unwilling or unable to contribute (Skilling, 2014, p. 71).

Distinction between ‘those deemed able to contribute meaningfully’ and those who are not can also be understood through the theoretical lens of Pierre Bourdieu. Topper (2011) relates Bourdieu’s perspective on relations between ‘linguistic competence’, social power, and dominance in Bourdieu’s ‘political sociology of linguistic domination’:

Bourdieu’s account of what he terms “linguistic competence” therefore begins from an assumption that may appear uncontroversial but which he argues is neglected by most linguists and philosophers of language—that language is not simply a medium of communication but is also an instrument of distinction, domination, and violence. As such, the ways in which language is used, the social relations of the speakers, the forms of speech, the setting of speech, and the style in which speakers speak are all potentially crucial for understanding the meaning of linguistic exchanges. In elaborating his political sociology of linguistic or symbolic domination, Bourdieu deploys a variety of concepts that he has continually refined over many years, the most important of which is habitus. This concept is deployed by Bourdieu in an effort to describe the process through which “habits” become incorporated in the body in the form of “durable, transposable dispositions.” As a system of “socially constituted dispositions” lying at the intersection of social structures and practical activity, the habitus is the embodied product of an individual’s history, experience, and social location, becoming over time an ethos, a set of flexible and enduring “mental structures” and “bodily schemas” that organize, orient, and direct one’s comportment in private and public space. As it is gradually modified in accordance with the ever-changing circumstances of one’s life, the habitus generates regular and immediate responses to a wide array of situations without necessarily being the product of strategic calculation or the methodical execution of rigid rules (Topper, 2011, p. 358).

A Bourdieusian view of the appointment of individuals to the Ministerial Inquiry Panel would suggest that selection would privilege individuals from a particular social location with a view of the world informed by their habitus. Documents released to the author by the Minister for Primary Industries under the Official Information Act in the course of this research demonstrate the process by which officials recommended Inquiry Panel appointees to relevant Ministers and the skills that were viewed as necessary for an individual to be appointed. One key document stated that ‘an appropriate process has been

followed in selecting the proposed appointees' and that the process was 'tailored to suit the specific skills, knowledge and experience required to conduct the Ministerial Inquiry'.¹⁵ Another document related the skill requirements deemed appropriate by classifying shortlisted candidates in four categories 'legal'; 'political'; 'public sector/policy'; and 'business'.¹⁶ The implications of this selection classification become clear when one considers how an alternative panel consisting of 'human rights expert'; 'workers advocate'; or even 'sociologist' may have responded to the primacy of economic considerations in the terms of reference. This is not to say that particular individuals with business or legal backgrounds would not have the capacity to consider serious allegations, rather it is an argument that the selection of individuals familiar with contemporary governance likely serves to enhance the emphasis placed on ensuring work is conducted in line with government expectations.

Analysing the Ministerial Inquiry Terms of Reference

It is useful to reflect on the specific processes involved in the production of the Ministerial Inquiry's terms of reference. Documents such as these do not appear out of the ether, they are authored by officials operating in particular contexts for the review of ministerial advisors and Ministers themselves who operate in a related but different frame. Production of texts is therefore a social process involving interactions between numbers of actors played out over a period of time. It is beyond the scope of this thesis to examine fully the particular social processes and dynamics that shape interactions between New Zealand public sector officials and Ministers of the Crown in the drafting of policy materials – that is – a fully informed review of habitus of officials. It is necessary, however, to acknowledge that official documents contain socially produced narratives that order how the issues in question should be conceived and dealt with. In this vein the ordering narratives used by officials (and approved by Ministers) in

¹⁵ Aide Memoire – Ministerial Inquiry into Foreign Fishing Vessels: Background for Cabinet Appointments and Honours Committee. 10 August 2011. Released to the author under the Official Information Act 1982.

¹⁶ Possible Candidate List – Foreign Charter Vessel Inquiry. No date. Released to the author under the Official Information Act 1982.

their preparation of the Ministerial Inquiry terms of reference can be interpreted, in line with the view of Skilling, ‘as the creative act of narrators who select, order and edit narrative elements so as to achieve certain rhetorical effects’ (Skilling, 2014, p. 61).

Firstly, a note on process. Officials present drafts to ministers for consultation following which feedback and approval based on feedback final sign off is given. It is not possible to identify the specific number of individuals involved in the drafting and ministerial consultation process or the specific discussions and textual editing processes that shape the development of the final terms of reference. It is, however, possible to compare the qualitative differences between the final Terms of Reference released publicly to draft versions (including the original draft) produced by officials and released to the author under the Official Information Act. The proposed terms of reference put forward by officials in the development of the Ministerial Inquiry terms of contain differences from the version that was signed off by Cabinet. Of most relevance to this research are the differences in the conveyed 'principle objectives' in draft and the final versions as demonstrated in the text excerpts below:

Draft Version text

The principal objective of the Inquiry is to ensure that the operation of these fishing vessels in New Zealand waters supports the following government objectives:

1. That acceptable and equitable labour standards (including safe working environments) are applied on all fishing vessels operating in the New Zealand Exclusive Economic Zone (EEZ).
2. Protection of New Zealand's international reputation and trade access.
3. Economic return to New Zealand is maximized including potential employment opportunities for New Zealanders.

Source: Proposed Terms of Reference (Draft), Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels. 15 July 2011. Released under the Official Information Act 1982.

Final version approved by Cabinet

The principal objective of the Inquiry is to ensure that the operation of foreign owned and flagged vessels chartered by New Zealand fishing companies supports the following government objectives:

1. Protect New Zealand's international reputation and trade access.
2. Maximise the economic return to New Zealand from our fisheries resources.
3. Ensure acceptable and equitable New Zealand labour standards (including safe working environments) are applied on all fishing vessels.

Source: Terms of Reference, Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels. No Date. Released under the Official Information Act 1982.

As we can see, the particular order changes between the draft and final versions. This reflects a change in the particular frame to a text that articulates economic questions and concerns ahead of attention to questions relating to worker treatment. This change is a discursive reordering of priorities – a shift in direction that emphasises the economic. The ideational 'architecture' of the inquiry had been configured before Ministerial Inquiry panel appointees had met. Of further interest is the initial insertion by officials of an objective relating to exploring opportunities of further employment of New Zealand citizens in the fishing industry which is a reference to the debate over a wider New Zealandisation of the industry. This reference was not included in the final version approved by Cabinet.

‘Reputation’

The directive to ‘protect New Zealand’s international reputation and trade access’ is a first order priority for the Ministerial Inquiry. It can be conceived as a primarily economic directive as the protection of ‘reputation’ is a different task than investigating particular wrongs or attempting to provide justice for guestworkers. The notion of ‘reputation’ can be described as the management of perception for the explicit purpose of ensuring or maintaining a favourable position in the eyes of an external set of actors – imagined to be international

capital, international news agencies, and international civil society organisations concerned with human rights. Managing ‘reputation’ relates back to the pre-metanarratives and the boundaries are set between what will be considered important to the Inquiry Panel members versus what, by implication won’t be.

Locating responsibility

In line with the views of Stone (1989) the location of responsibility is a political question that is addressed implicitly in the framing of the Ministerial Inquiry. By opening up a dialogical process through the Inquiry the government as an actor distances itself from the initial levelling of responsibility towards it. Instead the deployment of a ‘participatory’ process for ensuring the ‘policy settings’ are as finely tuned as they could be is emphasised through the Inquiry. Such an approach structures the discovery of ‘truth’ as a process to be undertaken and managed by the Inquiry, despite significant evidence held by state agencies that conditions aboard FCVs were highly unsatisfactory. The Inquiry process therefore acts as an ordering activity that defines the issues for consideration at hand and moves questions of the culpability of other actors (namely the state and businesses using FCVs) out of the frame while discursively constructing the particular frame in which problems will be viewed and responded to.

The Ministerial Inquiry terms of reference reflect a strategic positioning through discourse and through doing so, it in fact assists in the production of reality as other actors contemplate and respond to the powerful ordering of the issues at hand put forward by this central actor. As earlier iterated: ‘With language, we create representations of reality that are never mere reflections of a pre-existing reality but contribute to constructing reality’ (Jorgensen & Phillips, 2002, p. 10).

