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**WORLD MARITIME UNIVERSITY**

Dalian, China

**RESEARCH ON THE NECESSITY AND  
FEASIBILITY OF THE IMPLEMENTATION OF  
THE MLC, 2006 IN CHINA**

By

**REN ZHILIANG**

**China**

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

**MASTER OF SCIENCE**

**(MARITIME SAFETY AND ENVIRONMENTAL MANAGEMENT)**

2013

## **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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Date: July 19, 2013

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Professor Wang Fengwu

Dalian Maritime University

Assessor:

Co-assessor:

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## **Abstract**

Title of Dissertation:     **Research on the Necessity and Feasibility of the  
Implementation of the MLC, 2006 in China**

Degree:                   **Master of Science**

The shipping industry is regarded as the first real global industry and propels the world economy forward at a neck-break speed. Seafarer, as the productive labourers of shipping industry, is a special working group. Therefore, a certain law, aimed at seafarers besides the general labour legislation, is extremely necessary on account of the global nature, specific hazard and professional technicality of their jobs in order to meet the new demands of social protection.

Maritime Labour Convention, 2006 was adopted on the 23<sup>rd</sup> February, 2006 in the Ninety-fourth Session of the Governing Body of the International Labour Office at Geneva after the efforts of nearly five years. The particular and explicit provisions have been made for the rights of all seafarers and the obligations of Member States, and the convention is acting in an exemplary manner in the international seafarer code field based on its comprehensive content. Now, MLC, 2006 is regarded as the fourth pillar of the international shipping legislations after MARPOL 73/78, SOLAS, and STCW of IMO.

This paper gives a description on the influence to the whole shipping industry after the implementation of MLC, 2006 on the basis of the introduction and interpretation of the convention. Main problems on the implementation of the convention in China have been raised after the analysis of the necessity and feasibility to implement MLC, 2006. Finally, the current implementation development has been stated and proper

countermeasures have been proposed in order to facilitate the progress of ratifying MLC, 2006 in China, guaranteeing the rights of seafarers and then the development of the shipping industry.

**KEY WORDS:** MLC, 2006, Ratification, Seafarer, Implementation, China

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## **List of Abbreviations**

ABS	American Bureau of Shipping
BIMCO	the Baltic and International Maritime Council
CCS	China Classification Society
China MSA	China Maritime Safety Administration
DMLC	Declaration of Maritime Labour Compliance
DWT	Deadweight Tonnage
ISF	International Shipping Federation
ILO	International Labour Organization
IMO	International Maritime Organization
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978
MLC, 2006	Maritime Labour Convention, 2006
MOT	Ministry of Transport of the People's Republic of China
SOLAS	International Convention for the Safety of Life at Sea, 1974
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978
SWOT	Strengths, Weakness, Opportunities and Threats
UNCLOS	the United Nations Convention on the Law of the Sea, 1982
VLCC	Very Large Crude Carrier

## **Chapter I Introduction**

### **1.1 Significance of the research**

Within the overall context of maritime labour standard legislation, China is badly in need of a comprehensive understanding of the influences on the development of the shipping industry brought by the Maritime Labour Convention, 2006 and defines the necessity and feasibility of the ratification of the Convention; moreover, relevant adjustments of policy and law, in terms of legislation, management and shipping operations, made in China should be realized after the enforcement of the Convention.

The purpose of this paper is to demonstrate the necessity and feasibility of the Convention ratification in China through the research on the regulations prescribed in the Convention, the characteristics and the influences on the shipping industry, and put forward the countermeasures taken by China during the ratification process and after the implementation of the Convention, what's more, provide viable scheme for the ratification of China.

### **1.2 Research objectives**

The objectives of this research are as follows:

- 1) To parse the characteristics of the Convention
- 2) To define the impacts of the Convention on the whole shipping industry
- 3) To analyze the necessity and feasibility of the implementation of the Convention in China
- 4) To provide viable scheme for China and accelerate the ratification progress
- 5) To facilitate the birth of Seamen Law in China
- 6) To promote the healthy and harmonious development of the shipping industry in

China and even the whole world.

### **1.3 Order of presentation and research methodology**

This paper starts from the interpretation to the main contents and characteristics of the Convention in terms of structure, amendment procedures, enforcements and legal culture and continues to the influences brought by the implementation of the Convention to the whole shipping industry worldwide. Then, high attention is paid to the necessity and feasibility of the implementation of the Convention in China, making use of the SWOT analysis method to provide preferable conditions of China on the ratification of the Convention, opportunities, threats as well, along with the enforcements of the Convention for the Chinese seafarers and shipping industry.

Furthermore, problems, on the implementation of the Convention in China have been put forward on basis of the comprehensive analysis on the necessity and feasibility of the implementation of the MLC, 2006 in China. At last, relevant countermeasures have been suggested in pursuance of the problems.

And the primary methods for obtaining information in this research paper are internet searching and interviews with relevant shipping companies, competent authorities and some specialists in this field.

## **Chapter II    Brief introduction to the MLC, 2006**

### **2.1 Background of the MLC, 2006**

From 1920 to 1996, ILO has held a total of 9 Maritime Congresses which are specifically related to merchant seafarers. In addition, forty conventions, twenty-nine proposals and one protocol have been passed. These documents cover a number of wide-ranging issues, including seafarer recruitment and placement, the minimum age, hours of work, the occupational safety, sanitary and welfare, labor supervision and social security protection, etc.

These documents have exerted a high significant influence on the shipping industry. However, with the spanning of 80 years, some of these documents have lagged behind the development of the society and shipping technology. And as each of these documents is established under the specified conditions of some particular problems, ILO did not have them revised and updated in time.

In addition, each country involved is only concerned on whether ships can conform to the minimum requirements of IMO treaties, but is indifferent to the social standards and the problem of labor standards. This results in the low approval rate of the maritime conventions by ILO. For example, as the same kind of maritime conventions, the SOLAS Convention of IMO had been ratified by 143 countries by the end of 2000 and the merchant tonnage accounts for 98% in the world. However, for the most important Convention No. 147 of "Merchant Shipping (Minimum Standards) Convention, 1976" passed by ILO, only 51 countries with 50% of the merchant shipping tonnage in the globe had ratified.

Moreover, another vital reason bringing the matter of low approval level is that the individual mandatory provisions of the content is extremely specific, creating

obstacles to some countries. Even if, compared with the requirements of the convention, the protection system in the covered field of the convention would be at least as powerful as it in some relevant countries. Due to the lack of the uniform application of international labor standards and proper executive mechanism widely accepted on a global scale, it brings some unequal burdens to the shipowners and governments to provide decent living conditions for the seafarers.

Therefore, the Joint Maritime Committee highlighted, in order to improve their understandings of the real-time situation on maritime employment and the timeliness of the relevant maritime labour regulations, it staves for laying down a kind of labour standards suitable for the whole shipping industry worldwide. Out of concerns for these problems and the response to the request of the Joint Maritime Committee, the Governing Body of the International Labor Office set up a senior joint working group consisted of the representative organizations of shipowners and seafarers to fulfill the formulation task of the new convention.

Since the establishment of the joint working group, it reviewed all submitted documents one by one, and put forward the proposal of revising the old conventions and advocating to approve a new one, including carrying out proper abeyance or abolishment actions against some of the obsolete documents. These recommendations are authorized by the Committee and the Governing Body of International Labor Standards. The conclusion is that twenty-six items of Maritime Labor Convention, one protocol and eighteen proposals related to the shipping industry were considered to be with their internal validity.

Most of the recommendations formed by the joint working group won the approval at the 277th Councils (2000 March). Furthermore, five items of conventions and three proposals on maritime social security standards were examined by the joint working group and the results were approved by the 380th Councils (2001 March). According to the decisions of these two Councils, 10 items related to maritime conventions need

to be revised; 3 items need to maintain the status quo; 11 items need to be advocated for approval; 15 items need to recommend approval of the new convention from the original convention; and 8 items need to be shelved, abolished or revoked. While for the proposals, 5 items need to maintain the status quo; 3 items needs to be revised; 7 recommendations need to promoted and implemented; 4 items need to seek for more information; 5 items has been replaced by new files and 5 items need to be revoked.

Based on the above review, the International Labor Office put forward "*The Review Report on Maritime Labor Standards of the International Labor Organization*" and three schemes on how to conduct the work of formulating maritime labor standards in the next step have been raised in the report. The second scheme, named "*The Geneva protocol*", drafting a uniform framework convention based on synthesizing the existing maritime labour standards was chosen after careful weighing and argument at the 29<sup>th</sup> session of the Joint Maritime Committee in 2001 which was absolutely the historical moment for the development of maritime labour standards. At the same time, the Special Tripartite Committee was set up to deal with the task of combining the relevant conventions.

