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**WORLD MARITIME UNIVERSITY**

Dalian, China

**RESEARCH ON CHINA MSA'S IMPLEMENTATION  
OF MARITIME LABOUR CONVENTION, 2006**

By

**Zhang xiaodong**

**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)**

2013

**Dedicated to:**

**My dear parents**

**And**

**My beloved wife, Huang Jing**

## 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.

Signature: Zhang xiaodong

Date: July 12, 2013

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Last but not least, I would like to dedicate this research paper to my dear parents and beloved wife Huang Jing, for their consistent encouragement and support.

Title: Research on China MSA'S Implementation of the Maritime Labour Convention, 2006

Degree: MSc

## ABSTRACT

Known as *the Bill of Right* of 1.2 million seafarers in the world, *Maritime Labor Convention 2006* (hereinafter referred to as *the Convention* or MLC, 2006) will come into effect in August 2013 (ILO, 2013), and must bring a huge effect on world shipping market for that *the Convention* is honored as one of the four pillars of global quality shipping. Therefore, seafarers' rights will be fully guaranteed and low-standard ships and shipping companies will be phased out of the world shipping market. In face of the changing global shipping economic landscape, China's accession to *the Convention* is extremely necessary and urgent, and positive performance should be implemented to comprehensively improve the protection of right for seafarers, so as to ensure sustainable and steady development of shipping economy.

The main body of this thesis is divided into five parts. Firstly, the author focuses on how the other countries implement the *Convention* in their own ways. The second part pays more attention to SWOT analysis of China. This part points out the key points and obstacles of China to implement *Convention* and puts forward some corresponding suggestions and measures. The third and the fourth part are introduction to China MSA as the main body for implementing *the Convention* from the PSC and FSC perspectives, along with detailed interpretation on certification requirements and some recommended procedures for the FSC and PSC inspection on labour conditions. At last, the author once again puts forward the thesis statement with a summary of the previous four parts and gives some outlooks.

**Key words:** China MSA; Maritime Labor Convention 2006; Implementation; Countermeasures

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## ABBREVIATIONS

AMSA	Australian Maritime Safety Authority
AMSA ACT	Australian Maritime Safety Authority Act 1990
CBA	Collective Bargaining Agreement
CDSC	Crew Development and Security Center
China MSA	China Maritime Safety Administration
DMLC	Declaration of Maritime Labour Compliance
DMSCS	Dynamic Management System for Chinese Ships
DMU	Dalian Maritime University
DO	Designated Officers
FSC	Flag State Control
FSCO	Flag State Control Officer
HKMD	Hong Kong Marine Department
HKSAR	Hong Kong Special Administrative Region
ILO	International Labour Organization
IMO	International Maritime Organization
ISM Code	International safety management Code
ISPS Code	International Ship and Port Facility Security Code
LISCR	Liberian International Ship and Corporate Registry
LMA	Liberian Maritime Authority
LMLI	Liberian Maritime Labour Inspectors

MARPOL, 73/78	International Convention for the Prevention of Pollution from Ships73/78
MLC	Maritime Labour Certificate
MOHRSS	Ministry of Human Resources and Social Security
MSEM	Maritime Safety Environment Management
PDCA	Plan, Do, Check and Action
PRC	People's Republic of China
PSC	Port State Control
PSCO	Port State Control Officer
RO	Recognized Organization
SOLAS, 1974	International Convention for Safety of Life at Sea, 1974
SSIIR	Ship Safety Inspection Information Report
STCW, 1978	International Convention on Standards of Training, Certification and Watch keeping, 1978
SWOT analysis	Strengths, Weaknesses, Opportunities and threats analysis
WMU	World Maritime University

## Chapter 1

### Introduction

#### *1.1 The main contents of the Maritime Labour Convention, 2006*

Since 2001, the International Labour Organization (ILO) has gone through nearly five years' effort, consolidating and updating more than 68 international labour standards related to the Maritime sector adopted since the 1920s, and formed the Maritime Labour Convention, 2006 (MLC, 2006). The MLC, 2006 which revised 36 maritime Conventions and 1 Protocol (as listed in table 1) was approved by an absolute majority of 314 votes to 0, with 4 abstentions at the 94th (Maritime) Session of the International Labour Conference held in Geneva on february 23th, 2006,

Table 1— List of conventions and protocol revised by the MLC, 2006

<b>No.</b>	<b>Name of the Conventions</b>	<b>Entry into force</b>
<b>1</b>	Minimum Age (Sea) Convention, 1920 (No. 7)	27 Sep 1921
<b>2</b>	Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	16 Mar 1923
<b>3</b>	Placing of Seamen Convention, 1920 (No. 9)	23 Nov 1921
<b>4</b>	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	20 Nov 1922
<b>5</b>	Seamen's Articles of Agreement Convention, 1926 (No. 22)	04 Apr 1928
<b>6</b>	Repatriation of Seamen Convention, 1926 (No. 23)	16 Apr 1928
<b>7</b>	Officers' Competency Certificates Convention, 1936 (No.53)	29 Mar 1939
<b>8</b>	Holidays with Pay (Sea) Convention, 1936 (No. 54)	Not yet
<b>9</b>	Ship owners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)	29 Oct 1939
<b>10</b>	Sickness Insurance (Sea) Convention, 1936 (No. 56)	09 Dec 1949
<b>11</b>	Hours of Work and Manning (Sea) Convention, 1936 (No. 57)	Not yet

<b>12</b>	Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	11 Apr 1939
<b>13</b>	Food and Catering (Ships' Crews) Convention, 1946 (No. 68)	24 Mar 1957
<b>14</b>	Certification of Ships' Cooks Convention, 1946 (No. 69)	22 Apr 1953
<b>15</b>	Social Security (Seafarers) Convention, 1946 (No. 70)	Not yet
<b>16</b>	Paid Vacations (Seafarers) Convention, 1946 (No. 72)	Not yet
<b>17</b>	Medical Examination (Seafarers) Convention, 1946 (No. 73)	17 Aug 1955
<b>18</b>	Certification of Able Seamen Convention, 1946 (No. 74)	14 Jul 1951
<b>19</b>	Accommodation of Crews Convention, 1946 (No. 75)	Not yet
<b>20</b>	Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)	Not yet
<b>21</b>	Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)	14 Sep 1967
<b>22</b>	Accommodation of Crews Convention (Revised), 1949 (No. 92)	29 Jan 1953
<b>23</b>	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No.93)	Not yet
<b>24</b>	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)	Not yet
<b>25</b>	Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No 133)	27 Aug 1991
<b>26</b>	Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)	17 Feb 1973
<b>27</b>	Continuity of Employment (Seafarers) Convention, 1976 (No. 145)	03 May 1979
<b>28</b>	Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)	13 Jun 1979
<b>29</b>	Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)	28 Nov 1981
<b>30</b>	Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)	10 Jan 2003
<b>31</b>	Seafarers' Welfare Convention, 1987 (No. 163)	03 Oct 1990
<b>32</b>	Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)	11 Jan 1991
<b>33</b>	Social Security (Seafarers) Convention (Revised), 1987 (No. 165)	02 Jul 1992
<b>34</b>	Repatriation of Seafarers Convention (Revised), 1987 (No. 166)	03 Jul 1991
<b>35</b>	Labour Inspection (Seafarers) Convention, 1996 (No. 178)	22 Apr 2000

36	Recruitment and Placement of Seafarers Convention, 1996 (No. 179)	22 Apr 2000
37	Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)	08 Aug 2002

**Source: (ILO, 2013a)**

The MLC, 2006 is divided into three levels structurally, namely the Articles, the Regulations and the Code. Part A of the Code is Standards and part B is Guidelines. The Regulations and the Code are divided into 5 Titles in content. Title 1 is the minimum requirements for seafarers working on a ship, including a minimum age, a medical certificate, training and qualification, etc. Title 2 is the conditions of employment, including seafarers' employment agreement, salary, working and resting hours, entitlement to leave, repatriation, compensation seafarers for the loss or foundering, manning levels, occupation and skill development and seafarers' employment opportunities, etc. Title 3 is living, entertainment facilities, food and catering on board, including accommodation and recreational facilities, food and catering, etc. Title 4 is health protection, medical care, welfare and social security, including medical care aboard and on shore, the owner's responsibility, health protection, security protection, accident prevention, access to shore-based welfare facilities, social security, etc. Title 5 is meeting and execution, including inspection and certification, port state control, complaint procedure aboard and on shore, the obligation of the countries providing crews, etc.

**Table 2— The contents of the MLC, 2006**

<b>Structure</b>	<b>Contents</b>
Preamble	Explaining the background of adopting this convention
Article	Sixteen articles (Article I to XVI) that declare the MLC, 2006
Explanatory note	As a general guide and does not form part of <i>the Convention</i>
Regulations and the codes	Title 1 : Minimum requirements for seafarers to work on a ship
	Title 2 : Conditions of employment
	Title 3 : Accommodation, recreational facilities, food and catering
	Title 4 : Health protection, medical care, welfare and social security protection
	Title 5 : Compliance and enforcement

**Source :( ILO, 2013b)**

To come into force, the MLC, 2006 had to be ratified by at least 30 Member States with a total share of 33 percent in the world gross tonnage of ships. This milestone was reached on 20 August 2012. The MLC,2006 will thus come into force on 20 August 2013 (ILO,2013c) .Currently, a total of 35 countries, which account for 68.8% of world’s total merchant shipping tonnages have ratified *the Convention*.Table 3 gives a list of countries which have ratified *the Convention*.