Limiting the scope of the Inquiry

The scope of what the Inquiry Panel could investigate was also restricted. The terms of reference contained the following directive:

While the Inquiry will be informed by individual examples and situations, it is not the purpose of this Inquiry to investigate any particular situation or incident. If the Inquiry obtains specific information it believes should be investigated by a relevant authority it will be forwarded to the relevant authority for its consideration.¹⁷

In limiting the bounds of the Inquiry, its status as a site for the pursuit of particular grievances is sidelined. Questions related to particular injustices are structured to be outside of the purview of the Inquiry thus placing the Ministerial Inquiry process outside of scope for direct recognition of individuals alleging harm. In structuring individual allegations and incidents outside of the terms of reference the Inquiry adopts a 'technical' discursive frame – it is concerned with 'making recommendations relating to policy and legislative amendments and improvements to operational practices' that will allow for the realisation of an economic agenda.

Conclusion

This chapter analysed the organising logic underpinning the initial establishment and subsequent development of the Ministerial Inquiry's terms of reference. Specifically a critical analysis was put forward with respect to the way in which the discursive production of the Ministerial Inquiry's terms of reference produced and extended a normative frame with respect to the primary cause of the Inquiry and which specific questions and knowledge would be deemed of ultimate relevance to the Inquiry Panel. A key argument expressed in the thesis is that the discursive positioning of the Inquiry terms of reference, and the appointment of a panel consisting of individuals familiar with the logic of contemporary neoliberal understandings of governance in New Zealand were productive acts. Productive acts in the sense that what would be of interest and what would 'count' as a persuasive or meaningful contribution to the Inquiry

¹⁷ Terms of Reference, Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels. No Date. Released under the Official Information Act 1982.

would be those that elided with an already determined frame that privileged market logic. This is not to say that the Inquiry Panel avoided soliciting diverse views in its call for public contributions, it is however a reflection of the primacy of economic considerations in the development and exercise of public policy in New Zealand; a reflection of the power of neoliberalism as a primary organising logic of contemporary New Zealand society.

Chapter Four

Introduction

This chapter is concerned with developing responses to a number of the thesis's key research questions, namely how can discourse analysis methodology describe and explain the complex power relations involved in the government's response to FCV allegations; how were the subjectivities of FCV guestworkers discursively constructed at each stage of the government's response; how were the experiences of FCV guestworkers discursively constructed and conveyed at various stages of the government's response; what barriers did FCV crew face in accessing discourse with respect to the Ministerial Inquiry process and why did they face such barriers? This introductory section explains the approach taken in this chapter to present insight gained through the research process in aid of answering the research questions above.

Chapter four builds upon and incorporates the analysis presented in chapter three and extends the scope of analysis on to the Ministerial Inquiry's 'public consultation process' and the contributions to the FCV debate by the groups and individuals who provided submissions to the Inquiry. The importance of analysing these contributions is underscored by the methodological approach outlined in chapter two with respect to the epistemological notion that the discursive contributions of actors in public debates constitute a contentious politics of knowledge which shapes how the essence of issues are understood. Hegemonic perspectives on issues will form the basis for the determination of action (or inaction) in the context of public policy development. In analysing the development of the Government's public policy response to FCV allegations through the Ministerial Inquiry a review of the Inquiry Panel's public consultation process represents a thoroughly useful exercise given the availability of material upon which an investigation the discursive claims of various actors can be put forward in order to assess the impact of various discursive strands on the view of the Panel and the wider public debate.

Methodological approach

The methodological approach of Hajer, as introduced in chapter two forms the basis of the analysis in this chapter. Public contributions to the Ministerial Inquiry Panel put forward by industry groups, NGOs, government agencies, unions, and members of the public are analysed below in line with Hajer's understanding of the dynamics of 'discourse coalitions' in public debates, and how the interplay between coalitions and their conceptualisation of particular issues is an important process in the shaping of the politics of knowledge regarding a specific issue. According to Hajer:

Discourse should always be conceived of in interrelation with the practices in which it is produced, reproduced, and transformed. Consequently, we can refine the definition discourse ...to include practice. Discourse therefore is defined as an ensemble of ideas, concepts, and categories through which meaning is given to phenomena, and which is produced and reproduced through an identifiable set of practices. So a discourse-coalition is not so much connected to a particular person (as if such a person would have a coherent set of ideas and beliefs that were not context specific), but is related to practices in the context in which actors employ storylines and (re)produce and transform particular discourses. This, it becomes possible to come to terms with the fact that some actors might utter contradictory statements, or indeed help reproduce different discourse coalitions. To apply this whole vocabulary to politics one should also be able to link discourse to power and dominance. It should be possible not only to identify discourses but also to assess their influence as well. (Hajer, 2005, p. 303).

For Hajer discourse coalitions consist of an 'ensemble' of three elements: a set of storylines; actors who utter storylines; and 'practices in which discursive activity is based' (Hajer, 1997, p. 65). Discourse coalition analysis therefore pays careful attention both to the common themes that emerge amongst various actors but also the commonalities of practice shared by particular actors, by way of example it is identified in this research certain FCV fishing vessel operators share practice as do particular church groups. Hajer also further describes the conceptual characteristics of a 'storyline' in the context of contentious public debate relating to the environment:

"Storylines, in other words, not only help to construct a problem, they also play an important role in the creation of a social and moral order in a given domain. Storylines are devices through which actors are positioned, and through which specific ideas of 'blame' and 'responsibility', and or 'urgency' and 'responsible behaviour' are attributed. Through storylines actors can be positioned as victims of pollution, as problem solvers, as perpetrators, as top scientists, or as scaremongers" (Hajer, 1997, p. 64).

While Hajer's area of personal research interest is focused on environmental policy debates his general approach is applicable to the study of public debates in general. As described in chapter two Hajer has developed a theoretical basis for measuring the influence of particular discourses through a phenomenon he terms 'discourse structuration'. Discourse structuration occurs "when a discourse starts to dominate the way a given social unit (a policy domain, a firm, a society – all depending on the research question) conceptualises the world" (Hajer, 2005, p. 303). Hajer further puts forward to notion of 'discourse institutionalisation' which he holds to be present when 'discourse solidifies in particular institutional arrangements' and shapes organisational practices (Hajer, 2005, p. 303). Chapter three put forward an argument with respect to discourses of 'economic risk' being institutionalised within New Zealand government policy making processes. Chapters four and five analyse 'discourse structuration' by analysing the contributions (submissions) to the Ministerial Inquiry panel (chapter four) and looking at the final report and policy recommendations in chapter five to see how these privileged or marginalised the different discourses put forward by the different actors.

Methods

Discourse coalitions have been identified through qualitative analysis of submissions. Key to the identification process was understanding how each submitter conceptualised the experiences of FCV guestworkers; how each submitter understood FCV guestworkers subjectivity (for example were they constructed as an exploited group requiring urgent assistance, or were they viewed in a contrary frame as workers from the 'third world' who were likely getting a 'better deal' than they would at home); how each submitter affirmed or contested the stated aims and methodological approach of the Inquiry itself; and the specific public policy suggestions put forward by each submitter in support of or opposition to the status quo. Analysing 'discourse coalitions' is an important process as the key intellectual task of the Ministerial Inquiry was essentially interpretive work of discourses which were conveyed and appraised in the final report. Which discourse coalitions would find their key views on the issues taken up in the Report is of considerable interest as what has 'counted' as

legitimate knowledge has significant implications for the pursuit of social justice.

Public contributions to the Ministerial Inquiry panel came in a number of forms – 72 submissions¹⁸ lodged with the Inquiry secretariat and public hearings were held in Auckland, Christchurch, Wellington, and Nelson. Written submission documentation was freely available from the Ministry for Primary Industries. A factor in the analysis of submissions are the differences in size, structure, and incorporation of research sources. All submissions were noted and analysed in the research process, however more substantive submissions tended towards a greater overview of an actors' perspective and therefore provided a larger base of material for the deployment of discursive analysis. It is accepted that the submissions reviewed from different actors are complex. Care has been taken not to universalise and assert fixed views of the contributions of actors but to carefully trace key discourses within particular submissions as they appear. Some submissions incorporated multiple discursive strains – for example – one submitter argued for the maintenance of the status quo with respect to the current regulatory regime; however the argument for this was situated within a broader 'New Zealandisation' discourse which emphasised the need for greater employment of New Zealand citizens in the industry in the longer term.

