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## A study on the domestic application of Maritime Labour Convention 2006 in China

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**WORLD MARITIME UNIVERSITY**

Dalian, China

**A STUDY ON THE DOMESTIC APPLICATION OF  
MARITIME LABOUR CONVENTION 2006  
IN CHINA**

By

**YI SHA**

**The People's Republic of China**

A research paper submitted to the World Maritime University in partial  
fulfillment of the requirements for the award of the degree of

**MASTER OF SCIENCE**

**(MARITIME SAFETY AND ENVIRONMENTAL MANAGEMENT)**

2014

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## **Declaration**

I certify that all the material in this research paper that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this research paper reflect my own personal views, and are not necessarily endorsed by the University.

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Title: A Study on the Domestic Application of  
Maritime Labour Convention 2006 in China

Degree: **MSC**

**Abstract**

The thesis is a research on the domestic application of Maritime Labour Convention 2006 (MLC 2006) in China. The main innovation point of this thesis is putting forward an objective overview of MLC 2006. Generally people consider it as a seafarers' "bill of rights", while someone argue that it is a tool for unfair competition with veil. However, no matter what the nature of MLC 2006 is, the historical trend of further protecting the rights and interests of seafarers in the international shipping market cannot be reversed. The thesis analyses the necessity and urgency for China's ratification of MLC 2006 on the basis of both the characteristics of the convention and the demands of China and studies the enforcement of MLC 2006 in some other countries, including Australia, United Kingdom and United States. After listing the preparations for implementing the Convention since 2006, the thesis discusses the main problems existing in the ratification of the Convention in China and the corresponding solutions of these problems. The conclusions are summed up in the sixth chapter. When implementing the Convention, China shall find a balance between globalization and localization, which means the implementation of MLC 2006 shall keep pace with the international shipping market and maritime labour market, but also comply with fundamental realities of the initial stage of socialism.

**KEY WORDS:** Maritime Labour Convention 2006; Implementation; Domestic Application

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## **List of Abbreviations**

AMSA - Australian Maritime Safety Authority

AQSIQ - General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China

ATC - Australian Transport Council

CBA – collective bargaining agreement

China COSCO - China COSCO Holdings Company Limited

China Shipping - China Shipping (Group) Company

COAG - Council of Australian Governments

CSA - China Shipowners Association

DMLC – Declaration of Maritime Labour Compliance

GT – Gross Tonnage

IGA - Inter-Governmental Agreement

ILO – International Labour Organization

IMO – International Maritime Organization

ISF - International Shipping Federation

ITF - International Transport-workers Federation

MARPOL – International Convention for the Prevention of Pollution from Ships, 1973 (and its protocols)

MCA - The United Kingdom's Maritime & Coastguard Agency

MLC – Maritime Labour Convention 2006

MOC - Ministry of Commerce of the People’s Republic of China

MOCA - Ministry of Civil Affairs of the People’s Republic of China

MOJ – Ministry of Justice of the People’s Republic of China

MOH - Ministry of Health of the People’s Republic of China

MOHRSS - Ministry of Human Resources and Social Security of the People’s Republic of China

MOT - Ministry of Transport of the People’s Republic of China

NPC - China’s National People’s Congress

NTCC - National Tripartite Consultative Committee

RO - Recognized organization

SEA – Seafarers’ Employment Agreement

SOLAS – International Convention for the Safety of Life at Sea, 1974

STCW – International Convention on Standards of training, Certification and Watchkeeping for Seafarers, 1978 (amended 1995, 2010)

WHO – World Health Organization

UK - United Kingdom

USCG - U.S. Coast Guard

## **Chapter 1 Introduction**

### **1.1 Background**

No other labour market has been as internationalised as that for seafarers. Generally, Vessels might be registered in one country, owned by a person in another beneficially and operated by an entity in another. The seafarers manning the vessels can come from a number of countries, hold certificate of competency issued in another country, and possibly be recruited through an agency and in yet another country. It has been recognized for a long time that seafarers are engaged in a dangerous work environment.(Kinley, 2009, p.2) The International Labour Organization (the “ILO”) has had a major concern with the working and living conditions of seafarers ever since its establishment in 1919. Between 1920 and 2006 the ILO adopted 41 conventions and related recommendations dealing with almost every issue in the sector. (Kinley, 2009, p.2) In 2001 the ILO took action to draft a new instrument, which would consolidate nearly all the existing maritime sector instruments while also update them to reflect the current industry. Following several preparatory meetings, the 94th International Labour Conference of the ILO in February 2006 adopted the Maritime Labour Convention (the “MLC 2006”) by a record vote of 314 in favour, 0 against and 2 abstaining. China actively participated in the design and promotion of MLC 2006.

MLC 2006, entering into force worldwide on August 20, 2013, sets out rights to decent conditions of work for the world’s 1.2 million seafarers and covers a wide

range of subjects, including health, safety, minimum age, recruitment, hours of work and other vital issues affecting a seafarer's life. The Convention has become the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key conventions of the International Maritime Organization such as the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), the International Convention on Standards of Training, Certification and Watch keeping, 1978 as amended (STCW) and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).<sup>1</sup> These three IMO treaties were first adopted in the 1970s and have each been ratified by more than 150 countries, representing more than 99 per cent of world merchant shipping.<sup>2</sup> "The Maritime Labour Convention is an important strategic move forward in the ILO's promotion of its decent work agenda. The proposed Convention provides realistic solutions for achieving universal application and enforcement as it is the product of negotiation and consensus between seafarers, shipowners and Governments coming from over 80 countries", ILO Director-General Juan Somavia said.<sup>3</sup>

MLC 2006 imposes an extensive influence on international shipping. For developed countries, their rules of game have been applied and extended to the whole industry all over the world; for developing countries, new standards can be regarded as both target and barrier. On one hand, they have a model to promote domestic crew legislation; on the other hand, there is new threshold for them to play in this game of world shipping. As a major developing country, China considers MLC 2006 as a

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<sup>1</sup> International Labour Organization. (2013, August 13). *Basic facts on the Maritime Labour Convention 2006*. available at: [http://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_219665/lang-en/index.htm](http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_219665/lang-en/index.htm)

<sup>2</sup> International Maritime Organization. (2012, August 21). *IMO welcomes landmark Maritime Labour Convention ratifications*. (para.3). available at: <http://www.imo.org/MediaCentre/PressBriefings/Pages/32-MLC.aspx>

<sup>3</sup> International Labour Organization. (2006, February 06). *ILO to adopt "bill of rights" for seafarers*. (para. 3) available at: [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_065178/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_065178/lang-en/index.htm)

double-edged sword. Although MLC 2006 plays a catalytic role in China's crew legislation, the challenge of high standards cannot be neglected.

## **1.2 Significance of the research**

A comprehensive study on the issues of MLC 2006 and its application in China is very important. It has not only economic significance, but also political significance. Maritime labour standards have the most impact on China.

China is an important seafarer supply state. As the world's second-largest economy, China has 650,000 seafarers, the most in the world, who are responsible for 93 percent of the transport for China's foreign trade, according to figures from the Ministry of Transport. However, the subject of seafarers' rights and interests protection in China lacks due attention.

Throughout the history of shipping, seafarers have been in a relatively weak position in the field of the international shipping for a long time, especially Chinese seafarers. Although Regulation of the People's Republic of China on Seaman entered into force on September 1st, 2007, which provided legal protection of the legitimate rights and interests of seamen, there are still some problems to be solved, the seafarers' labor protection and social security having not been fully implemented, and the lawful rights and interests of the seafarers needing further maintenance. These problems not only hurt the seafarers' working enthusiasm, but also affect the physical and mental health of the seafarers. Even more importantly, it is not beneficial to attract talented young people to get involved in shipping enterprises, which is a serious threat to the healthy development of the shipping industry in China.

Immediately after the Convention was passed, China implemented the core of the convention through domestic legislation and formulated *Regulation of the People's Republic of China on Seaman*, which manifested that the maritime administration's performance capability had been walking in the forefront of the world. Judging from the domestic sense, the maritime labour development in recent years is not optimistic. Many young mariners quit their jobs after working only for five or six years. The shipping industry standstill and maritime labour market failure both exist. Judging from the international sense, it is necessary to solve domestic problems with international perspective. MLC 2006 provides a unified standard for the world maritime industry in the world, creates a fairer competition space for shipping enterprises all over the world, and makes the realization of "decent work" possible for offshore workers. With regard to China, to speed up legislative efforts to better protect the interests of seafarers, including accelerating procedures to ratify MLC 2006, is a major concerns for the Chinese shipping industry and maritime administration in the near future.

### **1.3 Research objectives and scope**

The objective of this paper is to study the domestic application of MLC 2006 in China. In this paper, the main innovation points are:

First, the thesis presents an objective and fair understanding of MLC2006. Based on a rational and reasonable analysis, the thesis proposes that international maritime labor standards are beneficial to the protection of labor rights for developing countries such as China, but it cannot be denied that developed countries use it as a weapon to get a superior position in international shipping competition.



Through Port State Control and no more favourable treatment, shipping developed countries promote developing countries to achieve unified maritime labor standards, which is a microcosm of trade protectionism under the background of globalization and “decent work” in the direction of the hidden, reasonable and lawful development.

Second, the thesis concentrates on China’s basic national conditions, which exist as the background of the differences between the domestic law and international maritime labour standards and their interaction relationship. Meanwhile, the present stage of China’s basic national conditions determines to what degree China can make efforts to enforce MLC 2006. However, the debate generated from the difference and the degree will speed up the protection progress of the Chinese seafarers’ labour rights. In order to eliminate the differences and improve maritime labour standards in China, we need to make endeavors to further develop China’s economic level. Therefore, there is complex correlation between the basic national conditions and maritime labour standards.

Third, combining theoretical analysis and empirical analysis, the thesis analyzes the nature of MLC 2006. To the point of view of developed countries, the thesis reveals that MLC 2006 is unilateral, not only for the purpose of pursuing the humanitarian and fair competition, but also under the drive of national interests and trade protection policy.

Fourth, the thesis has carried on rational analysis on how China will meet the requirements of MLC 2006. Based on low labor standards in present China, the thesis summarizes the problems existing in the field of domestic application of MLC 2006.

Fifth, the thesis puts forward strategies for China to cope with the international maritime labour standards. On one hand, China should start from the macroscopic angle, which includes formulation and modification of laws and regulations, the adjustment of the social security level and the international cooperation level. On the other hand, micro angle shall not be neglected. China should improve the humanitarian awareness of shipping enterprises and seafarers, and guide shipping companies to adapt to the long-standing development of international labour standards.