**Table 3— List of country ratifications**

<b>Country</b>	<b>Date</b>	<b>Status</b>
Antigua and Barbuda	11 Aug 2011	In Force
Australia	21 Dec 2011	In Force
Bahamas	11 Feb 2008	In Force
Benin	13 Jun 2011	In Force
Bosnia and Herzegovina	18 Jan 2010	In Force
Bulgaria	12 Apr 2010	In Force
Canada	15 Jun 2010	In Force
Croatia	12 Feb 2010	In Force
Cyprus	20 Jul 2012	In Force
Denmark	23 Jun 2011	In Force
Finland	09 Jan 2013	In Force
France	28 Feb 2013	In Force
Greece	04 Jan 2013	In Force
Kiribati	24 Oct 2011	In Force
Latvia	12 Aug 2011	In Force
Liberia	07 Jun 2006	In Force
Luxembourg	20 Sep 2011	In Force
Malta	22 Jan 2013	In Force
Marshall Islands	25 Sep 2007	In Force
Morocco	10 Sep 2012	In Force
Netherlands	13 Dec 2011	In Force
Norway	10 Feb 2009	In Force
Palau	29 May 2012	In Force
Panama	06 Feb 2009	In Force
Philippines	20 Aug 2012	In Force
Poland	03 May 2012	In Force
Russian Federation	20 Aug 2012	In Force
Saint Kitts and Nevis	21 Feb 2012	In Force
Saint Vincent and the Grenadines	09 Nov 2010	In Force
Serbia	15 Mar 2013	In Force
Singapore	15 Jun 2011	In Force
Spain	04 Feb 2010	In Force
Sweden	12 Jun 2012	In Force
Switzerland	21 Feb 2011	In Force
Togo	14 Mar 2012	In Force
Tuvalu	16 Feb 2012	In Force

**Source: (ILO, 2013d)**

It is widely accepted that *the Convention*, which is called the bill of rights for the 1.2 million seafarers in the world, together with the *International Convention for Safety of Life at Sea (SOLAS) 1974*, the *International Convention on Standards of Training, Certification and Watch keeping (STCW) 1978*, and the *International Convention for the Prevention of Pollution from Ships (MARPOL), 73/78* will constitute the four pillars of the world marine safety law system (ILO, 2013e).

### ***1.2 Analysis of the Necessity and the Urgency of China's Accession to the Convention***

As one of the largest shipping country, China will take more responsibility in meeting the requirements of *the Convention*, which is the main reason why China has always been hesitating to ratify *the Convention*. However, it is necessary and urgent to ratify *the Convention* when it comes to the core interests of the industry and the country. Traditionally, China is a country a large number of seafarers, but this situation is changing. According to statistics, there were nearly 400,000 people in China had a qualification of seafarer in 2006, in which 135,000 people had a qualification of senior seafarer(Xu , 2006). Except those who went to work on land, it is inferred that the number of professional seafarer aboard is less than 200,000, with less than 70,000 senior seafarers. Currently, there have been 650,000 people in China who have had a qualification of seafarer(China Daily, 2012). This number is achieved on the premise of the nation's great efforts made to develop the seafarer's education and expand the scale of maritime education training institutions.

In addition, according to the situation in recent years' mutual selection for graduates of navigation colleges, more than 50% of the undergraduates of navigation colleges are not willing to work aboard. Even if they have chosen to work as a seafarer, they are planning to exit the industry in the next few years. It is estimated that the number of people who consider seafaring as a life-long career is less than 20% (Shao, 2012). It is believed that the increased number of seafarers will not meet the needs of

shipping industries in China. The fact that many ship owners went to Southeast Asian countries to employ seafarers provides convincing evidence.

In terms of the number of seafarers, China will lose its advantage, and meanwhile, the quality of seafarers' education is not optimistic. Because of a huge gap in demand, training organizations has been blindly expanded in the case of the teachers and training hardware fall behind in some places. As a result, teaching quality has been sacrificed, and we simply pursue quantity. Besides, because of the hardship in working as a seafarer, now students majoring in navigation mainly come from underdeveloped inland regions rather than the developed coastal cities. Those students have lived on land for a long time and most of them have never seen the real sea until the phase of practice on board. They lack perceptual knowledge of the life on a ship, and most of them pass exams by learning by rote. It is hard to believe that students being trained like that will be competitive in international seafarer market.

There are many reasons for the above situation: both the personal reasons such as students' lack of hard-working spirit, and economic reasons such as more chances to make money on land while work aboard having lost its advantage. One more important reason for the decrease of the number of seafarers and the decline of their quality is the fact that seafarers fail to have deserved social position and decent working environment. For example, the seafarers' salary is constantly very low in some domestic companies ,especially during the vacation; the ship's condition is poor in some small shipping companies; seafarers' export of labour service is limited, and they can go to work on foreign ships only after paying broker companies service charge; individual seafarers or seafarers from small shipping companies will be refused by the insurance company.

Actually, *the Convention* is providing a great chance to improve the treatment of seafarers and to ensure their decent working conditions. If we fail to catch the chance, improving and revising the legislation for protection of seafarers' rights, the trend of

decline in both quantity and quality will go on. And even more seriously, China's shipping industry will not be able to develop sustainably and healthily. Thus, considering all about that, China should approve and ratify the MLC, 2006 as soon as possible.

### ***1.3 Overview of Some Countries and Regions' Compliance***

#### **1.3.1 Liberia**

Liberia, due to its status as a flag of convenience, has the world's second-largest fleet registered under its flag -including over 3,750 ships of more than 123 million gross tons—which represents 11 percent of the world's ocean going fleet.(**Wikipedia, 2013a**). In June 2006, Liberia ratified the MLC, 2006 as the first country in the world.

In Liberia, the Liberian Maritime Authority (LMA) is responsible for implementing maritime conventions that have ratified by the government. In order to fulfill requirements of the MLC, 2006, LMA has issued a series of Marine Notice (MLC001-006) to guide shipping companies, ship owners and authorized classification societies to prepare for the implementation of *the Convention* (**LISCR, 2013a**). Especially, LMA defined the main aspects of the requirements of standards and inspection procedures to tell the ship owners what areas should be prepared in order to meet the requirements of *the Convention*. In practice, the LMA is not responsible for the daily specific issues, but authorizes an American company—the Liberian International Ship and Corporate Registry (LISCR) — to implement specific work performance, such as inspection, certification, and registration.

According to the published series of Marine Notice (MLC001-006) issued by the LMA, some special requirements for implementing the MLC, 2006 are defined as follows:

Firstly, with regard to the applicability, the LMA stipulated in the marine notice MLC 001 that *the Convention* should neither be applied to Mobile Offshore Drilling Units (whose primary service is drilling operations for the exploration, exploitation, production of resources beneath the sea-bed) nor some specific persons, such as professional pilots, port workers, guest entertainers, and ship inspectors/surveyors. In addition, the administration is considering the possibility of harmonizing some verification audits under the International safety management (ISM) and International Ship and Port Facility Security (ISPS) Codes with subsequent maritime labour inspections after a vessel's initial inspection for a Maritime Labour Certificate (LISCR, 2013b), which reflects the LMA's flexibility in implementation of *the Convention*. What is more, it also stipulated that the ship owners could appeal directly to the competent authorities if they do not agree with the decisions made by the Liberian Maritime Labour Inspectors (LMLI) or the Recognized Organization (RO) inspectors during the inspection.

Secondly, with regard to the protection of seafarers' rights and interest, some further details and operational provisions are given by the LMA in accordance with *the Convention*. For example, it requires that the clause on protection of seafarers' rights should be embodied in the employment agreement; it also stipulates that the ship owner may choose the minimum rest periods mechanism or maximum working hour mechanism but not both of them on board a ship.

It is noteworthy that with regard to seafarers' complaints, it sets out the procedures and approaches by stipulating that "If the complaint cannot be solved on board a ship, sailors can appeal directly to the maritime labor inspectors or authorized RO Inspectors or the competent authority", which provides specific way for protection of seafarers' rights.

### 1.3.2 Australia

Australian government has revised and updated the relevant domestic laws in order to comply with the requirements of the MLC, 2006. For example, in 2011, the Australian Parliament had scrutinized and approved the amendments of the *Navigation Act, 1912*. to maintain consistency of the bill and *the Convention*. In addition, Australia will issue some administrative Marine Orders and make sure these Orders will be revised in accordance with the requirements of *the Convention*. Furthermore, some states and territories of Australia have revised related state laws to eliminate the inconsistencies with the MLC, 2006.

According to *Australian Maritime Safety Authority Act 1990* (the AMSA ACT), Australian Maritime Safety Authority (AMSA) is a statutory authority established to implement the requirements of maritime conventions (AMSA, 2013a). Australia fulfills its responsibility under the MLC,2006 mainly through Flag State Control(FSC) and Port State Control (PSC). On the one hand, AMSA is responsible for issuing the Maritime Labour Certificate (MLC) and Declaration of Maritime Labour Compliance (DMLC) on ships that fly its flag through the FSC system, and it also authorized 9 ROs to do inspection and certification jobs(as listed in table 4).

On the other hand, AMSA conducts inspection of maritime labour conditions on foreign ships calling its port through the PSC system. Vessels having not carried a MLC and DMLC or vessels with clear grounds for believing their working and living conditions do not conform to the requirements of *the Convention* will be critically examined by AMSA in Australian ports.

**Table 4— A list of ROs authorized to conduct inspections and issue certificates on behalf of AMSA.**

<b>Corporation or association</b>	<b>Acronym</b>	<b>Website</b>
American Bureau of Shipping	ABS	www.eagle.org
Bureau Veritas	BV	www.veristar.com
China Classification Society	CCS	www.ccs.org.cn
Det Norske Veritas	DNV	www.dnv.com
Germanischer Lloyd	GL	www.gl—group.com
Korean Register of Shipping	KR	www.krs.co.kr
Lloyds Register	LR	www.lr.org
Nippon Kaiji Kyokai	Class NK	www.classnk.or.jp
RINA S.P.A	RINA	www.rina.org

**Source: (AMSA, 2013b)**

### 1.3.3 Hong Kong

In Hong Kong Special Administrative Region (HKSAR), the Hong Kong Marine Department (HKMD) is the competent authority as defined in the MLC, 2006 and is in charge of implementing requirements of *the Convention* (HKMD, 2013). At present, the Hong Kong Marine Department is revising the *Merchant Shipping (Seafarers) Ordinance* to keep its consistence of *the Convention*.

On July 22, 2011, HKMD issued a policy letter of specific guidance for ship owners, ship operators and ROs to prepare for the implementation of *the Convention*. According to the policy letter, some details are set out as follows.

Firstly, it requires that the minimum age of seafarers working on board a ship that flies its flag is 17 years old, which is higher than that stipulated in *the Convention*. What is more, it specifies the validity of medical certificate ,as shown in table 5.

**Table 5— The validity of medical certificate in HKSAR.**

<b>Age</b>	Under 18 years old	18~55 years old	Over 55 years old	Bulk chemical carrier seafarers
<b>Validity</b>	1 year	2 years	1 year	1 year

**Source: the Author**

Secondly, it balanced laws of HKSAR with the MLC, 2006 and other conventions with respect to crew employment, accommodation and health protection. For example, it provides in the employment agreement that the quality of work for seafarers and their wages shall not be recorded in the work records, which is different from China registered ships, on which the master will sign an opinion for seafarers' work performance on board his ship. With regard to working hours, it adopts the minimum rest period mechanism conforming to the relevant requirements of *the Convention* and STCW 2010.