Ordering

In keeping with the thesis's overall approach as a guestworker focused project a particular scale has been applied in the discursive commonality assessment and ordering process. A scale that assesses submissions with respect to their discussion of guestworker experiences and concerns relating to their human rights through to those that make little or no specific mention of guestworkers in any part of their submission. Such an approach provides interesting insight into the practice of particular actors and the context they operate within. The epistemological viewpoint of this thesis holds that there will be a link between

¹⁸ A table containing the full list of Ministerial Inquiry submissions is attached to the thesis as Appendix One.

actors whose ‘practice’ quite directly involves thinking about or organising around questions of social justice and that such practice will inform discursive perspectives. Likewise, organisations or groups that are primarily commercially focused are likely to provide a qualitatively different perspective. The ordering process does not imply a homogenisation of the diverse characteristics of submitters – each submitting individual and organisation exists within a situated and particular social context which will be complex. Rather the ‘ordering’ approach focuses on identifying and grouping common discursive elements central to submissions put forward. In doing so it traces the deployment of arguments, frames, and logics and their reoccurrence and reproduction by actors in their submissions. ‘Ordering’ is a process of identifying common discursive strands amongst actors and tracing their reproduction in moves of decision makes and the ‘firm’ public policy outcomes agreed upon. It is not designed to produce fixed categories with a claim to empirical truth; such an assertion would be problematic in the context of the methodological approach deployed within this thesis. The author does not, therefore, claim to have fully ‘ordered’ the submissions, rather the author has carefully read each submission and transcript and has identified common threads. Such threads, understood in line with the discourse interpretation methods of Hajer, are understood as constituting ‘discourse coalitions’. Discourse coalitions are brought together by the threads of reproduced discourse that bind them. A full and knowledgeable alliance between actors is therefore not asserted nor is the existence of such important for the identification of discourse coalitions. Their identification is the result of a hermeneutical process of close reading by the author. No claim is therefore made to objective truth, however it is hoped that through the process undertaken can potentiate further understanding of the problem.

Discourse coalition analysis: an introduction

A series of discourse coalitions have been identified in the research process that can be understood as highly relevant in the context of the research questions. These coalitions reflect the diverse perspectives at play within the politics of knowledge shaping the Ministerial Inquiry, the work of the panel, and ultimately the public policy recommendations contained in the Report of the Ministerial Inquiry. Their identification allows insight into questions of power, hegemony, and how social justice can be obfuscated through a contentious public policy development process. Three broad discourse coalition categories have been formed. In relating these categories links to a commonality of practices with respect to the characteristics and focus of each actor will be explained. It is also important to consider these discourse coalition categories as ‘umbrella’ categories within which there will be differing emphases and divergence. Thus the categories can be viewed as a useful tool in making sense of this particular situated world but should be understood as sitting on a spectrum. The following table displays the three discourse coalitions identified:

Ministerial Inquiry Public Consultation Process Analysis: Overview of identified Discourse Coalitions.

Discourse Coalition	Characteristics
I) Humanitarian Concern for Guestworkers	<ul style="list-style-type: none">• Actors prioritised the experiences of guestworkers in their submissions.• Critical of the specific terms of reference of the Inquiry. Put forward by - church groups, NGOs, and trade union organisations.
II) Defence of the Status Quo	<ul style="list-style-type: none">• Actors justified the historical use of FCVs and guestworkers and supported the continuation of their use.• Some actors justified this position in line with their views on Treaty of Waitangi settlements.• Put forward by fishing

	companies presently using FCVs and guestworkers and also ancillary providers of services to the fishing industry.
III) New Zealandisation advocacy discourse	<ul style="list-style-type: none"> • Broadly categorised by a political agenda to change the structure of the industry to promote and enhance the employment prospect of New Zealand citizens and the commercial prospect of firms not using FCVs • There are a number of perspectives which are part of this discourse coalition: <ul style="list-style-type: none"> A) the views of trade unions, and political parties seeking greater domestic job growth; B) Small commercial operators who do not wish to compete with FCV users; C) Māori organisations that view employment for Māori an important an yet to be realised social agenda of treaty reparation as being unmet and undermined by FCVs; D) Large commercial firms not using FCVs (notably Talleys); E) Government agencies such as the Department of Labour.

Humanitarian Concern for Guestworkers Discourse

Introduction

Storylines relating to the lived experiences of FCV workers, their mistreatment, and concerns with social justice were at the forefront of the arguments put forward by actors characterised as part of this discourse coalition. Storylines deployed by these actors were also likely to contest, either openly or tacitly and to varying degrees, the Ministerial Inquiry's terms of reference boundaries through a universal concern for the welfare of FCV guestworkers and a focus

on social justice in response to injustice. As Hajer draws analytical attention to the question of shared practice in his understanding of how discourse coalitions form it important to consider commonalities between actors in the research process. Actors deploying storylines with commonalities in this space included Christian churches, some trade union organisations, a progressive New Zealand political party, an independent Crown funded human rights promotion agency, and a New Zealand based NGO established to promote the human rights of Indonesian citizens.

Analysing the storyline

Actors employing this storyline framed the experiences of guestworkers as of paramount importance to the Ministerial Inquiry process and communicated a sense of urgency with respect to reforming the current legislative framework in place. Essentially they understood the reason for the Ministerial Inquiry as directly related to guestworker allegations of mistreatment. Thematically actors putting forward this storyline prominently reproduced a human rights discourse and asserted the notion that the experiences of FCV guestworkers should be understood as a human rights crisis that required urgent change. The underlying motive of this storyline was to frame the experiences of guestworkers as structural violations of human rights occurring within the New Zealand fishing industry and to therefore demand reform and acknowledgement. Thus this storyline placed the phenomenological perspectives of workers alleging exploitation at the fore of their commentary. References to guestworker experiences as constituting human trafficking further enhanced the legitimacy of their discursive claims as this then placed a direct responsibility (both present and historical) on agencies of the New Zealand government given New Zealand's agreed responsibilities under international law.

A particularly important submission was that put forward by the Indonesian Human Rights Committee (IHRC) spokesperson Maire Leadbeater. Explicit within this submission was significant concern regarding the well-being of guestworkers and the relating of a sociological discourse, relating to the

international flow of migrant workers from the global south and how these workers are frequently mistreated:

We acknowledge that Indonesia is a society in transition from authoritarian rule to democracy, but we believe it is important to take note of the structural problems in Indonesia in terms of labour rights, migrant worker rights, the legal system and the prevailing climate of impunity with respect to the security forces. New Zealand is a prosperous democratic country with a well-established legal system and many checks and balances to protect citizens from the abuse of power. It is our responsibility to ensure that everyone who is working or living under our jurisdiction is treated as fairly and justly as one of our own citizens. In fact the moral responsibility is very great when those who are being mistreated are so vulnerable to exploitation and have so few means of redress. We recommend that the regulatory systems governing foreign fishing vessels be strengthened so that no similar abuse takes place again. All those operating or chartering fishing vessels that operate in our waters must be clear that workers' rights must be upheld at all times and that transgressors will be excluded from fishing in our territorial waters¹⁹.

In this excerpt Leadbeater deploys a development discourse that characterises Indonesia as a developing and that as New Zealand is a developed country it has a duty of care to ensure protection of those working in its jurisdiction. Another example of a storyline deployed within this discourse coalition are the discursive claims put forward in the submission of the Anglican Diocese of Christchurch. The Church invoked a storyline that referenced Christian traditions in fighting slavery, with a specific invocation of the work of William Wilberforce. Beyond this the Church clearly described its view that FCV conditions constituted a human rights violation. The submissions in this cluster are also notable for their attempt to contest and problematise the underpinning economic logic on the Ministerial Inquiry's terms of reference. They are key submissions as they put forward views that emphasise the experiences of guestworkers as well as constructing through discourse an alternative, guestworker focus, purpose for Ministerial Inquiry.