#### **1.4 Research methodology**

The research techniques include mainly institution analysis, comparative analysis, literature analysis and sample analysis. The full text is divided into six chapters:

The first chapter mainly elaborates on the background, significance, objectives and scopes, methodology and limitation of the research. The second chapter is literature review. An objective overview of MLC 2006 is put forward in this chapter. Generally, people consider it as a seafarers' "bill of rights", while some argue that it is a tool for unfair competition with veil. Literature analysis is mainly used in the second chapter. The third chapter analyzes the necessity and urgency for China's ratification of MLC 2006 on the basis of both the characteristics of convention and the demands of China. Institution analysis is mainly applied in the third chapter. The fourth chapter studies the enforcement of MLC 2006 in some other countries, including Australia, the United Kingdom and the United States, and the preparations for implementing MLC 2006 in China. Comparative analysis and sample analysis are mainly used in the fourth chapter. The fifth chapter discusses the main problems existing in the ratification of MLC 2006 in China and their corresponding solutions. Institution

analysis and literature analysis are mainly adapted in the fifth chapter. The conclusions are summed up in the sixth chapter.

### **1.5 Limitation of the research**

The Limitation of the research lies in the narrowness both of research methods and perspective.

Firstly, literature review shall be more detailed, because the implementation of MLC 2006 is related to several subjects in China, such as government departments, seafarers, shipowners, recognized organization and so on. The author is a civil servant from China Maritime Safety Administration, and due to the limited working experience, author attaches more importance on the government front.

Second, the study of other countries shall cover a wider range. Although different countries have different specific measures in the performance of MLC 2006, China still can draw lessons from their experience and advantages. Limited by length of the thesis and the data collecting channel, the author just introduces three typical developed countries. Others like open registration countries or seafarer supply countries are not mentioned.

Third, recommendations shall have a wilder view and more comprehensive. Actually, many problems existing in the ratification of MLC 2006 in China are not simple or single ones, and some problems interrelate with each other or influence the top-level design of the whole society, therefore, it is difficult to resolve a problem in the same level with the enforcement of MLC 2006.

## **Chapter 2 Literature review**

### **2.1 An overview of MLC 2006**

The ILO, founded in 1919, is specialized agency of the United Nations which seeks to promote social justice and internationally recognized human and labor rights, thereby improving the situation of human beings in the world of work. (Report of the Director General, 1999, p. 5) From the prospect of ILO's mission, it is positive for ILO to formulate international labour standards.

Maritime labour standards are rules or norms that govern labour relations and working conditions of seafarers, which have become a key point about the future of international shipping.

Most people regard labour standards as a progress. All countries enact standards for their workers. Nearly everyone supports standards in some form, at least in principle. However, under the background of economic globalization, western developed countries enforce the international labour standards as MLC 2006 in a short period of time, and for this reason to limit vessels visiting their ports from developing countries, so the international labor standards become a new protection measure for unfair competition.

#### **2.1.1 A seafarers' "bill of rights"**

When MLC 2006 was adopted by the 94<sup>th</sup> (Maritime) Session of the International Labour Conference of the ILO in February 2006, it was described as a “historic event”. MLC 2006 is seen by seafarers as a “bill of rights” that will help ensure “decent work” for seafarers, no matter where ships sail and no matter which flag they fly. Shipowners also support the MLC, 2006, as it is seen as an important new tool to help ensure a level playing field for quality shipowners that may have to compete with ships that have substandard conditions. MLC 2006 is also important for governments because it brings together nearly 70 international legal instruments in one comprehensive modern document that covers almost every aspect of decent work in this sector. (International Labour Organization, 2009, p.5)

MLC 2006 was described by the Director General of the ILO as “historic” and “a way forward” and was referred to by the Secretary General of the International Maritime Organization as the “fourth pillar” of maritime regulation, and indeed, it is an impressive document. It is also a complex and highly technical document. The MLC is structured similarly to STCW Convention with Articles and Regulations, which cover 5 Titles and are supported by a Code to provide detailed implementation requirements. The Code is divided into Standards (mandatory in Part A) and Guidelines (non-mandatory in Part B).

MLC 2006 provides protection for seafarers because: It sets out clearly the responsibilities of shipowners to their seafarers. The shipowner is ultimately responsible for meeting MLC requirements, even when the seafarer is employed by/ recruited through a recruitment and placement service; Documentation is required which makes clear the standards of living and working conditions which apply on board; It requires flag States to carry out a maritime labour inspection twice in every 5 years, to ensure those living and working conditions are being fully met by the

shipowner, and that where complaints are made by the seafarer, steps are taken to ensure they are investigated and resolved. (The United Kingdom's Maritime & Coastguard Agency, 2013, MGN 476)

Much of the substantive content of MLC 2006 is a modern pronouncement of ancient rights that have bound seafaring nations through operation of custom from time immemorial. Equivalent provisions can be found in the seventh-century Byzantine *lex Rhodia*, which was a then-modern codification of the Rhodian practices of antiquity. The articulation of MLC 2006 is through an organization that rightly puts labor rights within the framework of international human rights law, but the duties of shipowners and the rights of seafarers protected through time-honored maritime law and custom are unequalled in their universal respect and fulfillment.(Gorrie, 2013, para.4)

### **2.1.2 Unfair competition with veil**

Generally, MLC 2006 is considered to provide for the first time comprehensive protection at work for seafarers, while also promoting conditions of fair competition for shipowners. However, some argue that MLC 2006 is driven by western developed countries. Its aim is to maintain their maritime industry interests and domestic seafarers' employment, and suppress competition from developing countries. (Fields, 2003, p.72)

#### **2.1.2.1 The background of formulating MLC 2006**

Starting from 1920s, ILO has held nine maritime conferences concerning seamen, and made 39 conventions, 30 recommendations, and a protocol. However, these conventions and files did not achieve the desired effect: On one hand, the ratification

rate of these maritime conventions was very low; on the other hand, ILO lacks effective enforcement mechanisms.

After entering the 21st century, developing countries' maritime industry and seaman labor export industry get rapid development, and gradually participate in the competition of international market. The relatively cheap labor has very important significance in developing countries: for one thing, it actively supports the development of the domestic shipping industry and gradually occupies the market share of international shipping industry; for another, seafarers in the developing country with lower prices inevitably affect the seafarers' employment in developed countries. In such a big background, International Shipping Federation (ISF) firstly advocated, under the support of International Transport Workers' Federation (ITF), to promote the ILO to develop a new comprehensive maritime labour convention. (Dimitrova & Blanpain, 2010, p.82) The final purpose is to form a uniform high standard to apply to the whole industry, trying to expel shipping companies and seafarers in developing countries out of the international market.

For such a bill designed to protect seafarers' rights and interests, the original advocator is ISF, rather than seafarers. (Dimitrova & Blanpain, 2010, p.82) The first four countries that have ratified the convention are Liberia, Marshall islands, the Bahamas and Panama, which are four typical open registration countries owning nearly most of the fleet in the world. They obviously represent the interests of the shipowner. (McConnell, Devlin& Doumbia-Henry, 2011, p.3) Checking the conference record of ILO, we find that most of active promoters of MLC come from developed countries, such as France, Britain, Germany and Norway, rarely from developing countries. ITF represents the interests of the seafarers, but in many cases it is the representative of the interests of the seafarers of developed countries.

Therefore, it is hard to imagine that such an international convention would consider the interests of developing countries.

#### 2.1.2.2 The type of labor standards of MLC 2006

The view that MLC 2006 contributes to disguised protection of unfair competition can also be concluded from its own type of labour standards. Generally, the labour standards advocated by ILO can be divided into two types: core and cash standards. The distinction between core and cash standards is fundamental.



## Core versus cash labour standards

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### Core labor standards

*Prohibition of forced labour (ILO conventions 29 and 105)*

*Prohibition of discrimination (ILO conventions 100 and 111)*

*Freedom of association (ILO convention 87)*

*Right to collective bargaining (ILO conventions 98 and 154)*

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### Arguable core standards

*Minimum age for child labour (ILO convention 138)*

*Prohibition of exploitative child labour*

*Minimum occupational health and safety*

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### Cash labour standards

*Minimum wage fixing (ILO convention 131)*

*Minimum day of rest (ILO convention 14)*

*Right to occupational health and safety standards (ILO conventions cover specific issues)*

*Social security (ILO convention 102)*

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### Figure 1: Core versus cash labour standards

**Source: Based on ILO conventions and various discussions of core standards in OECD (1996), US Department of labour (1944a), and Swinnerton(1966)**

As Figure 1 shows, the classification distinguishes “core standards” concerning human rights from “cash standards” that shall vary with levels of GDP per capita. Core standards rule out a small number of undesirable market outcomes such as

violating human rights and require some democratic processes for workers to organize independently and bargain collectively, which may only indirectly affect cost. (Freeman, 1997, p.99) Therefore, Adherence to core standards will not substantially affect the comparative advantage of developing countries nor have more than a minimal effect on trade, while “cash standards” would weaken the competitiveness of developing countries directly. MLC 2006 is full of cash labour standards, from minimum wage to hours of rest, from occupational health to social security. To meet the requirements of MLC 2006, developing countries need to largely increase investment in shipping, not only in ship’s construction, but also in seafarer’s welfare. They will lose the advantage of cheap labour force. Ultimately they will be in a disadvantageous position in the competition.

#### 2.1.2.3 The missing labor rights

Although MLC 2006 has been considered to be seafarers’ “bill of rights”, some commentators have criticized that it did not go far enough to protect seafarers and the ratification of MLC 2006 would be an impediment to further reform in this area. For example, issues of visas for shore leave or protection of the right to strike are not mentioned in MLC 2006. (Bonino & Rees, 2010, para.6) The ILO spent about five years in drafting MLC 2006. There were another 7 years from its adoption by the ILO to its coming into force. After MLC 2006 is ratified any further reforms in any event might not be executed for some time, since the legislation needs to be kept stable over a period of time. Therefore, the missing labour rights would be delayed for discussion for some years to come. It is evident that the advocates of MLC 2006 were just concerned with their own profits, which led to seafarer’s pure rights in suspense.

Therefore, on the surface, MLC 2006 provides a unified standard for global maritime industry and creates a fair competition space for the shipping companies all over the world, and maintains maritime workers “decent work”. However, these appeared “fairness” covers an important fact, which is the imbalance between developed and developing countries. These high standards will suppress the development of the shipping industry in developing countries, and ultimately affect the seafarers’ employment abroad in developing countries.

