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WORLD MARITIME UNIVERSITY

Dalian, China

**STUDY ON CHINESE SEAFARERS' SOCIAL
INSURANCE SYSTEM ON THE BASIS OF
THE MLC 2006**

By

DONG YUN

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)

2016

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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ABSTRACT

Title of Dissertation: **Study on Chinese Seafarers' Social Insurance System
on the Basis of the MLC, 2006**

Degree: **MSc**

This Master degree dissertation is a study on the Chinese seafarers' social insurance on the basis of the MLC, 2006. The paper introduces the legislation and the practice of Chinese seafarers' social insurance, through comparison with the MLC, 2006, analyzes the causes of problems existing in the management of Chinese seafarers' social insurance, and gives suggestion of countermeasures of this issue thereafter. The motive to study such an issue is driven by China's ratification of the MLC, 2006, and its' entering into force this November.

China is rich with seafaring labour and has been recognized as one of the largest seafaring labour supply countries in international shipping industries. However, the social insurance provided for seafarers is far from sufficient, which greatly damaged the interests of the crew of our country. Although China has made substantial efforts to keep in tune with the international labour standards, there is no policy or law ratified to deal with the issue of seafarers' social insurance. Therefore, it is very necessary to study crew social insurance regulations in the MLC, 2006, and compare the legislation of China's current social insurance for seafarers, and then find out the countermeasures.

KEY WORDS: MLC, 2006, Chinese seafarers, Social insurance

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LIST OF ABBREVIATIONS

ACFTU	All-China Federation of Trade Union
CMC	Chinese Maritime Code
COC	Certificate of Competency
COSCO	China Ocean Shipping Company
FSC	Flag State Control
GT	Gross Tonnage
ILO	International Labor Organization
IMO	International Maritime Organization
KW	Kilowatt
LCL	Labour Contract Law
MLC	Maritime Labor Convention
MOHRSS	Ministry of Human Resources and Social Security
MOT	Ministry of Transport
MSA	Maritime Safety Administration
NPC	National People's Congress
PRC	People's Republic of China

ROS	Regulations of the People's Republic of China on Seafarers
SIL	Social Insurance Law
SOLAS	The Convention for the SAFETY of Life at Sea
STCW	The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers

Chapter 1

Introduction

1.1 Background of Research Project

Although shipping is thought of as an old fashion industry by general public, it is as crucial to people nowadays as it used to be. Shipping plays a vital role in global economy, in terms of tonnage, 90% of world trade is transported through shipping, contributing 25% of global GDP. Maritime transport is a complicated system made up of many sectors. Seafarers¹ is doubtlessly the major character in shipping industry. “Without seafarers, half of the world would be living in cold, and the other half would be living in starving. Seafarers are the people without whom food, clothes, gifts, gadgets or even basic needs would not reach our doors.” Compared to onshore careers, seafarers who have made enormous contributions to the world, should have particular protection, for they work and live in a harsh environment, facing isolation, risks and hazards, and changeable climate. Since the characteristics of seafarers, the labour security system onshore may not be effective for crew onboard ship. Seafarers work and live in a confined space which is constantly

¹ “*Seafarer*” means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies. (*Article II.1.(f)*) (THE MLC, 2006).

mobile around the globe, so the flag states may not have effective ways to supervise and inspect the vessels flying their flags when they sail out of territorial waters. Mixed nationality crews is another force for relevant international organizations (IMO and ILO) to improve the regulatory framework of the maritime industry.

In February 2006, the Maritime Labour Convention was adopted by the 94th International Labour Conference in ILO, which is a historical event for the 1.65 million seafarers² worldwide. The MLC, 2006 is a consolidated maritime labour convention which aims at “ensuring decent working and living conditions for the world’s seafarers, and establishing a system of fair competition among shipowners.” It is acclaimed as the “Seafarers’ Bill of Rights”, and represents the fourth pillar of maritime convention for the global marine industry, alongside the SOLAS, the MARPOL and the STCW, the other three pillars adopted by IMO. The MLC, 2006 has entered into force on 20 August 2013. As of May 2016, it has been ratified by 74 states³, including most major maritime nations, representing 87 per cent of global shipping.

China has ratified the Convention in 2015 as a major maritime nation with the largest seafarers supplying nations for the international shipping (See Table 1.1), and the Convention is going to enter into force on November 12, 2006 in China.

Table 1.1 - Chinese seafarers holding COC certificated by MSA (2015)

Officers	Ratings	Total
96,819	60,959	157,778

Source: China MSA (2016). *Chinese seafarers’ annual report 2015*.

² BIMCO (2015). *MANPOWER REPORT The global supply and demand for seafarers in 2015*. Copenhagen: Author

³ The ILO web site gives further information:
<http://www.ilo.org/dyn/normlex/en/f?p=1000:80020:0::NO:80020::>

1.2 Objective of the research project

The MLC, 2006 includes 5 titles, one of which is concerning seafarers' social security protection. The primary purpose of this research is to analyze the legislation and the practice of Chinese seafarers' social insurance, through comparison with the MLC, 2006, analyze the causes of problems existing in the management of Chinese seafarers' social insurance and the challenges for China to implement the Convention, give suggestions and countermeasures of this issue thereafter.

Although China's social insurance system has made dramatic progress since the economic reform, when the legal instruments of social insurance were drafted, they provide very limited protection for seafarers. Therefore, the author believes that it is necessary to take further analysis and discussion on the legislation and practice of Chinese seafarers' social insurance and then find out the causes of inadequate social insurance protection of Chinese seafarers. So that some countermeasures of how to implement the Convention in China can be brought out.

1.3 Methodology

The research project takes example from international convention and operation mechanism and characteristics, and combines with the current domestic relevant laws and regulations, thought normative analysis, empirical analysis, comparative analysis and historical analysis method.

Chapter 2, 3, 4, 5, 6 are based on wide range of literature review, such as IMO documents, international convention, journals and information on the Internet.

1.4 Structure of the Dissertation

This paper consists of seven chapters. Chapter two discloses the necessity of the research by introducing social insurance. Chapter three introduces the Maritime Labour Convention, 2006 and its provisions in respect to social security protection. Chapter four mainly concentrates on the Status quo of social insurance of Chinese seafarers, including the legislation and the practice of China's seafarers' social insurance. Chapter five analyzes the the causes of inadequate social insurance protection of Chinese seafarers. Chapter six provides the suggestion of countermeasures. Finally, the last chapter discourses the overall summary and conclusions.

Chapter 2

Introduction to social insurance

2.1 Implications of social insurance

In 19th century, European workers' struggle for their deserved rights gave birth to modern social insurance. From the "paper claims" (Li, 2012, 246) for working class in Germany's "Imperial Message of 17th November 1881" (Li, 2012, 246) to the full legal rights in America's Social Security Act of 1935, to universal social rights for all citizens provided by Beveridge Report of 1942, and then suffered "the test from new conservatism and its policies" (Li, 2012, 246) since the late 1970s, the development trajectory social insurance is increasingly clear: in the process, social insurance had undergone a spiral evolution from industrial citizenship to the whole social citizenship and was influenced by the trends of universalization and welfare-orientation.