¹⁹ Submission of the Indonesian Human Rights Committee to the Ministerial Inquiry Panel.

Defence of the Status Quo Discourse

Introduction

This discourse coalition can be defined by its reactionary quality to the prospect of reform within the New Zealand fishing industry. The broad framing put forward by storylines employed by actors in this discourse coalition is that no widespread exploitation of FCV guestworkers is or has occurred in the New Zealand fishing industry and that any proposed changes to the regulatory regime could a) undermine the profitability of the industry and b) result in a significant reduction in investment and employment for ancillary service providers. The assertion of this storyline reflects a discursive contestation around the very existence of the Ministerial Inquiry and implies a rejection and a discrediting of storylines that emphasise the experiences of guestworkers. A prominent view running through the submissions clustered within this discourse coalition is a scepticism of guestworker experiences combined with a view of any inquiry and proposed reform constituting government meddling or the exercise of power by an overzealous bureaucracy. Legitimacy for this perspective was produced through the reproduction of other powerful discourses around public policy making in New Zealand. An essential element of this was the view that the fishing industry in New Zealand was already regulated to a considerable degree and that responsibility for any (potential) abuses therefore lies with government agencies failing to uphold their own rules. A further important theme was the deployment of storylines relating to the status of quota as assets gained through Treaty of Waitangi settlement processes. Actors framed any possible changes that would affect the cost structure of their business model as constituting a breach of the Treaty of Waitangi by abrogating the ability of iwi to ‘realise’ the value of settlement assets. The reproduction of Treaty settlement discourse into this debate constitutes the deployment of a powerful and influential storyline in the context of public policy making in New Zealand given the central place of the Treaty of Waitangi in New Zealand’s contemporary social life, and the high profile transfer of fisheries assets that occurred in the 1990s.

FCV users and settlement quota holder employing justificatory storylines

Characteristic of this cluster was the deployment of justificatory discourses relating to the use and operation of FCVs by commercial organisations actively using FCVs in New Zealand waters. These situated responsibility through a storyline which implicates New Zealand government agencies and their record of oversight of the industry. Within this they challenge government agencies to properly enforce existing rules rather than have their powers expanded through legislative change. These actors also deploy economic arguments about ‘risk’ and profitability with respect to the viability of the industry should FCV use be restricted. A number of actors also deployed discourse around the value of Treaty Settlement Quota being undermined by any potential public policy changes and how this would jeopardise Iwi commercial operations. Little commentary was offered with respect to guestworkers aside from brief comments that media reports were over exaggerated.

Storylines and shared practice of ancillary suppliers of fishing industry related and goods/services

Actors within this discourse coalition shared similar characteristics with respect to their relationship with the Foreign Fishing Vessel Industry. Each actor identified as part of this discourse coalition was an ancillary supplier of products and or services to the Foreign Charter Vessel industry. Common to the written submissions provided by actors in this cluster to the Ministerial Inquiry was the relating of each particular firm’s commercial relationships with FCV operators. An important element within these submissions was the use of careful description to describe the quantum of their commercial engagement with the FCV industry and how such engagement produced flow on effects – namely employment - within the communities in which they are situated. The disclosure of specific statistics relevant to their commercial activities was a

common feature within these submissions. The use of commercial statistics in the context of a submission to a public inquiry can be understood as constituting a particular political tool in line with Stone's understanding of the political value of numbers:

“Counting, because it creates groups, is an essential instrument of political mobilisation. To identify shared characteristics or problems among individuals is to draw people into a group, no matter how artificial that group may be at first” (Stone, 1988, p. 137).

The quantification of the potential economic losses faced by ancillary suppliers was deployed specifically in submissions to the Ministerial Inquiry Panel and can be understood as constituting a strategy for raising their interests to the attention of the Panel. Within this approach the number of staff employed by a firm and the total dollar revenue derived from FCV related work was highlighted by submitters. Submissions of this nature varied in size, however the emphasis remained the same – the economic value of FCVs to firms was highlighted and a storyline of risk was projected with respect to the possibility of policy changes having flow on effects on local and regional employment. Two examples that encompass the main thrust of submissions grouped within this discourse coalition is encapsulated by the submission put forward by Lyttelton Engineering, a Canterbury based provider of ancillary services to FCVs, and Charta Packaging a Lower Hutt based packaging firm:

Excerpt: Lyttelton Engineering

Lyttelton Engineering has maintained close relationships with joint venture foreign charter companies for over 30 years including Koreans, Russians, and Norwegians. At present the company does dry docking and repair work for all of the Korean and Russian vessels on the New Zealand coast. At times we have project work aboard these vessel with up to 100 people both directly and indirectly working on one vessel with an important flow-on effect for Lyttelton and greater Christchurch – employment, from specialist subcontractors including painters, electricians, shipwrights and hydraulic technicians to providers of accommodation, transport companies, providers and suppliers for the vessel. We value the relationship we have built up over the years with these joint venture companies and all of our dealings with foreign fishing

representatives have been very fair and trouble free. Lyttelton Engineering therefore strongly supports the continuation of joint venture foreign fishing in New Zealand²⁰.

Excerpt: Charta Packaging

Charta Packaging employs 160 staff based at our Lower Hutt operations. The volume of product supplied to Sanford's constitutes 4.5% of our revenue with the joint venture component making up 40% of this. Economically to Charta and our providers this is critical mass which if put at risk or was not to exist at all would leave us in a position of not being sustainable at our current operation levels and would need to seriously look at our operation overheads based around employment levels. As suggested Charta is a significant manufacturing employer in the Hutt Valley and we exist in a national market which is very competitive and excess market volume simply doesn't exist. Losing such volume would also have an effect of purchasing power of raw materials and potentially create a situation where Charta packaging becomes less competitive in our market place. Outside of the effects on Charta Packaging the flow on would also be felt in areas such as container volume through the Wellington Port which is the incoming raw materials we import, also an effect would be on our freight providers who rely on this volume to get their trucks south in order to fulfil the north bound requirements they have²¹.

These exemplars highlight the key discursive claims of submitters clustered within this discourse coalition. Claims within this cluster relate the commercial relationships of firms servicing the FCV industry as an item of first order importance for the Ministerial Inquiry Panel to take into account in their review of the status quo. As described in chapter four managing 'economic risk' is a key organising logic that underpins public policy making in contemporary New Zealand. Appealing to economic precarity and fragility in the context of potential public policy changes can be understood as reproducing a discourse of economic risk that is regarded as important. The submissions of these actors are organised to constitute a storyline conveying tangible economic risk involved in potential public policy shifts. Economic concerns are at the forefront of these submissions while concerns relating to the welfare of FCV crew are largely absent. Overall submissions in this cluster did not make an extensive

²⁰ Submission of Lyttelton Engineering to the Ministerial Inquiry Panel

²¹ Submission of Charta Packaging to the Ministerial Inquiry Panel.

contribution to the construction of FCV worker subjectivity or the conceptualisation of what an appropriate public policy response from the Ministerial Inquiry might be. Submissions within this discursive coalition category tended towards a circumspect view of labour issues or human rights. No critical framing of the use of FCVs or the experiences of guestworkers was put forward. One submitter provided the following comment on FCV conditions:

“There is no doubt that by New Zealand standards the working conditions on-board these vessels are hard, with cramped accommodation and at times working long hours in rough sea conditions. However this can only be expected when you sign on to work on a charter fishing vessel²²”

This statement reflects an uncritical analysis of working condition differences between New Zealanders employed within the industry and foreign workers. ‘New Zealand standards’ are held to be natural and self-explanatorily different from those experienced by non-New Zealand workers. No argument is put forward as to why conditions are comparatively ‘hard’. Indeed this difference is framed as something to ‘be expected’; foreign workers, by virtue of their outsider status, should not expect to receive parity with New Zealand crews.