## **2.2 Domestic research on MLC 2006 in China**

Since 2006, many domestic scholars have worked on a comprehensive introduction to MLC 2006 and analyzed the implications of implementing MLC 2006 to related industries in China. For example, Professor Wang Xiufen published the book *Study on the Legislation Trend of Seaman Law of ILO and the Countermeasures in the Perspective of MLC 2006* in 2009; Professor Han Lixin and Zhang Li wrote *Thoughts on the Social Security Legislation for the Crew in the Perspective of MLC 2006*; Professor Wang Guohua and Sun Yuqing wrote *A Study on the Domestic Application of MLC 2006*. However, few essays introduce and analyze how other countries and regions perform the Convention. Although the domestic research on maritime labour standards is still in its initial stage, it has its own features as will be discussed below.

### **2.2.1 Government-sponsored research**

Before 2006, domestic research on maritime labour standards was nearly static and normative, which mainly focused on academic fields, such as the historical development of maritime labour standards. Generally, the labour market was considered as a whole, and no much attention was paid to the maritime sector. The

government was aware of the importance of promoting the competitiveness of Chinese seafarers, but the seafarers' welfare was ignored for a long time.

From 2006 on, faced with the pressure of both the enforcement and ratification of MLC 2006, Chinese government has paid more attention to the domestic application of the Convention. Various government-sponsored financial aid programs were established to guide the academic world to research MLC 2006. For instance, in 2007 the Ministry of Justice of the People's Republic of China (MOJ) financed Professor Wang Guohua of Shanghai Maritime University to proceed a project named "Study on the Domestic Application of International Maritime Conventions".<sup>4</sup> The project deadline was December 31, 2009. The Ministry of Transport of the People's Republic of China (MOT) financed Dalian Maritime University to proceed a project named "Comparative study between MLC 2006 and the Existing Maritime Labour Law System in China", the project was finished in January 2009.

Through those government-sponsored programs, research on the implementation of MLC 2006 developed swiftly. Researchers on maritime labour standards and their application have acquired fruitful achievements in their respective research fields. The legislative progress on seafarers' rights and interest protection speeded up.

### **2.2.2 Public participation**

Besides the academic scholars, shipping industry employers, China Classification Society, staff of China Maritime Safety Administration and so on also actively joined in the research of MLC 2006.

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<sup>4</sup> Belong to the annual legal theory research project of MOJ, Serial number: 07SFB5040.

Mainstream viewpoint is the enforcement of MLC 2006 is welcome. Most people considered that improving the maritime labour standards would certainly not do harm to a country's international competitiveness. However, Zhang Pengfei, from Shanghai Maritime University, put forward different views in his article *Maritime Labour Convention 2006 will Bring Negative Influence on Chinese Seafarers Dispatch*, which was published in magazine *World Shipping* on the 6<sup>th</sup> issue of 2013. In a word, there were all kinds of voices in the implementation of MLC 2006 in China.

### **2.2.3 Ministries' cooperation**

There are several ministries concerning the implementation of MLC 2006, such as the Ministry of Human Resources and Social Security of the People's Republic of China (MOHRSS), Ministry of Transport of the People's Republic of China (MOT), Ministry of Health of the People's Republic of China (MOH), and so on. They have worked together to look for the most scientific resolution to solve the difficulties in how to meet the requirements of MLC 2006. Detailed information will be discussed in the following chapters.

## **Chapter 3 The Necessity and urgency for China's ratification of MLC 2006**

The prevailing view within China shipping industry is that China is unlikely to ratify the Convention until 2014 at the earliest. However, there are several factors that lead to the necessity and urgency for China's ratification of MLC 2006.

### **3.1 The characteristics of MLC 2006**

Compared with other conventions that ILO formulated, MLC 2006 has its own distinguishing features. The whole structure of the new Convention differs from that of traditional ILO Conventions. It consists of the basic provisions, i.e. the Articles and Regulations, followed by a two-part Code and divided into five Titles.

#### **3.1.1 Tacit procedure**

Due to tacit procedure, MLC 2006 shall be kept more up to date than the existing Conventions. The two-part Code of the Convention is related to technical and detailed implementation of the basic obligations under the Convention, which need to be updated from time to time. In order to enable the modifications to come into effect in time, ILO has adapted an accelerated procedure ("tacit acceptance") (provided for in Article XV) to amend the Code. If a ratifying member delivers formal disagreement within a period of usually two years, according to Article XV of the Convention the amendment to the Code entering into force will not have effect on this ratifying member. In contrast, amendments under Article XIV have different

procedures, which can only take effect for countries that ratify them, since they are amendments to the basic provisions, i.e. the Articles and Regulations.

Both types of amendment procedures, no matter under Article XIV for the Convention as a whole, or Article XV for amendments only to the Code, are based to a certain extent on procedures that are already well established in International Maritime Organization (IMO).

### **3.1.2 Inspection and certification**

Due to inspection and certification system, MLC 2006 shall be kept more effectively implemented than the existing Conventions. The Appendices to the Convention include two significant model documents: a maritime labour certificate and a declaration of maritime labour compliance. The certificate would be issued by the flag State to a ship that flies its flag. The flag state is in charge of verifying whether the labour conditions on board ship comply with national laws and regulations implementing the Convention, in some cases a recognized organization would be authorized to carry out the inspections. The certificate would have a valid period of five years subject to periodic inspections by the flag State. The declaration is attached to the certificate to ensure that the national requirements implementing the Convention will be maintained on the ship between inspections. The main contents of the declaration are the shipowner's or operator's plan to implement an agreed-upon list of 14 areas of the maritime standards. The lists of the 14 areas certified by the flag State may be inspected in a foreign port. Therefore, the implementation is further reinforced by voluntary measures for inspections in foreign ports, which is port State control.

Establishing jurisdiction and ensuring flag State responsibility are main problems caused by the inherently international nature of the maritime industry. Often, the beneficial ownership of a ship is based in one State, the ship operates under the jurisdiction of another and the seafarers working onboard are of various different nationalities. Based on the inspection and certification of labour and conditions for seafarers, the MLC aims to provide some consistency. Therefore, flag State responsibility has been reinforced by establishing such a system of compliance and enforcement. An inspection carried out by the competent authorities in the ports visited by the ship is to be complemented to ensure compliance with the requirements of the MLC. To this end, MLC 2006 shall be kept more effectively implemented than the existing Conventions.

### **3.1.3 No more favourable treatment**

Due to No more favourable treatment, the force of MLC 2006 shall be unable to avoid for ships of non-ratifying countries. These words appear in Article V, paragraph 7, of the Convention. The idea, which is also found in IMO Conventions, is that ships must not be placed at a disadvantage because their country has ratified the new Convention, which prevents ships flying flags of States that have not signed the Convention from having an unfair advantage over ships flying the flag of States that have. The practical consequence comes out clearly in the port State control provisions of Title 5 of the Convention, under which ships of all countries (irrespective of ratification) will be subject to inspection in any country that has ratified the Convention, and to possible detention if they do not meet the minimum standards of the new Convention. (ILO, 2011, 15) Many existing maritime labour Conventions have a low ratification level. MLC 2006 has been designed specifically to address this problem.



### 3.1.4 Substantial equivalence

Due to Substantial equivalence, MLC 2006 shall be easier for countries to ratify and to implement its requirements. Taking into account the specific situation in some sectors and the diversity of national circumstances, ILO instruments seek to provide for some flexibility in their application. Flexibility is usually based on principles of tripartism, transparency and accountability. When flexibility with respect to a Convention is exercised by a government it usually involves consultation with the workers' and employers' organizations concerned, with any determinations that are made reported to the ILO by the government concerned.<sup>5</sup>

Likewise, MLC 2006 also provide for additional flexibility on some sectors at a national level. The Convention seeks to be “firm on rights and flexible on implementation”. Generally speaking, the excessive detail in many sectors of MLC 2006 is a major obstacle to its ratification. However, MLC 2006 establishes the basic rights of seafarers to decent work in firm statements, but leaves a great amount of flexibility for ratifying members to implement these standards in their national laws.

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The areas of flexibility in the Convention include the following:

- *In accordance with the requirements of this Convention, the “Seafarers Employment and Social Rights” may be achieved through national laws or*

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5 See “9. How does the new Convention make it easier for countries to ratify it and to implement its requirements?” in Frequently Asked Questions about the ILO's Maritime Labour Convention, 2006, available at: [http://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_CON\\_TXT\\_ILS\\_MAR\\_FAQ\\_EN/lang-en/index.htm#P65\\_12463](http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_CON_TXT_ILS_MAR_FAQ_EN/lang-en/index.htm#P65_12463)

6 The same as above

*regulations, through applicable collective bargaining agreements or through other measures or in practice;*

- Although Part A of the Code is mandatory, implementation of those standards be achieved through “substantially equivalent” measures;*
- Although Part B of the Code is filled with prescriptive or detailed requirements, it is not mandatory. Since the requirements in Part B of the Code are not subject to port State inspections, governments just need to give “due consideration”.*
- Except the ship certification system, the implementation of the requirements of the Convention might be relaxed for some smaller ships. For vessels of 200 gross tonnage (GT) and below which do not go on international voyages, its implementation of MLC 2006 would be negotiated on national level.*
- Only ships of 500 gross tonnage and above engaged in international voyages would be subject to the certification system of the flag State.*
- Recognized organizations (ROs) such as classification societies may be used carry out aspects of the ship certification system, on behalf of flag States;*
- Ships constructed before the Convention comes into force are not applied to provisions affecting ship construction and equipment in Title 3. Some specific accommodation requirements are not applied to smaller ships of 200 gross tonnage and below;*
- Definition on “seafarers” and “ships” might be negotiated at a national level.*
- For countries that may not have national organizations of shipowners or seafarers, provision on this situation has been made.*

(International Labour Organization, 2011, question 9)

## **3.2 The realistic demands of Chinese shipping**

### **3.2.1 Negative side**

As China is one of the few countries with a major shipping industry that have not ratified MLC 2006, due to the way the Convention is implemented, seafarers on China-flagged ships might have worse conditions than others, Chinese ships would be at a serious commercial disadvantage, and shipowners would move their ship registrations to other national jurisdictions.