Social insurance is also called social welfare insurance. It is the core part of the social security system. Social insurance is established to ensure people and their families' life when they loss their ability to work or work opportunities due to old age, illness, maternity, disability and death. The main purpose of social insurance is to help people who has difficulty in life, and the responsibility subject of social insurance is the state and society.

The capital sources of the pool are tripartite: the government, employers and individuals/employees. As the manager of the whole society, the representative of the interests of the people and the distributor of national income, the State has the responsibility of providing protection for its citizens to live under a certain level of quality of life. As employers, enterprises, institutions and other social organizations enjoy the benefits of social and economic activities, and the fortune they made is created by their employees. So they have the responsibility to sacrifice part of the benefit for citizens' life insurance and social relief. Rights are inseparable from duties. So when citizens enjoy the social security brought by the State and the employers, they should also afford part of the social insurance fund.

2.2 Characteristics of social insurance

2.2.1 Security

Social insurance provides help and compensation for people when they and their families are facing old age, unemployment, disable, illness, death or other abnormal risks and hazards. So security is the first priority among all the objectives of social insurances. Since it is hard to avoid risk and hazards during working, social insurance would help people to maintain living when they suffered from accidents or injuries.

2.2.2 Mandatory

Compared with private insurance, social insurance is mandatory. It is implemented through by State's legislation. Both employers and employees shall participate in

social insurance. The scope, type, standard, payment and issuing of the social insurance are all regulated by the law. Neither the employers nor the employees have the right to choose which type of insurance to participate in, or to exit insurance arbitrarily. The coverage and premium payment are also carried out in accordance with the provisions of the law instead of the result of consultation between employees and employers. Although the payment of the social insurance seems to reduce a certain part of the benefits, based on the overall interests of the society, it is necessary to take mandatory means to maintain the normal operation of social security system.

2.2.3 Sociality

The objective of government's social insurance policies is to seek the welfare of the majority. Compared with traditional agriculture society, the protection from family is largely weakened in an industrial society, due to the lack of support and relief from the blood and geopolitical relations. The social members need the protection from the State's power. Meanwhile, risks such as unemployment, occupational injuries are no longer only the risk to the individual and the families, but also risk to the society. In 1929, the Great Depression originated in the United States, which led to lots of factories closed down and thousands of workers unemployed, resulting in a huge social unrest and instability. As to 1933, the figure of unemployment caused by the Great Depression reached to 15 million. (Lin, 2003, 33) Americans who advocate personal heroism and the spirit of self-striving for wealth and fortune then realized that elimination of poverty is not only a problem of personal will and ability, but a fundamental economic and social problem. The government not only has the obligation to protect the freedom and dignity of individuals, but also has the

responsibility to help all the social members to meet the needs of living.

2.2.4 Mutual funded

The collection of funds follows the principle of combining social pooling with individual accounts. The funds used to help workers facing old age, illness, injury, unemployment and maternity. Although the social insurance fund is pooled by the State, employers and employees, it is managed by the government, and implemented through State's legislation. To some extent, social insurance is actually using the power of the State to redistribute the national income among different groups.

2.3 Categories of social insurance

According to different classification criteria, social insurance can be divided into different kinds. Currently, there are five common social insurance programs.

2.3.1 Basic state pension

Pension insurance is also known as annuity insurance. It refers to the fact that countries establish funds for their citizens and residents to provide income when they reach retirement age. Typically this requires payments throughout the citizen's employment years in order to qualify for benefits later on. A basic state pension is a "contribution based" benefit, and depends on an individual's contribution history. For instance, in China, eligibility for basic state pension requires at least 15 years' payment.

2.3.2 Medical insurance

Medical insurance is also known as disease insurance or health insurance. No matter how its name is changed, its essence is to share and relieve the economic losses caused by disease and injury risk and to establish the system of protection. It is a social security system which give certain economic aid to the social members who are suffering illness or non-work-related injury.

2.3.3 Employment injury insurance

Employment injury insurance, is also known as occupational injury insurance, it refers to when accidents happen to the employees due to occupational harmful hazards, causing injuries, occupational disease, maim or even death, himself/herself or the relatives can receive assistance and economic compensation from the employment injury insurance.

2.3.4 Unemployment insurance

Unemployment insurance is executed compulsively through legislation by the State. The government establish a trust fund, focusing on the temporary unemployed man. From a legal point of view, the unemployment insurance is the inevitable outcome of the modern market economy and one of the most important achievements of the modern legal civilization. It is recognized by the legislation and enforced by the state, aiming at protecting workers' labour rights and the rights to live, and maintaining social stability and promoting social development in the legal system.

2.3.5 Maternity insurance

Maternity insurance is established for female. When women are temporarily incapacitated and lose the source of economy due to fertility, the material will offer the help under a social insurance system given by the State and the society. Generally speaking, it offers help during the period of examination including female fertility and prenatal postpartum.

2.4 Social insurance in China

Shortly after the founding of the People's Republic of China in 1949, the country established a special national security insurance system, so called Labour Insurance Scheme (LIS), which was originated from the Soviet Union. At that time, the State offered full-scope security insurance for the citizens directly. In the specific regime, the State is not only the legislators and supervisors, but also the executive and implementer. The money was composed of tax income and firm's payment, individuals had no obligation to pay a fee. In the strict sense, national insurance cannot be classified into the category of social insurance, but the specific embodiment of the citizens' right endowed from the Constitution to get material assistance and care from the State.

Since the "Chinese economic reform" in 1978, there was a meteoric growth of private firms. But the employees in private firms were excluded from social insurance coverage for the LIS only applied to the state-controlled sector. And the burdens for State-owned Enterprises (SOEs) were too heavy: on the one hand, they had to pay for taxes and insurance payment, on the other hand, they had to compete

with the private firms that were exempt from insurance costs. To overcome these problems, Chinese government established several different social insurance schemes and these schemes were applied equally to all ownership sectors. At the same time, the financial responsibility was extended to tripartite sectors: the State, employers and individuals. Table 2.1 illustrates the current social insurance programs in China. Also listed are the years in which the main regulatory frameworks for these schemes were introduced, as well as benchmark contribution rates for employers and employees.

Table 2.1- Benchmark contribution rates for China’s social insurance programs

	Employer	Employee
Basic pension scheme (1997)	20	8
Urban employees basic medical insurance scheme (1999)	6	2
Unemployment insurance (1999)	2	1
Employment injury insurance (1996)	1	0
Maternity insurance (1994)	1	0
Total	30	11

Source: RICKNE, (2013), 54.

In addition to the schemes listed in Table 2.1, firms are also encouraged to participate in voluntary and supplementary insurances, like the Enterprise Annuity (EA) scheme that is a part of the pension system.