New Zealandisation Advocacy Discourse

Introduction

This discourse coalition represents a complex perspective about the Ministerial Inquiry, its role and purpose, the position of FCV workers, and what public policy reforms should be brought about. The underlying motives associated with this discourse coalition and the storylines deployed by Actors in their submissions to the Ministerial Inquiry Panel are explicitly concerned with the existing structure of the fishing industry and a dissatisfaction with the historical development of a role in the industry for FCVs. Actors deploying storylines in this coalition were dissatisfied with the presence of FCVs yet the specific causes of dissatisfaction can be understood as hierarchical in their discursive framing

²² Submission of South Port New Zealand Limited to the Ministerial Inquiry Panel.

on the issue. A first order concern within this coalition for actors was the theme that FCVs undermined the employment prospects of New Zealand citizens in the industry and/or undermined the growth of domestic industry capability and capacity by forcing New Zealand flagged vessels to compete with cheaper FCVs. While storylines frequently mentioned concerns with crew welfare and the unacceptability of abuse and exploitation in the industry these concerns were second order or subsidiary to the primary political economy thrust of the submissions. The discourses present in this coalition most certainly predate the development of the Ministerial Inquiry process. As demonstrated in chapter three a domestic politics relating to questions of ownership, employment, and future stewardship of the fishing industry was alive and well amongst trade unions, fishing companies, quota holders, and politicians. The major tranches of this discourse coalition have therefore been reproduced within submissions to the Ministerial Inquiry's public consultation process.

New Zealandisation advocacy discourse examples

Submissions within this cluster presented an array of contributions actors such as small fishing operations, trade union organisations, and large commercial market leaders. . Important, however, was their common standpoint on the current structure and dynamics of the New Zealand fishing industry and their views with respect to the desirability of a 'New Zealandisation' reform programme to reorganise the industry. The consensus of these submitters around the benefits of such reform is the defining characteristic of this cluster. The 'New Zealandisation' agenda can be understood as broadly supporting adjusting government policy to facilitate greater employment of New Zealanders within both onshore and offshore fishing and related activities as well as supporting capital investment in the development of a New Zealand owned fishing fleet and greater shares of ownership of fishing companies remaining in the hands of New Zealand investors. The 'New Zealandisation' agenda is in line with the broader social and national development blueprint articulated by organisations such as the New Zealand Council of Trade Unions, which emphasises a view that central to economic and social prosperity

in New Zealand is a strong and directed investment role for the state as set out in recent economic policy reports (New Zealand Council of Trade Unions, 2010). A scepticism towards offshore firms controlling New Zealand industry and a view of the state as a key agent in bringing about social and economic progress is not a new phenomenon - it is a long held perspective, particularly with the New Zealand trade union movement popularised in part through the contributions trade union economists such as Bill Sutch (1972) and the economic development programmes of New Zealand's 20th century Labour governments. As described in chapter three, some trade unions have been particularly active in their calls for New Zealandisation reforms. Trade unions such as the Service and Food Workers Union have had to become entrepreneurial in order to recruit and retain members and to be major actors in New Zealand's industrial relations environment. A shift away from compulsory unionism has seen unions like the Service and Food Workers Union adopt an 'organising model' approach to organising their members and advancing their agenda. According to Barry & Walsh :

Adoption of the "organizing model" required the union leadership to thoroughly commit to change to accept activism, the importance of membership education, and the vital role of members in recruitment (Oxenbridge 1997). Under this model, the union would become a "community of workers" with recruiting strategies seeking to "match" organizers with communities of potential members. For example, "organizing" unions began deploying indigenous Māori or Pacific Island organizers to recruit Māori or Pacific Island workers (Barry & Walsh, 2007).

The high profile contribution of unions in the FCV debate, and in particular contributions from Māori members through union representative structures is a reflection of the number of union members working in the industry and the emphasis placed by the union of organising workers in this industry. Some actors deployed both a humanitarian perspective and a New Zealandisation perspective, views that can be understood as problematic when put together, or perhaps even contradictory. Yet Hajer states:

"...the argumentative perspective implies that it would be wrong to think that these storylines were glued to specific actors. They are better seen as inherent in certain social practices in which specific social relations are defined. This is a rather important claim that allows for the understanding of the initially rather puzzling fact that actors are often found expressing contradictory statements. Depending on the practice or argumentative situation in which they participate, actors can be found drawing on elements from [multiple] storylines" (Hajer, 1997, p. 123)

Government agency contributions

Technocratic contributions to public debate cannot be understood as reflections of scientific or objective knowledge. Discourses produced by actors such as government agencies are the result of deliberation between officials within a policy habitus. In the context of this inquiry the contributions must be viewed within the same ontological frame as the contributions of other actors.

Policy advice is a human activity, produced in a social context, not an objective telling of truth by ‘experts’. Reflecting in their work on policymaking discourse:

We have in mind social entities made up of people who are in one way or another engaged with their environment, both immediate and proximal. Their engagement is both fuelled and expressed in their passions and their feelings about certain situations. They harbour sympathies and antipathies towards the people that make up their world. They are strongly committed to some subjects and indifferent and apathetic towards others. They see the plans and actions of their government or other actors as furthering or threatening their interests – and, in a more tacit and implicit manner, as strengthening or confounding their collective identity. Above all, they perceive and organise their world through more or less articulated value positions on a range of subjects (Hajer & Wagenaar, 2003, p. 21).

Within this cluster the Department of Labour’s submission must stand out for exegesis as the submission discusses in detail the context of FCV guestworkers and in doing so deploys through discourse a particular subjectivity for these workers reinforcing their status as migrants and incorporating elements of New Zealandisation discourse in their consideration of the structure of the fishing industry labour market. The contributions, then, of agencies such as the Department of Labour are therefore of considerable importance – not for any supposed possession or access to technical knowledge or ‘higher truth’ but because the impact of their framing of issues and of subjectivities is likely to be relied upon by other actors involved in a high profile public debate. The underpinning logic of their responses are likely to be reproduced owing to their status as producers of powerful discursive frames for ordering society and making sense of the social world.

FCV crew, discourse, and barriers to discourse

Noticeably absent in the submission process are direct contributions from FCV guestworkers themselves. While the Report of the Ministerial Inquiry does make reference to one meeting between Panel members and some FCV crew there were no written submissions submitted by guestworkers nor did any present or former guestworker give a scheduled oral submission to the Inquiry Panel.²³ Guestworkers did not get a chance to put forward their experiences. Language and distance no doubt served as obvious and possibly insurmountable barriers to participation. In addition the terms of reference of the Ministerial Inquiry did not request that the Inquiry Panel seek out guestworker contributions. While advocacy on their behalf was put forward by other groups, meaningful opportunities for guestworkers to participate in the Ministerial Inquiry process do not appear to have been considered by the Government. Understanding the implications of the lack of direct contribution from guestworkers to the discursive politics of the Ministerial Inquiry can be considered in line with van Dijk's 'access to discourse' an ability shaped by power relations. According to van Dijk:

An analysis of the various modes of discourse access reveals a rather surprising parallelism between social power and discourse access: the more discourse genres, contexts, participants, audience, scope and text characteristics they (may) actively control or influence, the more powerful social groups, institutions or elites are. Indeed, for each group, position or institution, we may spell out a 'discourse access profile' (van Dijk, 1993, p. 257)

Unfortunately the 'discourse access profile' for guestworkers in the Ministerial Inquiry Process was negligible.

²³ According to the scheduling document entitled 'Public Hearings of the Ministerial Inquiry into Foreign Charter Vessels' (19 October 2011) released by the Ministry of Primary Industries to the author under the Official Information Act 1982.

Chapter Five

Introduction

In this chapter the 'Report of the Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels' is critically examined in order to describe and explain the ways in which guestworker allegations were framed in this key text by the Inquiry Panel. Emphasis in this chapter is placed on the analysis of the text of the final report's Executive Summary²⁴ and also on the Inquiry Panel's recommendations²⁵. As an overarching framing text the Executive Summary is a useful discursive reference point for this chapter as it holistically describes the Inquiry Panel's view as to the purpose of the Inquiry, their conception of the key issues at play, and their rationale for their adoption of particular policy recommendations contained to government. In analysing the Executive Summary particular attention is paid to the incorporation by the Inquiry Panel in their report of particular storylines put forward by the discourse coalitions identified in chapter four. In line with Hajer's methodological perspective tracing the incorporation of storylines (through identification of 'discourse structuration' and 'discourse institutionalisation') allows us to comprehend which particular knowledge and construction of key issues has counted as influential in the context of this contentious public debate. Alongside this identification process attention is paid to the question of social justice for guestworkers and the extent to which the report considers the phenomenological perspectives of guestworkers and their claims of exploitation.