By the time MLC 2006 came into force, China had not been a signatory State. There are fears that China-flagged ships would be at a disadvantage if ratification continues to be postponed. The “No more favourable treatment” clause in MLC 2006 is a main concern for non-signatory states, since their ships will not be treated more favourably than those flagged in signatory states. The aim of this clause is to make sure ships of signatory states should not be placed at a disadvantage inconsequently because their flag country has ratified MLC 2006. The practical result is that all vessels, regardless of whether their country has ratified MLC 2006 or not, will be subject to inspection when visiting ports in other countries that have ratified MLC 2006. Further more, if a vessel does not meet the minimum requirements of MLC 2006, it may face detention. Those vessels coming from a country that has ratified MLC 2006 will be given a “fast pass” through port inspections since they have MLC certification as “prima facie evidence”. China-flagged ships, on the contrast, would accept strict port inspections under MLC 2006. Therefore, China-flagged ships cannot benefit from any of the flexibilities or derogations available to countries that have ratified MLC 2006.

### **3.2.2 Positive side**

Ratification will provide benefits to governments and shipowners, as well as to the seafarers whose rights are catered for in MLC 2006.

Firstly, for Chinese governments, ratification of ILO conventions will be simplified as MLC 2006 consolidated 68 existing conventions together. There is also a large degree of flexibility as to how the MLC is to be implemented at national level. The crew labour market in China is still in its initial stage, and it has a long way to go. MLC 2006 set new standards for crew management, to some extent China can directly copy the clauses. For example, Part B of the MLC, the provisions of which are set out in the form of guidelines, are not mandatory and not subject to inspections by port authorities. China can still learn from these provisions in domestic laws and regulations formulation, to guide the orientation for the shipping industry.

Secondly, for Chinese shipowners, the MLC will significantly reduce the commercial opportunities of companies which use substandard ships, so as to create a more efficient operating environment by survival of the fittest. If China ratifies MLC 2006, China-flagged ships will also benefit from a system of certification, which will reduce or altogether avoid the likelihood of lengthy delays caused by inspections in foreign ports.

Thirdly, for Chinese seafarers, they step into “decent work” further. In China, seafarers belong to vulnerable groups. Protection of the rights and interests of seafarers has much space for improvement. The standard set in MLC 2006 is the direction of the seafarers’ expectation.

In a word, ratification of the MLC may boost the reputation of the China shipping industry. It would signal to the rest of the world that the China is a leading advocate of optimal working and living conditions for seafarers, and further will ensure that all

ships visiting China ports comply with the standards laid down by the MLC. After all, China actively participated in the design and promotion of the MLC, 2006. (Wang, 2009, p.224)

### **3.3 The development of other international maritime conventions**

Generally, if a seafarer works on a ship that is registered in a flag State which has not ratified the MLC, the seafarer may not enjoy the same level of protection provided for by the MLC. Therefore, protection for the seafarer would not be guaranteed. However, some of the protections provided by MLC 2006 may be provided under other international conventions, if the flag State of the ship is a signatory State to those conventions. The International Convention on Standards of Training, Certification and Watchkeeping (STCW), adopted by the International Maritime Organization (IMO) contains provisions relating to medical examinations and certification, training and certification and minimum rest periods. A vessel that meets the STCW standards in these areas will also meet the minimum standards required under the MLC. In addition, the International Code for the Safe Management of Ships and Pollution Prevention (ISM Code) requires ship operators to have in place Safety Management Systems which are subject to annual flag state audits. These may provide for standards of health and safety protection and accident prevention that conform to the minimum standards of the MLC. (The United Kingdom's Maritime & Coastguard Agency, 2013, MGN 476)

Therefore, with the continuous improvement of other related maritime conventions, the requirements of MLC 2006 would be met at the same time, which also is a promotion to China's ratification of MLC 2006.

## **Chapter 4 Comparative study of implementing provisions of MLC 2006**

### **4.1 The enforcement of MLC 2006 in some other countries**

At present, it is important for China to learn and introduce some representative countries in terms of preparation for the implementation of MLC 2006. MLC2006 imposes different influence on different countries. For traditional shipping countries and seafarers supply countries, the convention obligation is relatively heavier for government and shipowner to perform, while the responsibility of convenient flag state would be passed on to the governments of states that actual shipowners belong to.

#### **4.1.1 Australia**

On 14<sup>th</sup> December 2011, Australia deposited with the International Labour Office the instrument of ratification of the MLC, 2006. Australia becomes the 22<sup>nd</sup> member state to ratify the landmark Convention. The arrangements of MLC 2006 implementation scheme of Australia are as follows:

AMSA is a statutory authority established under the Australian Maritime Safety Authority Act 1990 (the AMSA Act). AMSA's principal mission is ensuring safe vessel operations, combating marine pollution, and rescuing people in distress.<sup>7</sup> In

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<sup>7</sup> About the Australian Maritime Safety Authority. See the website of Australian Maritime Safety Authority: <http://www.amsa.gov.au/about-amsa/>, visited on June 11, 2014.

the long run the management system of AMSA was in accordance with IMO conventions, therefore, when implementing MLC 2006 from ILO, its management system inevitably was in trouble.

MLC 2006 generally applies to all seafarers, no matter on domestic vessels or international shipping vessels. However, in Australia, state government and AMSA separately supervised domestic vessels and international shipping vessels before 2013. Since different states had different regulations and standards, MLC 2006 cannot be implemented in a unified level. For this reason, Australia modified The Navigation Act and carried on a significant reform on shipping industry. (SHAO & GUO, 2012, p.118)

When the Council of Australian Governments (COAG) were determined to take a national method to regulating the safety of all domestic commercial vessels in Australian waters by 2013, in July 2009 domestic commercial vessel safety national reform was initiated. Recommendations made by the Australian Transport Council (ATC) were adopted by COAG. Subsequently, on 19 August 2011 an Inter-Governmental Agreement on Commercial Vessel Safety Reform (IGA) was signed. The IGA also determined that AMSA would become the National Regulator.

#### **4.1.1.1 AMSA**

AMSA is the competent authority responsible for the regulation of MLC 2006 and its requirements in Australia. Meanwhile, the legal frame of shipping industry is still divided into two parts: national system for domestic commercial vessel safety and its counterpart - international system. The national system for domestic commercial vessel safety is the framework within which the domestic commercial industry operates. On 1 July 2013, AMSA became the National Regulator of the framework

and is responsible for the National System. The state and territory Marine Safety Agencies, as Delegates of AMSA, are responsible for the face-to-face operations of the National System.

#### **4.1.1.2 The Navigation Act 2012 and associated delegated legislation**

In Australia MLC 2006 has been implemented primarily through the Navigation Act 2012 and associated delegated legislation (Marine Orders). The Navigation Act 2012 came into force on 1 July 2013, at the same time Marine Order 11 (Living and working conditions on vessels) 2013 commenced to be valid. The Navigation Act 2012 replaced the century old Navigation Act 1912 with a contemporary legislative framework for maritime regulation. Elements of MLC 2006 not captured by the Navigation Act 2012 or Marine Orders are covered in other commonwealth legislation listed below.

**Table 1: Other commonwealth legislation and marine orders that encompass aspects of MLC 2006 in Australia**

The Occupational Health and Safety (Maritime Industry) Act 1993	
The Fair Work Act 2009	
The Seafarers Rehabilitation and Compensation Act 1992	
Marine Order 3	(Seagoing qualifications)
Marine Order 9	(Health – medical fitness)
Marine Order 15	(Construction – fire protection, fire detection and fire extinction)
Marine Order 21	(Safety of navigation and emergency procedures)



Marine Order 28	(Operations standards and procedures)
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**Source: A Guide to the implementation of the MLC in Australia (www.amsa.gov.au)**

All marine orders can be accessed on the AMSA website.

Therefore, the management system of maritime authority in Australia can be concluded as “One Regulator, One Law”. (Liang, 2013, p.55) AMSA is responsible for maintaining and developing a nationally consistent regulatory framework that includes standards setting (National Standard for the Administration of Marine Safety, National Standard for Commercial Vessels, National Standard for General Safety Requirements for Vessels) and national system regulations and marine orders. States and territories have the delegated powers to enable day-to-day delivery of these national services such as considering applications for, and issuing certificates of operation; competency and survey; as well as carrying out compliance and enforcement activities. (Australian Maritime Safety Authority, 2013, p.1)

#### **4.1.2 The United Kingdom**

On 7<sup>th</sup> August 2013, which was 13 days before the deadline for MLC 2006 coming into force globally, the British Government ratified the convention. This ratification also includes the Isle of Man and Gibraltar. In addition to becoming the 15<sup>th</sup> European Union member to ratify MLC 2006, the United Kingdom is also the 41<sup>st</sup> ILO Member State to have ratified the Convention.<sup>8</sup> The Convention will enter

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<sup>8</sup> Statistics available at article “United Kingdom ratifies the Maritime Labour Convention, 2006 (MLC, 2006)” on ILO’s website:

[http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS\\_218778/lang--en/index.htm](http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_218778/lang--en/index.htm)

into force to the UK on 7<sup>th</sup> August 2014, a year after the date the UK ratified the Convention. However, UK legislation may apply before that date. The UK shall issue Certificates under its national legislation that should provide adequate prima facie evidence of compliance.

The UK is an island nation, which has over 120 commercial ports and more than 24,100 seafarers. The UK also has 1,383 registered vessels with more than 16.57 million gross tonnage under its flag. Currently the UK is constructing a major deep-sea port, the London Gateway that can handle the biggest container ships in the world. The maritime sector of the UK creates up to some 263,000 jobs and contributes nearly £13.8 billion to the GDP.<sup>9</sup>

The Isle of Man, which is listed in the world's top 15 in terms of tonnage, stands in the top 20 countries or territories for merchant fleet. Gibraltar is famous for its strategically location, at the crossroads of the Mediterranean and Atlantic shipping lanes.<sup>10</sup>

The implementation of MLC 2006 in the UK is characterized by its flexible legislative transformation, which makes full use of the different hierarchy of law and emphasizes public participation.

#### **4.1.2.1 The United Kingdom's Maritime & Coastguard Agency (MCA)**

MCA is an executive agency of the Department for Transport, which is main competent authority in implementing MLC 2006 in the UK.

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<sup>9</sup> Statistics available at article "United Kingdom ratifies the Maritime Labour Convention, 2006 (MLC, 2006)" on ILO's website:  
[http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS\\_218778/lang--en/index.htm](http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_218778/lang--en/index.htm).

<sup>10</sup> The same as above.

The Merchant Shipping Act 1995 is an Act of Parliament passed in the UK in 1995. Under this umbrella, MCA can publish Marine Notice to implement international conventions flexibly. There are three different types of Marine Notice which publish to the shipping and fishing industries on important safety, pollution prevention and other relevant information. Merchant Shipping Notices express mandatory information which must be complied with under UK legislation. These MSNs is related to Statutory Instruments and include the technical details of such regulations. Marine Guidance Notes give important guidance and advice concerning the improvement of the safety of shipping and of life at sea, and to minimize or prevent pollution from shipping. Marine Information Notes are sent for a more limited audience e.g. equipment manufacturers or training establishments, or convey information that will only be of use for a short period of time, like timetables for MCA examinations.