Chapter 3

The Maritime Labour Convention, 2006 and its provisions of social security protection

3.1 Introductory remarks

Since 1920, ILO has adopted about 70 fragmented labour standards in terms of maritime and seafarers. However, modification of existing standards are facing difficulties since the approved condition, implementation and supervision requirements of each standard is uneven.

Hence ILO decided to consolidate these standards into a single convention. On February 23rd, 2006, “Maritime Labour Convention, 2006”, the first and foremost consolidated convention based on the previous ILO law relating seafarers, was adopted by the 94th Session of ILO with the overwhelming 314 votes to 0 votes at Geneva. The Convention has come into force since 20 August, 2013, twelve months after the 33% of the world's total tonnage of merchant ships are approved and approved by 30 countries. The Convention provides comprehensive rights and protection at work and live for seafarers. This part summarises its framework and contents, highlighting the standards of social security.

3.2 Structure and main contents of the MLC, 2006

The structure of the Convention is quite similar to STCW, an IMO convention relating to seafarers. From a structural perspective, the Convention is divided into three different but related sections: Articles, Regulations and Code. The Articles set out general principles of the Convention, including the definition, scope of application, implementation and enforcement requirements, and procedures of amendments. The Regulations are mandatory, setting the core rights and obligations. The Codes have two parts: mandatory standards as Part A (Standards), and non-mandatory standards as Part B (Guidelines). “However, although the Convention offers an option for the Member States to decide whether to follow the non-mandatory standards (guidelines), there is still a mandatory provision under Article VI para 2 to give due consideration to the guidelines.” (Zhang, 2015, 3). Table 4 illustrates the structure of the Convention.

Table 3.1- Skeleton of the MLC, 2006

THE MLC, 2006	Preamble	The background and purpose of THE MLC, 2006, and the connection with other related conventions		
	Main body	Articles	I-VII	Scope of application, basic rights and obligations.
			VIII-XVI	Enforcement, implementation and amendments
		Regulations	Including 5 Titles	
		Codes	5 Titles	A: Mandatory standards
	B: Non-mandatory standards			
Appendixes	A5-I, A5-II, A5-III & B5-I.			

Source: Guo, 2014, 2

The five Titles synthesize the substance of the existing ILO Conventions on maritime labour standards with some modification and updating. They include the following:

“Title1: Minimum Requirements for Seafarers to Work on a Ship.” Title 1 sets up a series of minimum requirements, for example, the requirements of minimum age, the training and qualifications certificates, medical certificate. The title also includes the standards of private recruitment and placement services.

“Title2: Conditions of employment.” This title concerns the requirement of employment, including seafarers’ employment agreement, wages, hours of work and rest, annual leave, and sufficient manning levels on board ship. Title 2 also mandates seafarers’ rights for repatriation, career and skill development, and compensations for ship’s loss or foundering.

“Title 3: Accommodation, recreational facilities, food and catering.” Specific provisions are set under this title to ensure seafarer’s life on board ships, for instance, the size and conditions of the living area, food and catering, etc.

“Title 4: Health protection, medical care, welfare and social security protection.” In Title 4, shipowners are required to provide the necessary medical care to seafarers on board ship and ashore and to guarantee payment in case of sickness or injury while seafarers are serving under a seafarer employment agreement. The Title also sets standards regarding occupational safety standards, access to shore-based welfare facilities and social security.

“Title 5: Compliance and Enforcement.” Title 5 sets standards to force Port States, Flag States and Labour-supplying States to perform their responsibilities of implement and enforce the principles and rights of the Convention. In addition, a special certificate compliance system and an inspection system are established to

obligate each Member to fully take their responsibilities.

3.3 Provisions of social security protection in the MLC 2006

ILO has been working to promote the rights and interests of seafarers. Since 1920, several international conventions relating to social security protection of seafarers have been adopted. Table 5 lists the convention concerning seafarers' social security protection adopted by ILO before the MLC, 2006. However, the contents of some provisions were too specific, resulting in the relatively low ratification rate . In addition, with the development of shipping industry, some provisions do not accord with the requirements of the present reality. Therefore, this paper is not going to introduce them. On the basis of the conventions listed below, "international unification of the maritime labour law" - "the MLC, 2006" is one of the most important conventions adopted by ILO. The Convention provides a unified principle and model for how to protect the rights and interests of the crew.

Table 3.2- ILO Conventions regarding Seafarer's social security

ILO No.	Convention	Time of enforcement
C055	Shipowners' Liability (Sick and Injured Seamen) Convention, 1936	1939-10-29
C056	Sickness Insurance (Sea) Convention, 1936	1949-12-9
C070	Social Security (Seafarers) Convention, 1946	1946-6-28
C071	Seafarers' Pensions Convention, 1946	1962-10-10
C163	Seafarers' Welfare Convention, 1987	1990-10-3
C164	Health Protection and Medical Care (Seafarers) Convention, 1987	1991-1-11
C165	Social Security (Seafarers) Convention (Revised), 1987	1992-7-2

Source: www.ilo.org

Provisions of social security protection in the MLC, 2006 are as follows.

3.3.1 Mandatory standards

Paragraph 1 in Standard 4.5 stipulated that “seafarers’ social security protection include medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors’ benefit, complementing the protection provided for under Regulations 4.1, on medical care, and 4.2, on shipowners’ liability, and under other titles of this Convention.”

Paragraph 3 is about the contents of seafarers’ social insurance. It required that “the member shall provide the supplementary social security protection mentioned in paragraph 1 to all seafarers, who normally resident in their territory. This obligation could be performed, for example, through appropriate bilateral or multilateral agreements or contribution-based systems. And the protection shall not be less than that enjoyed by shoreworkers resident in their territory.”

Paragraph 6 regulates that member States shall consider a variety of different methods of providing similar benefits to seafarers in accordance with national laws and practices in the absence of full coverage of the sub categories covered under paragraph 1.

Paragraph 8 stipulates that “in a range consistent with their national law and practice, Member States shall cooperate through bilateral or multilateral agreements or other arrangements, and ensure the maintenance of social security rights, provided through contributory or non-contributory schemes, which have been acquired, or are in the course of acquisition, by all seafarers regardless of residence”.

3.3.2 Guidelines

Some non-mandatory provisions were also set up. For instance, Guideline 4.5, Paragraph 1 is about the branch insurances provided for seafarers: “The protection should at least include the branches of medical care, sickness benefit and employment injury benefit.” Paragraph 5 introduced that Member should provide social security protection for all the seafarers on the ships flying its flag, regardless of the seafarer’s nationality. Paragraph 6 deals with employment agreement: “The seafarers’ employment agreement should identify the ways through which various social security protection will be provided to the seafarer by the shipowner as well as any other relevant information from shipowner”.

Although the Member States have the freedom to decide whether to follow the non-mandatory Guidelines, there is a mandatory provision⁴ requiring Member State to give “due consideration” to the Guidelines.