The draft of the convention was carefully discussed and consulted, and the bequeathal problems of the new convention, such as the scope of application, entry into force and amendment procedure, were solved at the 94<sup>th</sup> Session on February 23, 2006. The new convention, officially named Maritime Labour Convention, 2006, was unanimously adopted by ILO delegates during the session with a total of 314 votes; there were a total of 106 countries involved. Two countries abstained from voting for reasons other than the substance of the convention. (ABS, 2009, P. 3) The success of the new convention was attributed to the joint efforts of ILO and all circles of the society, in the meantime, it expressed the common aspirations of the governments, shipowners and seafarers all over the world and at the session, many delegations indicated that they were to launch the ratification procedure as soon as possible.



## **2.2 Main objectives of the MLC, 2006**

There are overall five main objectives described in the MLC, 2006. They are:

- 1) Updating and consolidating existing ILO conventions
  - 2) Recruiting, developing, motivating and retaining qualified staff
  - 3) Preventing poor working and living conditions being used to create a competitive advantage
  - 4) Creating a level playing field
  - 5) Establishing the MLC, 2006 as the 4<sup>th</sup> pillar in international maritime regulations
- (Wu, 2012, p. 42)

## **2.3 Main contents of the MLC, 2006**

The main contents of the Maritime Labour Convention, 2006 consist of four parts: preamble, general obligations, explanatory note to the regulations and code of the Maritime Labour Convention and appendix.

### **2.3.1 Preamble**

The preamble does not have certain binding on the Member States but is the authoritative expression of their wishes. The legislative basis of the convention has been mentioned in the preamble, mainly including UNCLOS, the fundamental convention of the shipping industry, 8 core conventions of the ILO and some regulations of the IMO closely related to ship safety, personal security, training and competence for seafarers. In short, the MLC, 2006 will provide special protection for all seafarers.

### **2.3.2 General obligations**

The general obligations can be divided into two parts. Part one is composed of 16 articles which formulate the general issues of the convention covering the scope of application, definitions, fundamental rights of seafarers, Special Tripartite Committee, amendment of the convention and so on. The other part is the explanatory note to the convention about the Regulations and Code and the relationship between Part A and Part B of the Code.

### **2.3.3 The Regulations and Code**

The Code contains the details for the implementation of the Regulations and comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines), while the Regulations give a further statement on the rights and obligations of the convention.

The Regulations and Code are organized into general areas under five titles, each Title contains groups of provisions to a particular right or principle, with connected numbering, as follows:

#### **Title 1: Minimum requirements for seafarers to work on a ship.**

This part can be broken into four aspects, namely minimum age, medical certificate, training and qualifications, recruitment and placement. The fundamental rights of seafarers can be guaranteed with the help of the regulations of the minimum requirements prior to working onboard, and the safety of marine traffic also can be preserved in good order at the same time.

#### **Title 2: Conditions of employment**

This section is in connection with the regulations about the seafarers' labour rights at work, including seafarers' employment agreements, wages, hours of work and hours

of rest, entitlement to leave, repatriation, seafarer compensation for the ship's loss or foundering, manning levels, career and skill development and employment opportunities for seafarers.

### **Title 3: Accommodation, recreational facilities, food and catering**

This part has a bearing on the regulations about the seafarers' living conditions at work. The living conditions and standards are in the requirements of decent work beyond all doubt, so detailed regulations have been made in the convention. The international labour standards about seafarers' accommodation, food and catering have been synthesized and updated in this part. Meanwhile, certain fields in relation to the precaution of noise, vibration and other ambient factors in the living and working areas without detailed treatment in the shipping industry have been developed to a better stage. As the most particular part, it contains most of the technical requirements including the design and construction of new ships which fully reflect the adaption to the level of economic development and features on the improvement of seafarers' living standards.

### **Title 4: Health protection, medical care, welfare and social security protection**

The purpose of this section is to protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore in terms of medical care, shipowners' liability, health and safety protection and accident prevention, access to shore-based welfare facilities and social security. It is comprised of substantive contents based on the international labour standards, and still better, realistic approaches have been taken to promote the social security protection and avoid the obstruction of widespread approval of the MLC, 2006.

### **Title 5: Compliance and enforcement**

Each Member's responsibility set out in the Articles of this convention has been specified in this Title. The convention imposes the implementation responsibility upon the flag states, port states and the labour-supplying countries respectively and makes appropriate division among them in order to have seafarers under comprehensive protection from the new convention.

#### **2.3.4 The appendix part**

This part is comprised of the working and living conditions of seafarers that must be inspected and approved by the flag state before issuing certificates for a ship in accordance with Standard A 5.1.3, paragraph 1 and examples of the Maritime Labour Certificate, DMLC, Interim Maritime Labour Certificate and National Declaration.

### **2.4 The features of the MLC, 2006**

#### **2.4.1 The feature on structure**

As a kind of social phenomenon, law is a unity of content and form. The will expressed by the legislators is the content of the law and the form used to express the content depends on legislative technique. The structure issue of law belongs to a kind of legislative technique problem. High attention was paid to the arrangement of the structure during the draft process of the MLC, 2006. The convention adopted some new legislative techniques, compared with the previous conventions, specific embodying in the following two aspects:

##### **2.4.1.1 The design technique for the overall framework**

The new convention makes use of complex structural model in the respect of design technique for the overall framework, including preamble, general obligations, specific provisions and appendix. The structure of the maritime conventions formulated by

ILO from 1920 to 1996 adopted simple modes to organize the contents of the treaties: one is to set notes under the preamble directly, such as Seamen's Articles of Agreement Convention, 1926; another one is to set chapters under the preamble and to set articles under the chapters. The word "preamble" was not used as title, but only with the text content. The chapters are with titles while the articles are without titles like the new convention.

#### **2.4.1.2 The structure design technique on the legal norm**

A kind of arrangement with unified vertical format is adopted in the aspect of the structure design technique on the legal norm. In the past, the mandatory norm and non-mandatory norm were preferred by ILO when formulating international labour standards for some certain issues. The mandatory norm was stipulated in the form of convention while the non-mandatory one was provided in the recommendation form, and the arbitrariness regulation was used as a kind of supplement. The mandatory norm and the non-mandatory norm could be easily separated from each other by the member states and the relevant parties with the usage of this method, however, the discussion and deliberation, as well as quote and compliance, could not be facilitated in the method of putting social matters belongs to the same area into these two instruments to enact legislation.

The mandatory norms and the non-mandatory norms are organized in the united normative documents in the MLC, 2006. On the structural arrangement of legal norms, the basic principles are placed in the part of the general obligations and the specific principles are stationed in the specific provisions in the convention. The mandatory norms are after the specific principles and the following is non-mandatory norms which can make the member states and the relevant parties realize the entire range and obligations of the specific rules immediately and understand the whole contents of the convention clearly. This feature can be illustrated by the following example that each title (or chapter) contains several groups of provisions about a certain particular

principle or right, associated with numbers. For example, Title 1 is the minimum requirements for seafarers to work on a ship. There are three contents under the fourth article of the regulation, that is to say the Regulation 1.4 called recruitment and placement, of which all seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer is a principled provision. Then, some further stipulations on the particular measures to implement this principle have been made under Standard A1.4, such as the establishment of the seafarer services, as the words say:

“Nothing in this Standard or Regulation 1.4 shall be deemed to prevent a Member from maintaining a free public seafarer recruitment and placement service for seafarers in the framework of a policy to meet the needs of seafarers and shipowners, whether the service forms part of or is coordinated with a public employment service for all workers and employers.” (ILO, 2006, p. 34)

This is a definite regulation of the enforcement rules. Subsequently, some very detailed implementation measures have been prescribed on the operation of the seafarer recruitment and placement services, the collection and analysis of all relevant information on the maritime labour market, procedures to prevent the opportunities for exploitation of seafarers, right to be informed of seafarers about the working conditions and so on in Guideline B 1.4. By such a kind of structural arrangement, the convention attempts to achieve three major purposes:

- 1) To lay down a firm set of principles and rights in its Articles and Regulations
- 2) To provide the members with a considerable degree of flexibility on the ratification manner of these regulations and rights by the Codes. The flexibility is mainly reflected in two aspects: one is the possibility for a Member to implement the particular requirements of Part A of the regulation through substantial equivalence, when necessary; the other one is to provide the mandatory requirements of many provisions in Part A in a more general way, thus leaving

even more space for the Member legislation, in which case, the implementation guidelines are supplied in the non-mandatory Part B of the Code. And in this way, members who have ratified this Convention can ascertain the kind of action that might be expected of them under the corresponding general obligation in Part A, as well as the action that would not necessarily be required.

- 3) To ensure that the rights and principles are properly complied with and enforced through Title 5.

