

Pengfei Zhang

Seafarers' Rights in China

Restructuring in Legislation and
Practice Under the Maritime Labour
Convention 2006

Seafarers' Rights in China

Pengfei Zhang

Seafarers' Rights in China

Restructuring in Legislation
and Practice Under the Maritime Labour
Convention 2006



Springer

Pengfei Zhang
Southampton Solent University
Southampton, United Kingdom

ISBN 978-3-319-43619-7 ISBN 978-3-319-43620-3 (eBook)
DOI 10.1007/978-3-319-43620-3

Library of Congress Control Number: 2016951215

© Springer International Publishing Switzerland 2016

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made.

Printed on acid-free paper

This Springer imprint is published by Springer Nature
The registered company is Springer International Publishing AG Switzerland

Contents

1 Seafarers' Rights in China: A Restructuring Process	1
1.1 Increased Seafarer Protection in China Since the MLC 2006	1
1.2 Original Contribution of the Book	3
1.3 Research Aims and Questions	5
1.4 Literature Review	9
1.5 Methodology	13
1.6 Structure of the Book	15
References	16
2 The Development of Maritime Legislation in China Under the Impact of MLC 2006	19
2.1 Introduction	19
2.2 Background	22
2.2.1 The MLC 2006	22
2.2.1.1 Contents	22
2.2.1.2 Significance	24
2.2.1.3 Limitations	25
2.2.2 The Chinese Maritime Industry	27
2.2.3 The Chinese Maritime Labour Market	28
2.2.3.1 Evolution	29
2.2.3.2 'Revolution'	30
2.2.3.3 Sources of Maritime Labour	31
2.2.4 Chinese Seafarers' profile	34
2.2.4.1 Chinese Seafarers' Role as Temporary Migrant Workers	35
2.2.4.2 Chinese Seafarers' Role as Family Members	37
2.2.4.2.1 Spouse Role	38
2.2.4.2.2 Fathering Role	39
2.2.4.2.3 Filial Piety Duties	40
2.2.4.2.4 Difficulty in Rejoining Family Life	41

2.2.4.2.5	Difficulty in Rejoining Social Society on Land	42
2.2.4.3	Chinese Seafarers' Social Status Changes Across Different Times	43
2.3	Impact of the MLC 2006 in China	45
2.3.1	Changes in Legislation	45
2.3.1.1	Maritime Legislation in China: Before and After the MLC 2006	46
2.3.1.1.1	Pre-MLC Maritime Legislation Adopted Before 2007	47
2.3.1.1.2	Post-MLC Maritime Legislation Since 2007	49
2.3.1.2	The Establishment of the Chinese Labour Law Framework	52
2.3.2	The Awareness and Attitudes of Major Stakeholders	57
2.4	Prospects of Ratification of MLC 2006 in China	61
2.5	Conclusion	63
	References	64
3	The Pre-employment Conditions of Chinese Seafarers	69
3.1	Introduction	69
3.2	The Eligibility of Chinese Seafarers	70
3.2.1	Seafarers' Registration in China	71
3.2.1.1	The Distribution of Chinese Seafarers	71
3.2.1.2	The Significance of Seafarers' Registration	72
3.2.1.3	The Confusion Concerning Seafarer's Identity	74
3.2.2	Physical Conditions of Chinese Seafarers	76
3.2.2.1	The International Standards on Seafarers' Medical Fitness	77
3.2.2.2	The Minimum Age of Employment at Sea	78
3.2.2.3	The Physical Requirement for Seafarers in China	80
3.2.2.4	Difficulties in Obtaining Medical Certificate	82
3.2.2.5	Unreliability of Medical Certificates	83
3.2.2.6	Excessive Administrative Intervention	84
3.3	Professional Qualifications of Chinese Seafarers	86
3.3.1	International Standards of Seafarers' Qualification	86
3.3.2	Seafarers' Qualification Standards in China	88
3.3.3	Maritime Education and Training in China	89
3.4	Seafarer Recruitment Services in China	90
3.4.1	International Standards of Seafarers' Recruitment	91
3.4.2	The Relevant Legislation on Seafarers' Recruitment in China	92
3.4.3	The Industry Practice of Seafarers' Recruitment in China	95

3.4.4 Employment Competition of Foreign Seafarers	98
3.5 The Trade Union Protection for Chinese Seafarers	102
3.5.1 The ACFTU and CSCU	103
3.5.2 The Interaction Between CSCU and ITF	104
3.5.3 The Weakness of the CSCU	105
3.6 Conclusion	106
References	107
4 The In-Employment Conditions of Chinese Seafarers	111
4.1 Introduction	111
4.2 Employment Agreement for Chinese Seafarers	112
4.2.1 Seamen's Article of Agreement Convention, 1926	112
4.2.2 'The Heart' of the MLC 2006	113
4.2.3 Collective Bargain Agreement (CBA)	114
4.2.4 Seafarers' Employment Agreements in China	115
4.3 Chinese Seafarers' Monthly Wages	119
4.3.1 Minimum Wages	119
4.3.2 Payment of Wages	123
4.3.2.1 Delay in Payment	123
4.3.2.2 Deduction	126
4.3.2.3 Unpaid Wages	129
4.3.2.4 Maritime Lien	130
4.4 Working and Living Conditions for Chinese Seafarers	131
4.4.1 Food and Catering	132
4.4.2 Accommodation and Recreational Facilities	134
4.4.3 Occupational Health and Safety	135
4.4.4 Rights to Leave	136
4.4.4.1 Shore Leave	136
4.4.4.2 Annual Leave	139
4.4.4.3 Repatriation	140
4.5 Shore-Based Welfare and Social Security in China	142
4.5.1 Shore-Based Welfare for Seafarers in China	143
4.5.2 Social Security for Chinese Seafarers	144
4.6 Conclusion	147
References	148
5 Seafarers' Rights in China Calling for More Research	153
5.1 Introduction	153
5.2 The Main Contributions of This Research Project	154
5.2.1 Contribution to Literature	154
5.2.2 Contribution to Methodology	155
5.2.3 Contribution to Theories	156
5.3 Summary of Key Findings	157

5.3.1	Examination of the Unique Background of Chinese Seafarers Working on Board Merchant Ships Trading Internationally	157
5.3.2	Responses of Major Stakeholders to the MLC 2006	158
5.3.3	Examination of Improvements in Seafarer Protection in China and Identification of Existing Gaps	159
5.3.4	Identification of Challenges for Future Improvement	163
5.3.5	Major Proposals for Future Improvement	165
5.4	Strengths and Limitations of This Research	167
5.5	Suggestions for Future Studies	170
	References	171
Appendices	173	
Appendix A: Indicative Questions for Interviews	173	
Appendix B: Questionnaire A	177	
Appendix C: Questionnaire B	180	

List of Figures

Fig. 1.1	Distribution/comparison of potential and actual informants	14
Fig. 1.2	Distribution of stakeholders' responses to the questionnaire	15
Fig. 2.1	The source of Chinese seafarers until the end of the twentieth century	32
Fig. 2.2	The current distribution of Chinese seafarers	33
Fig. 2.3	Comparison of seafarers' wages by selected Asian countries and ranks	37
Fig. 2.4	Number of maritime legal instruments adopted in China in the last 3 decades, 1983–2012 (created by the author in 2013)	51
Fig. 2.5	Distribution of the regulations made by different levels of the legislative bodies in China (1982–2014)	56
Fig. 2.6	Distribution of the respondents' knowledge about the MLC 2006	59
Fig. 2.7	Attitudes towards the implementation of MLC 2006 in China	60
Fig. 2.8	Attitudes held by respondents with different knowledge about MLC 2006	60
Fig. 3.1	Distribution of Chinese seafarers serving on different vessels (2014)	72
Fig. 3.2	Top ten largest seafarer-supplying regions in China (2014)	73
Fig. 3.3	Top ten largest seafarer registration bureaus in China.	73
Fig. 3.4	The decrease of seafarers in two classes of DMU within 10 years	75
Fig. 3.5	The comparison of numbers of certified seafarers with and without seafaring experience in 2013	76
Fig. 3.6	The procedure of inspections for seafarer recruitment	93

List of Tables

Table 2.1	ILO conventions adopted by China	21
Table 2.2	Chinese seafarers registered with the MSA (2013)	31
Table 2.3	Chinese seafarers for the PRC-flag ships and for foreign-flag ships (2013)	31
Table 2.4	Hierarchy of Chinese legislation	46
Table 2.5	Regulations introduced at various levels (1982–2014)	53

Glossary of Abbreviations

AB	Able-bodied seafarer According to ILO R187, AB means ‘any seafarer who is deemed to be competent to perform any duty which may be required of a rating serving in the deck department, other than the duties of a leading or specialist rating, or any seafarer who is defined as an able seafarer in accordance with national laws, regulations or practice, or collective agreement’ (ILO 1996). AB is more skilled and ranked above an ordinary seafarer.
ACFTU	All-China Federation of Trade Unions
AQSIQ	Administration of Quality Supervision, Inspection and Quarantine (China)
ASEAN	Association of Southeast Asian Nations
BIMCO	Baltic and International Maritime Conference
CBA	Collective bargaining agreement
CCP	Chinese Communist Party
CCS	China Classification Society Competent institution or recognised organisation in China. It is authorised by flag states to regularly carry out independent inspections or to issue certificates, such as maritime labour certificate, or to do both.
CCSI	China Crew’s Salary Index
COSCO	China Ocean Shipping Company
CSA	China Shipowners’ Association
CSC	Chinese State Council
CSCU	Chinese Seamen and Construction Workers’ Union
CSR	Corporate social responsibility
FOC	Flags of convenience According to the ITF, ‘a flag of convenience ship is one that flies the flag of a country other than the country of ownership of the ship’.

HTLG	High-Level Tripartite Group
	In March 2001 ‘a major exercise was undertaken to consolidate over 60 international maritime labour instruments into one single instrument, a framework Convention. This new instrument will integrate as much as possible the relevant elements of the existing body of standards. A process for the elaboration of the new instrument has been put into place to achieve these objectives. A High-level Tripartite Working Group was established, as well as a Sub-Group of the High-level Group. The High-Level Group held its first meeting in December 2001’ (ILO 2002).
IBF	International Bargaining Forum
	The IBF was established in 2003 as ‘the mechanism by which maritime employers, represented by the Joint Negotiating Group (JNG), and seafarers unions, represented by the International Transport-Workers’ Federation (ITF) could negotiate over the wages and conditions of employment of seafarers serving on ships to which ITF Special Agreements apply’ (IMEC 2013).
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICS	International Chamber of Shipping
ILO	International Labour Organization
IMEC	International Maritime Employers’ Council
IMHA	International Maritime Health Association
IMO	International Maritime Organization
ISF	International Shipping Federation
ISM Code	International Management Code for the Safe Operation of Ships and for Pollution Prevention
ISPS Code	International Ship and Port Facility Security Code
ITF	International Transport Workers’ Federation
JMC	Joint Maritime Commission According to the ILO, the JMC is ‘a bipartite standing body that provides advice to the Governing Body on maritime questions including standard setting for the shipping industry. The Standing Orders of the JMC provide guidance on how to deal with the various procedural questions that may arise in the course of the Commission’s work’.
MARPOL	International Convention for the Prevention of Pollution from Ships
MET	Maritime education and training
MLC 2006	Maritime Labour Convention 2006 (adopted by the International Labour Organisation in 2006 and entered into force on 23 August 2013)
MOC	Ministry of Commerce of the People’s Republic of China
MOH	Ministry of Health of the People’s Republic of China
MOHRSS	Ministry of Human Resources and Social Security (China)
MOLSS	Ministry of Labour and Social Security (China)
MOT	Ministry of Transport of the People’s Republic of China

MOU	Memorandum of understanding
MSA	Maritime Safety Administration of the People's Republic of China
NPC	National People's Congress of the People's Republic of China
OECD	Organisation for Economic Co-operation and Development
OS	Ordinary seafarer
	An OS is an unlicensed seafarer of the deck department of a merchant ship. The position is usually an apprenticeship to become an able-bodied seafarer after working on board a ship for a specific amount of time and gaining what is referred to as 'sea experience'.
P & I Club	Protection and Indemnity Club
POEA	Philippine Overseas Employment Administration
PRC	People's Republic of China
PSC	Port State Control
PTMC	Preparatory Technical Maritime Conference
	The PTMC, also known as the Tripartite Meeting on Maritime Labour Standard, is 'a tripartite meeting that is convened when necessary to set the agenda for a forthcoming International Maritime Labour Conference'. This conference uniquely considers 'the specificities of the sector and either adopts or revises maritime conventions and recommendations'. The MLC 2006, adopted by a Maritime Session of the International Labour Conference, was the outcome of just such a process in February 2006 (Tortell et al. 2009, p. 114).
SCNPC	Standing Committee of the National People's Congress (China)
SEA	Seafarers' employment agreement
SEC	Seafarers' export company
SIRC	Seafarers International Research Centre
SMC	Seafarers' medical certificate
SMS	Safety management system
SOE	State-owned enterprise
SOLAS	International Convention for the Safety of Life at Sea
SRI	Seafarers' Rights International
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
TMN	Traditional Maritime Nation
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNHRC	United Nations Human Rights Committee

References

- ILO (1996). Seafarers' wages, hours of work and the manning of ships recommendation, 1996. Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:R187 (Accessed 17 April 2013).

- ILO (2002). High level tripartite working group on maritime labour standards. Available at http://www.un.org/depts/los/general_assembly/contributions_texts/ilo.pdf (Accessed 21 May 2015).
- IMEC (2013). Pay negotiations: IBF central negotiations. Available at <http://www.imec.org.uk/ibf/paynegotiations.html> (Accessed 13 April 2013).
- Tortell, L., Delarue, R., & Kenner, F. (2009). The EU and the ILO Maritime Labour Convention: 'In our common interest and in the interest of the world'. In J. Orbis & L. Tortell (Eds.), *The European Union and the social dimension of globalisation: how the EU influences the world* (pp. 113–125). Abingdon: Routledge.