Thirdly, HKMD announces its contact information for seafarers and encourages them to appeal directly in the case that disputes cannot be solved through on-board complaint procedure.

Considering its sound legal system, developed economy and powerful Hong Kong Seamen's Union, the HKSAR even set out higher standards and requirements with respect to labour condition compared with the MLC,2006 and it is likely that HKMD will suffer little implementing pressure when *the Convention* entry into force in the future.

#### ***1.4 Suggestions for China***

Just as mentioned above, both Liberia and Australia have made a lot of effort in the



domestic legislation and supervision in order to conform to the requirements of *the Convention*. Hong Kong, as one Special Administrative Region of China, also has prepared for entering into force of the MLC, 2006. For China, although its legislative and policy-making jobs are lagging behind these countries and region, some implications can still be drawn from them.

#### 1.4.1 Ratifying *the Convention* as Soon as Possible

Undoubtedly, to some extent, ratifying *the Convention* as a member state will bring some unfavorable factors. For example, ship building and operating costs will increase and the domestic legal system will be greatly challenged. However, considering it is an irreversible trend that *the Convention* will enter into force in August 2013 and be widely accepted in the world, China should accelerate its pace for ratification of *the Convention*. Only by doing this, can the decent work be obtained by Chinese seafarers in the future, which is of great significance for the whole shipping industry in China.

#### 1.4.2. Incorporating International Convention into Domestic Law Appropriately

It is believed that incorporating the international convention into appropriate national legislation would depend on whether the ratified country follows the monistic or dualistic method (**Maunikum, 2007**). Just like Hong Kong, Liberia and most other countries, China generally also published various notices to guide the ship owners and ship operators in compliance with the requirements of maritime conventions to which it has ratified, then gradually incorporating the international law into domestic law.

Due to scarcely legislative resources and urgent task of implementing related conventions, many conventions that china have ratified now only stay in the level of administrative regulations, which usually have lower legal status compared with laws.

In addition, some simple and rough words such as XX convention has been in force, please act refer to it, which are usually seen in China's various marine notices. With regard to these aspects, Liberia and Hong Kong has set a good example for China to issue some detailed and operational marine notices and regulations.

## Chapter 2

### Overview of China's Compliance Measures

#### *2.1 SWOT Analysis of China's Ratification of MLC, 2006*

SWOT analysis, also known as trend analysis, is used to find suitable business strategy and strategic approach for certain organization based on analysis of the four aspects of the internal and external environment, namely opportunities, threats, strengths and weaknesses (**Wikipedia, 2013b**). The SWOT analysis, proposed by Albert Humphrey, can be applied to individuals, a product, a geographical area or a particular industry. In section 1.2 the necessity and urgency for China's ratification of *the Convention* is analysed. Now a SWOT analysis is given to analyze China's ratification of *the Convention* and identify the threats and weaknesses in the process of implementation. The SWOT analysis is shown in Table 6.

**Table 6— A SWOT analysis for China’s implementation of the MLC, 2006.**

	<b>Beneficial factors</b>	<b>Harmful factors</b>
<b>Internal causes</b>	<b>strengths</b>	<b>weaknesses</b>
	<p>1. China is a big trading and shipping country, there are endogenous needs of ratifying <i>the Convention</i>;</p> <p>2. Some domestic laws and regulations have set out the labor standards required in <i>the Convention</i>;</p> <p>3. China has established an effective inspection and monitoring system in compliance with the requirements of <i>the Convention</i>.</p>	<p>1. Few labour conventions has ratified by china will result in Chinese officers’ less experience in labor condition inspections;</p> <p>2. Domestic legislations with respect to seaman’s management are dispersed, lack of a comprehensive seafarers’ law;</p> <p>3. The labor inspection mechanism in china is not so good due to its ambiguous governing body and decentralized management.</p>
<b>External causes</b>	<b>Opportunities</b>	<b>Threats</b>
	<p>1. Ratification of <i>the Convention</i> will reflect that China has all along adopted an active and responsible attitude towards the maritime conventions;</p> <p>2. The <i>substantially equivalent</i> principle setting out by <i>the Convention</i> allows member states to implement the requirements of <i>the Convention</i> in a flexible way;</p> <p>3. It will be conducive to the protection of seafarers’ rights and improvement of china’s legal system;</p> <p>4. It is conducive to the elimination of sub-standard ships and promotion of quality shipping;</p> <p>5. ILO has issued some useful instruments such as the guidelines to assist member states to effectively implement their responsibilities under <i>the Convention</i>.</p>	<p>1. The existing legal system will be challenged;</p> <p>2. The shipping building and operating costs will be pushed up;</p> <p>3. <i>The Convention</i> have established no favorable principle;</p> <p>4. If china does not approve <i>the Convention</i>, its ports will become refuges for international substandard ship while ships fly its flag will suffer more detailed inspection, leading to high risk of detention.</p>

**Source: the Author**

## 2.2 Countermeasures

Based on the analysis mentioned above, China should take some effective measures to implement the responsibilities under *the Convention*.

### 2.2.1 Strengthening Mutual Exchanges and Cooperation with other ILO and International Maritime Organization (IMO) Member States

Considering China has ratified only 4 of the total 8 fundamental conventions (see Table 7), both Chinese government and Chinese officers are lack of experience in implementing the responsibilities under the MLC, 2006. So it is necessary for China to strengthen mutual exchanges and cooperation with other ILO and IMO member states, especially those with rich experience in labour condition inspection and certification. Only by doing so, can Chinese officers improve their level and skill of inspection on labour condition and certification and finally find a suitable way for china's ratification and implementation of the MLC, 2006.

**Table 7— Eight Fundamental conventions drawn up by the ILO**

<b>NO.</b>	<b>Eight Fundamental conventions issued by ILO</b>	<b>Status</b>
1	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	China has not ratified
2	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	China has not ratified
3	Forced Labour Convention, 1930 (No. 29)	China has not ratified
4	Abolition of Forced Labour Convention, 1957 (No. 105)	China has not ratified
5	Minimum Age Convention, 1973 (No. 138)	China has ratified
6	Worst Forms of Child Labour Convention, 1999 (No. 182)	China has ratified
7	Equal Remuneration Convention, 1951 (No. 100)	China has ratified
8	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	China has ratified

**Source: (ILO, 2013f)**

### 2.2.2 Modifying Domestic Laws and Regulations in Compliance with the MLC, 2006

In recent years, some scholar in China proposed enacting the “*Seafarers Law of the People's Republic of China(PRC)*”(Zhou, 2006) ,others proposed revising chapter 3 (the Crew )of the “*Maritime Law of the PRC*” (Zhang, 2011).However, what china urgently needs to do is changing the legislative philosophy from governing the seafarers to serving the seafarers .In this sense, it is believed that the most economical and effective method for protection of seafarers rights is revising the “*Regulation of the PRC on Seamen*”, “*Regulations of the PRC governing survey of ships and off shore installations*”, “*Regulations of the PRC on ship inspection*”and other domestic laws and regulations other than enacting a new law. The advantage for doing this lies in saving the legislative resources and reducing the legislative cost.

### 2.2.3 Establishing and Improving the Maritime Labor Inspection Mechanism

Firstly, it should be stipulated in the “*Regulation of the PRC on Seamen*” that “China Maritime Safety Administration (China MSA) is the competent authorities responsible for supervising and examining the shipping companies’ compliance with national requirements implementing the MLC, 2006”,which is useful for establishing and emphasizing China MSA’s principal status in implementing *the Convention*. It is also recommends that China MSA should establish some functional departments such as the Crew Development and Security Center (CDSC),which can safeguard the seafarers’ rights for decent work.

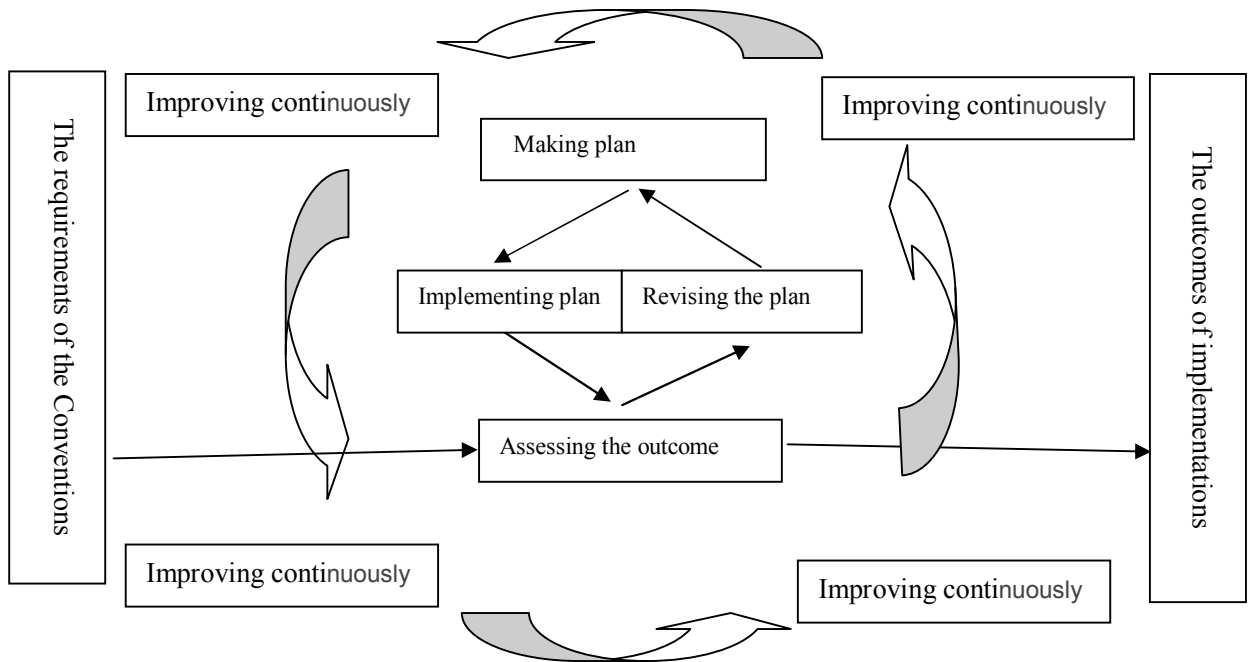
Secondly, the scope of inspection on seafarers’ labor conditions should be stipulated clearly in domestic laws or regulations that conform to the requirements of the MLC, 2006.The items,including but not limited to the minimum age, medical certificates,

qualifications of seafarers, seafarers' employment agreement, seafarer recruitment and placement services, working hours or rest time, ship manning levels, Accommodation, recreational facilities on board, food services, etc should be included in the scope of inspection on seafarers' labour conditions.