Another Convention adopted by ILO relating to this issue is Seafarers’ Welfare Convention, 1987. The differences between the MLC, 2006 and Seafarers’ Welfare Convention, 1987 are as follows. Firstly, the Seafarers’ Welfare Convention, 1987 set up detailed provisions to regulate the content of social insurance of seafarers’ heir and dependent, whereas the MLC, 2006 does not have such provisions. Secondly, the Seafarers’ Welfare Convention, 1987 provides the minimum requirements for each type of social security scheme, and the MLC, 2006 has not been specified. Thirdly, the Seafarers’ Welfare Convention, 1987 still acknowledges seafarers and onshore workers enjoy two different sets of social security system. The MLC, 2006, however, insists that seafarers and onshore workers should enjoy the same social security

⁴ Article VI, paragraph 2

benefits, and therefore, there is no corresponding provision for them. In summary, the content of the Seafarers' Welfare Convention, 1987 is more comprehensive than that of the MLC, 2006.

To conclude, from the author's point of view, the MLC, 2006 did not improve the standard of maritime labour social security protection due to the presence of the division of the mandatory standards and recommended guidelines, which provide freedom for the Member States. The main purpose of the Maritime Labour Convention, 2006 is to consolidate the various standards for the protection of the seafarers' rights into one international convention. And the renewal and improvement of the standards of these rights should rely on the further revision procedure of the Convention.

Chapter 4

Status quo of social insurance of Chinese seafarers

4.1 Introductory Remarks

Although the global community has agreed that social security and health care for children, working ageing people who face unemployment or injury and older persons, which is a universal human right, a recent report by the ILO finds that 70% people in the world are without adequate social protection at a time when it is most needed⁵. What's the situation of social insurance in China? Have Chinese seafarers get the rights of social insurance under the existing policy, regulation and legislation? This section will discuss these issues by examining the main policies, regulations and legislations in terms of social insurance in China, and discuss the practice of China's seafarers' social insurance.

Each country has various definition of "seafarer" according to its different legislation and practice. Generally speaking, the word "seafarer" is always defined in a generalized way. For instance, in the MLC, 2006, "seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies"⁶. In the Maritime Law of Peoples' Republic of China, "seafarers refers to all the staff on board ship, including the captain"⁷. Since the provisions of the Conventions is for seafarers working on sea, and the particularity and complexity of Chinese inland waters crew, in this paper, seafarer refers to the

⁵ ILO, (2015). *World Social Protection Report 2014-15*.

⁶ See Article II, Provision 1.

⁷ See Article 4.

crew working on the ships sailing on sea.

4.2 Status quo of China's seafarers' social insurance legislation

4.2.1 Chinese legislative hierarchy

Compared with English, the word legislation (fa) has a wide coverage in Chinese, including policies, laws and regulations of other formats. Actually, the Legislation Law of the PRC provides five major levels. Table 6 describes the five levels of Chinese legislative hierarchy, and examples are also illustrated.

Table 4.1- Hierarchy of Chinese Legislation

Levels of legislation	Legislative bodies	Types of legislation	Examples
1	NPC	Constitution Law (<i>Xian fa</i>)	Constitution Law
2	NPC and its Standing Committee	Integrated laws; specialty laws (<i>Fa lv</i>)	Labour Contract Law; Maritime Code
3	State Council (Central Government)	Administrative regulations; decrees (<i>Xingzheng fagui</i>)	Seafarers' Regulations
4	Ministries; provinces, autonomous region and municipalities	Administrative rules; (<i>Bumen Guizhang</i>)	Administration Rules of Seafarers' Registration
5	Special agencies; local governments	Normative documents (<i>Guifanxing wenjian</i>)	Provisions on Seafarers' Identity and Certificates

Source: Zhang & Zhao, 2015, 60.

4.2.2 General principles of social insurance in China

Constitution of the PRC clearly stipulates the basic rights of citizens to enjoy social insurance in the Chapter of “*Basic rights and obligations of citizens*”. According to the basic principles of the constitution, in 1994, the National People's Congress promulgated the *Labour Law*, which has special provisions on social insurance. In addition, the State Council and the Ministry of labour and social security also issued a number of regulatory documents, such as “*The Decision on the Reform of Pension*”

Insurance System”, “*The Establishment of Urban Workers' Medical Insurance System*”, and so on.

4.2.2.1 Constitution of the PRC

As stipulated by Article 44, “the State prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of state. The livelihood of retired personnel is ensured by the State and society”.

Article 45 concerns Citizens’ livelihood under the situation of old, ill or disabled. The citizens have the right to get material assistance from the state and society when they are old, ill or disabled, while it is the state’s duties and obligations to develop the social insurance, social relief and medical and health services.

4.2.2.2 Labour Law of the PRC

On 5 July 1994, the Eighth NPC’s Standing Committee adopted the Labour Law of the PRC, which scopes the social insurance in principle. Article 3 provides right of equal employment and choice of occupation, right to have labour remuneration, right of rest and paid leave, right of protection of occupational safety and health, right to receive vocational skills training, right to enjoy social insurance and welfare, right to submit to the labour dispute processing and so on. Article 20 sets up that the State shall develop the social insurance, establish a social insurance system and social insurance funds that are required to enable citizens to enjoy their rights when they are in old age, illness, injury, unemployment, maternity and other circumstances. Article 72 stipulated that the source of social insurance fund is determined in

accordance with the type of insurance. Employers and employees must participate in social insurance and pay social insurance premiums in accordance with the law. Article 73 enables workers and employees to enjoy social insurance treatment in the circumstances of retirement, illness and injury, occupational disease or occupational injury, unemployment and maternity. Article 74 is about the management and operation of social insurance fund: The supervisory organization is in charge of the revenue and expenditure, management and operation of social insurance fund according to the law. Any organization or individual shall not misappropriate the social insurance funds. Article 75 is about supplementary insurance: the State encourages employers to establish supplementary insurance for the employees; the State encourages workers to carry out personal savings insurance.

4.2.2.3 Labour Contract Law of the PRC

Labour Contract Law (LCL), which was adopted on 29 June 2007, at the 28th meeting of the Standing Committee of the 10th NPC, is a major milestone of Chinese labour legislation. There are several clauses and provisions in terms of social insurance. LCL stipulates that a labour contract shall have the provision of social insurance. In addition, LCL provides protection for employees who are in the period of maternity, occupational disease and injury: the employer shall not terminate the labour contract when their employees under such kinds of predicament.

4.2.2.4 Social Insurance Law of the PRC

The implementation of a *Social Insurance Law* in July 2011 was thought of as an important milestone in China's social insurance reform. Chinese social insurance

system is composed of five items: basic pension scheme, urban employees' basic medical insurance scheme, unemployment insurance, employment injury insurance and maternity insurance. Before SIL, Chinese social insurance legislation relied largely on administrative decisions and documents, the so-called "red-letterheaded document", which might be changed discretionary with political and social changes. SIL unified the main administrative decisions and documents, such as *Decision on the reform of pension insurance system for enterprise employees*, *Regulations on occupational injury insurance*, *Regulations on unemployment insurance* and *Decision on the establishment of the medical insurance system for urban employees*⁸, etc. The SIL also set the tone for the future development of Chinese social insurance system and established a unified social security ID system and a more efficient system for collecting contributions. Other important clauses include the portability of pension and health care benefits, expanded coverage for foreign workers and so on.