The structural arrangement of the convention indicates the core stance of ILO that allows the Members to adopt a flexible approach to guarantee the implementation of the principles and rights. (ILO, 2008, p. 4)

## **2.4.2 The features on the amendment procedures**

### **2.4.2.1 The amendment procedures provided by the Convention**

Another crucial feature of the convention is the regulations on the amendment procedure. The Convention prospectively predicts and develops various systems for the next 50 years. Therefore, it is extremely important for the Convention and all interested parties of shipping industry to keep in the greatest relevance. In order to achieve this goal, the Convention should frequently update its content through the discussion of the government, labour and capital. New convention provides the amendment procedure in a way of coexisting the existed procedures and new procedures. New procedure is a procedure that conventions can be approved quickly. This is aimed at meeting the necessity of updating the technical part of the Convention more quickly but no need for the revision of the whole Convention.

### **2.4.2.2 The specific contents of amendment procedures in the new Convention**

The convention has not only imported the new structure but also, in order to make this kind of structure work well, set up the Special Tripartite Committee under the Governing Body of ILO composed of government, labour and capital and endowed with special function in simplifying the amending procedure of the relevant Code to undertake the overall review of the effect of the new Convention at the same time. The Special Tripartite Committee will be comprised of the shipowners' and seafarers' representatives opted by the Council, and government representatives of the states which have approved the new convention (actually they may be the same as the members of Joint Maritime Committee). Hence, there will be no tripartite delegation as in the International Labour Conference but the modality of the Council. The social dialogue is actually carried out on the worldwide basis in view of the global characteristics of the shipping industry.

The government representatives without the approval of the convention may participate in the Committee, but have no right to vote. During the discussion of the second meeting of the senior working group, many government members held the perspective that the member states without the approval of the convention should also have the right to vote. It stipulated that members without the approval of the convention have no right to vote when the committee passed the amendment in the approved conventions. They are entitled to propose amendments and to participate in the ratification process of such kind of amendment at the International Labour Conference on the basis with the same right as the member states.

It formulates that the governments have as many as two times of the voting rights of the shipowners' and seafarers' in the Committee in Item 4. The 2:1:1 model means that, when the committee needs a formal vote (very possible), the government will account for 50% of the voting rights while each of the shipowners and seafarers accounts for 25%. This will eliminate the misgivings of the government representatives that they can be outweighed by the other two parties on the voting rights, especially in the adoption condition of amendments which demands for at least



2/3 of the voting rights. In addition, some further provisions have been provided by the convention to protect any one of the three parties will not be overwhelmed.

The simplification amendment procedure can be divided into six steps:

- 1) To submit an amendment proposal to the Director-General of the International Labour Office;
- 2) The amendment proposal be examined by the Director-General;
- 3) The Special Tripartite Committee reviews the amendment proposals;
- 4) Amendments shall be transmitted to the Committee for consideration at a meeting;
- 5) Amendments approved by the Conference shall notified by the Director-General to each of the ratification Members and set a response period within two years;
- 6) Entry into force. An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all the ratifying Members except those which had formally expressed their disagreement.

### **2.4.3 The features on enforcement**

Another feature of the Convention is the system related with enforcement, including two levels, international and domestic, of the enforcement regimes which embody in three aspects:

#### **2.4.3.1 Adding the inspection and certification system**

Compared with the previous conventions, the inspection and certification system have been added in the new convention. (CCS, 2009, p. 13) The Convention prescribes that the maritime labour certificate and declaration of maritime labour compliance shall be issued to a ship conforming to requirements of the MLC, 2006 and the native laws to guarantee the effective implementation of the Convention. (ILO, 2012)

#### **2.4.3.2 Enlarging the grounds of ships' detention in the PSC inspection**

A ship with substandard working and living conditions can be detained by the Port States. The ships applied to the Convention must carry and maintain a maritime labour certificate and a declaration of maritime labour compliance. The declaration of maritime labour compliance is a kind of certificate to state the native requirements of the Convention implementation on the working and living conditions of seafarers, and measures carried out by the shipowners to meet the requirements of the convention on board. (ILO, 2009, p. 20) As a kind of overwhelming evidence of the Members, the inspection frequency of the ships will decrease in case that no evidence can be provided to prove the substandard condition. Of course, the ships, from non-contracting countries or with no effective certificates though from contracting countries, will become the targets for even more detailed inspections.

This is the strong executive constitution established by the Convention to guarantee the practical and effective implementation. As the core system of implementation, make sure that more-favorable treatment will not be offered to the ships from the countries without ratification to the Convention. This is the unique feature that other ILO conventions do not have.

#### **2.4.3.3 Establishing the complaint procedures of seafarers**

For the complaint procedures of seafarers, regulation 5.1.5 introduces a requirement that a ship shall be with on-board complaint procedures and maintain the relevant reply records which do make sense in the area that ships continuously complies with the Convention standards on board.

#### **2.4.4 The features on contents and legal cultures**

The content of the Convention fully absorbs the outstanding achievements of ILO and many other international organizations in legislation, which embodies respect and protection of the human spirits. Just as the Convention mentioned in the third paragraph of the preamble:

“Desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the eight fundamental principles to be found in other international labour Conventions, in particular.” (ILO, 2006, p. 1)

The Convention is much more mature at the legislative technique. For example, it takes the legislative advantages of IMO and ILO considering the characteristics of maritime industry and maritime labor. In the institutions of the Convention, the amendment procedures adopt a flexible, pragmatic and innovative ways to develop conventions in order to assure the effectiveness of the Convention, and meanwhile other international organizations are also taken into consideration, such as the contents of the related conventions from the United Nations and the World Health Organization.

## **Chapter III Influences to the shipping industry of the MLC, 2006**

### **3.1 Influences to the international shipping industry**

As the fourth cornerstones of the high-quality international shipping management rules and regulations, Maritime Labour Convention, 2006 contains a set of global standards above the standards provided in the current maritime labour documents. This set of standards will help the whole industry obtain decent employment conditions in the global scope and the marvelous goal will be achieved by the ratification of the Convention in most countries active in the shipping industry as soon as possible.

The three reasons given below can realistically demonstrate that the convention can be ratified on a sufficient level and become the real global document.

1) The positive efforts made by government, labour and capital constitute the characteristics of the preparatory work and the Convention is the result of joint efforts carried out by these three parties.

2) The scientific legislation techniques have been adopted in the Convention and the consultation principles are adequately embodied in the legislative process as well, making the provisions to protect the seafarers' right in the Convention can be accepted by all the three parties.

3) The implementation mechanism set up by the Convention can promote fair competition in the shipping market. The certification system with clear reward provided in the new Convention has the shipowners already protecting the rights of seafarers according to the current conventions probably with none or rare substantive

additional obligations actually. The ships with the relevant certificates required by the new Convention can normally avoid the delays caused by the detailed inspections of the Port States; besides, certain protection is beneficial to these ships acquired from the new Convention when encountering unfair competitions brought by substandard ships in the shipping market. As this principle has firmly established in the Convention of the International Maritime Organization, countries that are not required ships flying its flag comply with the existing maritime labor standards, may find the certification system can meet their interests and enjoy the convenience associated with it.

The following international effects may be produced by the implementation of the new Convention according to the reasons above.

### **3.1.1 Facilitating the right-protection awareness of seafarers**

The legal obligations under the Convention will only apply to the seafarers on board ships hanging the Members' flag after the ratification of the Convention. However, the competent authorities of Members who have already ratified the Convention may require all ships moored their ports to comply with the Convention standards due to no more-favorable treatment principles and the establishment of the PSC inspection system, no matter the flag states of the ships are constrained by the Convention or not. Thus, the majority of the ships engaged in the international trade could not ignore the requirements of the Convention. This means that the Convention standards will become the basic knowledge for all seafarers and all the relevant parties have the responsibilities to have their seafarers acquaint the provisions of the Convention. For example, ships applying the Convention shall carry a copy of this Convention aimed at making the seafarers understand their rights. At the same time, it is more convenient for seafarers to learn and understand the rights provided by the Convention because of the simple language and unified text. So the enforcement of

the Convention will play a significant role on the right-protection awareness of seafarers. (Kang & Huang, 2008, p. 18)

### **3.1.2 Having a positive impact on the social dialogues at all levels**

The generating process of the Convention is the consultation result of all representatives from different countries and areas. Among these representatives, there are not only representatives from labour-supplying countries and shipping countries, but also representatives on behalf of the rights and interests of the shipowners and seafarers simultaneously. The discussion course is filled with conflicts and compromises. Moreover, in order to gain the wide ratification, the Convention leaves more space for the Members and allows them to formulate native laws to ratify the Convention on basis of the tripartite consultation. The native legislation process for the ratification of the Convention is the dialogue process of all social forces which can have a positive impact on the international social dialogue that the national organizations of seafarers and shipowners involved in. Hence, the Convention has a positive impact on the social dialogues at all levels.