Take some sectors of Title 1 - Minimum requirements for a seafarer to work on a ship of MLC 2006 for example, the corresponding UK legislation list as follows:

**Table 2: Related legislation and documents on minimum age in the UK**

1	Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998
2	Marine Guidance Notice MGN 88(M+F)
3	Maritime Labour Convention 2006 Standards
4	Provisional Guidance of Maritime Labour Convention 2006 on Minimum Age

**Source:** See “Maritime labour convention, 2006, standards – UK legislation and guidance”, available at Annex 2 of MGN 491<sup>11</sup>

**Table 3: Related legislation and documents on medical certificate in the UK**

1	The Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010, as amended
2	MSN 1822 - (Maritime Labour Convention) (Medical Certification) Regulations 2010
3	MSN 1821 – Maritime Labour Convention 2006: Merchant Shipping (Maritime Labour Convention) – List of Approved Doctors. <sup>12</sup>
4	MSN 1815 – Maritime Labour Convention 2006: Medical Certificate – List of those Countries whose Medical Certificates are Accepted as Equivalent
5	Provisional Guidance on Maritime Labour Convention 2006: Medical Certificate Guidelines For Maritime Employers and Manning Agencies

**Source:** The same as Table 2

**Table 4: Related legislation and documents on recruitment and placement in the UK**

1	Maritime Labour Convention 2006 Standards (Recruitment and Placement)	
2	Conduct of Employment Agencies and Employment Businesses Regulations 2003, as amended	For UK agencies only

<sup>11</sup> MGN 491 - Maritime labour convention: Application to workboats of 200GT to less than 500GT.

<sup>12</sup> See website of MCA for latest information

3	(Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981(a) in Northern Ireland)	
4	Provisional Guidance - Maritime Labour Convention 2006: Seafarer Recruitment and Placement	
5	Provisional Guidance - Maritime Labour Convention 2006: Benefits of working on board MLC Compliant ships	
6	Regulated by the states they are based in, but comply with Maritime Labour Convention 2006	For overseas agencies

**Source: The same as Table 2**

(The United Kingdom's Maritime & Coastguard Agency, 2013, MGN 491)

In general, as tables 2-4 show, Marine Notices should be used together with the UK regulations implementing the provisions of the MLC. Marine Notices explain the UK's understanding of important terms and clauses in MLC 2006. Through Marine Notices, the UK hopes to implement MLC 2006 completely and exactly, without straying away from the intention of those who drafted the Convention.

#### **4.1.2.2 Public consultations**

To transpose MLC 2006 into UK national law, the UK has revised and made a number of statutory instruments which have been consulted upon publicly. Public participation is an important feature of UK legislation procedure. During the period that MCA reviewed its merchant shipping legislation in line with the requirements in MLC 2006, a number of public consultations were conducted on its web sites, so as to seek public views on MCA's proposals.

#### **Table 5: Public consultations on implementing MLC 2006 in the UK**

Time	Consultations on regulatory packages
20 March 2013	Merchant shipping recruitment and placement regulations
25 June 2013	Merchant shipping minimum age regulations
8 May 2012	Merchant shipping medical care regulations
8 May 2013	Merchant shipping crew accommodation regulations
20 June 2013	Merchant shipping health and safety protection and accident prevention regulations
8 May 2012	Merchant shipping food and catering regulations
19 December 2012	Repatriation of seafarers on sea-going ships regulations
19 December 2012	Minimum standards for payment of seafarers wages regulations
8 May 2012	Minimum standards for seafarer compensation and shipowner liability regulations
20 March 2013	Ship surveys, certification and seafarer complaints procedures regulations
19 December 2012	Employment agreements for seafarers on UK sea-going ships regulations

**Source:**[https://www.gov.uk/government/publications?keywords=&publication\\_filter\\_option=consultations&topics%5B%5D=all&departments%5B%5D=maritime-and-coastguard-agency&world\\_locations%5B%5D=all](https://www.gov.uk/government/publications?keywords=&publication_filter_option=consultations&topics%5B%5D=all&departments%5B%5D=maritime-and-coastguard-agency&world_locations%5B%5D=all)

Besides the consultations mentioned above, a full list of the standards covered by MLC 2006, and the applicable UK legislation and guidance is published on MCA's official website. As one of the most developed shipping country in the world, the UK provides first-class service on the information disclosure of its maritime laws and

regulations. Figure 2 is a screenshot of the first page from the UK's Marine Notice database<sup>13</sup>, which covers all the MSNs, MGNs and MINs from 1919 to 2014.

**M Notice History**  
A historical list of Maritime and Coastguard Agency Marine Notices showing their current status

Jump to [MSN](#) Last updated 1 April 2014 MSN 1852  
[MGN](#) Last updated 1 April 2014 MGN 504  
[MIN](#) Last updated 1 April 2014 MIN 476

Jump to [MSN 1](#) [MSN 51](#) [MSN 101](#) [MSN 151](#) [MSN 201](#) [MSN 251](#) [MSN 301](#) [MSN 351](#) [MSN 401](#) [MSN 451](#) [MSN 501](#) [MSN 551](#) [MSN 601](#)  
[MSN 651](#) [MSN 701](#) [MSN 751](#) [MSN 801](#) [MSN 851](#) [MSN 901](#) [MSN 951](#) [MSN 1001](#) [MSN 1051](#) [MSN 1101](#) [MSN 1151](#) [MSN 1201](#) [MSN 1251](#)  
[MSN 1301](#) [MSN 1351](#) [MSN 1401](#) [MSN 1451](#) [MSN 1501](#) [MSN 1551](#) [MSN 1601](#) [MSN 1651](#) [MSN 1701](#) [MSN 1751](#) [MSN 1801](#) [MSN 1851](#)

Jump to [MGN 1](#) [MGN 51](#) [MGN 101](#) [MGN 151](#) [MGN 201](#) [MGN 251](#) [MGN 301](#) [MGN 351](#) [MGN 400](#) [MGN 451](#) [MGN 500](#)

Jump to [MIN 1](#) [MIN 51](#) [MIN 101](#) [MIN 151](#) [MIN 201](#) [MIN 251](#) [MIN 301](#) [MIN 351](#) [MIN 400](#) [MIN 451](#)

Refresh Data - remove all filtering  Print selected M Notices (>80 pages if ALL M Notices selected)

ALL Active M Notices  Active M Notices for Branch

Active since  dd/mm/yyyy  Canx/Replaced since  dd/mm/yyyy

Fishing ONLY  Merchant ONLY

Free text search  e.g. jackets

Contact details [Laraine Sinclair](#) (023 8032 9391)

**Figure 2: Frontpage of M Notice History Database**

**Noted: A historical list of Maritime and Coastguard Agency Marine Notices showing their current status**

**Source:**<http://www.dft.gov.uk/mca/mcga07-home/shipsandcargoes/mcga-shipsregsandguidance/marinenotices.htm>

#### 4.1.3 The United States

As we all know, the U.S. has not been very active in adopting ILO conventions. In the past half century, the U.S. has joined just 14 of the 189 ILO Conventions. Among those 14 conventions, seven were consolidated in MLC 2006. However, the United

<sup>13</sup> updated April 1<sup>st</sup> 2014

States has not ratified MLC 2006, and also faces the global application of MLC 2006, so it makes sense to discuss why the U.S. is absent and how such a superpower is to implement the Convention.

#### **4.1.3.1 The reason why the U.S. is absent**

According to the U.S. Department of Labor, those rules state that “no ILO convention will be ratified unless or until U.S. law and practice, at both the federal and state levels, is in full conformity with its provisions.”<sup>14</sup> According to the U.S. Council for International Business, the rules dictate that “no ILO convention will be forwarded to the U.S. Senate for ratification if ratification would require any change in U.S. federal or state laws.”<sup>15</sup> Therefore, as treaties under the U.S. Constitution, ILO conventions will not be used as a back door for changing federal and state labor law. This does not mean when a U.S. law is inconsistent with an ILO convention, ratification of that convention is impossible, but means that the Congress must change U.S. law before the convention will be submitted for ratification to the Senate.

Generally, U.S. courts have the potential to apply treaties like ILO conventions directly. In the 1951 case *Warren v. United States*<sup>16</sup>, the Supreme Court held that the United States that is the owner of a merchant ship was liable to a sailor for injuries he had suffered on shore leave. (*Warren v. United States*, 1951) When judging the case, the Court seemed to accept the ILO convention as U.S. law which could create rights

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<sup>14</sup> U.S. Dep’t of Labor, Bureau of International Labor Affairs, International Labor Organization (ILO), available at <<http://www.dol.gov/ilab/programs/oir/ILO.htm>>.

<sup>15</sup> U.S. Council for International Business, Issue Analysis: U.S. Ratification of ILO Core Labor Standards 4 (Apr. 2007), available at <<http://www.uscib.org/index.asp?documentID=1926>>.

<sup>16</sup> The central issue in the case was the meaning of the Shipowners’ Liability Convention (No. 55) in U.S. law. On *Warren* and the ILO, see VIRGINIA A. LEARY, INTERNATIONAL LABOUR CONVENTIONS AND NATIONAL LAW 77–82 (1982); Nicolas Valticos, The International Labour Organization, in THE EFFECTIVENESS OF INTERNATIONAL DECISIONS: PAPERS OF A CONFERENCE OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW, AND THE PROCEEDINGS OF THE CONFERENCE 134, 141–42 (Stephen M. Schwebel ed., 1971).



for individuals. The reluctance to consider ratifying MLC 2006 can also be attributed to the existence of contentious and detailed federal labor law that regulate the same issues covered by MLC 2006. (Charnovitz, 2008, p.25)

To some extent, MLC 2006 is formulated by ILO through putting labor rights within the framework of international human rights law. The U.S. has historically refrained from ratifying human rights instruments. However, the subject matters of international maritime law in MLC 2006 had been mostly covered in the seven of fourteen ILO conventions ratified by the U.S.