4.2.3 Maritime labour policy about social insurance of seafarers in China

Although Chinese legislation of social insurance has made great progress in recent years, most of the laws provide very limited protection for seafarers. For instance, when the Social Insurance Law was drafted, the special characteristics of seafarers which is different from workers in the land-based industries were not taken into consideration. As a result, it cannot provide special protection for Chinese seafarers. Meanwhile, many Chinese seafarers are parties ? to foreign-related employment contracts. However, the SIL only has provisions protecting the rights of foreign employees working in China, it does not have any provisions dealing with labour or employment relationship concerning foreign employers.

⁸ Published by the State Council in December, 1998

Since 2007, China has published a number of maritime policies which are directly related to seafarer profession, trying to keep in tune with THE MLC, 2006. However, the majority of the policies are published by MOT or MSA, the level of which are too low to have any teeth in practice. Table 4.2 illustrated the laws and policies related to maritime labour condition in China since the Economic Reform in the 1980's. Most of the laws or policies listed in Table 4.2 pay more attention to the administrative affairs of Chinese seafarers, especially the issues about seafarers' training, qualification and certification. Very few of these laws or policies focus on seafarers' rights and interest, such as decent working and living conditions, wages, social security and political rights. Although China is the largest seafaring labour supply country, China does not have a maritime labour law tailor made for seafarers' rights and interests at present.

Table 4.2 – Laws and policies related to maritime labour conditions at various levels

Legislative bodies	Laws and policies related to maritime labour conditions	Year of adoption
NPC (highest level)	The Constitution Law of the People's Republic of China	1982
Standing Committee of NPC (second level)	Maritime Traffic Safety Law of the PRC	1983
	Maritime Code of the People's Republic of China	1992
	Trade Union Law of the People's Republic of China	1992
	Labour Law of the People's Republic of China	1994
	Amendment to the Trade Union Law of the PRC	2001
	Labour Contract Law of the People's Republic of China	2007
	Employment Promotion Law of the PRC	2007
	Law on Mediation and Arbitration of Labour Disputes of the PRC	2007
	Social Security Law of the People's Republic of China	2010
Amendment to Labour Contract Law of the PRC	2013	
The State Council (third level)	Regulations on the Settlement of Labour Dispute	1993
	Regulations on Occupational Injury Insurance	2003
	Regulations of the People's Republic of China on Seafarers	2007
	The Regulations on Worker's Paid Annual Leave	2007
	Implementation Regulations for Labour Contract Law	2008
	Amendment to the Regulations on Work-related Injury Insurance	2010
	Abolishment of Labour Dispute Settlement Regulations	2011
Amendment to Seafarers' Regulations of the PRC	2013	
Ministry of Transport (fourth level)	Administration Rules of Maritime Penalty and Punishment of the PRC	2003
	Administration Rules of Seafarers' Registration of PRC	2008
	Administration Rules of Seafarer Recruitment Services Management	2008
	Administration Rules of Seafarers' Training of the PRC	2009

	Administration Rules of Seafarers' Despatch of PRC	2011	
	Administration Rules of Seafarers' Exam and Certification	2011	
	Administration Rules of Seafarers' Watchkeeping	2012	
	Amendment to the Administration Rules of Seafarers' Service Management	2013	
	Amendment to the Administration Rules of Seafarers' Training of PRC	2013	
	Amendment to the Administration Rules of Seafarers' Exam and Certification	2013	
	Amendment to the Administration Rules of Ship's Minimum Manning	2014	
Ministry of Human Resources and Social Security (fourth level)	Administration Rules of Workers' Minimum Wages	2004	
	The Notice on the Implementation of Labour Contract Law of the PRC	2007	
	Administration Rules of Workers' Employment Service and Management of the PRC	2007	
	The Notice on the Implementation of the Law on Employment Promotion of the PRC	2007	
	The Implementing Rules on the Annual Leave with Pay for Enterprise Employees	2008	
	The Rules for Handling the Cases of Labour Dispute Arbitration of the PRC	2009	
	The Organising Rules for Labour Dispute Arbitration of the PRC	2010	
	Administration Rules on the Determination of Work-related Injuries	2010	
	The Notice on the Implementation of the Law on Social Security of the PRC	2010	
	Administration Rules on the Permission of Labour Dispatch	2013	
	The Notice on the Implementation of the Regulations on the Insurance of Work-related Injuries	2013	
	The Administration Rules on the Determination of Labour Capacity of Injured workers	2014	
	The Temporary Provisions on Labour Dispatch	2014	
	The Decision on the Amendment of Administration Rules of Employment Service and Management	2014	
	The Notice on the Collaborative Work regarding Criminal Charges for Refusing to Pay Wages	2014	
	Maritime Safety Administration (fifth level)	Provisions on the Implementation of the Requirements of Seafarers' Medical Examination	1994
		Provisions on Seafarers' Identity and Certificates	1995
Provisions on Administration of Seafarers' Exit Permits		1999	
Provisions on Seafarers' Training on Seagoing Ships		2000	
Provisions on Administration of Seafarers' Technical Documents		2006	
Provisions on Administration of Seafarers' Identification Document for Exit Purpose		2006	
The Notice on the Implementation of the Rules of Seafarers' Registration		2008	
The Notice on the Implementation of the Rules of Seafarers' Service Management		2008	
The Notice on the Relevant Issues on the Administration of Seafarers' Service Agencies		2009	
The Notice on the Amendment of Seafarers' Medical Examination		2010	
The Notice on the Implementation of the Administration Rules of Seafarers' Export		2011	
The Notice on the Implementation Proposal of the Qualification of Export Manning Agencies		2011	
Provisions on the Administration of Seafarers' Medical Certificates		2012	
The Notice on the Implementation of the Requirements of Seafarers' Medical Examination		2012	
The Notice on the Requirements of Ship's Cook for the Implementation of Maritime Labour Convention 2006		2013	
The Notice on the Abrogation of Seafarers' Exit Permits		2013	
The Notice on the Relevant Issues of Seafarers' Training, Examination and Certification		2013	

Source: Zhang & Zhao, 2015, 61-62

After data and information collection, the author lists regulations concerning seafarers' right and interests of social insurance in China as follows.

4.2.3.1 Chinese Maritime Code

Chinese Maritime Code (CMC) ⁹ is regarded as one of the pillars of Chinese maritime legal system. Although the objective of CMC is to “adjusting the relations arising from maritime transport and those pertaining to ships, and protecting the legitimate rights and interests of the parties concerned, and to promoting the development of marine transportation and trade” (CMC, 1992, 1), there are still clauses and provisions taking seafarers' rights and interests into consideration, which can be regarded as a great improvement. For example, Article 22 stipulates that seafarers' claim for wage, salvage payment, repatriation or social insurance costs, death or injury can be secured by a maritime lien. The Code also stipulates that the seafarers' wages and other remuneration can be the subject of marine insurance.¹⁰

Obviously, the CMC has provisions concerning seafarers' social security protection, however, the provisions are scattered in different chapters, and far from fully covering the aspects of seafarers' social insurance.