### **3.1.3 Promoting the effective implementation of the maritime labour standards**

A strong executive component is within the Maritime Labour Convention. Undoubtedly, the strongest point of ILO in the implementation of the MLC is that it undertakes the necessary institutional assurance and authority, and has a vital supervision system of tripartite mechanism. The continuity of “compliance” consciousness of all aspects, from the national protection system to the international system, will be guaranteed by the formulation of the Convention. Under the Convention, it will start with the seafarer individual and must properly inform them of their rights and the remedies caused by not comply with the requirements of the Convention. Then the shipowners, they are requested to develop and ratify the

relevant plans to ensure that the native laws, regulations or other measure for the implementation of the Convention is abode by practically. (Jia&Fang, 2010, p. 51) The captain will be responsible for the implementation of the shipowner's plan and appropriate records to prove the implementation of the requirements of the Convention. As a new part for the ship supervision, the Flag States will inspect the shipowners' plan and confirm the execution of these plan, and need to have periodical quality assessments to the effectiveness of the national compliance system and submit the reports, including the quality assessment information about the supervision and certification system to the ILO according to Article 22 of the constitution.

Besides, this system will be strengthened by the PSC measures and enables countries to exchange information in the supervision and control process through the development of the international information base to boost the implementation of the labour standards.

#### **3.1.4 Boosting the enforcement operation of the inspections**

The unity of the Convention provides convenience for the inspectors. It is much more concise and explicit compared to the practice with the coexistence of multiple conventions and the Members can rarify certain conventions in accordance with their interests. There will be unique basic reference point for the supervision of the Flag States. The success of the Convention may entirely depend on the effectiveness of the voluntary supervision mechanism of the Port States if measuring in the global applicability of the standards. The ILO will provide supports on the establishment of supervision policy for the relevant authorities by preparing the practical guidelines materials and carrying out the training. They will use concrete examples and information to assist the authorized officials engaged in the Port State supervision to deal with a comprehensive range of labour issues.

In addition, the ILO will hold large-scale training activities under the cooperation with other relevant professional organizations, such as IMO, and support with the methods on how to strengthen the contact with PSC officials from other countries and makes full use of the information exchange promoted by the new Convention. It aims to ensure that the Port State officials, when necessary, can solve the problems with a self-confident and united way to verify whether the working and living conditions of seafarers correspond to the requirements of the Convention. Seafarers will have greater possibility of proposing complaints in foreign ports and look forward to the investigation about the complaints. Of course, the Port State Authorities will seek to push forward the solutions of the problems in appropriate situation, submit the relevant information of resolved and unsolved complaints to the Flag States, and inform the ILO and social partners.

### **3.2 Influences of the Convention to the shipping industry in China**

#### **3.2.1 Impact on the shipping legislation**

The Convention formulates that the Members should set up law for seafarers to perform the obligations prescribed by the Convention in many articles. Taking the Declaration of Maritime Labour Compliance for example, the requirements of the native laws should be embodied in this declaration according to the request of the Convention. However, the current legislation situation for seafarers in China can not meet the requirements of the domestic implementation of the Convention which indicates that China should formulate relevant code for seafarers reflecting the provisions of the Convention to fulfill the Member obligations after the enforcement of the Convention. (Zhou, 2006, p. 8)

#### **3.2.2 Influence to the shipping law enforcement department**



There is no unified provision for the competent department in the Convention, so MLC, 2006 can be the competent authorities of the government or the relevant organizations recognized by the government. It will be determined by legislation that which one is the real competent department.

### **3.2.3 Impact on the Seamen's Union Organization**

The contents of the Convention can be further explicit on basis of the tripartite consultation stipulated by many provisions of the Convention. But there are still several problems existed in China Seamen's Union, for example, no collective bargaining obligation is contained within the union constitution. (Wang, 2009, p. 16)

All the countries in the world have set up single industrial unions, rather than to form trade unions in the local governments and enterprises, which are determined by the internationalism of the shipping industry. Now the China Seamen's Union is comprised of the original Seamen's Union, Road Transport Union of China and China Construction and Material Trade Unions. It is adverse to the development of Seamen's Union by putting several industry unions together with no relevance for some of the industrial nature which is the embodiment of the weak consciousness on the shipping industry and the sea development in China. As is known to us that the seafarers from China occupy a small proportion in the seafarer labour market and most people attribute the main reason to the low quality of the seafarers in terms of communication in English, law abiding consciousness, whereas another important reason is neglected.

It is that the protection to the interests of the seafarers is far from enough in China. The intermediaries and exploitation exist in the seafarer labour market in China as well. Therefore, how to play the role of Seamen's Union under the system of the Convention is also a significant work in China in the future.

#### **3.2.4 Influence to the seafarers' intermediary organizations and seafarer labour market**

The comprehensive provisions on the seafarer recruitment and placement have been given in Regulation 1.4 in the Convention. In addition, the Convention provides even more comprehensive protection for the seafarers' rights through the provisions of labour-supplying responsibilities in Chapter 5. It is necessary to clean up and rectify the intermediary organizations and seafarer services so as to meet the requirements before the enforcement of the Convention in China.

#### **3.2.5 Impact on the shipping enterprises**

Clear provisions have been made on the shipowners' responsibilities in terms of working and living conditions, accommodation, social security protection of seafarers in Chapter 2, 3, 4 and the competent authority of the Member or a recognized organization shall issue a maritime labour certificate according to the requirements in Chapter 5 of the Convention. These regulations not only bring opportunities to the shipping industry, but also increase costs. How to cope with the accessorial burden after the enforcement of the Convention and increase the competitiveness of the shipping industry are not only the confronting problems for China, but for other countries worldwide. (Mao, 2007, p. 8)

## **Chapter IV    The necessity and feasibility of the Convention ratification in China**

### **4.1 The necessity of the Convention ratification in China**

China is not only a large shipping country with many ports but also a seamen output-oriented country. The ratification of the MLC, 2006 is urgently demanded in China in view of the institutions formulated in the Convention, trends of the major shipping countries for the Convention, the development strategies of the shipping industry and the condition of the seafarer labour market in China itself.

#### **4.1.1 Requirement from the institutions formulated in the Convention**

For the realization of the decent work of seafarers and the promotion of fair competition in the shipping industry, the Convention has established four aspects of the labour standards, respectively named minimum requirements for seafarers to work on a ship, conditions of employment, living conditions and the social security protection, at the same time, a kind of strong implementation mechanism has set up in Title 5 as guarantee for the compliance and enforcement of the labour standards.

The core requirement of the implementation mechanism is the “no-more favorable treatment” principle, the objectives of which are to supply the ratification of the Members with motivation mechanism and helpful to ensure the fair competitive environment in term of the employment rights.

This institution has already been created in the SOLAS Convention and the STCW Convention, 1978, as amended in 1995 both of which have been fully implemented worldwide as a result of this institution. Through the repeated legislation of treaties, it

has formed the regulations of customary international laws, with universal compulsory.

Through the repeated legislation of treaties, it has formed a rule of customary international law, with universal compulsory.

The specific implementation system is stipulated under Title 5, including the flag state responsibilities, the port state responsibilities and the labour-supplying responsibilities. The implementation of the Convention is guaranteed by such a kind of comprehensive system that the flag states issue certificates, the port states direct the inspections and the labour-supplying states are in charge of the supervision on the seafarer recruitment and placement services.

The institution mentioned above in the Convention shows that, after the entry into force, the ships with the nationality of China, when arriving at any of the Member ports, will be subjected to much more strict inspections which will cause a great threat to the development of the shipping industry in China. So China should access into the Convention and carry out the inspections and certifications in pursuance of the requirements of the Convention to enable the Chinese ships in and out the foreign ports without hitches and improve the transport efficiency, and it is a necessity for the development of the shipping economy as well.

#### **4.1.2 Impellent from the world major shipping countries' trends in allusion to the Convention**

After the adoption of Maritime Labor Convention, every member states have shown positive attitude that they will start the ratification procedure as soon as possible and hope to promote the realization of the decent working conditions for seafarers via bringing the MLC, 2006 into effect, and then boost the fair competition of maritime industry worldwide.

The Philippine Senate agreed to ratify the MLC, 2006 without any opposition on August 20, 2012 and the Philippine Foreign Ministry sent the approved documents to the International Maritime Labour Organization, making Philippine become the 30<sup>th</sup> Member to have its ratification registered and take part in the group of the “first 30” ILO countries to demonstrate their commitment to ensuring decent work for seafarers and a level playing field for quality shipowners. (ILO, 2012)

The compulsory enforcement of the Convention will be binding upon the ships applicable to the Convention and bring an adverse impact on the development of the shipping industry in China, if without ratification. Furthermore, the shipowners shall employ seafarers from the legal recruitment and placement services due to the relevant regulations of the Convention which will also have a great influence on the overseas assignment of seafarers in China.

In this international circumstance, China should make full preparations for the ratification of the Convention and keep pace with other countries in order to join the Convention as soon as possible.