What is more, the “*tripartite coordination mechanism*” established by Ministry of Transport of the PRC, the Chinese Seamen & Construction Workers' Union and China Ship owners' Association should be more productive. It is reported that, under the tripartite coordination mechanism, China established the first collective bargaining agreement —*Chinese Seafarer Collective Bargaining Agreement (CBA)* in 2009, which contains the labor contract making, salary and welfare, working hours and the right to a normal holiday and vacation, etc, and it was expected to spread throughout the country in 2012. (**Xinhua News, 2011**). It is recommended that the “tripartite coordination mechanism” should be strengthened by holding regular meetings and temporary meetings to ensure that the problems found in the inspection can be effectively solved and help achieve decent work for all seafarers in the end.

#### 2.2.4 Adopting the PDCA Cycle in the Process of Implementation of *the Convention*

PDCA means Plan (Plan), Do (implement), Check (check), Action (disposal). PDCA is an iterative four-step management method used in business for the control and continuous improvement of processes and products, which is also known as the Deming cycle or control cycle (**Wikipedia, 2013c**). Introducing PDCA management method to the process of implementing the MLC, 2006 is beneficial for China's implementing *the Convention* based on a systemic and closed-loop method by making the plan, implementing the plan, assessing the outcomes, and revising the plan. The structural framework of the PDCA cycle adopted in China's implementing of *the Convention* is shown in Figure 1.



**Figure 1—the PDCA cycle for China’s implementing of *the Conventions***

**Source: the Author**



## Chapter 3

### The Requirements and Procedures for China MSA to Implement the Flag State Supervision and Inspection

Generally speaking, Ministry of Human Resources and Social Security (MOHRSS) is responsible for governing China employee's (including seafarers) labour social security affairs (**Labour Law, 2013**). However, considering the specificity of seafarer as an occupation which needs people to work on board a ship other than on land, China MSA should be authorized by domestic laws and regulations to deal with seafarers' social security affairs along with the MOLSS, which is a practical and effective way for China's implementation of *the Convention*. In the following chapter, the essay will focus on China MSA's responsibility of FSC and PSC inspections on labour conditions that required in *the Convention*. The essay also gives some recommended procedures and check forms for inspection on labour conditions from theory aspects, but how to incorporate these procedures and check forms into the existing FSC and PSC procedures will not be discussed in this essay.

#### 3.1 General Requirement

##### 3.1.1 The Authorization to the ROs

*The Convention* allows its member to authorize the RO (e.g. Classification Society) to implement the inspection and issuance of certification with regard to the labour inspection and the inspection in respect of working and living conditions of the seafarers on board the ship flying its flag. If the member agrees, authorization of inspection and/or issuance of certification can be given to the capable and independent public administration or organization of another member. China MSA may authorize China Classification Society (CCS) to inspect and certify the Chinese ships engaged in international voyage if China have approved and ratified *the Convention*. The CCS's work on inspection and issuance of certification must be

implemented with the authorization of the relevant maritime administrative agency, and also must be supervised by China MSA.

In addition, in accordance with the requirements of *the Convention*, China MSA shall submit the report to International Labour Office, and make public the list of the authorized organization, including any information regarding the recognized organization, the limit of the authorization, and the information regarding their necessary arrangements to make sure the authorized activities to be implemented completely and effectively.

### 3.1.2 Requirements on Certificate

According to general requirements set out in Article 5.1.1 of the MLC, China shall establish the effective inspection and certification system in order to make sure that the requirement of *the Convention* can be enforced. With regard to the detailed requirement of the certification, the ships flying its flag and engaging in international voyage shall carry and keep a copy of MLC and the DMLC in order to constitute the prima facie evidence in relation to the facts that the ships have been duly inspected by the Member whose flag it flies and the requirements of this Convention relating to working and living conditions of the seafarers have been met to the extent so certified.

#### 3.1.2.1 Maritime Labour Certificate

MLC is used to prove that the ships are in compliance with the national laws, regulations and other legal documents which implement *the Convention*. The certification applies to ships of 500 gross tonnages or over, engaged in international voyages. In respect of ships of 500 gross tonnages below engaged in international voyages, there is no mandatory requirement to issue the MLC. However, if the ship owner of ships under 500 gross tonnages requests, China MSA may issue the MLC

to those ships too. The valid period of the certificate shall not exceed 5 years. The issuance and the validity of the MLC depend upon the categories of the inspection: issuance inspection, intermediate inspection or renewal inspection (as shown in Table 8).

**Table 8—The Summary Chart for Maritime Labour Certificate Inspection**

<b>Categories</b>	<b>Time of Inspection</b>	<b>Contents of Inspection</b>
Issuance Inspection	Before issuing the Maritime Labour Certification	14 contents, e.g. the minimum age
Intermediate Inspection	Between the second and the third anniversary of the certification	The same as above
Renewal Inspection	Within three months before the expire of the current Maritime Labour Certification	The same as above

**Source: (CCS, 2013a)**

Besides, under the special circumstances, CCS may issue a MLC on an interim basis for a period not exceeding six months without issuing the DMLC within this period. An interim MLC may be issued in the following three situations:

- To new ships on delivery;
- When a ship changes flag;
- When the responsibilities for operation of the ships have been changed.

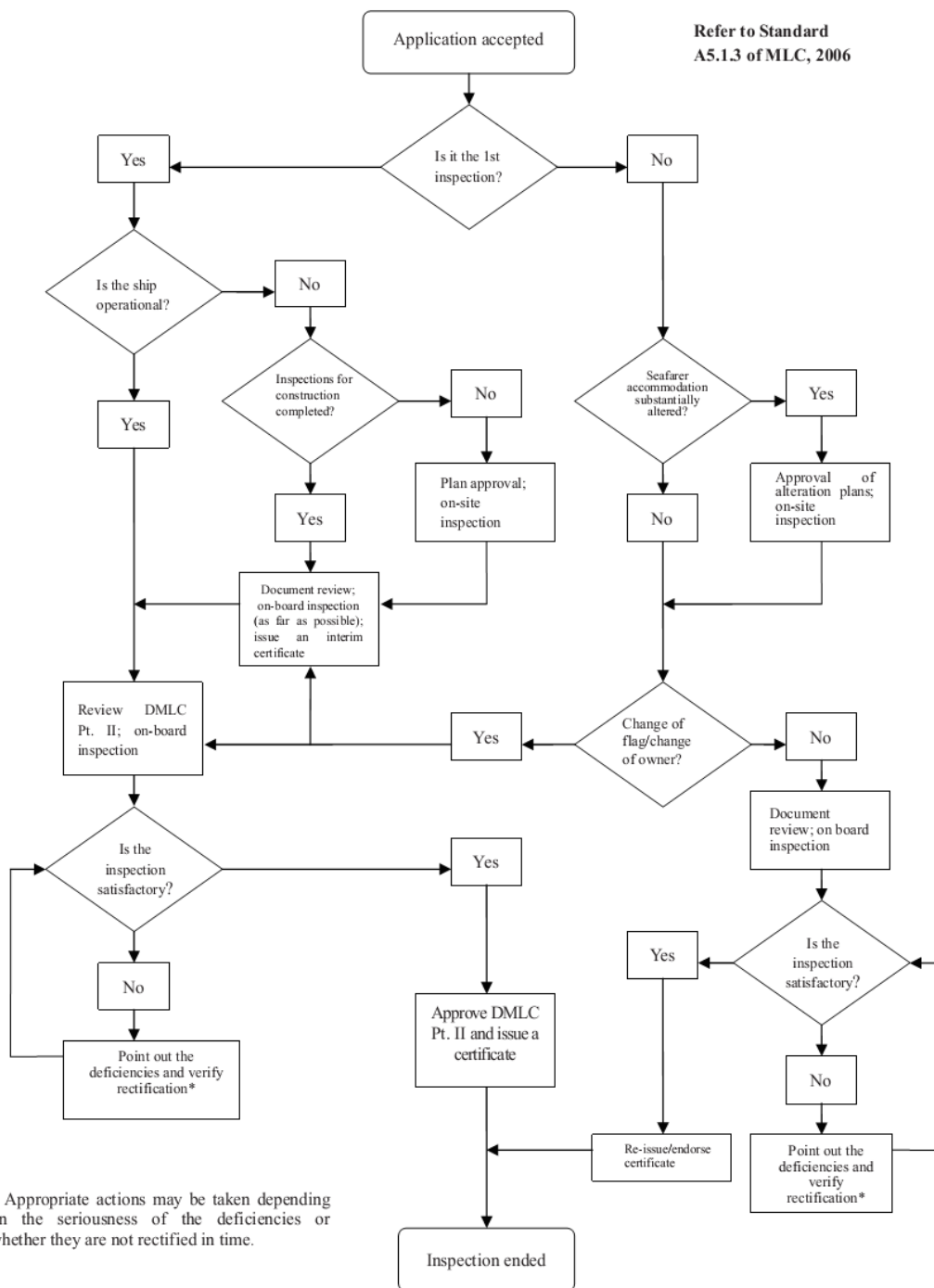
### 3.1.2.2. Declaration of Maritime Labour Compliance

The DMLC shall be attached to the MLC. The Declaration shall have two parts: Part One shall be drawn up by China MSA, identifying the national requirements

embodying the relevant provisions of this Convention by providing a reference to the relevant national legal provisions, in order to prove the laws and regulations of China is in accordance with *the Convention*; Part Two shall be drawn up by the ship owner and shall identify the measures adopted to ensure ongoing compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement, in order to prove the ship is in accordance with the requirements of Part One.

### 3.1.3 Inspection and Certification

Establishment of an effective maritime labour inspection and certification system is one of the core requirements of *the Convention* to its members regarding flag state supervision and inspection. China MSA may authorize CCS to inspect and certify the labour conditions to the ships flying its flag which engaged in international voyage. Depending upon the different stages and circumstances of the life circle of ships, the CCS's inspection on labour conditions generally includes the initial inspection of the new built ship, the initial inspection of the current ship, intermediate inspection, renewal inspection, inspection on the request of ship owner, inspection on the change of flag or ship owner, inspection on the substantial change to the accommodation, inspection on the request of ship owner, and additional inspection. The inspection and certification procedure of the CCS is shown in Figure 2.