4.2.3.2 Regulations of the People's Republic of China on Seafarers

Regulations of the People's Republic of China on Seafarers (ROS) was adopted on 28th March 2007, shortly after the adoption of the MLC, 2006 in ILO. The main purpose of the ROS is to “promote the administration of seafarers, improve the

⁹ Adopted on 7 November 1992, at the 28th meeting of the Standing Committee of the 7th NPC

¹⁰ Article 218 of the CMC

quality and capacity of seafarers, protect seafarers' rights and interests, ensure maritime traffic safety and protect marine environment". (ROS, 2007, 1).

With regard to seafarers' social insurance, the ROS modified Chinese social insurance regulations, such as *Labour Law*, *Decision on the reform of pension insurance system for enterprise employees*, *Regulations on occupational injury insurance*, *Regulations on unemployment insurance* and *Decision on the establishment of the medical insurance system for urban employees* when drafted. (At that time, the LCL has not adopted yet.) And the provisions and clauses about social insurance are mainly laid down in Chapter 4 "Seafarers' Occupational Protection". For instance, Article 25 regulated that both the employers and seafarers shall participate in the employment injury insurance, medical insurance scheme, basic pension scheme, unemployment insurance and other kinds of social insurance. It also stipulated that the employer shall buy special life and health insurance for the crew working on the vessels carrying poisonous or harmful substances, or the crew on the vessels going to the war zone or the epidemic area, and corresponding protective measures shall be taken on board ship as well. Other significant provisions concerning seafarers' rights and interests include the conduction of labour contract, wages, working and living condition, repatriation, hours of rest and entitlement to leave.

Although the ROS can be regarded as the first Chinese maritime law taking seafarers' rights and interests into serious consideration, and clearly there are provisions and clauses concerning seafarers' social insurance, there still remains implementation details for future clarification. In practice, many large shipping companies and their affiliated companies have developed their own internal

provisions of seafarers' social insurance, and the standards of these provisions were almost as same as those of onshore workers, which do not safeguard crew's special rights and interests effectively.

4.3 Practice of China's seafarers' social insurance

A survey taken by Ningbo University in 2015 in China showed that only 46% of seafarers have social insurance. The percentages are quite different among different types of seafarers: self-employed seafarers enjoyed the little percentage of 23.58%, while 77.63% of seafarers employed by shipping company have social insurance. And there are 58% of seafarers dispatched abroad have social insurance. (See Figure 4.1). Therefore, the situation of seafarers' social insurance is not optimistic, which is unfavourable for the crew to enjoy social insurance benefits. The author is going to discuss this issue in three categories of seafarers.

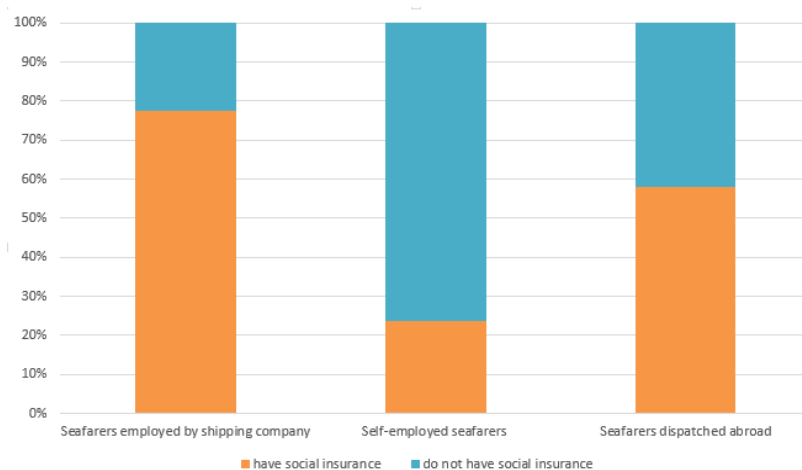


Figure 4.1 - The ratio of seafarers who paid social insurance among different types

Source: Xia, 2015, 36

4.3.1 Seafarers employed by shipping company

Employed seafarers refer to seafarers who have signed a certain period of labour contracts with shipping companies, and have established labour relations with the companies. The majority of seafarers in China are employed by shipping company, including state-owned enterprises (SOE), such as China Ocean Shipping Company (COSCO) and China Shipping¹¹, and private shipping companies. Since they have a labour contract and employment relationship with the company, the company have the obligation to provide social insurance security for them in accordance with Labour Law, Labour Contract Law and Social Insurance Law etc.

Since they are actually the employees of the enterprise, the social insurance provided for them refers to the standard of onshore crew's. Usually, seafarers' wage during the voyage is much higher than the wage during their vacation. In China, seafarer's onshore wage is always the minimum wage of the place where the shipping company is located. The question is that the shipping companies always take onshore wage as the social insurance payment so that they can save the compliance cost, which is extremely unreasonable and unfair for the crew.

Situation in SOEs is better, these companies, such as COSCO, have their own internal regulations to deal with the payment of seafarer's social insurance. As to small and medium private shipping companies, the management of seafarers' social insurance is in chaos, some of them even do not pay social insurance premium for seafarers, which greatly damages their rights and interests.

¹¹ COSCO and China Shipping have just been merged on Feb 18, 2016.

4.3.2 Self-employed seafarers

Self-employed seafarer refers to the seafarer who does not sign a fixed employment labour contract with any shipping company, which means he/she is not affiliated to any organization. The characteristics of self-employed seafarer is relatively flexible and free: the payment of wage is in accordance with every single voyage, and the seafarer can also make reasonable arrangements for the voyage according to their own schedule. The disadvantage is that the shipping companies would not provide social insurance for self-employed seafarers since the companies have no obligation to do so. On the other hand, the percentage of the self-employed seafarers buy social insurance for themselves is negligible. So the right of self-employed seafarers' social security is not well guaranteed.

The occupation of seafarer is mysterious to public. People regarded it as a romantic occupation in the old time: travelling around world, sitting on the deck with bear and guitar. Actually, seafarer is a high-risk occupation, seafarers work and live in a harsh environment, facing unexpected risks and hazard everywhere on board ship. So, in those so called “developed countries”, people are not willing to engage in the occupation of seafarer. Even if they are willing to do the job, the wage is so high that it forces the companies to go to “developing countries” to hire seafarers with relatively unexpensive wage. Table 4.3 lists the top five seafarering labour supply countries in 2015, all the five countries are developing countries. Compared with the wage of domestic shipping enterprise, payment during the dispatch is more attractive. Therefore, many seafarers in China chose to be self-employed, they just need to pay a certain intermediary costs to the intermediary companies instead of high management fees to the domestic shipping enterprise.