#### **4.1.3 Ask from the development of the shipping industry**

At present, tremendous changes have taken place in the development environment of the world economy and the world's economic powerhouse begins to transfer to the Asia-Pacific region which will launch a new wave of economic development boom in the west Pacific coast and promote the regional cooperation, providing favorable conditions to the port construction in China as well as the development of the shipping industry.

##### **4.1.3.1 The ranking of China's merchant fleet**

In accordance with related statistics, the gross deadweight tonnage of China's merchant fleet is 36.249 million dwt in early 1999, and the figure is 83.10 million dwt in 2007, with a growth rate of 129 percent in a period of nine years. The growth rate is skyrocketing and its strength is in a steady upward trend, reaching the fourth place in the world. (Wang, 2009, p. 229)

Table 1- Merchant fleet statistics of the major shipping countries from 2003-2007

Country (Region)	2003	2004	2005	2006	2007	2008	AAGR	Proportion of the world fleet
Greece	4771.2	5325.7	5536.8	5247.4	5482.9	6114.1	5.1	5.7
Japan	1614.4	1544.3	1495.7	1401.0	1404.8	1385.6	-3.0	1.3
Germany	786.5	695.9	862.0	1340.8	1316.4	1498.4	13.8	1.4
China	2410.2	2550.8	2881.4	3193.6	3344.0	3621.1	8.5	3.4
USA	1312.5	1307.4	1339.3	1185.8	1166.4	895.4	-7.4	0.8
Norway	3114.7	2885.2	2552.0	2202.2	2301.0	2270.1	-6.1	2.1
Hong Kong, China	2638.8	3374.5	4287.3	5071.3	5477.6	5955.4	17.7	5.5
Korea	1035.7	987.3	1109.0	1387.6	1545.0	2026.6	14.4	1.9
Britain	1559.8	2015.4	2187.4	2508.4	2603.0	2648.6	11.2	2.5
Singapore	3286.7	3617.1	3962.4	4746.3	4958.7	5466.2	10.7	5.2

Source: MOT. (2007). 2007 THE REPORT ON CHINA'S SHIPPING  
DEVELOPMENT, Beijing: China Communication Press

#### 4.1.3.2 Structural changes of China's merchant fleet

In recent years, the structure of China's international merchant fleet is continuously optimizing towards the direction of large-scale, specialization and modernization and the technical merit of the overall ocean-going fleet has been constantly improving. The oil tanker fleet and the liquefied gas fleet, especially the VLCC, grow rapidly because of the high attention on the energy transportation, meanwhile, the age structure of the fleet has optimized as well. At the end of 2007, China has a total number of merchant fleet 198,000 and the gross deadweight tonnage reaches 118,814,600 tons. (MOT, 2007, p. 15)

Table 2- Statistics of the transport fleet in China

Item	Total Transport Capacity			Ocean-going		Coastal		
	2007	2006	Compared with the year before (%)	2007	2006	2007	2006	2007
Number of Ships	191,800	194,400	98.66	2284	2278	9322	9213	180,200
Net Deadweight (10000t)	11,881.46	11,025.71	107.76	4164.64	3829.90	2450.28	2253.49	5266.25
Passenger Capacity (10000)	102.69	105.92	96.95	1.73	1.69	14.75	13.98	86.20
Quantity of Container (10000 TEU)	125.96	92.79	135.74	106.98	76.27	12.11	10.17	6.87

Source: MOT. (2007). 2007 THE REPORT ON CHINA'S SHIPPING DEVELOPMENT, Beijing: China Communication Press

The data above indicates that the international transport ships applicable to the Convention occupies a large proportion in China, so the accession to the Convention is the requirement to raise the competitive ability of China's shipping enterprises in the world shipping market.

#### **4.1.4 Need from the status quo of the seafarer labour market**

##### **4.1.4.1 The status quo of the seafarer labour market in main regions of the world and China**

The BIMCO/ISF Manpower Update supplies the shipping industries with the most comprehensive assessment of the global supply and demand for merchant seafarers which is currently available through the descriptions on the current situation for seafarers and predictions about the likely position in 5-10 years in order to help them anticipate developments and take appropriate action.

As the most integrated BIMCO/ISF study up to now, the 2010 Update on the foundation of data achieved by questionnaires sent to maritime administrations, shipping companies and crewing experts covers an even more particular assessment of the current global supply and demand for merchant seafarers and the size of the commercial trading fleet and their probable performance in the next 5 years or even further.

Though the global economic downturn was still there, the requirement for shipping services sharply declined and the data statistics indicated the supply and demand for ratings were more or less balanced in 2009, the truth was that the desire for officers, especially some grades working for the specific ship types such as tankers and VLCC, was extremely strong in the shipping market.



“The worldwide supply of seafarers in 2010 was estimated to be 624,000 officers and 747,000 ratings. This was based on the numbers holding STCW certificates and was therefore somewhat broader and not directly comparable to estimates in previous studies. It reflected significant increases in seafarer supply in some countries, notably in China, India and the Philippines, as well as in several European nations.” (BIMCO&ISF, 2010)

Table 3- Global Seafarer Supply by Broad Geographical Area

Area	Current supply			
	Officers (1000's)	%	Ratings (1000's)	%
OECD Countries	184	29.4	143	19.2
Eastern Europe	127	20.3	109	14.6
Africa/Latin America	50	8.0	112	15.0
Far East	184	29.5	275	36.7
Indian Sub-Continent	80	12.8	108	14.5
All National Groups	624	100.0	747	100.0

Source: BIMCO/ISF estimates

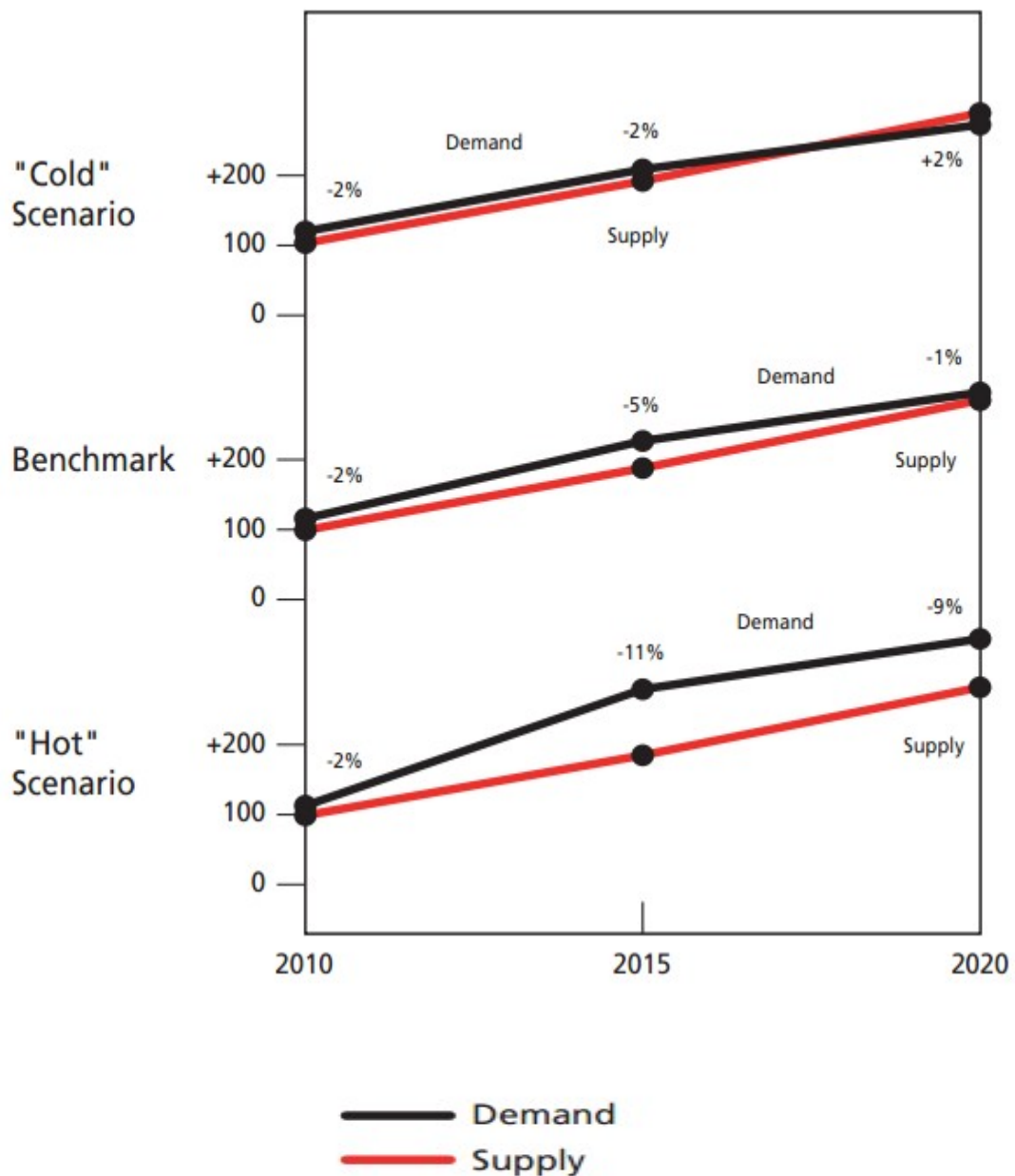
“The 2010 update presents various global supply/demand balance scenarios for the next decade. The central or “benchmark” scenario represents BIMCO/ISF’s view of the most likely trends, based on recent developments and the opinions of key players taken from the various surveys conducted for the study.” (BIMCO&ISF, 2010)