List of International Conventions Noted in the Book

Abbreviation (responsible authority)	Name of legal instruments	Adoption
ICESCR (UN)	International Covenant on Economic, Social and Cultural Rights	1966
ILO C002	Unemployment Convention	1919
ILO C005	Minimum Age (Industry) Convention	1919
ILO C007	Minimum Age (Sea) Convention	1920
ILO C009	Placing of Seamen Convention	1920
ILO C016	Medical Examination of Young Persons (Sea) Convention	1921
ILO C022	Seamen's Article of Agreement Convention	1926
ILO C023	Repatriation of Seamen Convention	1926
ILO C053	Officers' Competency Certificates Convention	1936
ILO C054	Holidays with Pay (Sea) Convention	1936
ILO C058	Minimum Age (Sea) Convention (Revised)	1936
ILO C059	Minimum Age (Industry) Convention (Revised)	1937
ILO C068	Food and Catering (Ship's Crews) Convention	1946
ILO C069	Certification of Ship's Cooks Convention	1946
ILO C072	Paid Vacations (Seafarers) Convention	1946
ILO C073	Medical Examination (Seafarers) Convention	1946
ILO C074	Certification of Able Seamen Convention	1946
ILO C075	Accommodation of Crew Convention	1946
ILO C076	Wages, Hours of Work and Manning (Sea) Convention	1946
ILO C087	Freedom of Association and Protection of Right to Organise Convention	1948
ILO C091	Paid Vacations (Seafarers) Convention (Revised)	1949
ILO C093	Wages, Hours of Work and Manning (Sea) Convention (Revised)	1949
ILO C098	Right to Organise and Collective Bargaining Convention	1949
ILO C108	Seafarers' Identity Documents Convention	1958

(continued)

Abbreviation (responsible authority)	Name of legal instruments	Adoption
ILO C109	Wages, Hours of Work and Manning (Sea) Convention (Revised)	1958
ILO C135	Workers' Representative Convention	1971
ILO C138	Minimum Age Convention	1973
ILO C146	Seafarers' Annual Leave with Pay Convention	1976
ILO C147	Merchant Shipping (Minimum Standard) Convention	1976
ILO C165	Social Security (Seafarers) Convention	1987
ILO C166	Repatriation of Seafarers Convention (Revised)	1987
ILO C178	Labour Inspection (Seafarers) Convention	
ILO C179	Recruitment and Placement of Seafarers Convention	1996
ILO C180	Seafarers' Hours of Work and the Manning of Ships Convention	1996
ILO C185	Seafarers' Identity Documents Convention (Revised)	2003
ILO C182	Worst Forms of Child Labour Convention	1999
ILO P147	Protocol to the Merchant Shipping (Minimum Standards) Convention	1996
ILO R027	Repatriation (Ship Master and Apprentices) Recommendation	1926
ILO R078	Bedding, Mess Utensils and Miscellaneous Provisions (Ships' Crews) Recommendation	1946
ILO R140	Crew Accommodation (Air Conditioning) Recommendation	1970
ILO R141	Crew Accommodation (Noise Control) Recommendation	1970
ILO R185	Labour Inspection (Seafarers) Recommendation	1996
ILO R186	Recruitment and Placement of Seafarers Recommendation	1996
ILO R187	Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation	1996
ISM Code (IMO)	International Management Code for the Safe Operation of Ships and for Pollution Prevention	1994
ISPS Code (IMO)	International Ship and Port Facility Security Code	2004
MARPOL (IMO)	International Convention for the Prevention of Pollution from Ships	1973
MLM (UN)	International Convention on Maritime Liens and Mortgages	1993
SOLAS (IMO)	International Convention for the Safety of Life at Sea	1974
STCW (IMO)	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers	1978
UNCLOS (UN)	United Nations Convention on the Law of the Sea	1982
UNGCLs (UN)	1958 Geneva Conventions on the Law of the Sea	1958

List of Chinese Legal Instruments Noted in the Book

Abbreviation	Name of legal instruments	Adoption
ALCL	Amendment to Labour Contract Law of the PRC	2013
ARSR	Administration Rules of Seafarers' Registration of the PRC	2008
ATUL	Amendment to the Trade Union Law of the PRC	2001
CLL	Labour Law of the PRC	1995
CMC	Chinese Maritime Code	1992
EPL	Employment Promotion Law of the PRC	2007
GPCL	General Provisions of Civil Law of the PRC	1986
IVPRL	Measures on Indemnity against Violations of Provisions Related to Labour Contract	1994
LCL	Labour Contract Law of the PRC	2007
LOL	Law on Legislation of the PRC	2000
LPYP	Law on the Protection of Young Persons of the PRC	1991
MALD	Law on Mediation and Arbitration of Labour Disputes in the PRC	2007
MEMH	Medical Equipment and Medicines Supplied to the Ship's Hospital	1990
MSPL	Maritime Special Procedure Law of the PRC	1999
MSSM	Minimum Standards for Safe Manning for Vessels of the PRC	1997
MTSL	Maritime Traffic Safety Law of the PRC	1983
PAEF	Provisions on Administration of Employment of Foreigners in China	1996
PASE	Provisions on the Administration of Seafarer's Export	2011
PASES	Provisions on the Administration of Seafarers' Employment Service	2008
PASMC	Provisions on the Administration of Seafarers' Medical Certificates	2012
PASR	Provisions on Administration of Seafarers' Registration	2008
PAST	Provisions on the Administration of Seafarers' Training	1997
PDOLD	Administration Rules on the Prevention and Disposal of Overseas Labour Disputes	2009
PESEA	Provisions on the Employment Services and Employment Administration	2007
PPCLE	Provisions on the Prohibition of Child Labour Employment	2002

(continued)

Abbreviation	Name of legal instruments	Adoption
PRPW	Provisional Rules on Payment of Wages	1994
PSDM	Provisions of Seafarers' Despatch Management of the PRC	2011
PSIS	Provisions on Safety Inspection of Ships of the PRC	2009
PSOS	Provisions of Seafarers' Occupational Security of the PRC	2013
PSEAC	Provisions on the Seafarers' Examination, Assessment and Certification	2004
PRPW	Provisional Rules on Payment of Wages of the PRC	1994
PSDM	Provisions of Seafarers' Despatch Management	2011
PSSM	Provisions of Seafarers' Service Management	2008
ROS	Regulations on Seafarers of the PRC	2007
SDR	Ship's Doctors Rules of the PRC	1990
SEOLC	Administration Rules on Seafarer Export and Overseas Labour Cooperation	2010
SPRPW	Supplement to the Provisional Rules on Payment of Wages	1995
SRR	Ship Registration Regulations of the PRC	1994
SSL	Social Security Law of the PRC	2010
TUL	Trade Union Law of the PRC	1992

Chapter 1

Seafarers' Rights in China: A Restructuring Process

The overall objective of this research is to critically investigate the conditions of seafarers' rights in China in legislation and practice, in particular during the restructuring process under the impact of the Maritime Labour Convention (hereinafter MLC) 2006 (MLC 2006). This chapter aims to provide an elaborate description of some key issues of the research. The first section of this chapter explains the rationale for carrying out this research. In the second section, the background of the research and how this study was initiated are elaborated. The third section sets forth the research aims and the key research questions for this study. The Fourth section provides a brief literature review and the next one introduces the methodology employed in this study. In the last section, an overview of the structure of this book is presented.

1.1 Increased Seafarer Protection in China Since the MLC 2006

Seafarers make critical contributions to international trade, the world economy, global stability and civil society as a whole (IMO 2010, p. 37). However, the labour conditions for seafarers are still considered 'very poor' by many commentators (Mah 2014, p. 132; Dimitrova 2010, p. 68; Wu 2007, p. 147). There are a number of reasons contributing to the poor labour conditions. First of all, the nature of their work makes seafarers an easy target for exploitation (Coupe et al. 1999, p. 3), such as isolated workplace and complicate employment relationships. At the same time, seafarers tend to face the most serious legal and practical constraints in invoking their legal rights (Fitzpatrick and Anderson 2005, pp. 30–35). In addition, in an increasingly globalised environment, the conflicts and disputes in policy-making between multi-governance levels and the interested parties exacerbate the situation (Roe 2007).

Since 1920, the International Labour Organization (ILO) has adopted 186 conventions on a series of issues related to social and employment rights and conditions, 41 of which were maritime labour conventions and related recommendations (McConnell et al. 2011, p. 16). However, many conventions did not deliver on their promise to provide seafarers with the improved rights and conditions that have been long desired. The MLC 2006, consolidating 68 legal instruments and recommendations of the ILO, provides a comprehensive codification of seafarers' rights. The Convention, often referred to as a 'bill of rights' for the world's maritime workers, has been in force since 20 August 2013. It prescribes a body of health, safety and employment standards and sets up an enforcement and monitoring mechanism.

The adoption and entry into force of the MLC 2006 has brought about significant changes to the international maritime industry. The Convention brings different elements together from both the existing ILO and the IMO standards (Dimitrova 2010, p. 82). Compared with previous ILO instruments, one of the biggest innovations of the new Convention is the cooperation between different parties using comprehensive enforcement and compliance mechanisms (Wang and Gao 2007, pp. 397–407). In this Convention, the responsibilities of the flag states, the port states, as well as the labour-supplying states are all clearly specified and regulated. First, the flag states are obliged, through an effective and coordinated system of regular inspection and certification, to ensure that ships flying their flags comply with the requirements of the Convention. Secondly, the Port State Control officers will inspect not only the maritime safety and pollution prevention requirements in accordance with IMO conventions, but also compliance with labour standards under the MLC 2006. In addition, the new Convention also makes the labour-supplying states play a role as regulators who assume a package of responsibilities towards their seafarers. The Convention, through its tripartite cooperation mechanism, is envisaged, for the first time significantly to improve seafarers' rights. Therefore, together with the three main IMO conventions of the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), it is deemed to be the 'fourth pillar' of the international regulatory regime in the maritime industry (IMO 2013).

China is considered as one of the largest beneficiary of global trade liberalisation (Ianchovichina and Martin 2001, p. 27). Today the fleet owned by the People's Republic of China (hereinafter PRC) has become the third-largest in the world (UNCTAD 2013, p. 43; 2014, p. 33). Meanwhile, China is one of the founding members of the Tokyo Memorandum of Understanding on Port State Control and has a host of important ports of the world (Fitzpatrick and Anderson 2005, p. 278). In addition, although most Chinese seafarers work on the Chinese fleet (ICS 2013), China provides the largest maritime workforce and has become one of the most important seafarers-supplying states (BIMCO/ISF 2005, 2010). However, seafarers' rights in China still remain largely unexplored, such as low wages, long working hours and lack of legal remedies (Chen and Hao 2012, p. 1). There are a number of reasons contributing to the area of seafarers' rights. Most importantly,

the relevant legislation in China is not strong enough to protect Chinese seafarers (Wang 1995, p. 211; 1999, p. 250). At the same time, in practice, due to the inadequate laws and regulations, seafarers in China tend to be unfairly treated and exploited by their employers and even by manning agencies (Chen 2008, p. 24).

The enforcement of the MLC 2006 is a good opportunity to strengthen Chinese seafarers' rights. The concept of 'seafarers' rights' will be extensively discussed in Chap. 2 in the literature review. Since the adoption of the MLC 2006 at the ILO, many changes have taken place, both in policy and practice in China. In 2007, the State Council of China adopted Seafarers' Regulations of the PRC. It was China's first major legislation in respect of seafarers' rights and was considered to be the countermeasure of the MLC 2006 (Sun 2010, p. 56). After that, the Ministry of Transport (hereinafter MOT) of the PRC implemented a series of rules and provisions to regulate various matters in respect of Chinese seafarers, including seafarers' recruitment, placement, registration and so on. Moreover, some other issues are also on the agenda, such as the Provisions of Seafarers' Vocational Safeguard and Seafarers' Law. In addition, in 2009 the Seafarers' Collective Bargain Agreement was reached between the seafarers' trade union and the ship-owners' association. A large number of clauses in the above instruments reflect the new requirements of the MLC 2006. Even though, for a variety of reasons, many problems remain to be solved (Li 2010, pp. 122–124), these actions have already made a significant contribution to the improvement of seafarer protection. The 'new laws and regulations' adopted since the adoption of the MLC 2006 have brought a real change in the Chinese maritime industry (Guo 2009, pp. 4–5). The restructuring of seafarers' rights in China seems to be in progress with the potential to benefit the hundreds and thousands of seafarers in the country.

1.2 Original Contribution of the Book

This book presents the results of a body of research entitled 'seafarers' rights in China: restructuring in legislation and practice under the Maritime Labour Convention 2006'. The term 'research' in common parlance refers to a search for pertinent information on a topic; this can be defined as a 'systematised effort to gain new knowledge' (Redman and Mory 1923, cited in Kothari 2004). As an academic activity, research not only looks into what is already there and then presents it, but also tests new hypotheses about an already established or a new idea or fact. It is 'a movement' 'from the known to the unknown' or 'a voyage of discovery'. All people possess the vital instinct of inquisitiveness. When the unknown confronts them, they wonder and their inquisitiveness makes them probe and attain a better understanding of the unknown world (Kothari 2004, p. 1).

The emergence of this research theme was not a once-off affair. It was a product of my intense engagement with the field. I worked on board as a seafarer for more than 8 years, and worked up to the role of Master. After I left the sea, I joined in a shipping company as a senior manning manager. I recruited seafarers for the

shipping company directly or through a number of manning agencies. My responsibilities were to deal with seafarers, recruiting agencies, government officials and maritime institutions related to seafarer affairs. Since 2008, I have been practising as a maritime lawyer, specialising in maritime labour disputes. I have helped a large number of Chinese seafarers in protecting their legal and contractual rights in respect of unpaid wages, injury compensation, repatriation, medical assistance, and so on. The vulnerability of Chinese seafarers is related to a wide range of factors. My daily work enabled me to observe existing institutional deficiencies in the seafarer recruitment and management system in China, which have failed to prevent exploitation and labour abuses being committed by various parties.