**Table 6: Fourteen ILO conventions ratified by the US**

<b>Convention</b>	<b>Date</b>	<b>Status</b>
<b>C105</b> - Abolition of Forced Labour Convention, 1957 (No. 105)	25 Sep 1991	In Force
<b>C182</b> - Worst Forms of Child Labour Convention, 1999 (No. 182)	02 Dec 1999	In Force
<b>C144</b> - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	15 Jun 1988	In Force
<i>C053 – Officers’ Competency Certificates Convention, 1936 (No. 53)</i>	<i>29 Oct 1938</i>	<i>In Force</i>
<i>C054 - Holidays with Pay (Sea) Convention, 1936 (No. 54)</i>	<i>29 Oct 1938</i>	<i>Not in force</i>
<i>C055 – Shipowners’ Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)</i>	<i>29 Oct 1938</i>	<i>In Force</i>
<i>C057 - Hours of Work and Manning (Sea) Convention, 1936 (No. 57)</i>	<i>29 Oct 1938</i>	<i>Not in force</i>
<i>C058 - Minimum Age (Sea) Convention (Revised), 1936 (No. 58)</i>	<i>29 Oct 1938</i>	<i>In Force</i>

<b>C074 - Certification of Able Seamen Convention, 1946 (No. 74)</b>	<b>09 Apr 1953</b>	<b><i>In Force</i></b>
<b>C080 - Final Articles Revision Convention, 1946 (No. 80)</b>	24 Jun 1948	In Force
<b>C147 - Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)</b>	<b>15 Jun 1988</b>	<b><i>In Force</i></b>
<b>C150 - Labour Administration Convention, 1978 (No. 150)</b>	03 Mar 1995	In Force
<b>C160 - Labour Statistics Convention, 1985 (No. 160)</b> Acceptance of all the Articles of Part II has been specified pursuant to Article 16, paragraph 2, of the Convention.	11 Jun 1990	In Force
<b>C176 - Safety and Health in Mines Convention, 1995 (No. 176)</b>	09 Feb 2001	In Force

**Source:**[http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102871](http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102871)

Further more, the U.S. has ratified the other three “pillars” of international maritime conventions, namely, STCW, SOLAS and MARPOL. Concerned with the seafarer’s proper ability, the safety of life at sea, and environmental integrity, these conventions are supplemented by the MLC, 2006 that focus on the rights and welfare of seafarers to support the whole international maritime industry comprehensively. Although existing U.S. laws and policies were very similar with those conventions, ratification is to make these conventions to facilitate U.S. trade when they entered into force. However, non-ratification of a convention like UNCLOS has not carried as serious implications for U.S. trade, so as would non-ratification of MLC 2006.

#### **4.1.3.2 The way the US implements MLC 2006**

According to the U.S. Coast Guard (USCG), about 1,000 U.S. ships, approximately crewed by between 15,000 and 25,000 seafarers, will be affected by the MLC, 2006 when it enters into force. This number of ship is nearly half of the entire American fleet of 2,055 vessels. These crew numbers do not cover American seafarers that work onboard ships flying the flags of other nations. Due to the “no more favourable treatment” provision created by MLC 2006, these ships of international routes will be required to comply with MLC 2006 when visiting the ports of States that have ratified the convention.

The USCG is the main agency charged with much of the responsibility of implementing MLC 2006 in the U.S. They drew a conclusion in the Navigation and Vessel Inspection Circular (NVIC) No. NEW-13 (Guidance Implementing MLC 2006), that is, U.S. law is “substantially equivalent” to all substantive provisions of MLC 2006 except for Regulation 4.3 (Health and Safety and Accident Prevention) and Regulation 5.1.5 (On-board Complaint Procedures).

NVIC 02-13, which was issued July 30, 2013, adopted a formal, voluntary inspection and certification system to provide prima facie evidence that U.S.-flagged ships comply with the provisions of MLC 2006. Specifically, a Statement of Voluntary Compliance (SOVC) and a Declaration of Voluntary Compliance reflect MLC 2006 and the DMLC of MLC 2006.

The U.S. Coast Guard was extremely meticulous in following the letter of MLC 2006 for one principal reason: the “no more favourable treatment” clause contained in Article V, paragraph 7. The Coast Guard’s NVIC on MLC 2006 plainly states, “Until such time that the U.S. ratifies MLC 2006, the Coast Guard will not mandate enforcement of its requirements on U.S. vessels or upon foreign vessels while in the Navigable Waters of the United States. However, Article V, paragraph 7, of the

Convention contains a ‘no more favorable treatment clause’ which requires ratifying governments to impose Convention requirements even on vessels from a non-ratifying government when calling on their ports. As a result, U.S. vessels not in compliance with the MLC [2006] may be at risk for Port State Control actions, including detention, when operating in a port of a ratifying nation.”

## **4.2 The preparation for implementing MLC 2006 in China**

Although China has not ratified MLC 2006 until now, Chinese government has responded positively to the domestic application of MLC 2006 and narrowed the gap between present situation of Chinese seafarers’ management and the requirement of MLC 2006.

In recent years, China’s National People’s Congress (NPC) and various ministries have intensified their efforts to streamline the country’s labor laws and regulations in order to narrow the gap between the Chinese labor standards and those of the world. However, there is no national law on seafarer, but three types of laws govern China’s maritime labor standards: Administrative Laws, Ministerial Rules and Maritime Regulatory Documents, and most of them were adopted after 2006.

### **4.2.1 Laws**

Laws are made by The NPC, which is the highest law making body in China. But the drafting of various legal bills is primarily a responsibility of State Council and its subordinate ministries and agencies. Labour Contract Law of the People’s Republic of China is the primary source of labour law in China and went into effect on January 1, 2008. It is a shame that there is no law regarding maritime labor standards in China.

#### **4.2.2 Administrative laws**

Administrative laws are made by the State Council of the People's Republic of China. Administrative laws are more important in China, since Chinese economy is changing constantly. Due to the shortage of statutory laws in some key policy areas, Chinese administrative agencies have been given a larger role in making administrative regulations, policies and orders. Take maritime labour area for example, Regulation of the People's Republic of China on Seafarers is the primary source of Administrative laws regarding maritime labour in China and went into effect on September 1, 2007. As the first law on seafarers' management, it fills the blank that there are no laws and regulations on seafarers' management in China for a long time. It cannot meet all of the requirements of MLC 2006, since Regulation of the People's Republic of China on Seafarers focus on the management of the seafarers, distinguished from MLC 2006 which attaches much importance on seafarers' life, working environment and social welfare. It is MOT that mainly drafted Regulations of the People's Republic of China. Limited by the scope of official duty, MOT cannot formulate regulations regarding to social welfare. Therefore, there are obvious deficiencies of Regulation of the People's Republic of China on Seafarers in the protection of legitimate rights and interests of seafarers.

#### **4.2.3 Ministerial Rules**

Generally, Administrative Law is an important means to amend the existing statutory law in China, accordingly, Ministerial Rules is an important means to explain the existing Administrative law. Many new measures and policies are normally carried out through Ministerial Rules first. Some of them may eventually become an Administrative Law or statutory law. Take maritime labour area for example, the

Ministry of Transport of the People’s Republic of China (MOT) has made a number of Ministerial Rules:

**Table 7: List of some maritime Ministerial Rules in China**

Administrative Measures for the Registration of Seafarers in People’s Republic of China	No. 1 Order of MOT 2008
The Seaman Service Management Regulations	No. 6 Order of MOT 2008
The Provisions of Domestic Ship Management Industry	No. 1 Order of MOT 2009
Rules of Crew Training Management in People’s Republic of China	No. 10 Order of MOT 2009
Rules of Ship Safety Inspection in People’s Republic of China	No. 15 Order of MOT 2009
Rules of Oversea Seafarers Management IN People’s Republic of China	No. 3 Order of MOT 2011
The Measures for Management of Seafarers’ Working and Living Conditions on Board Ship in People’s Republic of China	No. 442 of MOT Maritime Regulation 2013

**Source: Author**

Among the Ministerial Rules listed above, the last one is most important one, which established China’s main specification requirements on seafarers’ working and living conditions on board ship and whose terms and conditions set very high similarity

with MLC 2006. Therefore, it is considered to be the product of domestic practice on MLC 2006.

#### **4.2.4 Maritime Regulatory Documents**

Maritime Regulatory Documents are issued by administrative agencies like China Maritime Safety Administration, which are not regarded as legal norms.

In 2009, as the competent department of seafarers' industry, China Maritime Safety Administration launched the research of MLC 2006. After nearly two years of research, the preparation of legal documents for ratifying MLC 2006 basically completed. To this end, the Ministry of Transport of the People's Republic of China (MOT) and Ministry of Human Resources and Social Security of the People's Republic of China (MOHRSS) made multiple ministerial talks and negotiations on implementation of the convention. In May 2013, two ministries reached an implementation memo, forming the basic pattern of implementation, which is "joint supervision, certificating by MSA". In June 2013, in response to the port state control after the Convention came into force, China Maritime Safety Administration released a notice to advise shipowners to voluntarily apply Maritime Labour Certificate for Chinese ships on international voyages and entrusted China classification society to carry out inspections on whether Chinese ships on international voyages meet the conditions of MLC 2006. This notice belongs to Maritime Regulatory Documents.

## **Chapter 5 The main problems existing in the ratification of MLC 2006 in China and solutions**

### **5.1 Inadequate enforcement of current maritime labour standards**

It is an indisputable fact that China carries on low labour standards at present, compared with developed countries, especially in shipping industry. One can argue that China's labor standards may look good on paper, but many of these standards are either ignored or not followed strictly.

The reason for the current low labour standards in China is still the level of economic development. For many years, China was under a planned economy with socialist-style labor-management system. Workers enjoyed very high political and social status. Since 1979, China has begun to dismantle the planned economy. The labor system is currently undergoing a major change. China's entrance into WTO may increase international pressure on China in the areas of compliance with the international labor standards. In recent years, China's National People's Congress (NPC) and various ministries have reinforced their efforts to modify the country's labor laws and regulations in order to narrow the gap between the Chinese labor standards and those of the world. However, Based on the characteristics of dual economic structure in China, it is obvious for Chinese enterprises to implement the international labor standard in a polarization way.