Figure 1 Supply Demand Gap for Officers

Sensitivity to Fleet Growth

Demand and Supply are shown as Indices: Supply in 2010 = 100

With % gap (supply-demand)



Source: BIMCO/ISF estimates

“This “benchmark” assumes a modest increase in the number of ships in the world fleet of 2.3% per annum. Manning levels are assumed to decline slightly on average, and back up ratios are cautiously assumed stable. On the supply side, it is assumed that recruitment rates will continue at roughly the same rate as

during the previous decade, but wastage rates will be higher by around 1% per annum. Despite these quite conservative assumptions, the current moderate officer shortage is expected to persist, unless maritime training is further increased, and/or measures are taken to reduce wastage rates. If general economic conditions continue to improve, there could be quite severe problems.”  
(BIMCO&ISF, 2010)

With the development of the shipping internationalization trend, the seafarer labour market tends to be internationalized as well. Owing to the influence of the national shipping traditions and the imbalance of the economy development, the international seafarer labour market presents the following characteristics:

#### 1) The imbalanced development

Changes in supply and demand of the international seafarers depend on the development situation of the international shipping industry, while the degree of development of the international economy and trade determines the development of the shipping industry. The difference of the seafarer labour market is a response of the imbalance of economy development of all countries.

In general, the demand for seafarer labour is indeed larger in the developed regions of economy, and the seafarer labour market is developed much early and mature. On the contrary, the development of seafarer labour market is insufficient in the developing countries and regions.

#### 2) The moderate mobility

As a kind of production factors, labour is much more liquid than other production factors. Moreover, with the further development of the globalization of the world economy and the shipping market, the seafarer labour market also tends to be much

more internationalized, and the influx of seafarers from developing countries to developed countries has become an important feature of the current seafarer labour market.

### 3) The relative closeness

Seafarer, especially the senior officers on board, is required to possess solid professional knowledge and abundant navigation experience, and only the well-educated persons with good navigation trainings can be competent for this job. Besides, many persons are reluctant to do this job because it is difficult and boring. As a special kind of job, it is hard for other labour forces to engage in the job which determines the relative independence and closeness of the seafarer labour market.

4) Due to the impact of international politics, economy, trade and shipping market, new characteristics on change have presented in the international seafarer labour market, as follows: the quantity of seafarers from the developed countries and regions continues to decrease, while it tends to be increasing for the developing ones; the market loads more and more requirements for the self-quality of seafarers; the manning appears to be diversification and internationalization.

In China, taking the conditions into consideration that the international seafarer labour market will imminently demand for a large number of seafarers after the enforcement of the Convention with many foreign shipowners and ship management companies into the Chinese market, the resource shortage of Chinese seafarers will be much more severe. (Yao, 2007, p. 83)

According to the forecast of the research group of “China Maritime Education Policy Study”, by taking the demand of the future development for senior officers in China’s shipping industry, the future shipping volumes and the scale of required transport fleets into consideration combining with the requirements of the relevant international

and domestic safe manning regulations, the research group draws a predictive value of seafarer manning coefficient and the total demand of senior officers in 2020.

Table 4-The predictive value of seafarer manning coefficient

Year	Senior Officers	Ordinary seafarers
2007-2010	1.7	1.6
2011-2015	1.8	1.7
2016-2020	2.0	1.8

Source: MOT. (2009). China Maritime Education Policy Study. Beijing: Author.

Table 5-The predictive value of total demand of senior officers in China

Year	Predictive Value	Year	Predictive Value
2007	61, 661	2014	85,289
2008	64,430	2015	88,629
2009	67,232	2016	98,627
2010	70,097	2017	102,395
2011	75,744	2018	106,264
2012	78,849	2019	110,238
2013	82,030	2020	114,322

Source: MOT. (2009). China Maritime Education Policy Study. Beijing: Author.

From the dates above, we can see that the demand for senior officers in China will maintain a growth rate and the resource shortage of the senior officers will last for a considerable period in the future.

It is universally recognized by the foreign shipowners and the ship operators that the senior officers from China are with high quality and have good ship-handling techniques. But for the ordinary seafarers, the Chinese government viewed the labour output as the preferential policy to help the poor regions. As a result of that, the source of ordinary seafarers has been greatly restricted and the overall quality of seafarers has been affected to some extent. In this way, the whole impression of foreign shipowners to the Chinese seafarers is that their comprehensive quality is not high, mainly in:

- 1) The language ability is not qualified enough to guarantee the efficient communications. The ordinary seafarers have little knowledge of English and there are not enough senior officers who can communicate efficiently with foreign agencies, cargo owners and others on business contact. If the ship encounters with extraordinary situations, such as grounding, collision and cargo damage, there is even fewer seafarers who can cope with these emergencies on the grounds of the international laws and this, of course, will cause passive situation to their work.
- 2) The ordinary seafarers are lack of diligent work attitude and professional ethics. They are not positive enough to the job and sometimes slack and sloppy. Modern navigation has developed towards the direction of stowage and communication by computer and electric technology which have brought some problems for Chinese seafarers due to a serious lack of knowledge in these areas. What's worse, most of the Chinese seafarers, especial the ordinary ones, are short of systematic command of international laws and regulations.

#### **4.1.4.2 The situation of overseas assignment of seafarers in China**

According to the statistical results of BIMCO, the main countries engaging in the overseas assignment of seafarers are Philippines (28.1%), Russia (6.8%), India (5%), Eastern Europe (16.6%) and China (6.2%). The situation of overseas assignment of

seafarers in China is not satisfying. After the development for many years, the overseas assignment of seafarers in China shows a series of characteristics:

- 1) The service area has expanded from Hong Kong, Japan, Singapore to many other countries and areas of Asia, Europe and America. The market of Chinese seafarers has spread all over Asia, Africa, Latin Africa, Europe, North America and Oceania, among which Asia has 84.9% of the market share. The Asia market is still in the dominant position for the overseas assignment of seafarers of China, but the number of Chinese seafarers has increased in the European and American markets which dominate the world shipping market.
- 2) The technology level and education degree of the Chinese seafarers have improved continuously and the proportion of senior seafarers of overseas assignment has increased from the initial 15% to 40%.
- 3) The types of ships that the Chinese seafarers are working on have developed from the ordinary bulk freighter, container ship and oil tanker to the most advanced fifth generation container ship and LNG ship.
- 4) With the formation of globalization, the distribution of the seafarers has changed a lot. View from the salary level of seafarers, almost no change has taken place in the developed countries for many years, but the gap becomes smaller and smaller compared with those working on land. Moreover, more and more people do not want to work as seafarers due to the development of economy, the improvement of living quality and more attention to family values in the developed countries. The salary level of Chinese seafarers is increasing yearly, but there is still a gap with that of the international seafarer market. At the moment, the advantage of Chinese seafarers in the international seafarer market mainly lies in the low price. (Yang, 2007, p. 69)

There are many reasons for the unsatisfactory growth of the overseas assignment of seafarers in China, such as the low level of technology and education, lack of cross-culture integration ability, shortage of government cultivation and the rigid overseas assignment mechanism. But people have to notice the following two reasons which prevent Chinese seafarers from entering into the international market:

- 1) A mass of seafarers are needed in China itself due to the rapid development of the shipping industry. If the recruitment market of Chinese seafarers is excessive open to foreign shipping companies, the domestic ones will face a shortage problem for seafarers and be impacted seriously. So in order to protect the domestic shipping industry, the Chinese government still takes some restraint measures over the market of overseas assignment of seafarers.
- 2) Now the major world powers become more and more reliant on energy source and ocean transportation. Along with the steady growth of the Chinese shipbuilding industry and the continuous improvement status in the international shipping industry, the world is anxious about the market share caused by the expansion of Chinese seafarers, worrying that China will play the dominant role in the areas of shipbuilding and shipping industry which might threaten their benefits. In this way, these countries are reluctant to employ Chinese seafarers to a certain degree.