**Figure 2—The labour conditions inspection and certification procedure of the**

**CCS**

**Source: (CCS, 2013b)**

## ***3.2 Specific Requirements***

### **3.2.1 The Inspection of New Ships**

*The Guidelines for Implementation of Inspection of Maritime Labour Convention* drawn up by CCS have been put into effect since 1 January, 2010. The Guidelines stipulate the requirements for implementation of inspection of maritime labour. They clarify the corresponding applicable standards regarding ships built at different time and sailed in different areas, and at the same time set out the requirements regarding the MLC and Inspection Report. It is suggested that China MSA shall authorize the CCS to inspect and certify the seafarers' conditions on the newly-built ships flying Chinese flag and engaging in international voyage, subject to the supervision of China MSA. The accommodation arrangement requirements will be taken as an example, which set out in the Guidelines issued by the CCS.

*“Accommodation arrangement*

— *The minimum permitted headroom in all seafarer accommodation shall be not less than 203 centimeters (Standard A3.1/6(a)). The competent authority may permit some limited reduction in headroom [Note: The information of such headroom is to be provided in the “arrangement plan (or booklet) of seafarer accommodation”];*

— *In cargo ships, sleeping rooms shall be situated above the load line amidships or aft, except that in exceptional cases, sleeping rooms may be located in the fore part of the ship, but in no case forward of the collision bulkhead (Standard A3.1/6(c));*

— *In passenger ships, and in special purpose ships where the flag State permit the location of sleeping rooms below the load line, attention is to be paid to that satisfactory arrangements are made for lighting and ventilation, and that in no case shall they be located immediately beneath working alleyways (Standard A3.1/6(d));*

- *There shall be no direct openings into sleeping rooms from cargo and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas (Standard A3.1/6(e));*
- *Minimum requirement for seafarer sleeping rooms (Standard A3.1/9) [Note: The area of seafarer accommodation is to be indicated in the “arrangement plan (or booklet) of seafarer accommodation”; the sanitary space within a sleeping room intended for 1 seafarer may be included in the area of the sleeping room];*

**List of Collocation and Floor Areas of Seafarer Sleeping Rooms (Minimum Requirements)**

Categories		Gross tonnage		
		> 3000	≥ 3000 ~ <10000	≥ 10000
Cargo ships	Sleeping room for 1 person	4.5 m <sup>2</sup> *	5.5 m <sup>2</sup>	7.0 m <sup>2</sup>
	Sleeping room for 2 persons	7.0 m <sup>2</sup>	×	×
	Sleeping room for Officer (no day room)	7.5 m <sup>2</sup>	8.5 m <sup>2</sup>	10.0 m <sup>2</sup>
Passenger ships and special purpose ships	Sleeping room for 1 person	4.5 m <sup>2</sup> *	5.5 m <sup>2</sup> *	7.0 m <sup>2</sup> *
	Sleeping room for 2 persons	7.5 m <sup>2</sup>	7.5 m <sup>2</sup>	7.5 m <sup>2</sup>
	Sleeping room for 3 persons	11.5 m <sup>2</sup>	11.5 m <sup>2</sup>	11.5 m <sup>2</sup>
	Sleeping room for 4 persons	14.5 m <sup>2</sup>	14.5 m <sup>2</sup>	14.5 m <sup>2</sup>
	Sleeping room for more than 4 persons (special purpose ships only)	3.6 m <sup>2</sup> /person	3.6 m <sup>2</sup> /person	3.6 m <sup>2</sup> /person
	Sleeping room for junior officer (no day room)	7.5 m <sup>2</sup>	7.5 m <sup>2</sup>	7.5 m <sup>2</sup>
	Sleeping room for senior officer (no day room)	8.5 m <sup>2</sup>	8.5 m <sup>2</sup>	8.5 m <sup>2</sup>
All types of ships	Sleeping rooms for master, chief engineer and chief navigating officer	In addition to sleeping rooms, an adjoining sitting room, day room or equivalent additional space is to be available. Ships of less than 3,000 gross tonnage may be exempted by the flag State from this requirement		

\* The floor areas of sleeping rooms may be appropriately reduced according the requirements of the flag State.

- *Ships serve food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship (Regulation 3.2/1) [Note: The volume of refrigerated provision stores (m<sup>3</sup>) and their nominal or test temperature and the volume of dry provision stores (m<sup>3</sup>) and fresh water tanks (m<sup>3</sup>) are to be included in the “arrangement*

*plan (or booklet) of seafarer accommodation”];*

— *Ships carrying 15 or more seafarers and engaged in a voyage of more than three days’ duration shall provide separate hospital accommodation to be used exclusively for medical purposes (Standard A3.1/12);*

— *Ship shall be provided with separate offices or a common ship’s office for use by deck and engine departments (Standard A3.1/15);*

— *Mess rooms shall be located apart from the sleeping rooms and as close as practicable to the galley (Standard A3.1/10(a));*

— *Mess rooms shall be of adequate size and comfort, taking account of the number of seafarers likely to use them at any one time (Standard A3.1/10(b));*

— *On ships other than passenger ships, the floor area of mess rooms for seafarers should be not less than 1.5 square meters per person of the planned seating capacity (Guideline B3.1.6/3).”*

*(CCS, 2009, pp.23—24)*

### 3.2.2 On-board Inspection

#### 3.2.2.1 Contents of Inspection

The inspection conducted by China MSA’s flag state control officers (FSCO) shall be in accordance with *the Convention* and the national laws and regulations. The contents of inspection shall not only include the 14 categories in the mandatory certification system of *the Convention*, but also include the 5 categories stated in the national laws and regulations such as the right to apply for holiday and the right to repatriation. The detailed requirements and methods of the inspection may refer to the *Guidelines for Flag State Inspections under the Maritime Labour Convention 2006* issued by the ILO and *Guidelines for Inspection under the MLC, 2006* drawn up by China MSA, which will not be stated in details here.

#### 3.2.2.2 The Requirements for China’s Flag State Control Officers



In China, according to *The administrative regulations of ship supervisor in People's Republic of China*, ship safety supervisors in China are divided into 4 ranks, namely Chief ship safety inspector, rank A ship safety inspector, rank B ship safety inspector (coastal or inland waterway), and rank C ship safety inspector (coastal or inland waterway). The detail requirements for each rank inspectors are defined as in table 9.

**Table 9— The requirements for China's ship inspector**

Classification	Requirement 1	Requirement 2	Requirement 3	Requirement 4
Rank C inspector	College Degree in maritime or above	Qualified and trained to carry out inspection	Familiar with relevant national laws or regulations	Carry out inspections for more than 50 vessels or half a year above
Rank B inspector	College Degree in maritime or above	Good oral and written English, qualified and trained to carry out inspection	Familiar with relevant conventions and national laws or regulations	Carry out inspections as rank C inspector for more than 100 vessels or 1 year above
Rank A inspector	College Degree in maritime or above	Good oral and written English, qualified and trained to carry out inspection	Familiar with relevant conventions and national laws or regulations	Carry out inspections as rank B inspector for more than 200 vessels (no less than 100 foreign ships) or 2 years above
Chief inspector	Good Command of English and could use English as working language.	Carrying out all duties and solving complicated problems by using their professional judgments	Have achieved qualification certificates as a Rank A inspector for more than 4 years	Carry out inspections as rank A inspector for more than 400 vessels (no less than 200 foreign ships)

**Source: (China MSA, 2011a)**

According to the regulation, China's flag state control officers are those persons who have achieved rank B inspector qualification and have mainly conducted inspection on ships engaged in international voyage. In addition, experienced Rank—A ship

inspectors may be appointed as chief ship safety inspectors by China MSA and may be authorized as *Designated Officers (DO)* by China MSA. The DOs are responsible for analyzing the nature and seriousness of the ship's deficiencies found by the inspectors and assessing whether those deficiencies will be resulted in detention by contacting with the inspectors on a ship using a telephone or computer.

In order to carry out the labour condition inspection under *the Convention*, China MSA's FSCOs shall be familiar with relevant requirements of *the Convention* as well as domestic laws and regulations which are basis for judging whether the labour conditions are met or not on China's ships engaged in international voyage.

### ***3.3 Inspection Procedures***

In order to confirm whether the conditions of the ships have complied with the requirement of *the Convention*, the officers of China MSA may conduct the flag state supervisions and inspections regarding the ships flying Chinese flag which have been certified by the authorized CCS, including:

- When there is a substantial change regarding the seafarer accommodations and recreational facilities;
- When there is a change of flag;
- When there is a change of the responsibilities for operation of the ships;
- When there is complaint received by the member state with evidences;
- When there is evidence showing that a ship flying its flag does not comply with the requirement of *the Convention*;
- When there is a serious deficiency in the measures listed in Declaration of Maritime Labour Compliance.

Any one or more of the situations listed above will make the relevant MSA of the Chinese port start the flag state supervisions and inspections procedures regarding labour conditions. The inspection of the Chinese ships' labour conditions conducted by China MSA will be in accordance with *the Convention*, the national laws, regulations and the technical specification for ship inspections. According to the Guidelines for Inspection of Maritime Labour Conditions and Inspection and Working Procedures for Ship Safety drawn up by China MSA, the flag state shall implement the flag state supervisions and inspections through the following procedures.

#### 3.1.1 Choosing the Targeted Ship

The safety inspection officers of the flag state may, pursuant to the orders from the superiors or through the FSC choosing system, reasonably choose the ships mooring at the port or in operation to implement the supervision and inspection of maritime labour conditions.

#### 3.3.2 Showing the Identification

The inspection officers, when implementing the inspection of maritime labour conditions, shall as soon as they are on board show the inspector identifications to the master and crews and state clearly the intentions.

#### 3.3.3 Initial Inspection

The inspection officers, as long as they are on board, shall patrol around the ship, get the general impression of the labour conditions on board, and inspect the effectiveness and integrity of the ship's MLC and DMLC. If it is found that the documents are lawful and complete, inspection shall end accordingly.

### 3.3.4 Detailed Inspection

If the officers have reasons to believe that the working and living conditions on board do not comply with the requirements of *the Convention* (Standard A 5.2.1, Paragraph 1(b)) or have the reasonable doubt that ship has changed the flag for the purpose of not complying with the requirements of *the Convention* (Standard A 5.2.1, Paragraph 1(c)) or there is already a complaint (Standard A 5.2.1, Paragraph 1(d)), they may conduct the detailed inspection to the ship.