As a vital part of the international maritime labour force, Chinese seafarers are calling for more research in order to address the issues relating to their employment rights and working conditions (Wei 2013). I was encouraged by many people as being one of the best candidates to conduct research on this subject. As an ex-seafarer, I have a deep personal affection for this group. During my daily routines, I have witnessed all kinds of unfair and miserable experiences of seafarers, and indeed, I wanted to do something to contribute to this group. Also, the lack of research on Chinese seafarers' rights gave this project its initial purpose to examine the related issues from the perspective of an ex-seafarer. The research became further motivated by the need to assess the impact of the MLC 2006 on the Chinese shipping industry and the employment of Chinese seafarers.

The idea for the research was conceived in 2008 following the adoption of the MLC 2006. Its gestation was aided in the context of restructuring of Chinese maritime legislation and increasing seafarer protection in China. In recent years, China has emerged as one of the most important maritime nations in the world. Compared with the fact that China has been fully engaged in the formulation and implementation of the standards of the IMO, such as those in the SOLAS and the STCW, it appears to be inactive in the ratification and implementation of the Conventions of ILO (Wang 2009, p. 262). However, unlike many shore-based industries, the maritime industry is highly globalised and subject to an international regulatory framework. In addition, as one of the leading shipping powers in the world, China cannot stay out of the regulatory regime of the MLC 2006. As mentioned in the above context, since 2007 the Chinese government has implemented a series of rules and provisions to regulate affairs related to Chinese seafarers. During these years, some important changes have taken place to comply with the new requirements of the MLC 2006. However, a significant gap still exists between international standards and those in China; in practice, Chinese seafarers still face various problems. Research on this subject is therefore of great significance, not only to the Chinese seafarers but also to the entire maritime industry in the world.

1.3 Research Aims and Questions

Shipping is an intensely complex industry because it is a highly international activity working in an increasingly globalised environment. Shipping activity is subject to multi-level governance, which has been defined as ‘a system of continuous negotiation among nested governments at several territorial tiers- supranational, national, regional, and local- as the result of a broad process of institutional creation and decisional reallocation’ (Marks 1993, p. 392). Despite the fact that the nation-state continues to play a significant role today, maritime governance has been characterised as a multi-level structure that involves national, regional and local authorities, as well as cooperation between public and private sectors (Adolf 2012, p. 20). Accordingly, seafarers are subject to multi-level governance and their rights come from both international and national levels. First, seafarers have ‘entitlements under international, regional and domestic human rights law by virtue of the fact that they are human beings’ (Fitzpatrick and Anderson 2005, p. 40). Secondly, seafarers have rights by virtue of the fact that they are workers. Most of these rights are regulated at the international level by international organisations responsible for the safety of life at sea and maritime labour standards, in particular the living and working conditions aboard ships. Thirdly, seafarers’ rights can exist at the national level. Seafarers may have as many, or as few, substantive rights by virtue of the fact that they are citizens of a country.

On the other hand, a right has very limited value if it cannot be enforced in practice. Although seafarers’ rights have been substantially prescribed in international conventions and treaties, these rights have most frequently to be enforced at the national level (Fitzpatrick and Anderson 2005, p. 132). The MLC 2006 has prescribed the most comprehensive and substantial working and social rights for seafarers. According to Article III of the Convention, for example, all seafarers have the ILO’s fundamental rights relating to ‘freedom of association, elimination of forced labour, elimination of child labour and elimination of discrimination’. Under Article IV of the Convention, all seafarers are entitled to ‘a safe and secure workplace, fair terms of employment, decent working and living conditions, health protection, medical care, welfare measures and other forms of social protection’. However, the ILO lacks sufficient enforcement power over the labour rights that it has established (Cohn 2001). The enforcement of these standards relies mainly on the national states taking their responsibilities seriously. As Article IV of the MLC 2006 states, ‘unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice’.

The discussion of seafarers’ rights is not a new topic. Many researchers and commentators have contributed extensive books, papers and working reports to this subject, and these will be discussed in detail in Sect. 1.4, where the relevant literature will be examined. However, inadequate research has been conducted on Chinese seafarers’ rights. Compared with seafarers in other maritime-labour-supplying countries, Chinese seafarers face some unique conditions and challenges,

which will be discussed in detail in Chap. 2. The overall purpose of the research is to examine Chinese seafarers' rights in law and practice under the impact of the MLC 2006, to identify changes or the lack of changes as a result of the introduction of this 'new' international regulation. To serve the purpose, this book seeks to achieve the following aims:

- to investigate increased seafarers' rights in China since the adoption of the MLC 2006 by the ILO;
- to examine the gaps between seafarer protection in China and the international standards from different perspectives;
- to assess the ratification and implementation prospects of the MLC 2006 in China, and to make suggestions for the improvement of Chinese seafarers' rights in the future.

To accomplish the above aims, this research is positioned in an interdisciplinary framework that integrates relevant shipping information and data together with techniques, concepts, perspectives and theories drawn from both sociology and legal domains. However, given the limited space of this book, there is no intention to analyse the MLC 2006 in depth. This is because the special discussion on the MLC 2006 can be found in a range of literature (Lavelle 2014; McConnell et al. 2011). In order to achieve the aims identified above, the research addresses a number of key research questions. These research questions comprise:

RQ1: What is the unique background of Chinese seafarers working on board merchant ships trading internationally?

In order to examine the necessities of special protection for Chinese seafarers, it is necessary to investigate the unique conditions and challenges faced by them. China is now an important player in the international maritime industry in terms of the scale of its maritime labour pool and supply to the global seafaring labour market (Zhao 2002). However in China, compared with workers in some land-based industries, the seafarer represents only a small group of Chinese population. In modern history, China has been primarily a land power and seagoing ventures have seldom been encouraged. The majority of Chinese labour laws and regulations have been customised for land-based workers. Although the seafaring profession has its unique characteristics, when the Chinese government makes its policies, the benefits for seafarers have seldom been taken into consideration. As a result, Chinese seafarers face a number of unique conditions and challenges, which can restrict their access to public resources. The MLC 2006, which was specially designed for millions of seafarers, has a significant impact on policy-making in China. Through this question, the research will examine which areas the MLC 2006 can bring special protection to Chinese seafarers.

RQ2: What are the responses of the Chinese government and other major stakeholders in China to the MLC 2006?

The MLC 2006 exists at the intersection of two regimes: the regime regulating global labour standards, and that regulating international shipping safety and

pollution. It has brought about an important change in the way that global labour rights are governed in the maritime industry. In addition, even more significantly, it sets a precedent for labour rights in global governance. The MLC 2006 is different from the traditional national regulation model in that it is based not only on the structure of the interstate system but also on the structure of the maritime shipping business. Under the new Convention, labour standards have historically been a national responsibility, with enforcement and legitimacy monitored by labour organisations and their political partners, such as ITF, flag states, port states and so on. Nation states enforce the standards not only on themselves as flag states in response to obligations to international treaties, but also on each other and directly on shipowners as port states (Lillie 2008, p. 196).

China is not only a major player as a flag state, but also has an important role as a port state and seafarer-supplying state. To some degree, therefore, the impact of the MLC 2006 on China appears to be far more significant than any other country that does not play all those three roles. In recent years, Chinese seafarers' rights have been restructured under the impact of the MLC 2006. This research will examine the possible impact and change that the Convention has brought about to the Chinese maritime industry and Chinese seafarers' rights. Although to date the Convention has not yet entered into force in China, the Chinese government has been active in keeping in tune with the MLC 2006. Since 2007, the Government has implemented a series of maritime legal instruments to regulate Chinese seafarers' affairs. It is necessary to explore the factors and considerations that have affected the design and adoption of these new policies. On the other hand, the major stakeholders in the Chinese maritime industry have also introduced different strategies to cope with the new requirements in line with the latest maritime legislation. Through this question, the research will not only investigate the responses of the Chinese government and the major stakeholders in the Chinese maritime industry to the MLC 2006, but will also critically examine the factors, forces and background that have shaped these responses.

RQ3: What improvement in the protection of Chinese seafarers has been achieved since the MLC 2006, and what gaps still exist in comparison with international standards?

The MLC 2006 has influenced the restructuring of maritime legislation in China and practices in the Chinese maritime industry. As stated in the previous question, there have been many changes in law and practice as responses of the Chinese government and major maritime stakeholders to the MLC 2006. Consequently, these changes have brought about improved seafarer protection in China. Through this question, the conditions of Chinese seafarers' employment rights will be examined from different perspectives, and the improved rights will be critically examined. However, although significant progress has been made in a number of ways, Chinese seafarers still face problems and difficulties in many respects. An in-depth analysis will therefore be conducted to examine the gaps between maritime labour standards in China and those at the international level.

RQ4: What are the continuing challenges for improvement of seafarer protection in the future?

As discussed in the previous section, although seafarer protection in China has improved significantly over recent years, a number of gaps continue to exist. China is expected to stay inside the international maritime regulatory regime and to respect the commonly accepted international practice. Also, Chinese seafarers have been longing for significant changes in respect of their treatment and of their social and employment conditions. However, for the further improvement of seafarer protection in China, there are a variety of challenges. Through this question, the major challenges will be critically investigated and analysed from different perspectives.

RQ5: What are the major suggestions for the future improvement of seafarers' rights in China?

As one important aspect of the research, some major suggestions for improvement in legislation and in practice will be offered. These suggestions are based on the identification of gaps in the existing seafarer protection system in China, as well as of comprehensive analyses of legislation and of practice for future improvement. The major suggestions are proposed for the Chinese government, the Chinese seafarers' trade union, the maritime employers and Chinese seafarers. These suggestions are expected to build the foundation stones upon which China can build a better seafarer protection system that would suit the development of the maritime industry in China.

To answer these questions, the research follows an elaborately designed research process that involves a number of stages. These include collection and analysis of data through interviews, questionnaire analysis and secondary data analysis, to be discussed in detail in the section on research methodology.

However, it is noteworthy that the main focus of this research is on Chinese seafarers who are working on board merchant ships trading internationally. Accordingly, the book does not deal with other types of workers in the maritime industry, such as fishermen, seafarers on cruise ships, yachts, offshore platforms and crew engaged on inland navigation ships. Moreover, in several places of the book, references have been frequently made to male seafarers, such as in the section on Chinese seafarers' profile. However, the book has no intention of excluding females. The author conducted a separate study, 'Chinese Women Seafarers: Past, Present and Prospects', which was published by Springer in February 2015, but the book does not especially deal with this subject (Zhang and Zhao 2015). The author also published several papers on some other specific issues, such as the characteristics of seafaring labour, the negative impact of the MLC 2006 on Chinese maritime industry and so on (Zhang 2013). The same discussions will not be repeated in this book. Finally, even though the research concentrates on the rights of Chinese seafarers, it does not in any way suggest that they do not have obligations or their obligations are any less important. As a matter of fact, seafarers have special responsibilities with regard to the safety and efficiency of ship

operations and the protection of the marine environment. However, these subjects are not specifically discussed in this book.

1.4 Literature Review

While the topics of seafarers and of seafarers' rights have been discussed in a large quantity of literature (Brooks 1989; Coupe et al. 1999; Fitzpatrick and Anderson 2005), there are still a considerable number of issues on these subjects that remain unexplored. With the development of legislation, technology and dramatic innovations in the maritime industry, the definition and understanding of seafarers and seafarers' rights continue to change. The necessity of new research on the subject therefore becomes apparent. In order to identify the gaps in the current research and to utilise the experience and knowledge created by others, a systematic literature review is necessary before any new study is carried out.

Many words have been used to refer to a person who works aboard water-borne vessels, such as seaman, seafarer, sailor, boatman, mariner, and crew. All these terms relate to the profession of 'travelling on water' or assisting in the operation, maintenance, or service of ships. In a practical context, people use these terms interchangeably according to their preference. An extensive literature review indicates that there is no determined rule to discriminate between these terms. However, several distinctions exist among the literal interpretation of these words, particularly when people use them to highlight different inclinations. For example, etymologically, sailor preserves 'the memory of the time when ships were commonly powered by sails', despite the fact that it applies to 'the personnel of all vessels' (Martin 2008). In the *Sea Grammar*, Captain John Smith defined the sailor as 'the older man who hoists the sails' (Lloyd 1970, p. 19). A boatman indicates that a man 'is skilled in the use of boats'. According to *Collins English Dictionary*, it means a person 'who works on, hires out, sells, repairs or operates a boat or boats'. There is a distinct difference between a boat and a ship. The *Oxford English Dictionary* defines 'a boat' as a craft 'plying on the larger rivers or lakes'. As opposed to a 'boat', a 'ship' is a sea-going vessel that is 'usually larger than a boat'. A boatman is therefore 'often restricted to sea-going' (Sheppard 2013, p. 17). However, the term was introduced in the STCW 2010 Amendments, wherein boatman means the person who is licensed and designated to operate the Fast Rescue Craft (FRC lifeboat) of a merchant ship (STCW 2010).

The terms 'seaman', 'seafarer' and 'mariner' are literally associated with 'sea' and 'marine'. In many cases, mariners have a broad meaning that includes shipwrights and those 'who are able to build a ship, to fit and provide her of all things necessary, and after to carry her about the world' (Lloyd 1970, p. 18). It also refers to experienced seamen, usually—given the context—of a certificated officer. In particular, those who are merchant captains are usually described as 'master mariners'. Currently, 'seaman' and 'seafarer' are the most common words in use. In Denmark, it is stated in *The Seaman's Rights and Duties* 'the two expressions

mean the same' despite the fact that 'they are used at random' (DMA 2001, p. 2). However, literal nuance still exists between these two terms. 'Seaman' was first introduced into written English with the appearance in 1436 of the treatise on naval policy, *The Libelle of English Policie* (Lloyd 1970, p. 18). Since then, the term had been widely used in conventions, treaties and national policies before the middle of 1940s. The word was proper when persons working on board were usually male. Nowadays, women are also encouraged to perform duties aboard ships. Therefore, on formal occasions, seafarer is more appropriate than seaman to make it gender-neutral and universal. For example, in 1946 the word 'seafarer' was first introduced in the ILO's Food and Catering (Ships' Crews) Convention (ILO C068). Since then, the ILO has replaced the word 'seaman' by 'seafarer' in the series of its conventions and recommendations. The IMO has also used seafarer rather than seaman in its conventions, documents and publications. Compared with the above words, 'crew' is a collective concept that means 'the entire group of seafarers' (Wang 2010, p. 82). However, the word is used not exclusively aboard ships but also on many occasions, such as aboard an aeroplane or even in a company. According to the Oxford Dictionaries, crew means a group of people who work closely together, including people on a ship, an aircraft and other workplaces.