In a word, the resource of Chinese seafarers, either in quantity or in quality, can not meet the requirements of the international seafarer labour market. The backward Chinese seafarer management system has prevented the development of the Chinese seafarer resource and the exploitation of the Chinese seafarer labor market seriously. China should seize the opportunity positively that the MLC, 2006 will come into effect to develop high-quality seafarer labor resource and expand the market of overseas assignment of seafarers.



#### **4.1.5 Demand from the realization of the scientific development and establishment of the harmonious society**

The scientific development should be people-oriented and the core of the Convention is to promote decent work for seafarers. The labour condition of seafarers will impact on the development of the shipping industry and the national economy will be affected by the development situation of the shipping industry, thus, the labour condition of seafarers will influence the harmony and stability of the society. In this way, China needs to ratify the Convention for the establishment of the harmonious society and the realization of people-oriented scientific development.

### **4.2 The feasibility of the Convention ratification in China**

#### **4.2.1 Analysis from the present situation of the reform of the shipping economy system**

The gradual development of China's socialist market economy is accompanied by the reform of the market economy system, of which the most important one is the cultivation of the market entity. Since the reform of the market economy, great changes have occurred in the market economy structure, as well as in the area of adjustment and disposal of labour relations in China. Joining in the WTO and the changes of the management modes of the shipping enterprises results in the tremendous changes in the labour relations of the shipping industry, and the continual emergence of new labour relations have laid a solid underpinning for the ratification of the MLC, 2006 in China. Still better, the Convention itself has provided the best blueprint and mechanism for the adjustments of these labour relations.

Therefore, China should accelerate the process of ratifying the Convention and formulate a world-class Seamen Law with scientific content, complete system and rigorous structure after the ratification of the MLC, 2006.

#### **4.2.2 Analysis from the status quo of merchant fleet in China**

With regard to the average age distribution of the world's top 15 merchant fleets in 2005, the average age of China was obviously high and the merchant fleet appeared to be aging apparently. The technical condition of ships is generally poor with much more accident potential and high operation cost as a result of the existence of a large number of old ships which has a serious negative effect to the healthy development of shipping industry in China.

In pursuance of THE REPORT ON CHINA'S SHIPPING DEVELOPMENT, 2011, the scale of the transportation ships continues to grow rapidly and the capacity structure keeps being optimized in China in 2011. By the end of 2011, China has 179200 transport ships, with a growth of 0.5% compared with last year, and the total capacity exceeds 200 million deadweight tons for the first time. Among them the number of ocean-going ships is 2494 with 67.0386 million deadweight tons, with a growth of 12.7% and 19.2% respectively.

The scale of China's shipping fleet continues to be at the world's fourth place, thus it has the ability to implement the conditions stipulated in the Convention. Despite the ship aging phenomenon, ships can be designed and constructed in accordance with relevant provisions of the Convention in the updating process in the future. Though the cost of new standard ships has increased, outstanding seafarers will be inevitably attracted due to the safety performance and living conditions, at the same time, the trust of the shippers will be won by the new standard ships, and then the shipping industry will be in the dominant position in the competition. (Liu & Sun, 2008, p. 93)

Hence, China's accession to the Convention is feasible from the perspective of the Chinese shipping industry.

#### **4.2.3 Analysis from the maritime legislation environment in China**

Although China has not yet formulated comprehensive Seamen Law, the maritime legislation, in terms of convention ratification and domestic legislation, has provided certain conditions to approve and implement the Convention.

China has joined in 25 conventions of the ILO since it's resuming her legal seat in the United Nations in 1971, including 4 core conventions and 4 seafarer conventions. Moreover, China has ratified 48 conventions of the IMO. The approval and implementation of these conventions above have provided an significant legal environment and premise basis for China to join in the MLC, 2006.

Many laws, regulations and rules in aspect of seafarer law and general law have been enacted in China. On basis of the MARITIME TRAFFIC SAFETY LAW OF THE PEOPLE'S REPUBLIC OF CHINA in 1983, relevant departments have also promulgated the Regulations of the People's Republic of China on Seafarers, which made relatively comprehensive regulations for seafarer registration, obligations, employment security, supervision and inspection, executed on September 1<sup>st</sup>, 2007. Combined with other seafarer laws and regulations, China has formed a complete set of legal norms for the seafarer management.

#### **4.2.4 Analysis from the institutions and mechanisms of maritime labour management**

At present, although China has not formulated the Seamen Law and there is still a certain gap from the requirements of the Convention on supervision to the seafarer labour conditions, the Regulations of the People's Republic of China on Seafarers has explicitly stipulated that the national maritime authority is responsible for the unified implementation of seafarer management according to this regulation.

In practice, the processes of maritime traffic safety supervisions and inspections implemented by China Maritime Administration has played an important role in the

supervisions and inspections of labour conditions of seafarers objectively due to the existence of the ship inspection and certification system of the Flag State and the supervision and inspection system of the Port State, however, the supervision and inspection on the labour contract are not involved. Seen from the institutions setting and personnel allocation in the China Maritime Administration, China is capable of implementing the stipulations about the responsibilities of the Flag State and the Port State in pursuance of Title 5 in the Convention.

## **Chapter V    Main problems on the implementation of the Convention in China**

### **5.1 Problems on implementation of the International Labour Convention**

Only 4 of the 8 core conventions of ILO have been ratified in China and even less is the seafarer labor convention. Only 4 of the 40 seafarer labor conventions have been approved in China before “Maritime Labor Convention,2006”, including the Seamen’s Articles of Agreement Convention, 1926 and the Repatriation of Seamen Convention, 1926. As demonstrated here, the lack of experience on the implementation of this kind of international labor convention is an obvious problem.

### **5.2 Problems on the seafarer legislation**

#### **5.2.1    Problem on the legislative forms**

The current legislative forms of seafarer are scattered, not unified and with lower-grade effectiveness in China. Most of the legal norms used for adjusting the labour relations of seafarers are scattered in the general labour legal documents, such as the “Labour Legislation”, “Labour Contract Law” and so on, and there are also some provisions scattered in the maritime legislation, like the “Maritime Law”, “Regulations of the People’s Republic of China on Seafarers” and so on. The legislative disunity can not only have an impact on the systematicness and comprehensiveness of the content, but also bring inconvenience to the application of seamen law which goes against the right protection of seafarer labour.

#### **5.2.2    Problem on the legislative content**

In the seafarer legislation aspect, there are rare legislative contents for the seafarer labour and lack of the specialized statute book in China. This condition breaks away from the development trend of the international seafarer legislation in uniformity and progressiveness.

The formulation of the specialized statute book, that is to say the “Seamen Law”, for the seafarer labour relationship is urgently demanded due to the labour particularity at sea, such as not regular working hours and the hazardous working conditions. At present, there is a certain gap not only on the respect of the seafarer legislative contents with the Convention but also on the development trend of world seafarer legislation for China.

### **5.3 Problems on the labour supervision to seafarers**

The purpose of formulating the law is to implement, and the implementation of the law is inseparable from the state organs’ enforcement of law and judicial activities. The authorized rights of laws in main body of the seafarer labour supervision are unclear and not concentrated, existing the phenomenon of multi-sectoral management, such as in the “Regulations of the People’s Republic of China on Seafarers” Article 3, Item 2: “The state maritime administrative organ shall be responsible for uniformly implementing the administrative work of seamen”. (MOT, 2007, p. 22) While, Article 52 provides that the administrative department of labour and social security shall strengthen the supervisions and inspections on the labour and social security laws, regulations and other relevant provisions that the seamen employers should comply with. (BUREAU VERITAS, 2012, p. 137)

The above descriptions explain that the main body of implementation of seafarer management norms is the maritime authorities while the main body of implementation of seafarer labour norms is the administrative department of labor and social security. (Li, 2004, p. 24) But practically the administrative department of labor

and social security does not dispatch officers on board to carry out the supervision and inspection for working conditions which makes seamen labor supervision departments in a deficiency condition at present.

#### **5.4 Problems on the coordination of the seafarer labour relations**

Though the Special Tripartite Committee composed of the maritime competent authority, China Shipowners' Association and China Seamen's Union has already been set up, no activity has launched in the form of the Tripartite Consultative Conference. But the maritime competent authority would contact with the China Shipowners' Association or China Seamen's Union when they met some problems or in necessity and carry out the research activities, or the communications with the competent authority were used to be formed by either the China Shipowners' Association or China Seamen's Union who could assist the competent authority to conduct shipping industrial management.

Therefore, the tripartite consultation mechanism of the labour area at sea in China has not set up a kind of normative and explicit operation system. Moreover, the organization system constructions of all the parties of the tripartite consultation mechanism are far from perfect.