Table 4.3 - Top five seafarering labour supply countries in 2015

	FOR ALL SEAFARERS	FOR OFFICERS	FOR RATINGS
1	China	China	Philippines
2	Philippines	Philippines	China
3	Indonesia	India	Indonesia
4	Russian Federation	Indonesia	Russian Federation
5	Ukraine	Russian Federation	Ukraine

Source: BIMCO (2015). *MANPOWER REPORT The global supply and demand for seafarers in 2015*

However, since China’s maritime labour legislation has not been well established, the management of self-employed seafarers’ social insurance is far from sufficient. The shipping company would not provide social insurance premium for the seafarers who are actually not their employees, meanwhile, the self-employed seafarers themselves do not have the awareness of social insurance. Although the self-employed seafarers have high wages at present, they have no social insurance protection at all. For instance, if occupational injuries occurred to them, they can only claim compensation to the shipowner according to the contract and the general provisions of civil law, they cannot enjoy the work-related injury insurance fund. They cannot have basic pension when they are old and they cannot enjoy medical insurance. Once they go bankrupt, it would bring great risks to social stability.

What if self-employed seafarers have the willing to participate in social insurance scheme? In China, self-employed seafarer is freelancer. According to China’s present laws and policies, freelancers do have the right to participate in social insurance scheme, but they can only participate in basic pension scheme and medical insurance. As to unemployment insurance, work-related injury insurance and

maternity insurance, they are not available to them. And their benchmark contribution rate is much higher than those employees' with long term labour contracts. (See Table 4.4) Take basic pension scheme as an illustration, the benchmark contribution rates of freelancer is 20%, while the employees of an organization only need to pay 8%. Within the 20% they paid, only 8% is credited into their personal accounts. In addition, the base pay takes local annual average wage as standard, so when they reach the age of retirement, the money they can get from the pension pool is little. The reasons mentioned above reduced the self-employed seafarers' willingness to participate in social insurance scheme. They prefer to savings to cope with old, health care, unemployment, work-related injury, maternity and other hazards and risks. However, the insurance function of personal deposit is very weak.

Table 4.4- Comparison of benchmark contribution rates among employer, employee and freelancer

	Employer	Employee	Freelancer
Basic pension scheme (1997)	20	8	20
Urban employees basic medical insurance scheme (1999)	6	2	4.2
Unemployment insurance (1999)	2	1	-
Employment injury insurance (1996)	1	0	-
Maternity insurance (1994)	1	0	-
Total	30	11	24.2

Source: RICKNE, (2013), 54.

4.3.3 Seafarers dispatched abroad

Seafarer dispatched aboard refers to a special group of seafarers who “export” to foreign ships through seafarering labour agencies with related qualification. Seafarers’ export is an important part of China's foreign labour exports, the number of seafarers dispatched aboard has been increasing these years. (See Table 4.5) In 2015, the total number of Chinese seafarers working on foreign-flag ships was

reported as 133,326.

Table 4.5- PIXNET of Chinese seafarers dispatched aboard (2013-2015)

	2013	2014	2015
PIXNET	119,316	124,568	133,326

Source: China MSA (2016). *Chinese seafarers' annual report 2015*.

Seafarers dispatched aboard can be divided into three categories. The first type is self-employed seafarers, who sign a service contract with foreign shipowners directly. The issue of self-employed seafarers' social insurance has been discussed above. The second type is seafarer employed by a certain shipping company. Since the Chinese economy reform, many Sino-foreign joint shipping companies established. These shipping companies own foreign-flag ships, and seafarers employed by them are arranged to work on these vessels. In this situation, although most of these 'foreign' ships are actually owned or controlled by Chinese nationals, and the crews are all Chinese, since the vessel is regarded as the extension of the territory of a country, as long as they work on a foreign-flag ship, even it is a Chinese-owned-but-foreign-flagged ship, the seafarers are regarded as dispatched aboard. The practice of this part of seafarers' social insurance is familiar with the seafarers employed by shipping companies, which has been introduced already. Another type of seafarers dispatched aboard sign a service contract with the crew agency, then the crew agency dispatches seafarers to work on foreign-flag ships. And the wage is paid by the shipowner. In this mode, the crew agency does not provide all the social insurance scheme for seafarers, they only pay basic pension premium for seafarers. These manning agencies also charge high management fees to the crew, however, under the pressure of severe employment situation, the crew have to accept the unfair treatment. To solve this problem, from my point of view, the State should adopt mandatory

provisions to stipulate shipping companies and crew agencies, the management fee they charged must be made public transparently and follow the standard published by the Ministry of human resources and social security. In addition, relevant provisions shall be made to regulate foreign shipowners to provide commercial insurance for crews.

Chapter 5

The analysis of the causes of inadequate social insurance protection of Chinese seafarers

5.1 Inadequate legislation of maritime labour law in China

From analysis above, it is obvious that China's legislation of seafarers' social insurance is far from sufficient. The problems mainly exist in the following aspects. Firstly, the current social insurance system is far from fully covering all the citizens. For instance, the social insurance system for farmers is not well established yet, which means the majority of Chinese people have to rely on themselves and their families to deal with risks and hazards. As to the urban social insurance system, although it has experienced a dramatic overhaul due to the economic reform, it is still not comprehensive. Take the SIL as an example, which is regarded as the milestone of Chinese social insurance legislation. The Law gave policy parameters for seafarers' social insurance. Secondly, in general, the status of China's maritime labour legislation is behind the development of shipping industry. Although there are provisions and clauses dealing with seafarers' rights and interest scattered in some policies or codes, they have very little legal binding force, since the level of these policies are too low. The low legislation dealing with seafarers' rights and interests

in China has some negative outcomes. Usually, these policies are only applicable in the jurisdiction of MOT or MSA. Many policies have been made without adequate consultation or discussion. So, some of these legal instruments are short-sighted or just stopgap. Another issue is that China has no policy with respect to dispatched seafarers. There are differences between various States' social insurance legislation. If the crew is under the jurisdiction of the social security law of more than one country, there comes the problem which national law should be applicable to. But at present, the legislation of China has not specified. In addition, full-coverage, equality, the principles of social insurance, have not been found in the seafarers' legislation in China. In general, the legal instruments relating to seafarers' social security system is unsound in China.

5.2 The ineffectiveness of Chinese Seamen Union

A Special Tripartite Committee was established for the MLC, 2006. The Tripartite Committee involve the State Members' representatives of Governments, Shipowners and Seafarers. The representatives of seafarers are actually the Seamen Union of the State Members. The Tripartite Committee is the best combination of the interests of all parties in shipping industry: it safeguards the legitimate rights and interests of tripartite, forces the government to make decision-making more reasonable, and provides the shipowners' and seafarers' bigger discursive power. Since the Convention is "a consolidated maritime labour convention which protects seafarers' right", the status of Seamen Union is more significant in the tripartite.