The definition of seafarers varies in different countries and conventions. For example, in the Philippines, seafarer refers to any person who is employed or engaged in any capacity on board a seagoing ship navigating the foreign seas other than a government ship used for military or non-commercial purposes (POEA 2003, p. 4). According to the United Kingdom's Merchant Shipping Act 1995, seaman means every person (except masters and pilots) employed or engaged in any capacity on board any ship (MSA 1995: Sec.313). The United States' Code defines a seaman as any person (apprentices excepted) who shall be employed or engaged in any capacity on board any vessel belonging to any citizen of the United States (USC 1944, p. 46). In Denmark, the term 'seafarer' shall apply to all persons, apart from the master, employed, engaged or working on board a Danish ship 'who does not exclusively work on board while the ship is in port' (DMA 2013).

In addition, the definition of 'seafarer' varies slightly even between the ILO's conventions. For example, in the Seafarers' Identity Documents Convention 1958, seafarer means a person 'who is engaged in any capacity on board a vessel, other than a ship of war, registered in a territory for which the Convention is in force and ordinarily engaged in maritime navigation'. In the Seafarers' Hours of Work and the Manning of Ships Convention 1996, seafarer means 'any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board a seagoing ship to which this Convention applies'. However, the MLC 2006 makes a significant development by consolidating the definition of a 'seafarer'. According to the Convention, seafarer means 'any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies'.

In China, the definition of seafarer is vague because different legal instruments define the term in different ways. The Chinese Maritime Code is the first legal instrument touching upon seafarers. In Article 31 of the Code, a seafarer is defined

as 'any person who has a duty aboard a ship, including the master' (CMC, Art.31). According to the Code, only those who are working on board a seagoing ship are seafarers. The seafarer's special status disappears when he is discharged or on leave. However, seafarers are entitled to certain rights before they go on board, when they work on board, as well as after their disembarkation. For example, a seafarer has the right to repatriation, the right to a maritime lien for unpaid wages, and the right to a placement opportunity, and so on. The narrow interpretation of its definition restricts them to claim their rights when they do not 'have a duty aboard a ship' anymore. The Regulations of Seafarers of the PRC defines the term in a totally different way. Article 4 of the Regulations states that 'a seafarer refers to any person who has been registered as a seafarer and obtained a seafarer's book, including masters, officers and ratings'. This definition expands the range of seafarers excessively. In China, there are a large number of people who have registered as seafarers only as a back-up strategy, but are very unlikely ever again to serve on board. The issue will be further discussed in Chinese seafarers' registration in Chap. 3: Chinese seafarers' pre-employment conditions. These 'false seafarers' inevitably consume the public resources that are the entitlement of 'real seafarers' only; they should therefore be excluded from the definition of seafarer. Accordingly, for the purpose of the research, the meaning of seafarer will be formulated as based on the above discussion. In this book, seafarer means any person who is employed or engaged or works in any capacity on board a ship, including seafarers between ships.

At the same time, 'Seafarers' Rights' is a most important concept, which needs to be clearly defined at the start of this book. While an excessive number of definitions of seafarer has caused conflicting understanding, the term 'seafarers' rights' has lacked adequate definition and theory. In recent years, the subject of 'seafarers' rights' has provoked heated discussion. However, its definition has seldom been discussed in existing literature. For example, among the small number of books on the subject, *Seafarers' Rights*, edited by Fitzpatrick and Anderson (2005), is the first and most important monograph entitled with the keywords 'seafarers' rights'. The book provides a comprehensive picture of seafarers' rights at both the international and national levels. It also examines the enforcement mechanisms of the rights under the UN, ILO, IMO and regional systems. However, the authors have not provided a definition on 'seafarers' rights'. The same absence exists in other academic literature, such as *Seafarers' Rights in the Globalised Maritime Industry* (Dimitrova 2010), *Voyages of Abuse: Seafarers, Human Rights and International Shipping* (Coupe et al. 1999), and so on.

The special nature of maritime employment suggests that seafarers as a distinct group of workers are entitled to separate treatment and rights that are different from their counterparts on land. In the work of Fitzpatrick and Anderson, it is considered that seafarers' rights include two categories in the international system. First, seafarers have the rights 'under international, regional and domestic human rights law by virtue of the fact that they are human beings'. Secondly, seafarers have the relevant labour rights 'by virtue of the fact that they are workers' (Fitzpatrick and Anderson 2005, p. 40). While this consideration looks into the sources and the

nature of seafarers' rights in international law, it does not cover the rights under national law and private law that obviously require further exploration.

In this study, seafarers' rights include not only the above categories in the international system, but also extend to the entitlements under national law and private law. Under the Chinese law, such as the General Provisions of the Civil Law (*minfa tongze*), an individual's rights can be divided into two categories, substantive rights (*shiti quanli*) and procedural rights (*chengxu quanli*). The concept of substantive rights describes general rights that grant the individual the entitlement 'to act or behave in a particular way despite the government's desire to the contrary' (Lopes and Quenivet 2008, p. 205). For example, their rights to social security and welfare and to freedom of association are substantive rights according to Chinese labour law. In contrast, procedural rights mean that the individual's influence and opinions are part of the decision process (Ketscher 1988, p. 47), such as rights to information, rights to justice and rights to participation. To a certain extent, procedural rights are 'a continuation of substantive rights since they provide for their application' (Lopes and Quenivet 2008, p. 210).

For the purpose of this research, substantive rights are further divided into *basic rights* (*jiben quanli*), *statutory rights* (*fading quanli*) and *contractual rights* (*hetong quanli*). A *basic right* in this context means a priori right, 'the existence of which does not depend on their legal recognition, and which exist as long as they are not removed by the law' (Sieckmann 1997, p. 34), such as the right to life and physical integrity. *Statutory rights* embrace a series of entitlements, each entitlement setting forth a right that all individuals can bring proceedings before a tribunal according to the international conventions, treaties and national laws, such as seafarers' right to repatriation. *Contractual rights* include all claims on the other party that are acknowledged and perhaps reciprocated in a legally binding contract or agreement. These will be either express terms that are written down in a document or implied terms, the existence of which is considered by a tribunal to be contained in every similar contract, 'even if they are not written down' (Donut 2013).

However, in China, there exist various gaps between seafarers' existing rights (*shiran quanli*), which means the rights that they already have (*what they have*), and seafarers' desired rights (*yingran quanli*), which refer to the rights that they ought to have (*what they ought to have*). As will be explained in the next chapter, one objective of this study is to identify and critically inspect these gaps and make relevant suggestions for improvement in the future. The following chapters will therefore examine the main issues from different perspectives, in particular the perspectives of '*what they have*' and '*what they ought to have*'.

It is clear that seafarers are clearly calling for more research to promote their rights and to improve their treatment, both at the international and national level. In recent years, China has started to play a more important role in the international maritime industry. Although Chinese shipping power has inspired widespread research interest, including on Chinese fleets, Chinese ports and Chinese shipyards, it is still noted that Chinese seafarers themselves have drawn very little attention. Outside China, a number of studies have been conducted with regard to Chinese

seafarers, but most of those focus on the Chinese maritime labour market. In spite of their many merits, some of the studies are unsystematic and incomplete, and need to be updated according to continual developments. In China, the research on seafarers has continued to grow in recent years. However, the majority of research is from the perspectives of administration of seafarers, and their training and qualification, the export of seafarers, and so on. The concerns of most researchers are how to improve the quality of Chinese seafarers and to promote better business, rather than to promote and protect seafarers' rights. Given the situation, this research is of crucial significance, not only at present, but also in the future. In the following chapters, an extensive and critical examination of seafarers' rights in China will be conducted, in particular the restructuring process under the impact of the MLC 2006.

1.5 Methodology

The main objective of this study is to examine the change concerning seafarers' rights in China under the impact of the MLC 2006. Under that umbrella, the study was required to investigate a number of aspects by using a qualitative method. First of all, it is a precondition to make sense of seafarers' personal experience and the ways in which they interact. Furthermore, as stated in the introduction, the study needs to investigate the responses of the Chinese government and some other stakeholders in China to the MLC 2006. To do this, the researcher needed to conduct in-depth interviews in order to examine the conditions and challenges that the seafarers face in their lives, as well as the different stakeholders' experiences and opinions in explaining their responses.

Problem-solving approach has been introduced as a main strategy in the formulation of the research process which includes a number of stages. *At the beginning*, a number of problems related to seafarers' rights in China are identified as a result of the literature review, and then a focus area is developed by stating and defining the problems. *At the second stage*, several hypotheses are developed for the solution of the problems, for example, one of them is that the adoption of several maritime legal instruments in China has significantly improved Chinese seafarers' rights. *The third stage* is the preparation of fieldwork, including the ethical considerations. At this stage, the researcher needs to identify the potential data sources and compare different methods to be employed. After that, *at the fourth stage* the fieldwork begins, and raw data are collected from various sources. *The next stage* is for data cleansing, refinement and analysis, during which the data are transformed into presentable and manageable form by way of data analysis techniques. Salient features of the data can be graphically illustrated with methods such as bar charts, pie charts, line graphs and histograms (Morenikeji 2006). *Finally*, a number of thematic studies are conducted based on the above stages.

For data collection the author conducted two phases of fieldwork. The first phase of the fieldwork started in July 2013, and it lasted over 2 months in some major cities, such as Shanghai and Beijing.

The second phase of fieldwork took place between 26 August 2014 and 8 November 2014, and so lasted two and a half months. During this period the author visited Shanghai, Nanjing, Yangzhou, Tianjin and Zhoushan.

Most of the primary data were collected through semi-structured interview (Appendix A). Before the author started each field trip, he contacted a large number of potential informants by all kinds of communication methods available to him, including email, telephone, WeChat, Weibo and so on. Except for the seafarers, the majority of others from different stakeholders are those who were directly involved or in charge of seafarer affairs. However, for various reasons, there is a slight difference between the number of potential informants and that of actual informants. Figure 1.1 illustrates the distribution of informants by category and shows the comparison of potential and actual informants who were interviewed in this study.

In addition, questionnaire survey was employed as a complementary method in connection with the interview. Questionnaires (Appendix B and Appendix C with translation) were used to find out the respondents' attitudes on some specific issues. In this study, a total of 250 questionnaires were sent out during two field trips. The first difficulty was that the government officials and trade unions were reluctant to participate in the questionnaire survey. In addition, there was a very low rate of response for the questionnaires sent by email. Although sending by email would have saved time and costs, the strategy had to be changed to delivering the questionnaires face to face. In the end, 191 valid questionnaires were returned,

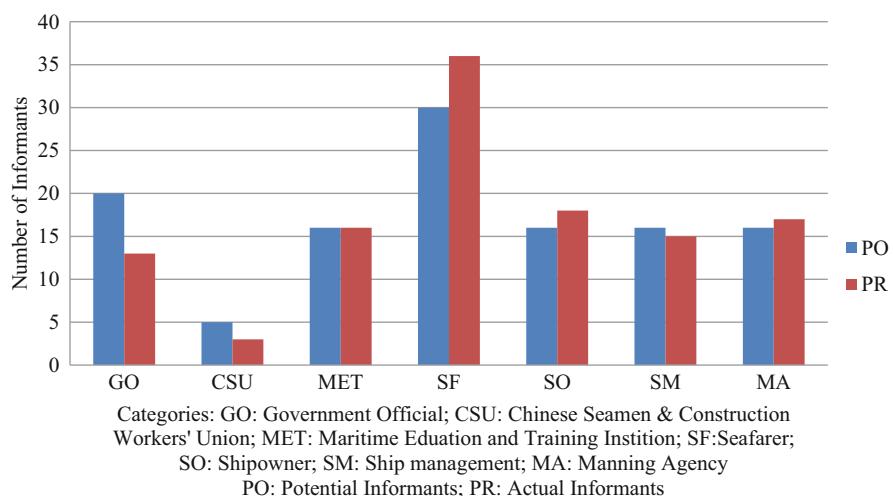


Fig. 1.1 Distribution/comparison of potential and actual informants (Source: created by the author in 2013)

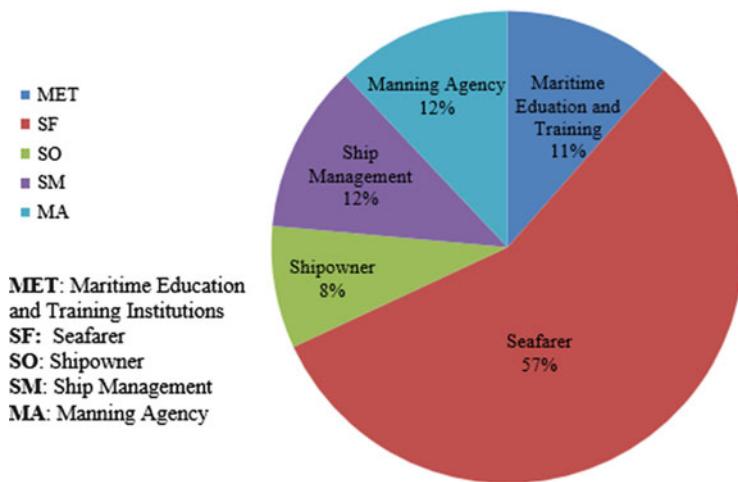


Fig. 1.2 Distribution of stakeholders' responses to the questionnaire (Source: created by the author in 2013)

making a 76 % response rate, excluding some incomplete ones and some expressing very extreme opinions. Figure 1.2 illustrates the distribution of stakeholders answering the questionnaire.

1.6 Structure of the Book

Except for the Introduction, the book is organised into four further chapters. Chapter 2 examines the development of maritime legislation in China under the impact of the MLC 2006. This chapter provides a legislative context for further discussions in the following chapters. It begins with the introduction of the development of the Chinese shipping and Chinese maritime labour force, and provides a background to Chinese maritime legislation. After that, the chapter critically examines the influences of the MLC 2006 on the Chinese maritime industry, and the responses of major stakeholders in China to the Convention. In addition, the chapter compares the maritime legislation in China before and after the adoption of the MLC 2006 by the ILO, and analyses the prospects of ratification and implementation of the MLC 2006 in China.