²⁴ The Executive Summary excerpt is attached to the thesis as Appendix Three for reference.

²⁵ The Ministerial Inquiry's recommendations have been included as Appendix Four for reference.

Analysing the Executive Summary

The Executive Summary of the Report of the Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels consists of 14 paragraphs, each addressing a particular aspect of the Inquiry Panel's final deliberations. The sections below analyse the storylines present within the Executive Summary and consider their implications.

Introduction of key issues

The Executive Summary commences with a statement acknowledging the controversial history of the use of FCVs by acknowledging that “the debate over the use of foreign flagged fishing vessels in New Zealand’s EEZ has been running ever since foreign vessels were licensed to operate in the EEZ” and that their use was initially meant as a stop gap solution until such a time as New Zealand’s domestic fishing industry developed (Paragraph 11). The Summary noted that FCVs now catch in excess of half the total catch volume for the country (Paragraph 11). The succeeding section moves on from the acknowledgement of FCVs controversial use by making an assessment of their ‘benefits’. This assessment relates to the contribution FCVs have made to New Zealand in economic terms. Specifically referenced are the ‘significant economic benefits’ that have been provided to New Zealand fishing companies, the ‘additional operational flexibility to industry’ their use provides, and the acknowledgement of a storyline that argues that “some of the resources of our EEZ would have remained untapped if it were not for the specialist equipment and lower operational costs of FCVs” (Paragraph 12). Reflecting the storylines put forward by ancillary providers/suppliers to the fishing industry (part of the ‘Defence of the Status Quo’ discourse coalition identified in chapter four) the Summary explicitly acknowledges that “stevedoring, engineering and other firms in port towns derive considerable business from FCVs” (Paragraph 12). Benefits gained by Iwi organisations are also referenced with the Summary stating that: “many quota owners, including iwi, are able to collectivise and sell their Annual Catch Entitlement through companies using FCVs” (Paragraph

12). This constitutes a further acknowledgement of the storylines put forward by Iwi organisations in their defence of the status quo regime. Guestworkers in this section are framed as actual beneficiaries of the use of FCVs in the industry with the Summary claiming that “FCVs provide important work opportunities for crews from developing countries such as Indonesia and the Philippines” (Paragraph 12) further reflecting an incorporation of storylines defending the use of FCVs into the Inquiry Panel’s view.

Assessing the use and operation of FCVs

The next section of the Summary references counter arguments deployed by other discourse coalitions who contributed to the Inquiry’s public consultation process. According to the Summary:

The use of FCVs does, however, have its drawbacks. It is argued by some that FCVs are operating at an unfair competitive advantage over domestic vessels. It is further claimed that the use of FCVs has undermined investment in the domestic fleet, artificially inflated quota values and reduced employment opportunities for New Zealanders. There have been reports of serious breaches of employment rules and workplace standards as well as non-compliance with New Zealand’s safety standards and fisheries legislation (Paragraph 13).

Within this statement oppositional storylines put forward by discourse coalitions advocating New Zealandisation and those expressing humanitarian concern for guestworkers are clearly referenced, however it is again economic questions that are placed first in the paragraph’s hierarchy of issues. Questions of ‘unfair competitive advantage’ relate to the storylines put forward by large industry players such as Talley’s who do not use FCVs as part of their operations. Allegations of guestworker exploitation, abuse, and concerns around human trafficking practices are not referenced, instead a more sanguine construction emphasising ‘breaches of employment rules’ and ‘non-compliance’ with safety standards is offered.

A case for change

Through the Summary the Inquiry Panel signalled that it did not believe the status quo could continue to hold and offered a series of justificatory storylines by way of explanation. According to the Summary:

The way in which some foreign flagged FCVs have been operating has, in the Panel's view, the potential to damage New Zealand's international standing and harm the fishing industry's reputation. Criticisms have been directed not just at the foreign owners and operators of the vessels in question but also at the New Zealand charter parties concerned for failing to ensure that their obligations under the Code of Practice on Foreign Fishing Crew are met. Criticisms have also been made of weaknesses in the government's monitoring and enforcement regime (Paragraph 14)

In line with the underpinning economic logic that shaped the Inquiry's terms of reference we see in this section of the Summary a statement the basis for a public policy shift comes from a fear of economic risk and the implications of New Zealand's reputation, and therefore potentially global market access for goods, to be tarnished. References are also made to the role of specific actors may have played in the exploitation of guestworkers (whether actively or tacitly), however the criticism is directed towards failures to uphold the Code of Practice. No mention of any violation of international and domestic law with respect to the treatment of guestworkers was put forward.

Recommendations

Through the Executive Summary of the Report the Inquiry Panel described the public policy recommendations it was putting forward to the Government. These included: the prioritising of collaboration and information sharing between key state agencies in the monitoring and enforcement of FCV rules (Paragraph 16, Paragraph 17); recommending amendments to legislation to extend the application of the Health and Safety in Employment Act 1992 through the Fisheries Act 1996 to cover FCVs (Paragraph 18); recommending the Government ratify two International Maritime Organisation conventions (the Torremolinos Protocol and the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel) and to consider ratifying the ILO Work in Fishing Convention (Paragraph 19). The Inquiry Panel's fifth set of public policy recommendations represented a bolder move than the suggestions referenced above. According to the Summary:

We have recommended that legislation be amended to require all FCVs to be placed on a demise²⁶ charter and their crew to be employed under a New Zealand employment agreement. This would establish the accountability of New Zealand charter parties for the treatment of crew. Such a significant policy change may well have an impact on the economics of fishing, including the value of quota and Annual Catchment Entitlement. For these reasons, we have recommended that the Government allow a transition period to enable the fishing industry to adapt to these changes. This will also allow time to enact the necessary legislative amendments. The Panel is not recommending that all FCVs be reflagged to New Zealand. We, however, do recommend that a mechanism enabling the government to require FCVs to reflag to New Zealand be included in the legislative changes proposed elsewhere in this Report, should this become necessary at some point in the future to protect New Zealand's reputation or trade interests. We also recommend that consideration be given to how the provisions of the Crimes Act 1961 might be applied to foreign flagged charter vessels in New Zealand's EEZ. (Paragraphs 20-22).

The recommendation to shift to a 'demise' charter model in which a New Zealand charter party is directly responsible for employment matters represents recognition of the role and behaviour of offshore manning agents in the recruitment of guestworkers. A requirement for New Zealand charter parties to oversee employment matters does represent a positive move as oversight and access to legal remedy is theoretically enhanced in such an arrangement. Of significant concern in this proposal, however, is the Inquiry's recommendation that an exemption ('transition period') to apply for two years following the Government's adoption of the broader proposal. Such an exemption represents an example of 'discourse institutionalisation' with respect to arguments put up by industry groups that a change such as this would have a significant effect on their business.

Conclusion

While many of the public policy recommendations put forward by the Inquiry Panel are positive developments likely to make some difference on the future experiences guestworkers may have on FCVs this thesis has as its focus FCV guestworkers who have already experienced exploitation. None of the recommendations put forward by the Ministerial Inquiry made any specific reference to their experiences or proposed any investigation into the extent of exploitation and abuse in the industry. While key discursive claims of each

²⁶ Under a demise charter (also known as a "bareboat charter"), only the vessel is chartered. Crew must be hired by the charter party.