### **5.1.1 Dual structures of economy and their status**

There exist dual structures of the economy in China, socialist public economy and non-public sectors of the economy. As stated in the Constitution of the People's Republic of China,

*“The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production.”*

(Constitution of the People's Republic of China, 2004, Article 6)

*“The state economy is the sector of socialist economy under ownership by the whole people; it is the leading force in the national economy. The state ensures the consolidation and growth of the state economy. ”*

(Constitution of the People's Republic of China, 2004, Article 7)

*The non-public sectors of the economy such as the individual and private sectors of the economy, operating within the limits prescribed by law, constitute an important component of the socialist market economy.*

*The State protects the lawful rights and interests of the non-public sectors of the economy such as the individual and private sectors of the economy. The State encourages, supports and guides the development of the non-public sectors of the economy and, in accordance with law, exercises supervision and control over the non-public sectors of the economy.*

(Constitution of the People's Republic of China, 2004, Article 11)

Due to the different ownership, socialist public economy and non-public ownership economy share different proportion and management model in China, as stated in the Property Law of the People's Republic of China,

*“In the primary stage of socialism, the state upholds the basic economic system under which the public (state) ownership shall play a dominant role and diversified forms of ownerships may develop side by side.*

*The state consolidates and develops the public (state) economy, and encourages, supports and guides the development of the nonpublic economy.*

*The state practices the socialist market economy system and safeguards the equal legal status and development rights of all market operators.”*

(Property Law of the People’s Republic of China, 2007, Article 3)

### **5.1.2 Dual enterprise structures**

Based on the dual structures of economy in China, there exist dual business enterprises, state-owned enterprises and private enterprises. On one hand, China’s state-owned enterprises are characterized by state coordination, bank financing, incremental productivity-enhancing innovations, and so on. On the other hand, China’s private enterprises are characterized by private ownership, difficult budget constraints, profit maximization, and more risky radical innovation. Based on the state controlling shareholding in the state sector, the boundary between the state sector business system and private sector business system is clear.

In the shipping industry, besides several state-owned enterprises, such as China COSCO Holdings Company Limited (“China COSCO”) and China Shipping (Group) Company (“China Shipping”), there are hundreds of thousands of small shipping enterprises in China that are private owned. Accordingly, on the basis of different kinds of companies they belong to, Chinese sailors can be divided into three groups: that of state-owned enterprise groups, that of private shipping companies and crew seafarers service agencies, and freelance seaman.

Currently, large state-owned enterprises, like China COSCO and China Shipping, have relatively perfect and professional crew management, including the personnel allocation of seafarers, labor wages, training and education and so on. The labour unions in these companies play a positive role in the protection of seafarers' rights and interests.

In contrast, private shipping companies and seafarers service agencies lack effective management of seafarers. Their labour unions perform practically no function or have not been established. Seafarers' rights and interests cannot be guaranteed. Firstly, they cannot provide the crew with decent work, including living conditions, working conditions, health conditions and so on. They cannot conform to the provisions of national laws and regulations, let alone MLC 2006; secondly, their crew cannot get enough rest, working with fatigue; thirdly, some shipping companies do not distribute wages and subsidies in time; fourthly, the crew cannot get social security of special profession or can only get the lowest level of social security.

When it comes to freelance seaman, things will be more serious. Once they get their feet on land, they will not be able to obtain any source of pension. Generally, they pay for their own social security and medical insurance.

In a word, the crew services market in China is immature. Under the profit-driven, some private shipping companies and seafarers service agencies charge high fees on seafarers without providing equivalent services on the same level. On the contrast, they seriously infringe on the legitimate rights and interests of the crew. It is still a long way for private owned shipping companies to implement MLC 2006.

### **5.1.3 Recommendations**

In the long run, only through the evolution of market competition mechanism, can these substandard private shipping companies and seafarers service agencies be eliminated.

## **5.2 Reallocation of obligation on seafarers' rights protection**

MLC 2006 requires the clear allocation of responsibility on the protection of seafarers' rights among different ministries. Currently, there are several departments concerning the protection of seafarers' rights among different ministries.

### **5.2.1 Ministry of Human Resources and Social Security of the People's Republic of China (MOHRSS)**

According to Labor Contract Law of the People's Republic of China,

*“The State Council's labor administration authority shall be responsible for overseeing the implementation of the employment contract system nationwide. The labor administration authorities of local People's Governments at the county level and above shall be responsible for overseeing the implementation of the employment contract system in their respective jurisdictions.*

*In the course of overseeing the implementation of the employment contract system, the labor administration authorities of People's Governments at the county level and above shall consider the opinions of the Trade unions, the representatives on the side of the enterprises and the authorities in charge of the industries concerned.”*

(Labor Contract Law of the People's Republic of China, 2008, Article 73)

Therefore, it is the labor administrative departments that take responsibility for the management and supervision of crew labor security, while the maritime administrative departments can only put forward opinions and suggestions.

### **5.2.2 Ministry of Transport of the People's Republic of China (MOT)**

According to Regulation of the People's Republic of China on Seamen,

*“The administrative department of transportation of the State Council shall be in charge of the administration of seamen across the whole nation.*

*The state maritime administrative organ shall be responsible for uniformly implementing the administrative work of seamen.*

*The maritime administrative organs in charge of the water areas under the jurisdiction of the Central Government and those in charge of other water areas (hereinafter generally referred to as maritime administrative organs) shall be responsible for the administration of seamen in light of their respective duties.”*

(Regulation of the People's Republic of China on Seamen, 2007, Article 3)

*“The maritime administrative organ shall establish and improve a supervision and inspection system for the administration of seamen, lay particular stress on the supervision and inspection of the registration, competence and qualifications, fulfillment of duties and safety records of seamen, training quality of seaman training centers, honesty and good faith of seaman service providers and the protection of the legitimate rights and interests of seamen by employers of seamen, etc., urge employers of seamen, ship owners and the relevant institutions to establish and improve corresponding systems to safeguard the personal safety,*

*sanitation, health and labor security of seamen when they are working on board and urge them to carry the corresponding safeguard measures into effect.”*

(Regulation of the People’s Republic of China on Seamen, 2007, Article 45)

Therefore, it is the maritime administrative departments that take responsible for registration, competence and qualifications, fulfillment of duties and safety records of seamen, training quality of seaman training centers, and so on. Based on the conflicting clauses in 5.2.1 and 5.2.2, the responsibility of two departments is not clear. In order to meet the requirements of MLC 2006 better and to protect the legitimate rights and interests of the crew better, China needs to further define the division of authority between these departments.

### **5.2.3 Ministry of Health of the People’s Republic of China (MOH) and General Administration of Quality Supervision, Inspection and Quarantine of the People’s Republic of China (AQSIQ)**

These two departments overlap in issuing seamen’s medical certificate. The provisions of MLC 2006 regarding medical certificate is to ensure that all seafarers are medically fit to perform the duties they are to carry out at sea, so as to protect both the shipowners and seafarers. This standard is without prejudice to the STCW. A medical certificate issued in accordance with the requirements of the STCW shall be accepted by the competent authority. A medical certificate meeting the substance of those requirements, in the case of seafarers not covered by the STCW, shall similarly be accepted. (Maritime Labour Convention 2006, (2006))

At present, according to legal provisions in China, the international seafarers shall hold “international travel health examination certificate” issued by AQSIQ, “health certificate” supervised by MOH and printed by MOT, and “Seafarers’ health

certificate” required by China MSA. From the prospect of implementing MLC 2006, “seafarers’ health certificate” is issued on the basis of STCW, which can meet the requirements of international conventions in the maximum. However, as national health management authorities and entry-exit inspection and quarantine authorities, MOH and AQSIQ also bear the responsibility on the seafarers’ health management.

Therefore, it is necessary for related ministries to cooperate on issuing seamen’s medical certificate. The ideal method is “one physical examination, two certificates issued”, which avoid seafarers proceeding similar examination twice.

#### **5.2.4 Recommendations**

Combined with the requirements of MLC 2006 and the crew legislative situation in China, China MSA may undertake the main responsibility of the supervision and inspection of the crew’s rights in future. Once the rights and interests of seafarers are infringed, it is the most effective and most convenient way for maritime authorities to find it in the inspection. Seafarer’s complaint to maritime authorities is also thought to be the simplest and easiest channel. Therefore, in future the responsibility on the protection of seafarers’ rights in China will mainly rely on maritime authorities, supplemented by other departments.

### **5.3 The natural defects of the Tripartite Consultation Mechanism in China**

The Tripartite Consultation Mechanism is implemented by the ILO, which means workers, employers, and the government work together to improve labor standards and protect workers’ rights. In 1990, the NPC Standing Committee approved China’s entry into the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Soon afterwards the domestic legislation defined the tripartite mechanism.

China implemented its own form of tripartite consultation in 2001, with the founding of the State Labor Relations Tripartite Consultation Conference. Now the national tripartite mechanism is composed of the original Ministry of Labour (now named MOHRSS), All-China Federation of Trade Unions (ACFTU) and China Enterprise Management Association (CEMA). Many argue that the tripartite system in China does not meet the standards of the ILO tripartite system. Nonetheless, the tripartite mechanism currently applied in Chinese labor relations is a first step toward a more authentic tripartite consultation mechanism by ILO standards. (Shen & Benson, 2008, p.231)

On December 23, 2009, the National Tripartite Consultation Mechanism on maritime labor relationship was established and collective agreement on Chinese seafarers was signed for the first time. The National Tripartite Consultation Mechanism on maritime labor relationship is composed of MOT, Chinese seafarers construction union and China Shipowners Association (CSA). Compared with most shipping developed countries, China set up the Tripartite Consultation Mechanism on maritime labor relationship very late, and there are some natural defects:

### **5.3.1 Some parties of Tripartite Consultation limited to administrative guidance**

According to CSA's constitution, CSA accepts the guidance and supervision of the Ministry of Transport of the Peoples Republic of China (MOT) and the Ministry of Civil Affairs of the People's Republic of China (MOCA). Meanwhile, CSA assists the government department in charge of industry management and undertakes the work assigned by the government departments. Generally, shipowners association in foreign countries is usually unrelated to political factors. They pursue to maintain and improve the working conditions of laborer, improve the economic status of the workers, so there is no political function and purpose. (Clark & Lee, 2002)



ACFTU's subordination to the Party-state is so evident that it probably needs little further comment. According to ACFTU's Constitution, the trade unions are a bridge and a bond linking the Party and the masses of the workers and staff members, an important social pillar of the state power of the country. (Cui, 2007, p.54) Chinese seafarers construction union is no exception.

In a word, the non-government parties of the National Tripartite Consultation Mechanism on maritime labor relationship have an ambiguous role to play. On one hand, their targets are to defend the rights and interests of employers and employees. On the other hand, they have responsibilities imposed by the State to fulfill the political task and maintain social stability. It is evident that there are contradictions between these two roles. (Gao, 2007, p.44)

### **5.3.2 The unrealistic institutionalisation of Tripartite Consultation Mechanism**

Chinese government is adopting a vertical management mode in the Tripartite Consultation Mechanism. The National Tripartite Consultative Committee (NTCC) was established in August 2001 and instructions were sent to all provincial governments to establish their own TCCs by the end of 2002. The second meeting of the NTCC in February 2002 decided to extend tripartism to municipalities and townships across the country. By the end of 2001 there were already 15 provincial TCCs and by June 2002 their coverage extended to 20 out of 31 regions. Eventually Tripartite Consultation Mechanism extended to county levels. Under provincial TCCs, there are municipal TCCs that had a similar organizational structure. However, the authorized employer's representative does not have many branches at city and county level. This difficulty has been partially overcome by choosing some of the major local employers to represent the employers association where CEC is absent.