Chapter 3 discusses a number of major issues related to the pre-employment conditions of Chinese seafarers. The pre-employment conditions are of particular importance for seafarers, for these issues are significantly associated with subsequent in-employment conditions on board, which are discussed in Chap. 4.

Chapter 4 discusses a number of major issues in respect of the in-employment conditions of Chinese seafarers. Most of these issues have been discussed by many people from different perspectives. However, what has been done specially for

Chinese seafarers is significantly inadequate. The major issues related to Chinese seafarers' employment agreement, payment of wages, working and living conditions, and shore-based welfare and social security are discussed.

Chapter 5, as the concluding chapter, provides an account of how this book has created new knowledge by answering the research questions. It emphasises the key findings from this research project and assesses the extent to which the MLC 2006 has impacted on the Chinese maritime industry. In addition, it also addresses the significance and the limitations of this research, as well as introducing suggestions for future studies.

References

- Adolf, K. Y. (2012). Container liner shipping, port development and competition. In D. W. Song & P. M. Panayides (Eds.), *Maritime logistics: Contemporary issues* (pp. 5–28). Bingley: Emerald Group Publishing.
- BIMCO/ISF. (2010). *Manpower 2010 Update: The worldwide demand for and supply of seafarers*. Denmark: Baltic and International Maritime Council.
- BIMCO/ISF. (2005). *Manpower 2005 Update: The worldwide demand for and supply of seafarers*. Coventry: Warwick Institute for Employment Research.
- Brooks, M. R. (Ed.). (1989). *Seafarers in the ASEAN region*. Singapore: Institute of Southeast Asian Studies.
- Chen, G., & Hao, Y. (2012). *Seafarers' labour rights and social security protection*. Wuhan: Wuhan University of Technology Press [in Chinese].
- Chen, J. (2008). *Chinese law: Context and transformation*. Leiden: Martinus Nijhoff.
- CMC. (1993). *Chinese Maritime Code of the PRC*. Available at: http://www.npc.gov.cn/wxzl/gongbao/1992-11/07/content_1479260.htm. Accessed 09 November 2013 [in Chinese].
- Cohn, M. (2001). The World Trade Organisation: Elevating property interests about human rights. *Georgia Journal of International and Comparative Law*, 29, 427–434.
- Coupe, A., Walsh, C. J., Stanberry, B. A., & Boerne, G. L. (1999). *Voyages of abuse: Seafarers, human rights and international shipping*. London: Pluto Press.
- Dimitrova, D. N. (2010). *Seafarers' rights in the globalised maritime industry*. London: Kluwer Law International.
- DMA. (2001). *The Seaman's Rights and Duties of Danish Maritime Authority*. Available at: http://www.dma.dk/SiteCollectionDocuments/SOF/Rights%20and%20duties/pligt_og_ret_pjce_sept09.pdf. Accessed 6 January 2013.
- DMA. (2013). *Act on Seafarers' Conditions of Employment, etc.* Available at: <http://www.dma.dk/Ships/MLC/Documents/LBK-742-s%C3%88mandsloven%20incl%20%20MLC.pdf>. Accessed 6 January 2013.
- Donut. (2013). *The Law Donut: Employment Contracts*. Available at: <http://www.lawdonut.co.uk/law/employment-law/recruitment-and-employment-contracts/employment-contracts>. Accessed 20 March 2013.
- Fitzpatrick, D., & Anderson, M. (2005). *Seafarers' rights*. Oxford: Oxford University Press.
- Guo, C. (2009). On the protective clauses in the regulations of the People's Republic of China for Seafarers. *China Water Transport*, 1, 54–55 [in Chinese].
- Ianchovichina, E., & Martin, W. (2001). *Trade liberalisation in China's accession to the World Trade Organisation*. Washington, DC: World Bank.
- ICS. (2013). *Number and Nationality of World's Seafarers*. Available at: <http://www.ics-shipping.org/shipping-facts/shipping-and-world-trade/number-and-nationality-of-world's-seafarers>. Accessed 22 May 2015.

- ILO C068. (1946). *Food and Catering (Ship's Crews) Convention, 1946*. Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C068. Accessed 25 April 2013.
- IMO. (2010). *World Maritime Day 2010: Year of the Seafarers, IMO News (3)*. Available at: <http://www.imo.org/MediaCentre/NewsMagazine/Documents/2010/IMO%20News%20Issue%203%202010.pdf>. Accessed 22 December 2013.
- IMO. (2013). *IMO Secretary-General welcomes entry into force of Maritime Labour Convention*. Available at: http://www.imo.org/MediaCentre/PressBriefings/Pages/38-MLC.aspx#.VV35R_19PTA. Accessed 21 May 2015.
- Ketscher, K. (1988). The legal base for local government and public participation in Denmark. In J. Regulski et al. (Eds.), *Decentralisation and local government*. Copenhagen: Roskilde University Press.
- Kothari, C. R. (2004). *Research methodology: Methods and techniques* (2nd ed.). New Delhi: New Age International.
- Lavelle, J. (Ed.). (2014). *The Maritime Labour Convention 2006: International labour law redefined*. Abingdon: Informa Law from Routledge.
- Li, S. (2010). Retrospective of Seafarers' development in New China. *China Water Transport*, 11, 14–15 [in Chinese].
- Lillie, N. (2008). The ILO Maritime Labour Convention, 2006: A new paradigm for global labour rights implementation. In K. Papadakis (Ed.), *Cross-border social dialogue and agreements: An emerging global industrial relations framework* (pp. 192–210). Geneva: International Institute for Labour Studies.
- Lloyd, C. (1970). *The British Seaman*. Cranbury: Associated University Press.
- Lopes, C., & Quenivet, N. (2008). Individuals as subjects of international humanitarian law and human rights law. In R. Arnold & N. Quenivet (Eds.), *International humanitarian law and human rights law: Towards a new merger in international law*. Leiden: Martinus Nijhoff.
- Mah, A. (2014). *Port cities and global legacies: Urban identity, waterfront work, and radicalism*. New York, NY: Palgrave Macmillan.
- Marks, G. (1993). Structural policy and multi-level governance in the EC. In A. Cafruny & G. Rosenthal (Eds.), *The state of the European community*. Boulder: Lynne Reinner.
- Martin, J. (2008). *Pinup Sailor Tattoo Tribal, Pinup Sailor Tattoo Designs*. Available at: <http://www.zimbio.com/Tattoos/articles/3126284/Pinup+Sailor+Tattoo+Tribal+Pinup+Sailor+Tattoo>. Accessed 5 January 2013.
- McConnell, M. L., Devlin, D., & Henry, C. D. (2011). *The Maritime Labour Convention, 2006: A legal primer to an emerging international regime*. Leiden: Martinus Nijhoff.
- MLC. (2006). *Maritime Labour Convention 2006*. Available at: <http://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm>. Accessed 8 March 2013.
- Morenikeji, W. (2006). *Essentials of Research Methods*. Available at: <http://dspace.futminna.edu.ng/jspui/bitstream/1/696/1/Research%20Methodology.pdf>. Accessed 17 November 2013.
- MSA. (1995). *Merchant Shipping Act 1995*. Available at: <http://www.legislation.gov.uk/ukpga/1995/21/section/313>. Accessed 6 January 2014.
- POEA. (2003). *POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers*. Available at: <http://www.poea.gov.ph/rules/SB%20Rules%202003.pdf>. Accessed 6 January 2014.
- Roe, M. (2007). Policy perspective: Shipping, policy and multi-level governance. *Maritime Economics & Logistics*, 9, 84–103.
- Sheppard, A. M. (2013). *Modern maritime law, volume 1: Jurisdiction and risks* (3rd ed.). New York, NY: Informa Law from Routledge.
- Sieckmann, J. (1997). Basic rights in the model of principles. In R. Martin & G. Sprenger (Eds.), *Rights* (pp. 30–36). Stuttgart: International Association for the Philosophy of Law and Social Philosophy.

- STCW. (2010). *The 2010 Amendments to the STCW Convention*. Available at: <http://www.imo.org/OurWork/HumanElement/TrainingCertification/Documents/34.pdf>. Accessed 25 May 2015.
- Sun, Z. (2010). The comparative study of MLC 2006 and Seafarers' regulations of PRC. *China Water Transport*, 4, 32–33.
- UNCTAD. (2013). *Review of Maritime Transport 2013*. Geneva: United Nations Conference on Trade and Development.
- UNCTAD. (2014). *Review of Maritime Transport 2014*. Geneva: United Nations Conference on Trade and Development.
- USC. (1944). *Title 46, U.S. Code annotated*. St. Paul, MN: West Publishing Company, Sections 541–713.
- Wang, F. (2010). Conflict, resistance and the transformation of the Hukou system. In E. J. Perry & M. Selden (Eds.), *Chinese society: Change, conflict and resistance* (3rd ed.). Oxon: Routledge.
- Wang, X. (1995). On issues of Chinese seaman legislation. *Annual of China Maritime Law*, 6, 210–218 [in Chinese].
- Wang, X. (1999). On the nature of seafarer law and its main system. *Annual of China Maritime Law*, 10(1), 247–256 [in Chinese].
- Wang, X. (2009). *The trend of seafarer legislation of the International Labour Organization and the counter measures of China: From the Perspective of Maritime Labour Convention 2006*. Beijing: The Law Press of China [in Chinese].
- Wang, X., & Gao, Y. (2007). The content and characteristic and the impact on the maritime industry of MLC 2006. *Annual of China Maritime Law*, 17(1), 397–407 [in Chinese].
- Wei, X. (2013). *A study on the protection of Chinese seafarers' rights*. Unpublished LLM thesis, Huaqiao University [in Chinese].
- Wu, B. (2007). Globalisation and marginalisation of Chinese overseas contract workers. In H. Zhang, B. Wu, & R. Sanders (Eds.), *Marginalisation in China: Perspectives on transition and globalisation*. Hampshire: Ashgate Publishing Limited.
- Zhang, P. (2013). The negative impact of Maritime Labour Convention 2006 on Chinese Maritime Industry. *Ship Management*, 35(4), 32–34 [in Chinese].
- Zhang, P., & Zhao, M. (2015). Chinese women seafarers: Past, present and prospect. In M. Kitada, E. Williams, & L. Froholdt (Eds.), *Maritime women: Global leadership* (pp. 235–254). London: Springer.
- Zhao, M. (2002). The consequences of China's socialist market economy for seafarers. *Work Employment and Society*, 16(1), 171–183.

Chapter 2

The Development of Maritime Legislation in China Under the Impact of MLC 2006

2.1 Introduction

Ocean-going seafarers receive special attention at the ILO, the UN's specialised agency whose main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues (ILO 2013). For example, the ILO has the Joint Maritime Commission (JMC), a specialist bipartite standing body (representing shipowners and seafarers) designed particularly for workers in the shipping industry, which provides advice to the Governing Body on maritime issues, including labour standard-setting for the shipping industry (ILO 2011). The JMC represents the only statutory wage-fixing mechanism across all the sectors in the world economy (UN 2013).

At the ILO, a most important historical event for the world seafarers occurred in 2006. It was this year that witnessed the adoption of the MLC 2006 by the 94th International Labour Conference. For the 1.5 million seafarers worldwide, this new convention brought together, in one place, international minimum standards that ensure decent work. It also levelled the playing field for shipowners to help ensure fair competition. Furthermore, the Convention consolidated 37 ILO conventions and was widely believed to be bound to have a significant impact on all the key stakeholders in the industry, including shipowners, managers, crewing agencies and, most importantly, the seafarers on-board. It has therefore been acclaimed as the 'Seafarers Bill of Rights' representing the 'fourth pillar' of maritime regulation for the world maritime industry, alongside the SOLAS, the STCW and the MARPOL, the three other maritime Conventions adopted by the International Maritime Organization (IMO), another UN agency specialising in producing rules and regulations for the world maritime industry (Wright 2012, p. 287).

One of the most important features of the MLC 2006 is that it prescribes responsibilities for the major three interests in the maritime industry: the flag states, the port states, and the seafarer supplying states. The ratification and indeed the effective enforcement of the Convention relies on the ILO member states that have

ratified the Convention taking their responsibilities seriously and incorporating the international regulation into their national law and policy and so implementing these laws and policies at the national level. The MLC 2006 entered into force in August 2013 and has so far been ratified by 66 states including most major maritime nations, such as Panama, France, Germany, Greece, Japan, and the UK. China had not ratified the Convention at the time when this chapter was drafted (ILO 2015).

This seems strange. China has doubtlessly emerged since the beginning of the new millennium as a major maritime nation with powerful influence on global maritime activities. For example, China is now the world's largest shipbuilder, one of the world's largest shipowners, a key contributor to the global labour market for seafarers, and plays significant roles in port development and ship recycling. It is difficult to exaggerate the enormous impact of China, which has gained a dominant role on the international maritime scene in the twenty-first century, as noted by authors elsewhere (Zhang and Zhao 2014). In particular, and more relevant to the topic discussed in this chapter, China's strong maritime labour force has been recognised as having the largest potential to crew the world fleets (UNCTAD 2013). It is these seafarers that 'drive' China's ocean-going ships, which together with vessels of many other countries carry over 90 % of international trade, raw materials such as coal, iron ore, oil and soya beans into China and manufactured goods such as shirts, shoes, refrigerators, TV sets, washing machines, Ipads, mobiles out of China and into the other parts of the globe. As an important part of the Chinese working class, these ocean-going seafarers make significant contributions to the rise of China as a strong maritime nation. They surely deserve to enjoy the rights under the protection of the new international labour convention, namely the MLC 2006. Furthermore, China joined the ILO right from its very beginning in 1919 as one of the founding members of the Organisation and has become increasingly active in participating in setting up or revising the labour standards at the international level (Donn and Zhao 2011). Table 2.1 presents the ILO Conventions adopted by China. It is known that one of the guiding principles of China's foreign policy is to work within the framework of the international law and to respect the commonly accepted international practices (Li and Ingram 2002, p. 6). China therefore, apparently has all the reasons to have ratified the Convention and to become one of the members in the regulatory framework.