‘discourse coalition’ referenced in chapter four can be recognised in the Summary text the public policy recommendations put forward by the Inquiry Panel do not appear to be shaped by the discursive claims of those seeking recognition of the experiences of guestworkers or those wishing to see a significant shift towards New Zealandisation in the industry. Rather the recommendations are based upon a desire to ensure overseas markets remain open to fishing industry products and that New Zealand’s ‘reputation’ can be effectively maintained rather than seeking social justice for guestworkers or seeing greater control and employment within the industry put in the hands of New Zealanders. A desire to insulate the operations of particular firms to ensure something of a smooth transition to a new operative environment further reflects the overarching economic organising logic that underpinned the instigation and work of the Ministerial Inquiry.

Remarks in conclusion

This thesis emerged out of a desire to understand why a group of exploited guestworkers have struggled to be heard and have their experiences recognised in the context of a high profile Ministerial Inquiry into the operation of the industry that allowed their experiences to occur. The application of discourse analysis methodology in this thesis has allowed for an analysis of the politics of knowledge involved in the organisation of the Ministerial Inquiry which has allowed analysis beyond a *sancta simplicitas* acceptance that because the Inquiry's recommendations have been taken up by the Government that the issues now lie. This is not the case. There has been an on-going systematic system of exploitation existing within the industry for many years and it requires a full political acknowledgement and response from the New Zealand Government and meaningful engagement with guestworkers. This thesis has argued that the Ministerial Inquiry did not constitute such a process. On the contrary, it is argued that an economic agenda underpinned the Inquiry's terms of reference not a concern for the experiences of guestworkers. Market access and protecting New Zealand's 'reputation' were first order priorities with references to guestworkers absent outside of vague references to 'equitable labour standards' or 'compliance with employment obligations'. Guestworkers were rendered invisible through the use of such oblique terminology. This invisibility carried through to the public consultation process where barriers to discursive participation prevented a direct contribution to the Inquiry Panel. It is extremely disappointing that an inquiry called to order after revelations of abuse failed to incorporate the phenomenological perspectives of the group the inquiry was ostensibly created to protect. While many contributors to the Inquiry consistently stated that the welfare of guestworkers was of paramount importance it was economic perspectives that shaped the conduct of the inquiry. The Ministerial Inquiry can therefore be considered a *trompe l'oeil* in that its instigation signified hope but it has not delivered in reality.

Postscript

At the time of writing the recommendations of the Inquiry have still yet to be implemented some two years after their release.

Legislation before Parliament to enact the Inquiry's recommendations is unlikely to pass before the 2014 General Election.

Implement the FCVs crewed by guest workers continue to operate in New Zealand waters.

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Appendix One - Materials analysed in Chapter Three

<ul style="list-style-type: none">• Terms of Reference of the Ministerial Inquiry into use and operation of Foreign Charter Vessels (September 2011)
<ul style="list-style-type: none">• Background Paper on the Use of Foreign Charter Vessels (September 2011)
<ul style="list-style-type: none">• Pre-Cabinet summary document entitled: Aide Memoire: Foreign Charter Vessel Inquiry: Proposed Terms of Reference, Candidates and Governance Structures (Department of Labour, July 2011). Released to the author under the Official Information Act 1982.
<ul style="list-style-type: none">• Draft Cabinet paper for the Ministerial Inquiry into the use and operation of foreign charter vessels (Ministry of Agriculture and Forestry²⁷, July 2011). Released to the author under the Official Information Act 1982.
<ul style="list-style-type: none">• Post-Cabinet summary document entitled: Aide Memoire: Ministerial Inquiry Into Foreign Fishing Vessels: Background For Cabinet Appointments and Honours Committee (Department of Labour, August 2011). Released to the author under the Official Information Act 1982.

Appendix Two – List of submitters to the Ministerial Inquiry

Indonesian Human Rights Committee	Parr & Co Ltd	Maritime New Zealand Union
Lyttleton Engineering	Lyttleton Port of Christchurch	Sanford
RL Clough	Christine Hutana	Northland Deepwater Ltd
Arendale Ltd	Victor Norman	Te Ohu Kaimoana
Hilton Haulage Ltd	New Zealand Council of Trade Unions (NZCTU)	Sealord
Anglican Church	NZCTU – Runanga	New Zealand Federation of Commercial Fisherman
Alec Woods	SFWU – Runanga	Timaru Squid Company Ltd
New Zealand Fishing Industry Guild	Rahui Katene – Māori Party	New Zealand Japan Tuna Company
Carter Holt Harvey	Port Otago Ltd	Aurora Fisheries Ltd
South Port New Zealand	Southern Storm Fishing	Maritime New Zealand
CoolPak Coolstores Ltd	Sullivan & Spillane	Human Rights Commission
Auckland international Seafarers Centre Inc	Service and Food Workers Union (SFWU)	Aotearoa Fisheries Ltd
Dawson and Associates	Charta Packaging	Forest and Bird
Department of Labour	JX2 Contracting Ltd	Ministry of Agriculture and Forestry
SGS New Zealand Ltd	Independent Fisheries Ltd	Albany Baptist Church
FAS Ltd	New Zealand Green Party Members of Parliament	Talley's
ATEC Ltd	New Zealand Seafood Industry Council Ltd	Iwi Collective Partnership
Keith Ingram	Stark Bros Ltd	Kahungunu Asset Holding Company
Anglican Diocese of Christchurch	Safe Sea Systems	
	Fisheries Consultancy Ltd	

Appendix Three - Executive Summary – Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels

11 The debate over the use of foreign flagged fishing vessels in New Zealand's EEZ has been running ever since foreign vessels were licensed to operate in the EEZ. Initially, this was perceived as a transitional measure while New Zealand developed its own capacity to fish the EEZ. Today, the 27 foreign vessels chartered by New Zealand companies are a significant part of the EEZ fishing fleet,³ accounting for over half of the EEZ fish catch volume landed in New Zealand.

12 FCVs have brought significant economic benefits to a number of New Zealand fishing companies. FCVs give additional operational flexibility to industry and help to develop wider business links with foreign owners and their companies. It is argued that some of the resources of our EEZ would have remained untapped if it were not for the specialist equipment and lower operational costs of FCVs. A number of New Zealand companies have benefited from preferential access to flag State markets. Stevedoring, engineering and other firms in port towns derive considerable business from FCVs. Many quota owners, including iwi, are able to collectivise and sell their Annual Catch Entitlement through companies using FCVs. The FCVs provide important work opportunities for crews from developing countries such as Indonesia and the Philippines.

13 The use of FCVs does, however, have its drawbacks. It is argued by some that FCVs are operating at an unfair competitive advantage over domestic vessels. It is further claimed that the use of FCVs has undermined investment in the domestic fleet, artificially inflated quota values and reduced employment opportunities for New Zealanders. There have been reports of serious breaches of employment rules and workplace standards as well as non-compliance with New Zealand's safety standards and fisheries legislation.

14 The way in which some foreign flagged FCVs have been operating has, in the Panel's view, the potential to damage New Zealand's international standing and harm the fishing industry's reputation. Criticisms have been directed not just at the foreign owners and operators of the vessels in question but also at the New Zealand charter parties concerned for failing to ensure that their obligations under the Code of Practice on Foreign Fishing Crew are met. Criticisms have also been made of weaknesses in the government's monitoring and enforcement regime.

15 The Panel has concluded that urgent corrective action is required in the way New Zealand regulates the activities of FCVs in its EEZ. The package of recommendations outlined below is intended to provide government agencies and the industry with the means to ensure that in future all vessels operating in the EEZ adhere to New Zealand standards and rules.

16 The first set of recommendations deals with changes that can be implemented within the existing legislative framework. These relate mainly to practical improvements in the monitoring and enforcement of the rules established for FCVs. They cover actions to be taken by Ministry of Agriculture and Forestry, Maritime New Zealand and the Department of Labour. It is important that the rules are properly enforced and that decisive action is taken against owners and operators who refuse to adhere to them. These changes can be implemented relatively quickly and, in many cases, are already underway.

17 The second set of recommendations involves improvements in the sharing of information, co-ordination of decision making and co-operation in enforcement among key government agencies. The Panel has concluded that the present arrangements are disjointed and that a stronger collaborative focus is required on the activities of FCVs. We are encouraged that, since the commencement of the Inquiry, government agencies have taken a number of steps to strengthen their co-ordination mechanisms and operate in a more cohesive manner.