### 3.3.5 Issuing the Report

After the flag state inspections has ended, the inspection officers shall on site issue the Flag State Supervisions and Inspections Report in the Flag State Supervisions and Inspections Log. In accordance with the standard inspection report procedures, the report shall stipulate that all the deficiencies discovered in the inspections must be rectified. A copy of the report shall be given to the master and another copy shall be posted on the bulletin board of the ship for crews' purpose. A third copy shall be kept by the relevant authority of the flag state or recognized organization for the purpose of necessary record. Under the requests of seafarers, a copy shall be given to their representatives.

### 3.3.6 Detaining and Releasing

Regarding the ships with serious deficiencies in labour conditions, the inspectors of the flag state may issue the detaining report after being authorized by the designated person in charge. The detained ship may apply for releasing after the deficiencies have been rectified and re-inspection has been passed. Releasing order shall be authorized by the designated person in charge and issued to the ships in question.

### 3.3.7 Re-Inspection

In respect of the relevant labour deficiencies which result in detaining and restricting the operation of the vessel, the state flag inspectors, after receiving the application for re-inspection, shall arrange the ship to be re-inspected in time. The rectified deficiencies shall be stamped by *Stamp of Ship Safety Re-inspection Conformity*, and the original inspection report shall also be annotated with re-inspection comments, signed, dated and stamped by *Stamp of Ship Safety Re-inspection Conformity*.

### 3.3.8 Entering the Information and Follow-up Inspection

The information regarding the ship flag supervision and inspection shall be entered into the Dynamic Management System for Chinese Ships (DMSCS), and according to the search result of the System, the follow-up inspection shall be implemented to the ships that have not rectified their deficiencies.

### 3.3.9 Reporting the Information and Feedback

With regard to the existing deficiencies that require the relevant maritime management administration to implement the follow-up inspection, the flag state supervision officers may issue the Ship Safety Inspection Information Report (SSIIR) to the relevant maritime management, and the latter shall report the feedback to the maritime administration after implementing the follow-up inspection.

### 3.3.10 Filing

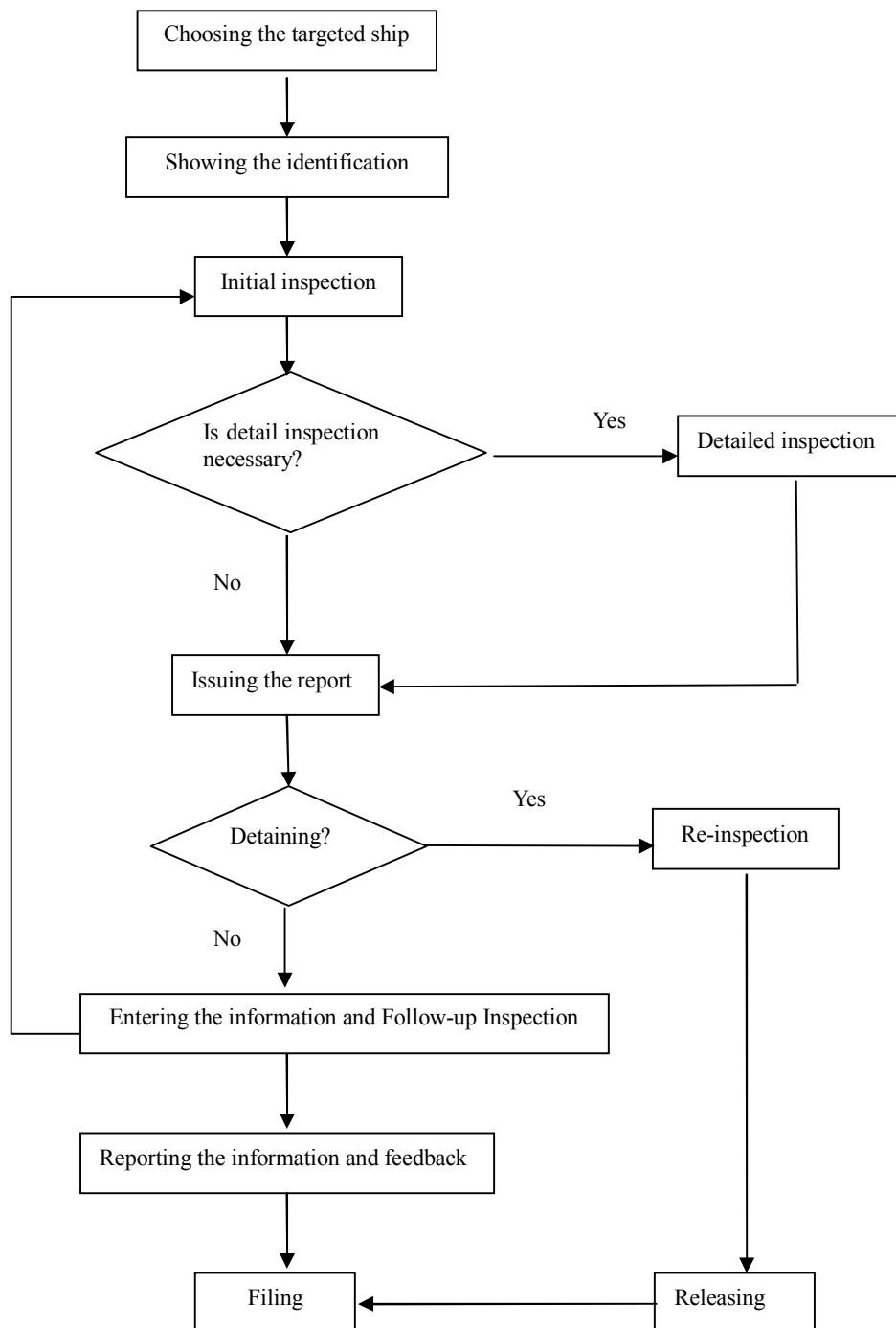
The relevant maritime management agencies of the various ports in China, which implement the maritime labour conditions inspection, shall establish the flag state supervision and inspection documents, which shall include the following contents:

- The flag state supervision and inspection report;

- The application for ship safety re-inspection (if any);
- The materials for ship re-inspection and follow-up inspection (if any);
- The Ship Safety Inspection Information Report (if any);
- The Ship Safety Inspection Information Report Record (if any);
- Other illustrative materials (if any). Other illustrative materials include the various documents which can prove the true existence of the ship deficiencies, such as text, record, video, picture and any written reasons to explain the reason for the failure of the maritime management administration to perform the re-inspection responsibilities.

Each flag state supervision and inspection shall be documented separately; the relevant materials shall be filed within 5 working days. The supervision and inspection documents shall be kept at least for 2 years.

The procedure for FSC on maritime labour conditions in China is shown in Figure 3.



**Figure 3— The procedures for FSC on maritime labour conditions in China**

**Source: the Author**

## Chapter Four

### The Requirements and Procedures of Port State Inspection

#### *4.1 Requirements of Port State Inspection*

The purpose of carrying out the inspections by the PRC port control officers is to determine whether the ship calling in PRC ports complies with the relevant provisions of *the Convention*.

In accordance with the unfavorable terms, ships from non-party states shall face stricter and more detailed inspections at PRC ports. However, for the ships flying the flags from the state parties of the Maritime Labour Convention, PRC port state control inspections shall be limited to re-examining relevant certificates, declarations and records, which in addition shall be considered as prima facie evidences required by *the Convention*.

If the certificates or declarations are not provided as required, if there are clear grounds for proving that the ship is in compliance with the requirements of *the Convention*, or if the ship has changed flag for the purpose of avoiding compliance with *the Convention*, the port State control officer shall implement detailed inspections on the ship. Those detailed inspections may cover all requirements in *the Convention*.

In addition, detailed inspections may be triggered by stated non-compliance complaints. However, such inspection shall be limited to the problems mentioned in the complaints, unless by which and by the investigation of which, clear evidences can be provided.

For the defects discovered in detailed inspections, the port State control officer shall



make the decision of rectification within certain time limits or detention based on his or her professional judgment.

It is worthy of mention that while carrying out the examination, since each state party may perform the same provision of *the Convention* in a different manner or different national requirements may be provided, substantial equivalence, exception and exemption shall be considered thoroughly.

Therefore, it shall be highly significant to brief the inspection status to the flag states and demand them to make necessary actions.

If the reply of the flag state is inefficient to solve the problem, when it is necessary, the port maritime administrative authority may notify the ILO and accept action orders from the ILO. In certain occasions, the administrative authority of the next port of call and suitable ship owners and crews may be notified.

#### ***4.2 Inspection Procedures***

In accordance with the requirements of *the Convention* and the Memorandum of Regional Cooperation, such as the Memorandum of Asia-Pacific Area Port State Supervision and Inspection, the maritime administrative authorities at PRC ports may conduct the port State supervisions and inspections regarding labour conditions on the arrival foreign ships according to the following steps.

##### **4.2.1 Ship Targeting Procedures**

While mooring or operating, the ship which presents a relevant high score in the port control data base is commonly chosen to be examined under the port State supervision and inspection. In addition, complaints coming from shore can also trigger investigations and the port State supervision and inspection

##### **4.2.2 Presenting Identifications**

While implementing the port state supervisions and inspections on board, the inspection officers shall present the inspector identifications to the master and crews and declare their intentions.