#### **5.5 Problems on the research of the seafarer legislative theory**

China has not formed relevant experts group engaging in the research of Seamen Law and established the specialized research institutions yet, and worse still, it is lack of research achievements such as the monographs on the seafarers' basic theoretical research. The legislative completeness is depending on the prosperity and development of the theoretical research. Not only will the legislation lose the theoretical support, but also will the construction of the legal system, completeness and science of the content suffer from certain limitations as a result of the lack of

theoretical research. Thus, the above problems in the seamen legislation are closely related to the insufficiency of the research of the seamen's legislative theory.



## **Chapter VI Countermeasures to the ratification and implementation of the Convention in China**

In view of the objective situation of the enforcement of the Convention, China should adopt the planned and systematic countermeasures to deal with the problems mentioned above to make our country, on one hand, will be able to implement the obligations in real earnest and the ships with Chinese nationality, on the other hand, can pass through the PSC inspections smoothly at foreign ports after the ratification and enforcement of the Convention in China.

In short, China should protect the rights of seafarers and promote the development of its shipping industry through ratification and implementation of the Convention.

### **6.1 The countermeasures on the seafarer legislation**

The Convention is a product of bargaining and compromise among all the Member States. At the same time in order to ensure the wide approval, most of the contents in the Convention are only the principle rules which need the ratification Members to formulate the native laws further to implement all the regulations established by the Convention. Therefore, legislation is the first step to perform the Convention. (Li, 2011, p. 33)

From the preparation of the native laws for carrying out the Convention, the native legislations have taken the first step in many countries before the ratification of the Convention by drafting or amending the native laws according to system set up by the Convention and countries should be prepared for the native legislation and management system before the approval of the convention.

View from the status of the current seafarer legislation and the existing problems, China can accomplish the MLC, 2006 in two ways in the respect of legislation after the ratification:

One is to formulate the unified Seamen Law of the People's Republic of China and the relevant supporting implementation regulations, and carry out the Convention by shifting the content of the Convention into a unified native seamen law. The advantage of this approach is that it is convenient for the relevant bodies to quote and obey due to the higher effectiveness level of the code and the unified, definite contents. And the shortcoming of this approach is that the legislation process is fussy and demands for more workload and higher costs of manpower and material resources through an even longer period in the compiling course.

Another method is to make some amendments to the current seafarer regulations and add principle contents for the implementation of the Convention system, or formulate complementary administrative rules and then draft the collective contract suitable for the whole shipping industry to stipulate the implementation details of the Convention. This approach is simple, fast and can save the legislation resources to some extent; nonetheless, it is not easy to master and quote because of the dispersive contents of the regulations. Especially when facing multiple normative documents, the seafarers tend to be confused by the relationship between each other, feeling disoriented, which is detrimental to the rights maintenances.

No matter of the adoption of either method, the Seamen Law with comprehensive contents should be formulated and the relevant Articles about contents of the tripartite consultation should be added.

## **6.2 The countermeasures to the seafarer labour supervision**

China shall confirm the MSA of the Ministry of Transport of the PRC as the principal status to fully implement the Seamen Law through native legislation and found the unified management institution for overseas assignment of seamen.

### **6.3 The countermeasures to coordination of seafarer labour relations**

With the current situation of the maritime labour relations, China should strengthen the communications and connections within the government competent authority, the China Seamen's Union and the China Shipowners' Association and set up the tripartite consultation mechanism appropriate for the development of the shipping industry for sake of the realization of the decent work of the seafarers, the healthy development of the shipping industry and the satisfaction to the requirements of the MLC, 2006.

#### **6.3.1 Improvement on the main body construction of the tripartite mechanism in the maritime labour field**

Considering the lack of the effective supervision on the maritime labour and the existence of the phenomenon that the maritime labour affairs are under the management of multiple departments and the function division are ambiguous, the specialized organ should be set up to cope with the maritime labour affairs by the Chinese government, for example, this kind of supervision responsibilities about the seafarer labour protection can be given to the Seafarer Management Department of China's Ministry of Transport and let it implement the inspection functions carried out by the Flag State, Port State and Labour-supplying State in pursuance of the provisions of the Convention on behalf of the Chinese government.

#### **6.3.2 Improving the relevant institutions of the Shipowners' Association and Seamen's Union in China**

Through the analysis on the institutions of the Shipowners' Association and Seamen's Union in China, the mechanism constructions of the Shipowners' Association and Seamen's Union should be further improved.

#### **6.3.2.1 Enhancing the representativeness of the organizations**

Though the Shipowners' Association and Seamen's Union have been founded in China, the representativeness of these organizations should be enhanced. As the organization of the shipowners' union, the primary characteristic of the Shipowners' Association is to delegate the overall interests of the shipowners in all kind of situations which have been written into the articles as the purpose of the association or the footholds of the relevant activities by most of the foreign shipowners' associations. However, it is totally different in China that this characteristic could not be found in the articles of the shipowners' association and the effect can not be realized. And the same problem exists in the China Seamen's Union. Thus, the representativeness of these organizations should be enhanced.

#### **6.3.2.2 Diluting the administrative colour of the organizations**

At present, the Shipowners' Association and the Seamen' Union are politicized strongly in China due to the influence of political and economic system, and they were built by the relevant administrative departments of the government at the very beginning and have been working under the directions and supervisions of these administrative departments since the establishment.

Meanwhile, both of the Shipowners' Association and the Seamen's Union treat their work assisting the administrative departments to carry out the industry management as one of their main responsibilities. Such intense administrative color always station the Shipowners's Association and the Seamen's Union on the position of the

administrators when carrying out the work which may be against with the development of these organizations.

Therefore, the Shipowners' Association and the Seamen's Union should weaken their administrative color and position themselves appropriately, providing services from the standpoint of their members.

#### **6.3.2.3 Clarifying the job responsibilities of these organizations**

Neither the Shipowners' Association nor the Seamen's Union handles the negotiations and revisions of the collective bargaining agreement on behalf of their members with the opposite party as their job responsibility, and worse still, no consultations and negotiations have been launched on the working and living conditions of seafarers at sea which, on the contrary, is just the work focus of foreign Shipowners' Associations and Seamen's Unions and one of the most important means of rights and interests protection of seafarers as well.

Hence, it is necessary to clarify the job responsibilities of these organizations in order to perform their power better respectively and protect the rights and interests of seafarers.

#### **6.3.2.4 Improving the structure constructions of these organizations**

In China, not only the national shipowners' association has been established, named the China Shipowners' Association, but also different levels of the shipowners' associations have been founded by local governments at present. There are 268 shipping companies engaging in the international ocean transport and 176 liner companies in China until the end of 2005 according to THE REPORT ON CHINA'S SHIPPING DEVELOPMENT, 2005. However, the transport capacity of only about 15 shipping companies is over 10 thousands DWT. (MOT, 2006, p. 68) Obviously,

though there are a large number of shipping companies in China, most of them are small to medium businesses and the large corporations with certain scale are rare.

Given this situation, China is strongly advised to abolish all the local shipowners' associations, and the national shipowners' association can connect with all the shipping industries directly, take the suggestions of all the members and provide services for them. This practice not only can make the national shipowners' association enable to receive much more information of its members directly, summarize the overall situation of the shipping industry and offer help to the members, but also be conducive to the rational allocation of the human and financial resources, alleviate the economical burden of all members and improve the working efficiency.

In consideration of the merger situation of Seamen's Union and other industrial unions, all the local seamen's unions should be replaced by the primary ones set up in the seafarer companies of the shipping industry for the purpose of productivity improvement, repeated construction of the organizations and optimized allocation of the resources as well.

In addition, the national Shipowners' Association and the Seamen's Union are suggested to convene the regular general meetings and build the investigation system specific to the members which are favorable to grasp the existing problems in labour relations at sea as soon as possible and provide better services for the members.

## **Chapter VII Conclusion**

The enforcement of the MLC, 2006 will bring revolutionary change for the international maritime labour standards and realize the international coordination of social conditions and economic conditions of the maritime labour related with seafarers. The contents stipulated in the Convention are guaranteed to be implemented in the Flag States, Port States and Labour-supplying States through its implementation mechanism, that is to say Compliance and Enforcement.

As a member of the working group, there are gaps between China and the contents of the Convention in many aspects, so China shall closely track and research the legislative development of the Convention and adjust the relevant countermeasures, including the establishment of the Seamen Law, and the contents of the Convention should be implemented through the seafarer legislation. Besides, the implementation and inspection mechanism should be set up in China as well, and the relevant competent department should be appointed to be in charge of the inspection responsibilities. Endowing China Maritime Administration with the inspection and supervision rights is in accordance with not only relevant regulations of the MLC, 2006, but also the special requirements of seafarer labour relations.

The relevant arguments on the necessity and feasibility of the implementation of the Convention has been provided for China in this paper on basis of the analysis on the characteristics and implementation mechanism of the Convention, and several countermeasures have been suggested for China to cope with the influences and problems brought by the enforcement of the Convention. Hopefully this paper can provide the theoretical foundation for China and step up the pace of the implementation of the MLC, 2006.

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