18 The third set of recommendations relates to amendments to the existing legislation and Code of Practice covering FCVs. The recommended amendments will remove some of the current impediments to the enforcement of New Zealand's rules and enable agencies to take decisive action when rules are breached. A key recommendation here is extending the application of the Health and Safety in Employment Act 1992 through the Fisheries Act 1996 to provide protection to crew on board FCVs.

19 The fourth set of recommendations is that New Zealand should announce its intention, subject to a national interest analysis, to ratify two key International Maritime Organisation conventions (Torremolinos Protocol and SCTW-F). It is also recommended that the merits of ratifying the International Labour Organisation (C188 – Work in Fishing) convention be considered. These conventions relate to safety, health and employment conditions for the crew of fishing vessels. The conventions will not only assist government agencies to apply international standards to FCVs in New Zealand waters, but send a clear signal to the international community as to the Government's determination to resolve the current issues.

20 The fifth set of recommendations involves a major policy change. We have recommended that legislation be amended to require all FCVs to be placed on a demise charter and their crew to be employed under a New Zealand employment agreement. This would establish the accountability of New Zealand charter parties for the treatment of crew.

21 Such a significant policy change may well have an impact on the economics of fishing, including the value of quota and Annual Catchment Entitlement. For these reasons, we have recommended that the Government allow a transition period to enable the fishing industry to adapt to these changes. This will also allow time to enact the necessary legislative amendments.

22 The Panel is not recommending that all FCVs be reflagged to New Zealand. We, however, do recommend that a mechanism enabling the government to require FCVs to reflag to New Zealand be included in the legislative changes proposed elsewhere in this Report, should this become necessary at some point in the future to protect New Zealand's reputation or trade interests. We also recommend that consideration be given to how the provisions of the Crimes Act 1961 might be applied to foreign flagged charter vessels in New Zealand's EEZ.

23 Finally, the Panel outlines its views on the implementation of its recommendations. We consider it important that the fishing industry, including worker representation, be involved in the development of detailed implementation plans. It is also recommended that the government, industry and the workforce work together to establish a new strategic plan for New Zealand's fishing industry in order to provide a clear and shared sense of direction for the future.

24 Our recommendations will, if adopted, have wide-ranging and significant implications for the way New Zealand's fishing industry is run. We have not reached these decisions lightly. Our conclusion follows extensive discussions and debate with major players in the industry as well as a wide range of interested parties and officials.

25 We submit these recommendations to Ministers for their consideration.

3 For the purposes of this Report, the EEZ fishing fleet is defined as all fishing vessels greater than 30 metres in registered

Appendix Four - List of Recommendations - Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels

Practical improvements by agencies

Recommendation 1

That the Ministry of Agriculture and Forestry continues its efforts to strengthen monitoring and enforcement of FCVs, including, but not restricted to, the following areas: placing an observer on all FCVs fishing in the EEZ; streamlining and improving observer reporting processes on FCVs, including making greater use of technology; ensuring that any outsourcing arrangements for its observer programme avoid possible conflicts of interest on the part of contracted firms and that the Ministry of Agriculture and Forestry has full control of the programme; ensuring the collection and availability of compliance data broken down by vessel, operator and charter party; considering additional ways of

securing enforceable guarantees for any deemed value debts incurred; and considering non-fisheries offences when making FCV registration decisions.

Recommendation 2

That Maritime New Zealand maintains its stronger focus on the enforcement of FCV compliance with New Zealand's maritime safety standards, including, but not restricted to, the following areas: maintaining the present higher standards of vessel safety inspections of FCVs; introducing the Maritime Operator Safety System vessel safety system to enable Maritime New Zealand to take more direct responsibility for safety audits of FCVs, clearly identifying a New Zealand party that can be held accountable for any breaches and removing the two year transitional provision for FCVs arriving in New Zealand waters; and taking steps to facilitate the recognition of foreign qualifications for the crews of FCVs.

Recommendation 3

That the Department of Labour continues its efforts to strengthen its monitoring and enforcement arrangements for FCVs, including, but not restricted to, the following areas: rapid implementation of the improved audit system for FCVs; tightening up the Code of Practice on Foreign Fishing Crew, for example by placing the onus of proof on the New Zealand charter party and requiring FCV crew wages to be paid into a New Zealand bank account; increasing the frequency and thoroughness of inspections; introducing a 'fit and proper person' requirement into the Approval In Principle process; replacing the Deepsea Fishing Crew Employment Register with the standard immigration labour market test; proactively informing FCV crews of their rights and FCV operators of their responsibilities; and reducing timeframes for FCV operators to provide information and remedy problems.

Closer interagency co-operation

Recommendation 4

That an interagency Steering Group on FCVs be established to co-ordinate the evaluation of information relating to the operation of FCVs before agency decision making, and that this Steering Group be chaired by a senior Ministry of Agriculture and Forestry official.

Recommendation 5

That a pilot programme of compliance monitoring be developed across the Department of Labour, Ministry of Agriculture and Forestry and Maritime New Zealand. Personnel would be trained to monitor compliance on high-risk FCVs in such areas as fisheries rules, vessel safety and labour standards, food safety and seabird and bycatch prevention measures. The costs of this programme should be recovered from vessel operators whose compliance record and risk profile is such that compliance monitoring is required on their vessel(s).

Recommendation 6

That the Department of Labour, Ministry of Agriculture and Forestry and Maritime New Zealand continue their work on the option of co-ordinated FCV inspections both in-port and at-sea along the lines described in this Report.

Legislative amendments

Recommendation 7

That the following amendments be made to the Fisheries Act 1996: include an explicit power to suspend or revoke the registration of an FCV at any stage when information is received that, in the Director General's opinion, warrants reconsideration of the initial decision to consent to that vessel's registration; include a provision enabling the Director General to take vessel safety considerations into account in determining whether to grant consent to register an FCV; include provisions increasing the visibility and

accountability of the New Zealand-based authorised agent of the FCV owner; review the defence provisions to clarify the obligations of the parties involved in an FCV fishing operation; enable either the authorised agent of the FCV owner or the New Zealand permit holder to be served with any documents relating to an FCV's operations; and include in either the Fisheries (Commercial Fishing) Regulations 2001 or the Fisheries Act 1996 the key conditions in the Director-General's consent to strengthen them.

Recommendation 8

That application of the Health and Safety in Employment Act 1992 be extended through Section 103 of the Fisheries Act 1996 to the crew of FCVs (in the same way as the Wages Protection Act 1983 and Minimum Wage Act 1983 are currently applied to FCVs).

Recommendation 9

That any consequential amendments required to the Health and Safety in Employment Act 1992 and Maritime Transport Act 1994 be made to reflect the incorporation of the Health and Safety in Employment Act 1992 in the Fisheries Act 1996.

Recommendation 10

That the Maritime Rules be revised to ensure that they apply to FCVs as well as New Zealand ships.

International conventions

Recommendation 11

That the Government announces its intention to conduct a national interest analysis of the Torremolinos Protocol and International Maritime Organisation Convention STCW-F with a view to ratifying these conventions at the earliest possible date; and that an assessment also be made of the merits of ratifying International Labour Organisation Convention C188 – Work in Fishing.

Policy changes

Recommendation 12

That: the Fisheries Act 1996 be amended to restrict registration to vessels on demise charter; the New Zealand charter party must be the employer of FCV crew under a New Zealand employment agreement; the Code of Practice be revised to reflect these changes; and there be a transition period of either two years from the date of the government's decision, or until the amended legislation is passed (whichever is the later), to allow industry to adapt to this policy change.

Recommendation 13

That the Fisheries Act 1996 be amended to include an empowering provision for the reflagging to New Zealand of some or all FCVs operating in the EEZ should this be deemed necessary in the national interest.

Recommendation 14

That consideration be given to how the provisions of the Crimes Act 1961 might be applied to the activities of foreign flagged FCVs in New Zealand's EEZ.

Implementation of recommendations

Recommendation 15

That, once decisions are taken on the recommendations in this Report, steps be taken to engage with industry on a detailed implementation plan.