#### 4.2.3 Initial Inspection

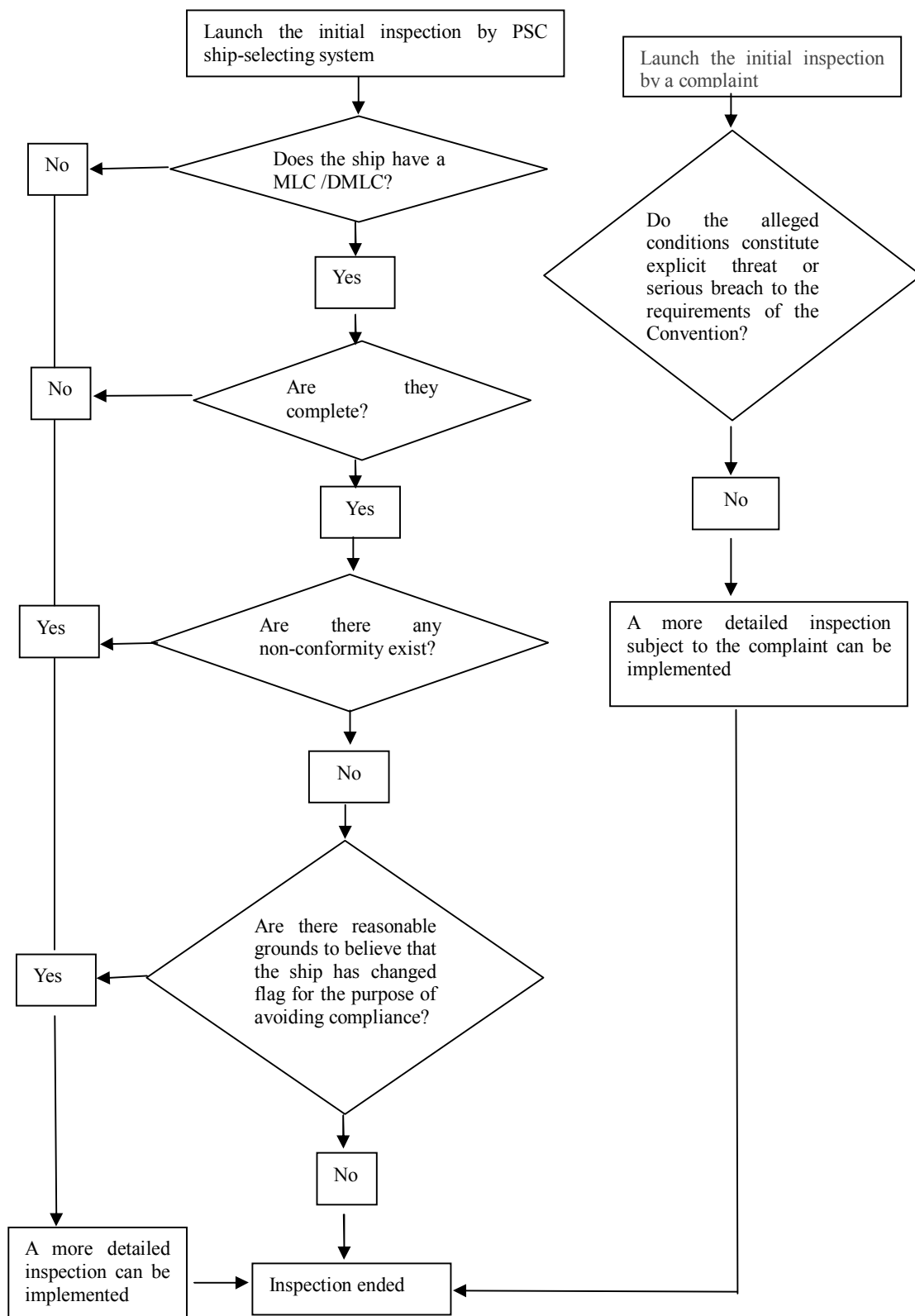
While on board, the inspectors shall tour the ship, gather an overall impression on the labour condition. The validity and completeness of the certificates, documents and relevant records shall be checked by inquiring. If the documents are legal and complete, the inspection shall be closed.

However, under the following situations, detailed inspections shall be performed and the ship's master shall be informed.

- Apparent defects or hidden perils are discovered during the tour or inspection procedures;
- Complaints are made regarding labour conditions which are lower than required;
- No detailed inspection has been performed by the maritime administrative authorities within the recent two years.

In accordance with the regulations of the regional cooperation organizations, it is demanded to be inspected in detail by foreign maritime administrative authorities.

The recommended procedure of initial inspection for China PSCO is shown in figure 4.

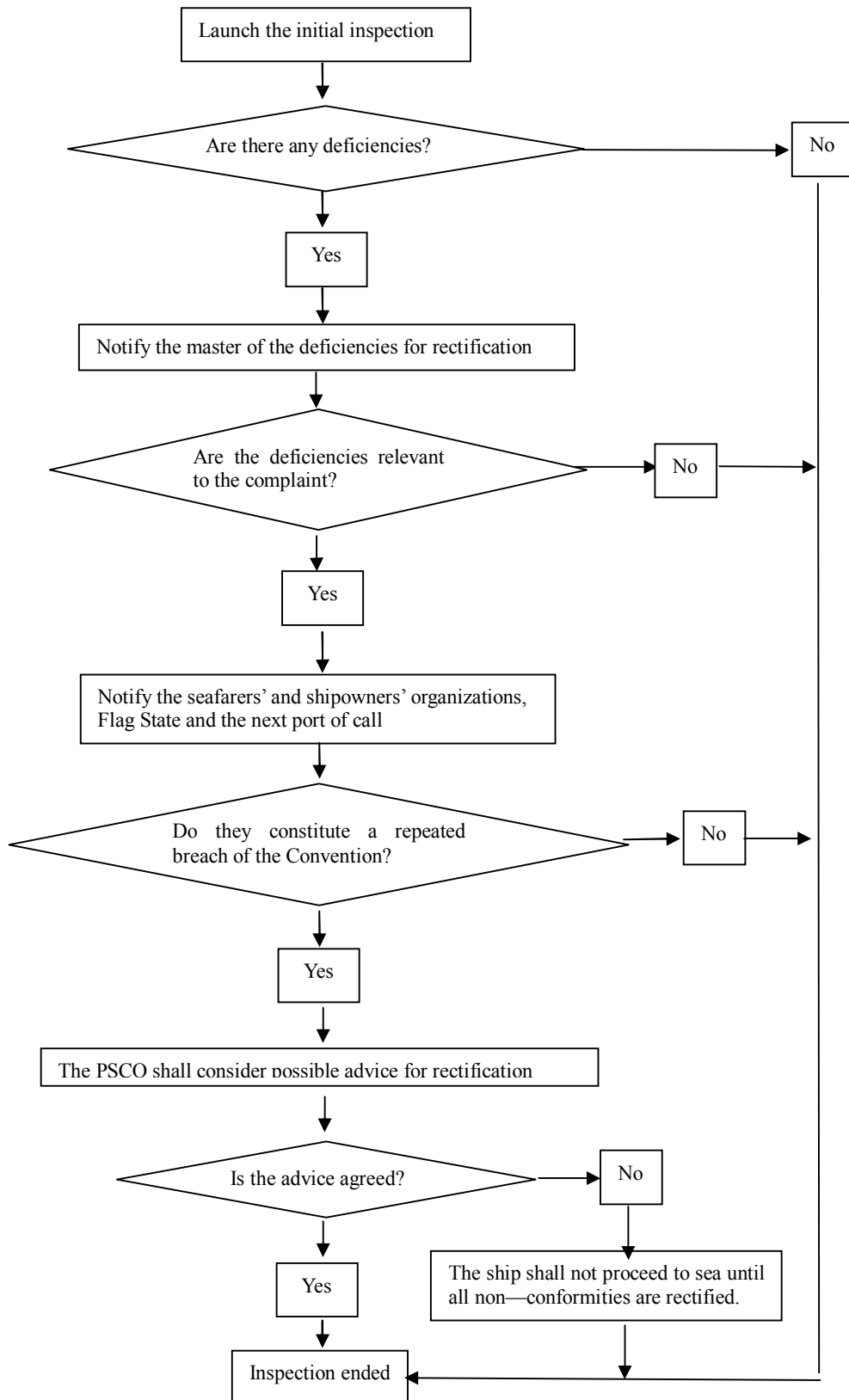


**Figure 4— The procedures of initial inspection for China PSCO**

**Source: the Author**

4.2.4 Detailed Inspection

According to the results of the initial inspection, the PSCO may carry out a detailed inspection the initially initiatives or due to receipt of a complaint in accordance with the *Guidelines for Inspection under the MLC, 2006* drawn up by China MSA. The recommended procedures of detail inspection for China PSCO is shown in Figure 5.



## **Figure 5— The procedure of detail inspection for China PSCO**

**Source: the Author**

### 4.2.5 Issuing the Report

Upon completion of the port state control and inspection, the *Port State Control and Inspection Report* shall be issued by the inspector who holds the Class A Certificate. When filling out the *Port State Control and Inspection Report*, the inspector shall describe the deficiency in detail and accurately with the professional terminology, as well as indicate the advice on the deficiency. If the detention of the vessel is to be the advice, the inspector shall indicate the relevant legal basis on the *Port State Control and Inspection Report*.

The *Port State Control and Inspection Report* shall be filled out strictly in accordance with the section *Guidelines for Completing Inspection Reports of Asia-Pacific Port State Control Manual*. The *Port State Control and Inspection Report* shall be made in duplicate, one copy of which shall be delivered to the vessel, the other reserved by the MSA which conducts such an inspection.

### 4.2.6 Detaining and Releasing

As to the ship that has serious deficiency regarding the working and living conditions of seafarers, the PSCO may issue a detention report to her with the consent of the DO. After the remedial action taken by the ship and her passing the review, the ship may apply for the release. The release report may be issued with the consent of the authorized officer.

### 4.2.7 Re-inspection

On receiving a report on the review application submitted by the detention ship, in principle, the PSCO should conduct a review, on board, to the detention ship.

If the ship is located in the places of transportation difficulties and the deficiencies are concerning the certificates and documents merely, as requested of the ship, the inspectors may carry out the review in the office with the consent of the director of the MSA.

After passing the review of the deficiency, the inspector shall indicate the review comments on *Port State Control and Inspection Report*, also mark the review date and the signature, affix the special ship safety seal to the report, and lift the corresponding measure taken without delay.

#### 4.2.8 Information Recording and Tracking

*Port State Control and Inspection Report* shall be recorded into the information system of port state after the completion of the inspection to ascertain such inspection information would be in the information system right before the arrival of the ship at the next port and no later than 5 calendar days after the inspection date.

Where the complaint of the deficiency has not been resolved following action taken or has only been mended temporarily, irrespective of the ship detention, China MSA may request the MSAs of other native ports or the parties of the *Memorandum of Understanding on Port State Control in the Asia-Pacific Region* to follow the inspection regarding the correction of the deficiency on the arrival ship. China MSA may carry out the follow-up inspection at the request of other MSAs or the Parties of the *Memorandum of Understanding on Port State Control*.

#### 4.2.9 Information Notifying and Feedback

Where the deficiency of the ship needs to be follow-up inspected by the relevant Maritime Administration or the parties of the *Memorandum of Understanding on Port State Control*, the Maritime Administration carrying out the inspection shall fill





At the request of other Maritime Administration or the Parties of the *Memorandum of Understanding on Port State Control*, the Maritime Administration carrying out the follow-up inspection shall fill out the *Report of Action Taken to the Notifying Authority* (as shown in Figure 7), and notify the relevant MSA or the parties of the *Memorandum of Understanding on Port State Control* the inspection feedback timely.