Although the Convention has not yet entered into force in China, it has perhaps more significant impact on China than on any other country due to the fact that it has the largest number of seafarers. Since 2007, the Chinese Government has made substantial efforts to keep in tune with international labour standards, in particular on the seafarers' affairs. What development of maritime legislation in China has taken place? Why then has China not ratified the Convention and remains outside of the framework? How far is China away from ratification? What should be done to promote seafarers' rights in China by taking advantage of the impact of the MLC 2006? In the broader overall context of Chinese maritime legislation, this chapter attempts to shed lights on these questions.

The rest of the chapter will first of all give an overview of the primary context for this chapter's discussion, namely the MLC 2006 and the labour market for seafarers

Table 2.1 ILO conventions adopted by China

Convention code	Convention title/status	Adopted year	Ratified by China
ILO C007 ^a	Minimum Age (Sea) Convention/Not in force	1920	1936
ILO C011	Right of Association (Agriculture) Convention	1921	1934
ILO C014	Weekly Rest (Industry) Convention	1921	1934
ILO C015 ^a	Minimum Age (Trimmers and Stokers) Convention/Not in force	1921	1936
ILO C016	Medical Examination of Young Persons (Sea) Convention	1921	1936
ILO C019	Equality of Treatment (Accident Compensation) Convention	1925	1934
ILO C022	Seamen's Articles of Agreement Convention	1926	1936
ILO C023	Repatriation of Seamen Convention	1926	1936
ILO C026	Minimum Wage-Fixing Machinery Convention	1928	1930
ILO C027	Marking of Weight (Packages Transported by Vessels) Convention	1929	1931
ILO C032	Protection against Accidents (Dockers) Convention (Revised)	1932	1935
ILO C045	Underground Work (Women) Convention	1935	1936
ILO C059 ^a	Minimum Age (Industry) Convention (Revised)/Not in force	1937	1940
ILO C080	Labour Inspection Convention	1947	1947
ILO C 100	Equal Remuneration Convention	1951	1990
ILO C 111	Discrimination (Employment and Occupation) Convention	1958	2006
ILO C 122	Employment Policy Convention	1964	1997
ILO C 138	Minimum Age Convention	1973	1999
ILO C 144	Tripartite Consultation (International Labour Standards) Convention	1976	1990
ILO C 150	Labour Administration Convention	1978	2002
ILO C 155	Occupational Safety and Health Convention	1981	2007
ILO C 159	Vocational Rehabilitation and Employment (Disabled Persons) Convention	1983	1988
ILO C 167	Safety and Health in Construction Convention	1988	2002
ILO C 170	Chemicals Convention	1990	1995
ILO C 182	Worst Forms of Child Labour	1999	2002
ILO MLC	Maritime Labour Convention, 2006	2006	2013

Source: Table created with data drawn on ILO Website on 09 July 2015

^aNot in force, automatically replaced on 28 April 2000 by convention C138

in China, as well as the main relevant issues involved. The focus of the discussion will then move to investigate the changes identified in China as a result of the adoption of the Convention in Geneva since 2006. References will be made both to the changes in policy and legislation and also to the responses of key stakeholders in the country's maritime sector. The final part presents my thoughts and analysis

regarding where China is and where the country should go concerning the ratification of the MLC 2006, which hopefully should not be too far away in the future.

While a significant part of the data presented in this chapter is drawn on the existing knowledge and scholarship available in the public domain, the empirical data referred to in the discussion were collected during my two field research trips in China (2013–2014), where I conducted semi-structured interviews with a large number of stakeholders in the maritime sector, followed by my close attention to the development of the relevant issues in China.

2.2 Background

2.2.1 *The MLC 2006*

The MLC 2006 was the culmination of many years of hard work to consolidate and update a series of fragmented labour standards into a single Convention. The Convention provides comprehensive rights and protection at work for the world seafarers. It has been designed for a uniformity of enforcement, so that it will present to the world ‘the face of a modern industry where social provisions for the workforce are seen to be central’ (Grey 2011). This section summarises its main contents, highlights its significance and points out its main limitations.

2.2.1.1 **Contents**

The MLC 2006 is, first and foremost, a consolidation of the previously existing corpus of ILO law relating to seafarers’ labour standards. The new Convention consolidates most of the other pre-existing ILO Conventions on maritime labour standards, not including those on fishers and dockworkers. However, modifications of existing standards have essentially been restricted to updating matters of detail that were not considered to give rise to controversy or to resolving inconsistencies among the Conventions concerned (ILO 2005, p. 9). The regulatory scope of the Convention covers the full range of subject areas on the living and working conditions of seafarers and deals with numerous aspects of a seafarer’s ‘rights to decent employment’, including recruitment, conditions of employment, accommodation, food and catering, medical care, recreational facilities, hours of work and rest, health protection, welfare and social security, and so on.

From a structural perspective, the MLC 2006 adopts an approach similar to the IMO’s STCW Convention. It has three different but related parts: Articles, Regulations and a Two-Part Code. The Two-Part Code includes mandatory Standards as Part A and non-mandatory Guidelines as Part B (McConnell 2008, p. 124). The Articles, which are written in ‘plain’ language, are mandatory and set out the overarching obligations and principles of the Convention. They include reference

to fundamental labour rights, implementation and enforcement requirements, a new procedure for amendment and a new Tripartite Maritime Committee. The Code, which is divided into five Titles, includes a mandatory Part A and non-mandatory Part B; it is divided into five Titles (MLC 2006). Each of these titles is created to serve a special area of the seafarers' life and they consist of mandatory regulations, one or more mandatory standards (Part A) and one or more non-mandatory guidelines (Part B). The mandatory regulations and the standards are followed by non-binding guidelines to facilitate their implementation. However, although the Convention gives Member States (MS) the freedom to decide whether they want to follow the guidelines, there is still a mandatory obligation under Article VI para 2 to give 'due consideration' to the guidelines. The structure of the Convention follows three main objectives: to stipulate a firm set of rights, to give a significant degree of flexibility to the Member States, and to ensure that the rights are effectively enforced (Dimitrova 2010, p. 86).

The five Titles comprise the substance of the existing 37 ILO Conventions on maritime labour standards with some modernisation and updating (MLC 2006). They include the following:

- *Title 1: 'Minimum Requirements for Seafarers to Work on a Ship'*. This Title sets up a series of minimum requirements, for instance, the minimum age for seafarers to be employed aboard, the obligation of each seafarer to have the relevant qualifications, training certificates, appropriate medical certificate and also the requirements for the regulation of private recruitment and placement services.
- *Title 2: 'Conditions of Employment'*. This title concerns primarily terms of employment, including wages, working hours and annual leave. It sets out the obligation for signing a written legally enforceable agreement between the seafarer and his employer. In addition, it mandates rights for wages, annual leave, repatriation, career and skill development, manning levels and compensations in case of ship loss or foundering.
- *Title 3: 'Accommodation, Recreational Facilities, Food and Catering'*. To ensure the quality of seafarers' lives aboard, specific standards are stipulated in this section, such as the size and conditions of the living areas on board a ship.
- *Title 4: 'Health Protection, Medical Care, Welfare and Social Security Protection'*. According to this Title, shipowners are obliged to, at their own expense, provide the necessary medical care to seafarers on board the ship and ashore and to guarantee payment when they have been sick or injured while serving under a seafarer employment agreement. In addition, the Title also provides obligations regarding occupational safety standards, access to shore-based welfare facilities and social security obligations.
- *Title 5: 'Compliance and Enforcement'*. This title regulates the implementation and enforcement of the principles and rights set out in the Convention. The responsibilities of flag states, port states and labour-supplying states are specified to improve and reintroduce effective state enforcement of the Convention. Moreover, a special certificate compliance system and inspection system are

provided to ensure each Member's responsibility fully to implement and enforce. It also contains requirements for procedures to allow seafarers and others to file complaints on board and on shore about implementation on board a ship.

2.2.1.2 Significance

Seafarers work and live in a confined space that is constantly mobile around the globe and they face isolation, abnormal risks and hazards. The implementation, compliance and enforcement of regulations concerning seafarers' labour and social rights have always met challenges. From a legal and institutional perspective, 'labour and social rights in the maritime sector uncomfortably straddle both shipping and labour expertise and practice' (McConnell et al. 2011, p. 4). Thus the issue of maritime labour or seafarers' rights often 'risks falling between these two areas, in both international and domestic legal systems'. As McConnell et al explain 'the challenge for the implementation of international conventions that are at the intersection of maritime and labour law' (McConnell et al. 2011, p. 4):

In part this is because the international maritime regulatory regime is based on the international law of the sea and flag State and port State responsibility whilst labour and employment law, even if implementing standards in international conventions, is by contrast, more concerned with domestic law and is founded on territorial jurisdiction and national practice.

Since its establishment in 1919, the ILO has adopted a large number of maritime labour conventions and recommendations to regulate seafarers' labour and social standards and to protect their rights and interests. However, most of these instruments have not been widely ratified or effectively implemented and, as a result, many of the rights and conditions deserved by the seafarers have not been delivered. There are a number of reasons for this. Most importantly, although the ILO has a long established supervisory system which regularly reviews national implementation and has a set of international sanctions, it still lacks sufficient enforcement power over the standards that it establishes (Bauer 2008), and the situation for seafarers is worsened by 'the traditionally fragmented approach' to the maritime issues in most countries and internationally (McConnell et al. 2011, p. 5). Therefore, it was widely recognised that the improvement of the labour conditions globally for all seafarers could be achieved only through 'the adoption of an instrument' that combines global actions along with 'the complete involvement of the national States' (Dimitrova 2010, p. 81).

The MLC 2006 is expressly intended to mainstream the human, labour, and social rights for seafarers within the wider maritime regime. Unlike the ILO's previous labour Conventions, this new ILO Convention exists at the intersection of two regimes: the regime regulating global labour standards, and that regulating international shipping safety and pollution (McConnell et al. 2011, p. 5; Dimitrova 2010, p. 82). It signals an important change in such a way that global labour rights

are governed in the maritime industry but, even more significantly, ‘it sets a precedent for labour rights at global governance generally’ (Lillie 2008, p. 196). In addition, this new Convention will follow the historical practice that labour standards will remain a national responsibility with the enforcement and implementation monitored by international organisations. Nation states enforce the standards ‘not only on themselves as flag states’ according to obligations under the international standards and the United Nations Convention on the Law of the Sea 1982, but also on each other, including directly on shipowners as port states (Lillie 2006, p. 107).

The Convention has been praised as a ‘historic achievement’ and a ‘turning point’ in the history of the maritime industry. It is predicted that it ‘will stay forever in the history of the ILO and international regulatory policy as a precedent, a remarkable achievement and a step forward in the fight against the negative consequences of globalisation’ (Dimitrova 2010, p. 82). It is worth noting the comments made by Somavia (2006), the Director-General of the International Labour Office, in commenting on the epoch-making character of the MLC 2006:

The MLC 2006 covers a sector that has become a driving force of globalisation, increasing productivity and demand over the past decades and moving 90 per cent of world trade. And by setting solid uniform rules for the workers, employers and governments involved in commerce at sea, it provides a model for tackling the most pressing globalisation challenges of our time. . . . This exceptional vision and capacity for social dialogue among seafarer and ship-owner organisations has thus helped build the foundation for an innovative approach to social policy that represents a pioneering contribution on making globalisation fair.

2.2.1.3 Limitations

Despite the great strength and progress discussed above, the MLC 2006 has a number of weaknesses that have to be overcome in the future. First of all, the key to the effective enforcement of the MLC 2006 lies in the port states taking their responsibilities seriously, such as through inspections of port state control (PSC). However, in practice, the PSC inspection is considered as the right of a port state operated under regional agreements, rather than a duty or obligation required by the international regulation. It tends to be in a nation’s self-interest to gain a competitive advantage by ignoring the Convention’s requirements. For instance, an importing nation’s greatest interest would be ‘a reduced price on the imported goods’, while a flag state’s primary concern would be ‘increasing its registry via the appeal of lax standards’ (Bauer 2008). For example, in China many ports are taking various measures to attract more vessels to call. Since 2013, Shanghai port, as the largest container port in the world, has intended to restrict the calling of ships using high-sulphur fuel oil (HSFO) to reduce the emission of CO₂. However, considering the possibility that the restriction may compel many shipowners to choose other ports of call, until now the policy is still being discussed, and ships are ‘encouraged’ to use low-sulphur fuel oil only when entering Shanghai port (Fan 2015). As a

result, there potentially exists a risk of both the port nation and the flag nation achieving their objectives by simply ignoring the Convention's mandates. Although the 'no more favourable treatment' clause in Article V of the MLC 2006 encourages more states to stay inside the regime, there is still a challenge that many countries value economic profit above maritime labour standards.

In addition, some clauses of the MLC 2006 are considered as lacking of sufficient enforcement power. For example, in the second Title of the Convention, it is required that seafarers should be granted shore leave for their own health and well-being (MLC, 2006: Reg. 2.4.2). This is deemed as the responsibility of the shipowner and it is certainly a step in the right direction. However, there seems no consideration of the fact that sometimes the availability of shore leave actually depends on the port state, rather than the shipowner. For example, the United States and Australia require seafarers to be in possession of an entry visa, which should be issued in the country of origin of the seafarer before the application of the contract. Besides, pressured by the International Ship and Port Facility Security (ISPS) Code (ISPS 2004), more and more international ports refuse to issue shore passes to seafarers because of increasingly strict port security requirements. Moreover, during the ship's stay at a port, the seafarers are always busy with operational activities such as port state inspections, cargo operations, bunkering and provisions replenishment; they do not therefore have any time or the physical capabilities to leave the ship and to benefit from their right to the shore leave (Dimitrova 2010, p. 88).