As a matter of fact, the vertical management mode in Tripartite Consultation Mechanism is not suitable for the real market, because each industry has its own specifications. The provincial TCCs or the municipal TCCs are consolidated by all kinds of industries, so they cannot grasp every aspect of each industry. Therefore, the classification of the Tripartite Consultation Mechanism shall be based on industry type, not administrative division. (Shao, Nyland & Zhu, 2011)

#### **5.4 Challenge on foreign related employment of Chinese seafarers**

With the development of the globalized economy, the scale of global fleets is continuously expanding. Now because of the scarce number of senior seafarer in international maritime labour market, the source of seafarer supply is turning to developing countries. The expanding share of Chinese seafarers in the international maritime labour market has positive significance to alleviate the pressure of the civil employment, enhance the quality of the whole Chinese maritime labour and promote the development of shipping.

China has huge human resources and the total number of seafarers in China ranks first in the world. However, compared with the Republic of the Philippines, the percentage of Chinese seafarer in the international maritime labour market is not very high. Now MLC 2006 imposes new challenge on the operation pattern of Chinese crew dispatching.

##### **5.4.1 The immature operation model of crew service agencies**

Unlike other countries where seafarers can sign an employment contract with shipowners directly, China has an indirect way that Chinese seafarers need to be dispatched working aboard by the crew service agencies franchised by the Ministry of Commerce of the People's Republic of China (MOC) before 2010. From 2010 on,

MOC had transferred such responsibility to MOT. The crew service agency is a supporting body in the Chinese seafarers dispatch, which plays an important role in the legal relationship of crew labor service contract. By the end of June 2014, there were 200 crew service agencies approved.<sup>17</sup>

There are two different types of crew service agencies engaged in crew dispatch business with qualification. Some crew service agencies have their own seafarers and dispatch their own seafarers, such as COSCO bulk carrier Co. Ltd, which owns 7000 seafarers with professional certification. At present, this company sends 4000 seafarers working aboard for 20 shipowners in 170 ships.<sup>18</sup> Another type of crew service agencies engaged in crew dispatch business do not have their own fleet, such as Hua Yang Maritime Center.<sup>19</sup>

Because the crew labor market in China is in the initial stage, government is exploring to establish effective management mode. Present seafarer labor service is defective and deficient. Firstly, the service provided is not comprehensive. Most crew service agencies only provide the employment service, while occupation training, social insurance, social welfare and health care are rarely concerned. Even there are a small number of institutions providing these services, usually they require the crew to afford the high cost. Secondly, crew service agencies obtain high intermediate value on seafarers labour service. In general, crew service agencies do not directly charge fees on seafarers when providing labor service, but a large

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<sup>17</sup> See the website of China MSA, <http://cyxx.msa.gov.cn/lycx/jglycx!queryFwjgxx.action>.

<sup>18</sup> The introduction of COSCO bulk carrier Co. Ltd, showed on the website: <http://www.cosbulk.com/secondary-introduction.jsp#>, visited on June 11, 2014.

<sup>19</sup> See the website: <http://www.huayangmaritime.com.cn/huayang/features/root/02/index>, visited on June 11, 2014.

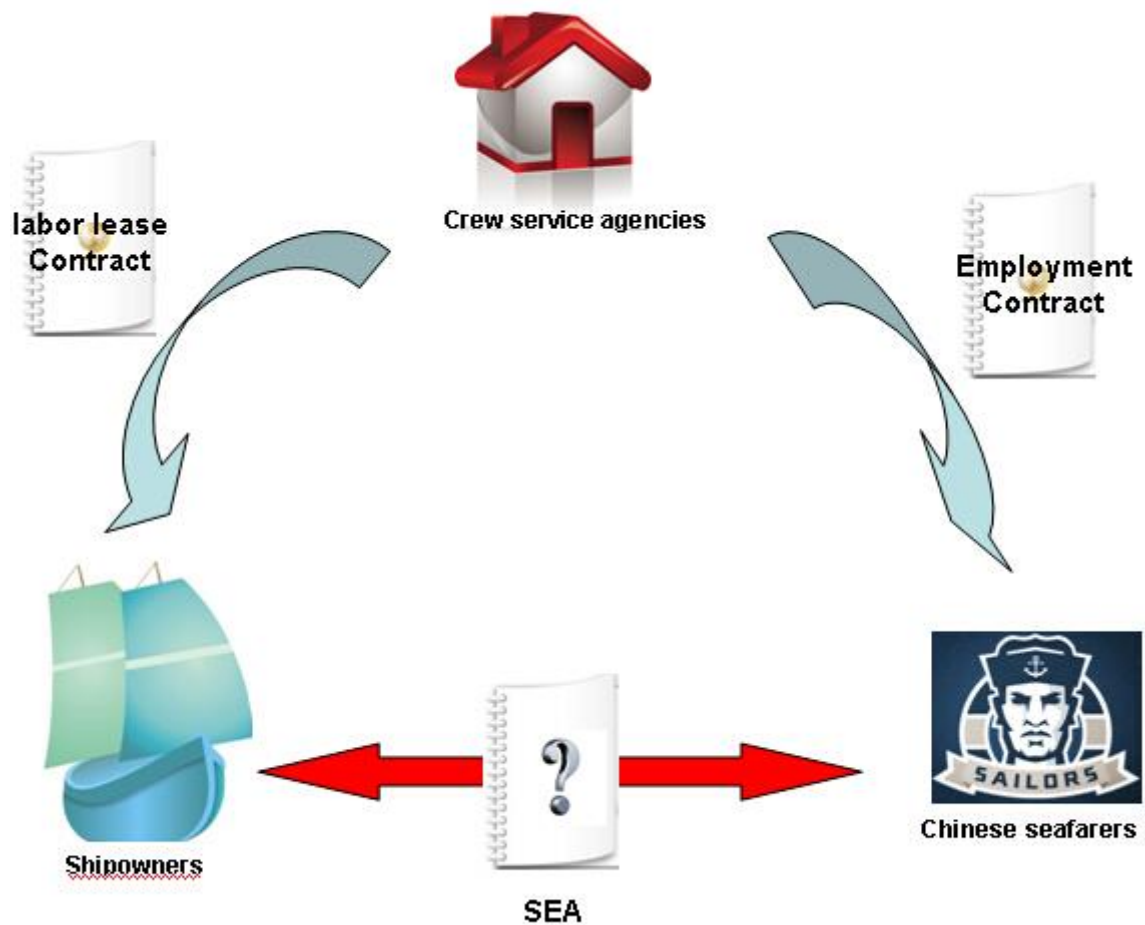
proportion of the wage will be deducted as service fee, which is too high to deserve their service. (Wang & Gao, 2007, p.406)

#### **5.4.2 Lack of the public-welfare crew service agencies**

According to MLC 2006, each member shall ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system. All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer. Undue proliferation of private seafarer recruitment and placement services shall not be encouraged. (Maritime Labour Convention 2006, (2006)) When formulating Regulation of the People's Republic of China on Seamen, Chinese government had thought of establishing crew service agencies to meet the demands of MLC 2006. MOT sets a license system for crew service agencies which are profitable. However, it is a new problem for the Chinese government to make sure that seafarers get free work chances.

#### **5.4.3 Complicated seafarers employment agreements**

Because Chinese seafarers need to be dispatched working aboard by the crew service agencies, there is a third party interfering in the labour relation between Chinese seafarers and shipowners. Specific procedures for the Chinese seafarers dispatch are as follows: Crew service agencies sign an "employment contract" with seafarers. Crew service agencies sign a "labour lease contract" with shipowners. Based on these two contracts, crew service agencies provide seafarers to shipowners.



**Figure 3: Complicated seafarers employment agreement**

**Source: Author**

As Figure 3 illustrates, in some cases there are no written labor contract between Chinese seafarers and shipowners. The labor relation between them is determined indirectly by “employment contract” and “labour lease contract”. In practice, many of the crew’s contract disputes originate from the complex legal relationship among three parties.

Seafarers’ employment agreement regulated by MLC 2006 is to construct an Employment relationship between seafarers and shipowners, which is a popular manner in the international shipping industry. In order to implement MLC 2006, the

Chinese government requires shipowners to sign “on board ship agreement” with seafarers.

#### **5.4.4 Recommendations**

First and foremost, the legal status of crew service agency shall be clarified. Next, the charges standard of crew service agency shall be regulated strictly. Finally, nonprofit crew service agencies might be set under the seafarer registration center in China MSA, to introduce work to seafarers for free. In conclusion, the competent authority shall enhance the administrative management of crew service agencies.

## **Chapter 6 Conclusion**

There is no doubt that the implementation of MLC 2006 is a major and significant milestone in the history of the shipping industry. This Convention has already directed attention to the rights and working conditions for Seafarers, which are the key players in ensuring that the world economy ticks over every day. It will also generate more work for these seafarers, flag States, port States and any recognized organizations if it is to be implemented properly. It will require new legislation and regulation, inspection resources and certification arrangements in many countries including China.

Although there is no direct evidence to prove that ISF and ITF had kidnapped ILO to create MLC 2006, so as to suppress shipping industry development and maritime labour export in developing countries, the enforcement and implementation of the Convention will greatly increase the operating costs of shipping industry in China, and ultimately affect the Chinese seafarers overseas jobs. (Zhang, 2013, p.14) There shall be some alerts and alarms among the long and loud applause. China shall focus on the consequences of the implementation of the convention.

Obviously, the implementation of MLC 2006 worldwide will do much for the living and working conditions of seafarers. To provide a global framework for the rights of key employees in shipping industry conforms to both the trend of economic

development and historical progress. It is impossible and unnecessary to reverse the trend. Therefore, it is significant for China to find a balance between the requirements of MLC 2006 and domestic application before ratifying MLC 2006. China shall make full use of the flexibility in application of conventions, like “substantially equivalent” measures, so as to make sure the measures will conform to fundamental realities of socialism initial stage in China.

Only through this healthy development can maritime labour market and the Chinese shipping industry own concrete competitiveness in the international market.



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