<b>REPORT OF ACTION TAKEN TO THE NOTIFYING AUTHORITY</b>	
<b>1. To :</b>	(Name) ..... (Position) ..... (Authority) ..... Telephone: ..... Tel/fax: ..... Date: .....
<b>2. From :</b>	(Name) ..... (Position) ..... (Authority) ..... Telephone: ..... Tel/fax: .....
<b>3. Name of ship:</b>	.....
<b>4. Call sign:</b>	.....
<b>5. IMO number:</b>	.....
<b>6. Port of inspection:</b>	.....
<b>7. Date of inspection:</b>	.....
<b>8. Action taken:</b>	(a) Deficiencies ..... (b) Action taken .....
	.....
	.....
	.....
<b>9. Next port:</b>	(Date) .....
<b>10. Supporting documentation</b>	No Yes (See attached)
	<b>Signature</b> .....

**Figure 7— Report of action taken to the notifying authority**

**Source: the Author**

#### 4.2.10 Filing

China MSA carrying out the PSC inspection shall establish the archives of PSC records.

The following documents shall be contained in the PSC records archives:

- The Port State Control and Inspection report or its copies (applied to the follow-up inspection);
- The application of Port State Control review (if any);
- The documents of Port State Control and Inspection review or follow-up inspection (if any);
- Notification of Detention of Ship (as shown in Figure 8);
- Notification for Release of Ship (as shown in Figure 9)
- Report of Deficiencies not Fully Rectified or Only Provisionally Repaired (if any);
- Report to the Notifying Authority (if any, as listed in Figure 10);
- Evidence supporting the deficiency (if necessary).

**NOTIFICATION OF DETENTION OF SHIP**

Dear Sirs,

**M/V ship's name, flag, IMO No. – Detention of ship**

China Maritime Safety Administration has on (date of inspection, month day year) carried out an inspection of the above ship at (port), China.

The ship is detained on (date of detention, month day year) due to the following detainable deficiencies:

1. ....
2. ....
3. ....

Enclosed please find a copy of Report of Inspection and Notice of Departure Prohibition.

Issuing by (Seal).....(PORT).....Maritime Safety Administration

Authorized officer:..... Date:.....

Tel:..... Fax:.....

Address:.....

**Figure 8— Notification of detention of ship**

**Source: the Author**

**NOTIFICATION FOR RELEASE OF SHIP**

Dear Sirs:

Considering the fact that the cause(s) of departure prohibition of the vessel  
..... Of .....flag, has been eliminated, I hereby  
order the release of the said vessel at .....(hour)..... on .....(day).....  
Of .....(year).....

Issuing by (Seal).....(PORT)..... Maritime Safety Administration

Authorized officer:..... Date:.....

Tel:..... Fax:.....

Address:.....

**Figure 9— Notification for release of ship**

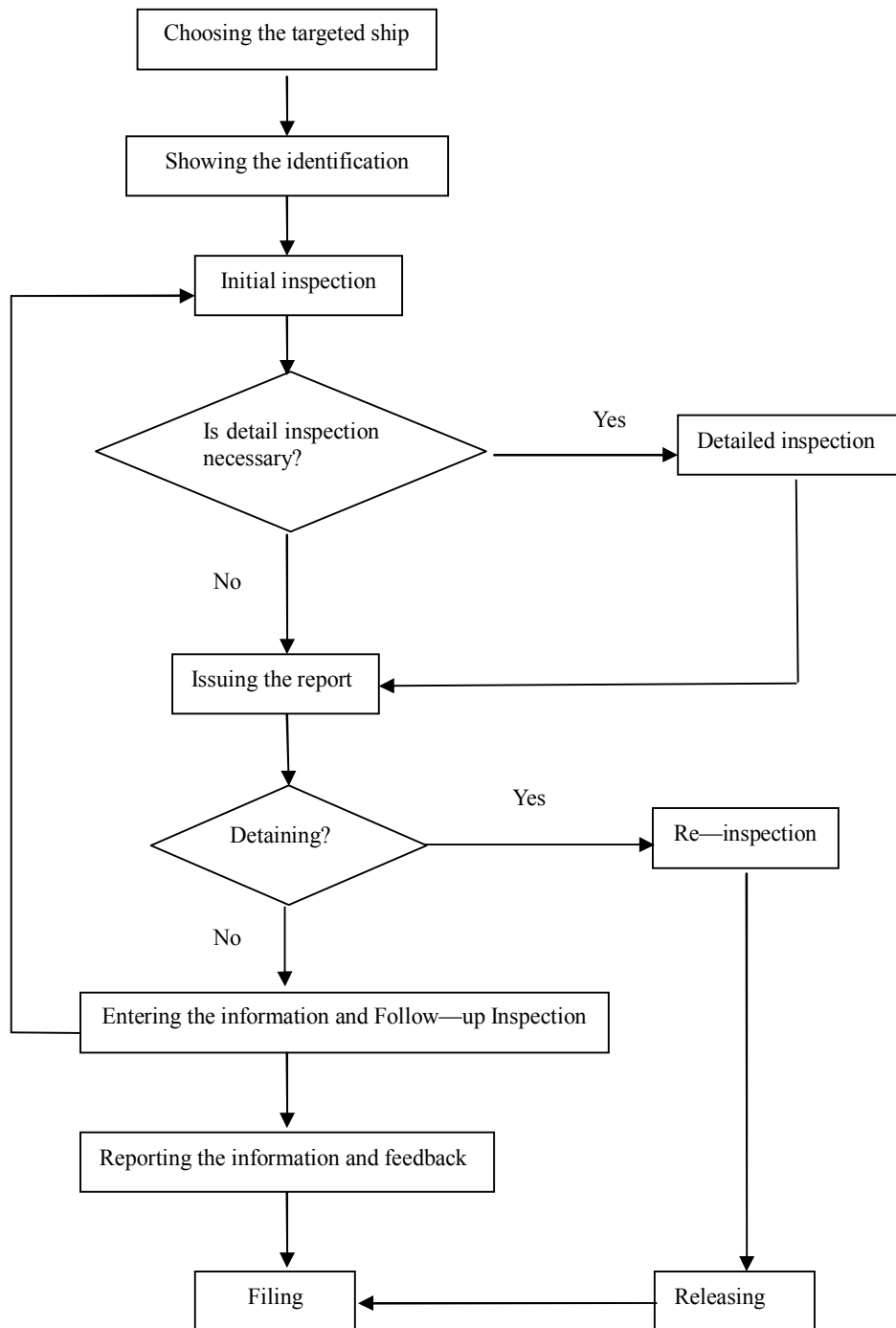
**Source: the Author**

<b>REPORT TO THE NOTIFYING AUTHORITY</b>	
<b>1. To :</b>	(Name) ..... (Position) ..... (Authority) ..... Telephone: ..... Tel/fax: ..... Date: .....
<b>2. From :</b>	(Name) ..... (Position) ..... (Authority) ..... Telephone: ..... Tel/fax: .....
<b>3. Name of ship:</b>	.....
<b>4. Call sign:</b>	.....
<b>5. IMO Number:</b>	.....
<b>The above ship failed to call at the port in accordance with its voyage plan.</b>	
<b>Signature</b> .....	

**Figure 10— Report to the notifying authority**  
**Source: the Author**

The documents of each PSC inspection shall be separately archived. The relevant materials shall be archived within 5 working days after the inspection. The archives of PSC inspection shall be preserved for at least 2 years. Each MSA shall designate a very person to report relevant data of the PSC inspection or the statements to China MSA.

The procedures of Port State Control and Inspection are shown in Figure 11.



**Figure 11— The procedures for PSC on maritime labour conditions in China**  
**Source: the Author.**

## **Chapter 5**

### **Conclusions and Future Works**

#### ***5.1 Conclusions***

At present, China has not yet ratified the MLC, 2006, but China's Ministry of Transport has established an expert panel for approving and implementing *the Convention* in 2009. In 2010, the M/V "SONG ZI" belonging to China Ocean Shipping (Group) Company (COSCO) obtained its MLC issued by CCS as the first ship in China, which shows that China has made a big step in ratifying *the Convention*.

In this essay, after analyzing the implementation of *the Convention* in some countries and regions, then the author presented the challenges and weaknesses of China's ratification of *the Convention* through a comprehensive SWOT analysis which concluded as below. First, China's lack of experience in implementing Maritime Labour Conventions will result in China's Flag State Control Officers (FSCO) and Port State Control Officers (PSCO) lacking the relevant training and practice of inspections of maritime labour condition under the MLC, 2006. Second, the domestic legislation developed in an unbalanced and dispersed way. The legislation about seafarers management is more than the protection of seafarers' social security. China lacks a law or regulation which can be applied to adjust seafarers' labour conditions comprehensively and systematically. Third, the main administrative body for China's labor surveillance issues is ambiguous, which proves that a perfect labor inspection mechanism has not been established in China.

In addition, the author puts forward some measures and recommendations for China to implement *the Convention*. Firstly, China MSA should strengthen communication and cooperation with leading IMO or ILO member states to learn their successful

experience in maritime labour inspection through the regional organizations( such as the Tokyo MOU).Secondly, China MSA should recommend the central government to revise the existing laws and regulations such as “*Regulation of the PRC on Seamen* ”to keep compliance with the requirements of the MLC, 2006.Thirdly,Chian MSA should establish and improve seafarers' labour surveillance mechanisms. Some functional departments such as the Crew Development and Security Center, which is beneficial for seafarers’ rights protection, should be established by China MSA as soon as possible.

Finally, the Author gave a detailed description of China MSA’s implementing of its FSC and PSC responsibilities under *the Convention* and presented detailed requirements and complete procedures for FSC and PSC inspections.

## ***5.2 Future Works***

In future, China MSA should focus on the following works. First, Considering the MLC, 2006 will come into force in August 2013, it is recommended that China MSA should approve and ratify *the Convention* on behalf of the Chinese government s as soon as possible. Second, China MSA should strengthen its cooperation and communication with other IMO and ILO member states in respect to maritime labour inspection. Third, In the long run, China MSA should recommend the Chinese government to accelerate the speed of drafting the *Seafarers’ Law*, which will provide a strong legal support for seafarers’ rights of decent work and the healthy and successive development of China’s shipping industry.



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