Apart from the above, there are a number of compromises under the MLC 2006, which may impair the effective enforcement of the Convention. For example, although Article III of the Convention refers to the fundamental right to freedom of association, there is still an absence of direct provisions guaranteeing seafarers' right to strike. The right to strike tends to be the most powerful tool to ensure that working and living conditions on board will correspond to the standards required by the Convention. The lawful use of the tool aboard ships has proven to be quite effective in the past (Dimitrova 2010, p. 88). However, although the MLC 2006 addresses a variety of rights, it fails to provide a provision guaranteeing seafarers' entitlement 'to uphold these rights through lawful strikes' (Bauer 2008). Another compromise is that in numerous Regulations of MLC 2006, the importance of consultation with shipowners' and seafarers' organisations is recognised. However, the process of consultation does not necessarily mean that the social partners such as the shipowners' association and the seafarers' trade union have to reach a quick decision. In many cases, the issues affecting seafarers' benefits are constantly put off because there is no explicit timeliness with regard to the process of consultation (Bauer 2008). Furthermore, there are also scholars having expressed concerns that the level of protection for seafarers in certain areas has actually been reduced under the MLC 2006 due to the fear of change provoked by such a sophisticated instrument (Christodoulou-Varotsi 2012).

2.2.2 *The Chinese Maritime Industry*

China has always been a maritime nation with its coastline of more than 32,000 km (including the mainland shore over 18,000 km and island shore more than 14,000 km), more than a 100 large and small bays and more than 20 deep-water harbours (GOVCN 2013). The country has a long history of ocean shipping dating back at least more than a 1000 years when it commenced trade with ancient Korea through Shandong Province via the Yellow Sea route (Chang 2002, p. 116). In the Ming Dynasty (1368–1644), Admiral Zheng He (1371–1435) led his fleets of 200-strong ships and 27,000 seafarers, and commanded expeditionary voyages to Southeast Asia, South Asia, the Middle East, and East Africa from 1405 to 1433 (Yamashita 2006, p. 14). Some commentators even claim that it was the Chinese, not Columbus, who discovered America in the year of 1421 (Menzies 2012, p. 96).

Unfortunately, the ocean shipping industry in China declined significantly as a result of the *haijin* (海禁), a state policy banning maritime activities, imposed during the Ming Dynasty and again at the time of the Qing Dynasty (1644–1911) (Wang and Ng 2004, p. 381). The sector enjoyed a short period of recovery and prosperity during The First World War and in the 1930s but suffered another big setback during the Second World War and the country's Civil War (1946–1949). In 1949, before the founding of the People's Republic of China (PRC), most Chinese ocean vessels had either escaped to Taiwan or been destroyed or seriously damaged, with only a small number of river vessels left in mainland China (Heine 1989, p. 9; Zhao 2009; Tsai 2009, p. 178). In 1950, the PRC merchant fleet consisted of only 77 ships of 1000 gross tons (GT) or over and most of these were unseaworthy (Muller 1983, p. 58). Meanwhile, in order to suppress development of new China, the Western countries implemented a strict trade embargo against the new China. The PRC's Minister of Transportation (MOT) had no ability to organise its own ocean fleet. In 1951, a joint venture between China and Poland, the Sino-Polish Shipping Company Limited was launched and opened a route from China to Europe, and hence took the first step in restoring Chinese international shipping (Wei and Liu 2001, p. 9). The first Chinese state-owned international shipping carrier, the China Ocean Shipping Company (COSCO) came into being in April 1961 (Wit and Meyer 2010, p. 745) and this has been considered as a most important milestone in the PRC's history of ocean shipping.

China's shipping industry has experienced a huge expansion in the last 50 years, especially since China adopted the open-door policy in the 1980s. Take COSCO, for example: the company has grown from a small shipowner with four small ships to a major shipping conglomerate with more than 800 modern merchant vessels with a total tonnage of 56 million deadweight (DWT) and an annual carrying capacity of 400 million tons (COSCO 2013). In the meantime, driven by the huge demand of imports and exports, tremendous change has taken place in China in the last 30–40 years, with a large number of shipping companies registered as engaged in international shipping (MSA 2012). Overall, China's ocean shipping industry still concentrates in several state-owned enterprises (SOE), including big players

like COSCO, China Shipping (Group) Company (CSGC), SINOTRANS & CSC Holding Company (SINOTRANS & CSC), and so on. By the end of 2014, the number of China's merchant vessels had grown to 5,405 totalling more than 200 million tonnes (DWT) and China was ranked as the third-largest ship-owning country in the world (UNCTAD 2014, p. 33; UNCTAD 2012, p. 42). Other commentators even assert that 'China will become the world's largest ship owner, the superpower in every area of commercial shipping by 2030.' (The Lloyd's Register 2013).

2.2.3 The Chinese Maritime Labour Market

The expansion of the fleet has led to a rapid growth of the seafarers' labour market in China. In 1999, the number of seafarers was estimated at 338,000 (Shen et al. 2005). This has led to a speculation that China would become the top supplier of seafarers to the world fleet and a potential alternative to the Philippines whose seafarers have for many years constituted the largest proportion (25 %) of the world maritime workforce since the mid-/late 1990s (Grey 1999; Li and Wonham 1999, cited in Zhao 2002). Arguably, such a speculation has become a reality at the end of the first decade in the twenty-first century. According to UNCTAD Maritime Review, since 2010 China has become the largest supplier of seafarers for the world fleet, ranking first in ratings and second in officers (UNCTAD 2011, pp. 158–159; UNCTAD 2012).

Like seafarers in many other countries, Chinese seafarers face many problems which restrict them to claim many rights prescribed in the international standards and national laws and policies. These problems involve seafarers' recruitment, training, employment terms and conditions, working and living conditions, health, and other aspects concerning their rights and interests as industrial workers. As examined in Chap. 1, these issues have drawn serious concerns and debates from a range of stakeholders, such as shipping companies, trade unions, maritime education providers, policy makers and maritime researchers. Amongst the various reasons identified for the 'roots' of these problems, the most significant one seems to be the inadequacy in China's maritime legislation concerning seafarers' affairs.

In modern history, China was primarily a land power and seafaring as an occupation received very little attention (Erickson et al. 2009: XIII). The development and reforms that took place in China's shipping sector have had a profound impact on the recruitment, employment and management of Chinese seafarers (Li 2010, p. 15). The structure of the source of maritime labour in the country has also been significantly altered as a result. With the dramatic expansion of the Chinese fleet and the increasing demand of seafarers, the Chinese maritime labour force has enlarged significantly. Seafarers used to be recruited from coastal areas; they are now increasingly sought after from inland towns and villages. This following section summarises the development of the seafarers' labour market for

commercial shipping in China, describes its current size, structure and features, and reviews the major changes of the source of Chinese seafarers since the economic reform and identifies the main reasons for these.

2.2.3.1 Evolution

Traditionally, seafaring was not much encouraged in China. It tended to be the last choice made under compelling circumstances, just as an old Chinese saying goes, ‘good families will not marry their daughters to seafarers (*you nu bu jia cheng chuan lang*)’. Seafarers were mainly recruited from amongst bankrupt fishermen, craftsmen or peasants from coastal districts in the country’s South East, in particular from Zhejiang, Fujian and Canton regions (Wang 2005, p. 188; MOT 1982). In the Qing Dynasty (1644–1911), the implementation of ‘forbidding the seas’ policy, introduced in the Ming Dynasty (1368–1644), had kept back sea transport with little development. There were very few Chinese ships sailing internationally during that period.

In the early twentieth century, Chinese seafarers had begun to work on ocean-going ships, but mostly aboard foreign merchant ships. For example, from the mid-nineteenth century Chinese seafarers were found amongst the crews on British merchant ships. Professor Falkus (1990) documents the observation of a large number of the Chinese seafarers working aboard the Liverpool-based Blue Funnel vessels:

Asian crews, who numbered about 3000 at any one time in the hey-day of Blue Funnel sailings...mostly...were recruited in Hong Kong (though many taken on there came from the Chinese mainland, especially from the Canton region), but some were recruited in Singapore and some from among the Liverpool Chinese community (1990, p. 271).

As far as Asian ratings were concerned, a special department looked after the recruitment, training, posting, and paying of Asian crews, most of whom were Chinese. From the earliest days these Chinese crews formed the majority of seamen on Blue Funnel vessels. Originally many had come from the Chinese mainland but after the communist victory in 1949 the majority came from Hong Kong (1990, p. 309).

However, sometimes this was the result of force or straightforward kidnap or the lure of an agent’s tale of riches. These hapless seafarers had led an uncomfortable life, working in the galley, cleaning officers’ clothes, or sweating down in the engine room (SACU 2001; SACU 1988, p. 36). Many of them lost contact with home and finally married and settled at foreign ports. For example, by the end of the Second World War between 15,000 and 20,000 Chinese seafarers had made Liverpool their home (Gardiner 2013).

When the People’s Republic of China was founded in 1949, constructing a Chinese maritime industry was set as an explicit national strategy in order to maintain national security and to promote international trade. For example, immediately after the Communist Party took power in Beijing, Mao commanded the building of more ships and the development of China’s ‘railway’ and ‘great wall’ at sea (Peng 2012). Since then, China has adopted various measures to revive the

Chinese maritime industry, including establishing shipyards and building new ships.

In the 1950s and the 1960s, with the establishment of the nationalised ocean-shipping industry and the increased demand for seafarers, more importance than before had been attached to the group. It was recognised that Chinese seafarers would play a vital role in the development of Chinese maritime industry (Cai 2009, p. 159). However, at that time, apart from a small number of graduates from maritime colleges and maritime training centres, the main channel for sourcing seafarers was marine personnel who had left naval forces. The supply of Chinese seafarers was far from meeting the growing demand of the maritime industry in China.

The 1970s and the 1980s witnessed another rapid development in China's ocean shipping industry. Driven by the dramatically increased demand, shipping companies started recruiting seafarers from more sources, for instance, from maritime colleges, vocational training centres, former servicemen from the navy, and the children of the former seafarers. Meanwhile, China had also taken a series of actions to develop maritime education and training (MET) in order to cultivate more shipping talents. Overall, however, the coastal region such as Guangdong, Shanghai, Tianjin, Shandong and Liaoning remained the main source of maritime labour in China with most seafarers recruited from these cities and provinces.

2.2.3.2 ‘Revolution’

A dramatic change, sometimes referred to in China as a ‘revolution’ or a ‘fundamental change’ in the recruitment of seafarers, has happened since the mid-/late 1990s. First of all, graduates from maritime universities and colleges have become the main source for maritime labour in the country. These maritime education and training (MET) institutions include those privileged universities (equivalent to the Russel Group universities in the UK or the Ivy League universities in the US) like Dalian Maritime University, Shanghai Maritime University, Jimei University, Wuhan University of Technology, and so on, but also include relatively ‘new’ and less privileged MET institutions at the provincial and local levels such as Dalian Maritime Institute and Guangzhou Maritime Institute. At the same time, with the extension of the reform of the ocean shipping system, Chinese seafarers started to work on board foreign ships. This has led to the active participation of foreign shipowners in Chinese seafarers’ recruitment. As a result, the employment mode of Chinese seafarers and their relationship with employers are becoming ever more complex (Wu et al. 2007, p. 14).

In the meantime, the expansion of the Chinese and the international fleets has led to a rapid growth of the seafarers’ labour market in China. In 1999, the number of seafarers was estimated at 338,000 (Shen et al. 2005). This led to a speculation that China would become the top supplier of seafarers to the world fleet and a potential alternative to the Philippines, whose seafarers have for many years constituted the largest proportion (25 %) of the world maritime workforce since the mid-/late

Table 2.2 Chinese seafarers registered with the MSA (2013)

Officers	Ratings	Total
272,705	301,412	574,117
47.5 %	52.5 %	100 %

Source: Created by the author based on information provided by MSA in 2014

Table 2.3 Chinese seafarers for the PRC-flag ships and for foreign-flag ships (2013)

Seafarers for the PRC-flag ships	Seafarers for foreign-flag ships	Total
136,934	437,183	574,117
24 %	76 %	100 %

Source: Created by the author based on information provided by MSA in 2014

1990s (Grey 1999). Arguably, such a speculation has become a reality at the end of the first decade in the twenty-first century. Since 2010, China has been reported as the largest supplier of seafarers for world fleet, ranking first in ratings and second in officers (UNCTAD 2011, pp. 158–159; UNCTAD 2012).

However, such an impressive resource has not been fully utilised by the world fleets, and most of the qualified ocean-going seafarers are found in China's own vessels, with many standing idle waiting for ships to sail. According to the figures provided by China's Maritime Safety Administration (MSA), the total number of registered Chinese seafarers was 574,117 at the end of 2013. As prescribed in Table 2.2, amongst all these seafarers, 47.5 % were officers and 52.5 % ratings. The number accounts for nearly half of the worldwide total (MSA 2014).

At the end of 2013, there were 6318 ocean-going ships and 13,675 coastal trading vessels flying the PRC flag. As analysed in Table 2.3, to satisfy the minimum manning requirements for Chinese ships would need 136,934 seafarers, suggesting that there would be 437,183 Chinese seafarers available for employment on board foreign-flag ships.

In 2013, however, the total number of Chinese seafarers working on foreign-flag ships was reported as 119,316, including those working on China-owned but foreign-flagged ships, among whom 60.7 % were ratings and 39.3 % were officers (MSA 2014). Although the real gap may not be as precise as the figures noted above, these calculations indicate that the supply of seafarers in China is far larger than the demand of China's own fleet, suggesting that a large number of Chinese seafarers have to stand idle and struggle for employment opportunities.

2.2.3.3 Sources of Maritime Labour

Traditionally, as in most other countries, seafarers in China were recruited primarily in coastal provinces such as Liaoning, Tianjin, Shandong, Jiangsu, Zhejiang, Fujian and Guangdong, as shown in Fig. 2.1.

The distribution of maritime labour in China has changed significantly in the new millennium. The major sources of Chinese seafarers have shifted from the



Fig. 2.1 The source of Chinese seafarers until the end of the twentieth century. *Source:* Created by the author with data drawn from fieldwork in 2013

coastal areas to some main inland areas, including Hebei, Henan, Anhui, Hubei and Sichuan provinces. The coastal areas continue to supply seafarers, but on a much minor scale.