China does not have specific Seaman Union at present. The labour union of Chinese Seafarers belongs to Chinese Seaman & Construction Union, which is led by All-

China Federation of Trade Union (ACFTU). Chinese Seaman & Construction Union has about 1,500,000 members at present, including people working in the industries of shipping, port, waterway and harbor engineering, salvage, maritime safety supervision, transportation research institutes and colleges, seafarer is just one occupation among them. Chinese Seaman & Construction Union consisted of the former Seamen Union, Road Transport Union, and Construction Union. Although the mode is convenient for the lead and management of ACFTU, the abuses in the specific work is obvious. For instance, many activities such as ratification of industrial regulations, participation in the activities of international organizations, have to be approved step by step. The bureaucracy is a huge obstacle for the protection of seafarers' rights. The SOF just set up principle provisions to regulate that the Seamen Union has the obligation to help seafarers to sign labour contracts with employers, lack of implementation details. And at present, there is no special organization or department in the various levels' trade unions dealing with social insurance for seafarers. Chinese Seaman & Construction Union has not played its due role in ensuring the social security of the crew.

5.3 The uncertain liability of the crew labour supervision and overlapping management

Seafarers' social insurance in China involves several departments: such as Ministry of Human Resources and Social Security and MSA under MOT. Of course, the phenomenon of the coexistence of multiple management departments, is not unique to China, in other countries, there are different degrees of existence. Since multiplicity and complexity of Chinese administration structure, there is little possibility to regulate only one specific department to deal with the issue of

seafarers' social insurance, even China has been promoting the reform of administrative institutions since the 18th CPC National Congress. For instance, according to ROS, MSA is in charge of the implementation of seafarer's management.¹² But as to the supervision and inspection of maritime labour, ROS stipulated that "the labour supervision department shall strengthen the supervision and inspection of the implementation of laws and regulations on maritime labour and seafarers' social security and other relevant provisions of the state".¹³ Obviously, MSA has no right to carry out the supervision and inspection of implementation of laws and regulations on maritime labour and seafarers' social security, it is the duty of the labour supervision department. However, due to the special characteristics of shipping industry, seafarers' work hour, payments of social insurance, wages, labour contracts are quite different from onshore workers'. And it is impossible for the labour supervision department to investigate every ship. Therefore, who is in charge of the maritime labour security supervision, how to monitor, how to delineate the boundaries between the labour supervision department and MSA, all these questions need to be made definite in the future legislation and practice in China. Recently, MOT has established coordination mechanism with the Ministry of Human Resources and Social Security. But how to construct a coordination mechanism to deal with seafarers' social insurance after China's implementation of the MLC, 2006 is still a thorny issue.

¹² See Article 3 of ROS.

¹³ See Article 52 of ROS

Chapter 6

Countermeasures for perfecting a sound social insurance system for China's seafarers

6.1 To accelerate the process of the legislation of seafarers' insurance

China's ratification of the MLC, 2006 is a good opportunity to disentangle the maritime labour legislation. It is true that China has ratified and implemented some maritime labour policies since 2006, trying to keep in tune with the Convention. However, most of the laws or policies pay more attention to the administrative affairs of Chinese seafarers, especially the issues about seafarers' training, qualification and certification. Very few of them focus on seafarers' rights and interest, such as decent working and living conditions, wages, social security and political rights. Although China is the largest seafaring labour supply country, China does not have a maritime labour law tailor made for seafarers' rights and interests at present. It is the high time to draft a separate legislation of maritime labour to substitute the current omnibus legal system, so that the special characteristic of seafarers can be taken into consideration, the impact of the existing labour system can be reduced to the minimum as well.

6.2 To clarify the liability of the crew supervision and coordination mechanism

within several departments

Although the latest development suggests that there has been an agreement between the MOT and MOHRSS, it is far from sufficient as to the issue of seafarers' social insurance. The solution is to ratify a specific maritime labour law, such as "Seafarer Law". The various departments can deal with administrative affairs in accordance with the Seafarer Law, instead of following different legal instruments ratified by the ministry they affiliated to. Other measures such as regular communication and coordination among different departments to reduce and avoid contradiction and conflict should also be taken.

6.3 To strengthen the role of the seafarers' Union

The countermeasure is to establish a specific Seamen Union, and gradually strengthen the role of the Union. So that the Union can truly represent the seafarer, constitute a solid pillar together with the representatives of government and shipowners in the tripartite mechanism, protect the interests of the crew. Specific to the social insurance of the seafarers, the Seamen's Union should exert the supervision function, and set up a department in charge of the management of seafarers' social insurance.

6.4 To establish compliant procedures

The MLC, 2006 required each State to establish both onshore and onboard compliant procedures. China has not established the complaint procedures for seafarers yet. In order to implement the Convention, to protect the interests of seafarers' social

insurance, China should accelerate the construction of complaint procedures. The establishment of onboard complaint procedures shall follow Standard A5.1.5 and Guideline B5.1.5, while the establishment of onshore complaint procedures shall follow Standard A5.2.2 and Guideline B5.2.2.

6.5 Efforts to help seafarers to learn more about the MLC, 2006

The MLC, 2006 is going to be implemented in China this November. What are the awareness of the Chinese seafarers towards the Convention? A survey undertaken in 2014 indicates that although most Chinese seafarers have a vague appreciation that the Convention will improve their rights, very few of them have the relevant knowledge of its content. They do not know how to use the Convention to protect themselves. Measures to be taken to help seafarers get knowledge about the MLC, 2006. For instance, MSA and the universities can provide free courses about the Convention for seafarers. And brochures can be sent to the seafarers when their ship entering into port.

Chapter 7

Conclusion

Seafarer plays a pivotal role in the development of the shipping industry. Providing adequate social security for the seafarers is very significant. On the one hand, it protects the rights and interests of seafarers, relieves their anxiety and worry when they work on the ship; on the other hand it can promote the development of shipping economy, so as to enhance the international competitiveness of China. The International Labour Organization has been working to improve the social security protection for the seafarers all over the world. The Maritime Labour Convention, 2006 made a few provisions related to seafarers' social insurance and welfare. In addition, most of the maritime nations in the world has established legislation of seafarers' social insurance in accordance with their countries' practices.

However, seafarers' social insurance issue has not been addressed sufficiently in China. Firstly, Chinese maritime law has taken shape initially by the ratification of some national laws since the adoption of the MLC, 2006. However, all these laws and policies mainly focus on seafarers' administrative affairs, their interest and rights are not taken serious consideration. In addition, the majority of the legal instruments in respect of maritime issues in China are at low level of legislative hierarchy, which means they have very limited legal effect in practice. Secondly, the phenomenon of the coexistence of multiple management departments still remains, although the

MOHRSS and MOT has made some agreements. The ineffectiveness of Chinese Seamen Union is another issue to be improved. A series of legal problems about the social security of seafarers in the judicial practice need to be solved urgently. With China's implementation of the MLC, 2006 this November, it is the high time to accelerate the establishment of seafarers' social security domestic legislation.

The suggestions and countermeasures for establishing a sound social insurance system for Chinese seafarers are mainly propounded on the basis of international labour conventions, especially the MLC, 2006 in accordance with the Chinese practice.

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