A number of reasons have contributed to such a phenomenal shift. One most important factor is the rapid economic development in the coastal provinces. This has led to significantly improved living conditions there. As a result, young people are reluctant to seek jobs at sea. At the same time, more employment opportunities on land with good payment have been created. The payment on board is not as attractive as it was in the past. The majority of people in the coastal areas prefer to choose a job on land rather than work at sea (Chambers 2003). In addition, with the rapid expansion of the Chinese maritime industry, an increasing number of shipping companies and other land-based maritime servicing companies have been established in the coastal cities, driving the demand for personnel with maritime talents, especially those with seafaring experiences. As a result, many seafarers have decided to withdraw from the sea and have picked up jobs in management positions on land, as shipping managers, charterers, brokers and insurers, and so on. This trend has been well confirmed by a number of interviewees who held senior managerial posts in the maritime industry, all of them with working experiences at

sea. One of them, a 46-year-old ex-seafarer who has become a senior crewing manager in Shanghai, explained in the interview:

I have worked on board ships for nearly twenty years. Four years ago, I got this job as a manager in this crewing agency. Of course, I would not go to sea again. In the past, there were not many job opportunities for seafarers on land. Now the situation is different. There are many shipping companies seeking for managers. People from coastal areas prefer to work in offices. Sometimes they may also choose a seafaring profession, but it is only temporary. They would give up a job on board as soon as they find other opportunities on land . . . As far as I know, the majority of seafarers are now coming from Shandong, Henan, Anhui and other inland areas (Interview SF 4-1).

Indeed, maritime colleges and universities find it difficult to recruit students from the coastal areas. They have shifted their recruitment attention from coastal regions to inland provinces and from urban to rural areas, where the economy is relatively less developed and living standards and labour costs remain low (Zhao 2000). Large numbers of seafarers are now sourced from the towns and villages in Anhui, Hebei, Henan and Sichuan that are hundreds of miles from the sea and that have little knowledge, tradition and connections to seafaring, as shown in Fig. 2.2.

The map above indicates a significant change in the source of the supply of seafarers in China today. Some coastal provinces, such as Guangzhou, Zhejiang and Jiangsu, have ‘stepped down’ as the leading suppliers of seafarers; some inland provinces, such as Anhui and Henan have ‘stepped up’ and begun to ‘produce’ seafarers in large numbers. Take Henan for example. The province is located deep inland in central China as the most densely populated province, second only to Sichuan. Traditionally, it has little to do with the sea and seafaring. Interestingly,

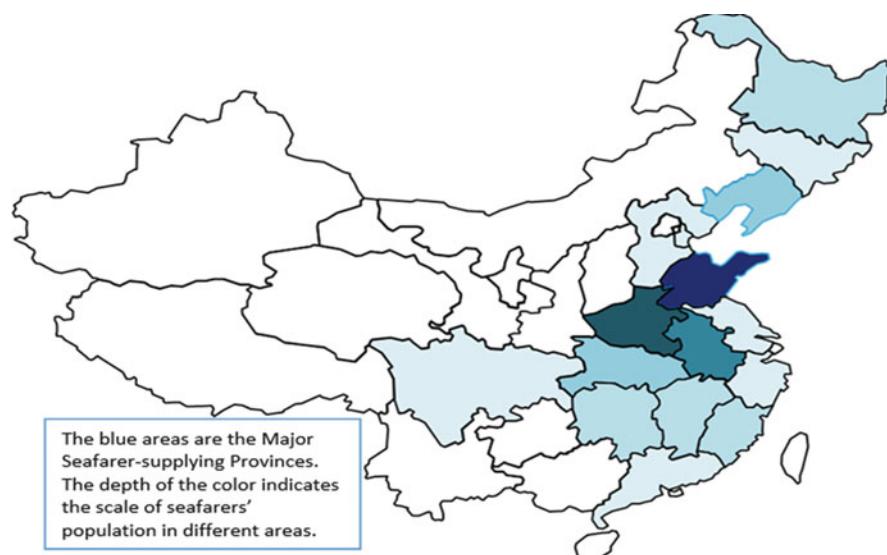


Fig. 2.2 The current distribution of Chinese seafarers. *Source:* Created by the author with data drawn from fieldwork in 2013

however, seafarer training schools and colleges have mushroomed up in the recent 10–15 years, simply because here the labour cost is low and the employment opportunities are limited when compared with the coastal areas. Working aboard a ship is at least a good way to improve people's income and to relieve employment pressure. Both the provincial and the local governments support the initiative, which agrees with the overall development strategy introduced by the central government in the new millennium that encourages more investment to 'go west' (Pai 2012, p. 243).

It is interesting to note that Shandong has become a top supplier. Even though with a number of coastal cities, Shandong is not as highly developed as other coastal provinces such as Zhejiang and Guangdong. This suggests that seafaring as a profession remains attractive in some areas of the province. Moreover, unlike most other coastal provinces, Shandong has a vast inland rural area and a large population, hence possessing strong potentials for developing maritime labour. Overall, however, the main suppliers of seafarers still cluster in the eastern part of China. There is still a long way to go before the seafaring profession could penetrate deeper into the western regions and become a common occupation or profession there.

As with seafarers in many other countries, Chinese seafarers face many problems that restrict their entitlements to rights and interests covered by the national and international standards, including the MLC 2006. These problems involve seafarers' recruitment, training, employment terms and conditions, working and living conditions, health, and other aspects concerning their rights and interests as industrial workers, and the problems have drawn serious concerns and debates from a range of stakeholders, including shipping companies, trade unions, maritime education providers, policy makers and maritime scholars and commentators. Of the various reasons identified as the 'roots' of these problems, the inadequacy in China's maritime legislation concerning seafarers' governance seems to be a major contributor. The MLC 2006 provides an excellent opportunity for China to improve its governance of the maritime industry—indeed a better chance of protecting the rights and interests for the country's seafarers.

2.2.4 Chinese Seafarers' profile

As discussed in the previous sections, Chinese seafarers play a vital role in the construction of Chinese maritime industry. While this has generated great interest in Chinese seafarers' quantity and quality, little is known about their miserable profile in other aspects, such as they are considered as 'migrant workers' or 'peasants at sea' (54seaman 2014), and they also play special roles in their families. This section provides a detailed description from a sociological perspective.

2.2.4.1 Chinese Seafarers' Role as Temporary Migrant Workers

According to Warrick (2010, p. 123), migrant workers are those 'who move from place to place to get work'. In the New Encyclopaedia Britannica, they are defined as 'workers who move about systematically from one region to another offering their services on a temporary, usually seasonal, basis' (Mignard 2003, p. 118). The International Convention on Migrant Workers and its Committee prescribes a standardised definition of migrant worker. According to Article 2(1) of the Convention, a migrant worker is 'a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national' (UN 2005, p. 4). Generally, migrant workers are doing 'undesirable jobs' in 'undesirable sectors' that 'natives no longer wish to take up' (Ruths 2002, p. 19). They are therefore 'inherently more vulnerable to the deprivation of even their most basic rights' and to face 'various unanticipated exploitation' (Ruths 2002, p. 23). Accordingly, they tend to face 'poor working conditions, long working hours, low wages, discrimination' and 'are abused to various extents' (ILO 2004).

Chinese migrant workers have become an increasingly visible social group. As discussed in the previous context, considerable regional disparities have brought about a large population of migrant workers. They leave their local residence and seek employment opportunities in the coastal areas or other places with higher development level. However, the Chinese seafarers from rural areas have to migrate much more to achieve a means of livelihood. First, they need to leave their home and seek an employment opportunity in the coastal cities. Then they have to be despatched aboard a ship and tramp worldwide, subjected to a global governance framework. Compared with land-based migrant workers who are governed by the nation's administrations, seafarers therefore always face a more complicated and perplexing regulatory system.

Chinese seafarers are still one of the most vulnerable groups amongst world migrant workers. There are a number of reasons contributing to the phenomenon. First of all, although a global governance framework has been established to unify labour standards aboard ships, there are still many deficiencies (Lillie 2004). Many international Conventions and standards cannot deliver on their promises, due to the unique nature of seafaring labour and the de-regulation in the maritime industry (Alderton and Winchester 2002). Secondly, even though China has made a great effort to keep in tune with the global governance, there are still many gaps between the Chinese standards and international standards. There is still a long way to go before China can minimise the institutional deficiencies that exist in many aspects. Thirdly, in practice it is difficult to 'prevent the exploitation and labour abuses being committed by both licensed and unlicensed recruitment agencies' in China (Wu 2008).

Chinese seafarers' vulnerabilities are related to a number of factors. First, although the quality of Chinese seafarers has been improved significantly in recent years, and China is recognised in the white list of STCW, Chinese seafarers are still considered as low-skilled or unskilled migrant workers. Seafarers have today

benefited from the rapid development of technology. Many new ships have been built with advanced equipment, glorious facilities and ample living space. However, many Chinese seafarers are still working on board those old and substandard vessels with very poor working and living conditions. As a senior crewing manager in a ship management company in Beijing explained in an interview (2013):

We have more than two thousand seafarer employees. Most of them are very high standard. However, the majority of them are still working aboard bulk carriers, general cargo and container ships with very old ages. We have tried many times to insert our seafarers into the European maritime labour market; they normally have a higher standard of vessels, management level and employment conditions. However, only a very limited number of seafarers are accepted by them. There is a long way to go before Chinese seafarers could be accepted on a global scale (Interview SM 4-1).

Another vulnerability of Chinese seafarers is that they still stay outside the protection of international trade union system. As will be discussed in Chap. 3, Chinese seafarers have not joined the ITF organisation, which represents the interest of seafarers affiliated to it. ITF is considered as a powerful international trade union in the maritime industry and fights for seafarers' working conditions and to protect their interests and rights. Chinese seafarers are affiliated to the All-China Federation of Trade Union (ACFTU). However, the bargaining power of ITF is much stronger in the international labour market than that of ACFTU. In many cases the ACFTU is unable to provide as sufficient and efficient protection for a miserable seafarer in a foreign port as the ITF. Another comment taken from a 55-year-old captain, coming from Shandong province, amplifies this point in an interview (2013):

The biggest issue for Chinese seafarers is that they do not have a powerful organisation to protect their rights. According to my experience, there are always disputes between seafarers and shipping companies. For the Filipinos, they can seek assistance from their Seamen's Union or place their complaints to the ITF. The disputes would be solved efficiently under the pressure of these organisations. For Chinese seafarers, we are restricted from contact with the ITF. The ACFTU is the only legal trade union available from which to seek help. Of course, sometimes they also provide assistance for seafarers. However, in most of the cases they only tell a seafarer to hire a lawyer and appeal in court. We know it normally takes very long to hear a case; therefore, we always give up our claims (Interview SF 4-2).

For Chinese seafarers, they do not have a powerful organisation to bargain for their employment terms and defend their basic rights. Their working conditions and wages are totally at the mercy of shipowners or of supply and demand relations in the maritime labour market. Even among low-income seafarers from some Asian developing countries, Chinese seafarers' wages fall at the bottom of the range. Figure 2.3 outlines a comparison of seafarers' wages by selected Asian countries and ranks.

Figure 2.3 indicates a clear income inequality among seafarers from different countries. However, the wages of seafarers from India, the Philippines and Bangladesh always keep on the same level for the same rank. However, Chinese seafarers earn much less than seafarers from other countries for both officer and

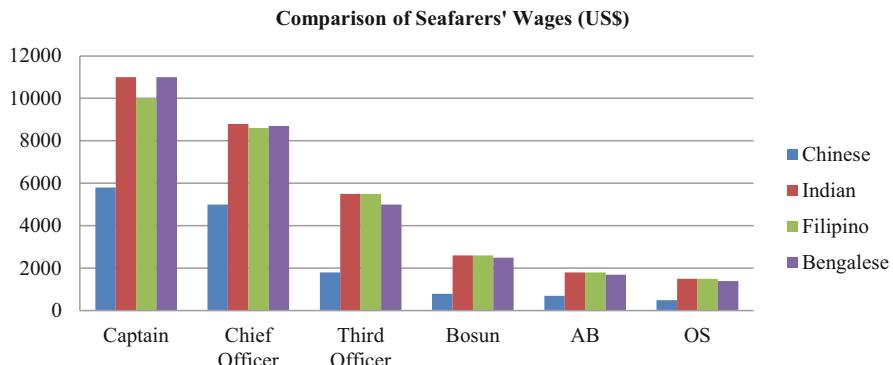


Fig. 2.3 Comparison of seafarers' wages by selected Asian countries and ranks. *Source:* All wage data provided by manning agencies in 2013. The actual wages in the labour market may fluctuate from time to time, but the comparison reflects the same

rating ranks. In addition, even on the same ship, it is very common that some Chinese officers earn less than a bosun or AB from other countries. As one 31 years old Second Officer, coming from Henan province, complained about this unfair phenomenon in an interview (2013):

I have been working with Filipinos and Indians for many years. It is very difficult for me to understand why same ranks cannot get the same payment. The key issue is that what we have contributed is the same; sometimes I even think I am better than them. What is more ridiculous is that I always earn less than those with lower rank than me. I always feel very ashamed about that, but now I get used to that because I have no choice. I am unable to bargain for a higher wage. I have to take what they give me; otherwise I get nothing (Interview SF 4-3).

2.2.4.2 Chinese Seafarers' Role as Family Members

The family is the most fundamental unit of social organisation, which has long been a subject of study by social scientists. Functionally a family is defined by Garland (2012, p. 56) as the group 'through which persons attempt to meet their needs for belonging and attachment and to share life purposes, help and resources'. As a primary and basic social group, the family requires its members to 'take on roles, both chosen and assigned, which they enact with another'. These roles change over time, but it is necessary to live alongside one another.

However, the seafarer suffers from the absence of routine family life and becomes a visitor in his family. Arrivals become events instead of daily occurrences. He becomes a stranger to the children whom he did not watch grow up (Hohman 1952, p. 17). A seafarer has to live apart from his family for the majority of his time, due to the special characteristics of seafaring labour. Clearly, living apart has negative consequences for both the seafarer and his family (Forsyth and Bankston 1983). However, it is practically a commonplace that the seafarer's life is

incompatible with his family life. As with any family, a seafarer has multiple roles in the family, including the husband of the wife, the son of parents and the father of children. However, a seafarer always finds it difficult to play the roles effectively. Although the problem is common for seafarers in most countries, Chinese seafarers tend to face special challenges because of unique socio-economic and cultural backgrounds.

2.2.4.2.1 Spouse Role

The roles of Chinese men have been shaped by special social-economic background in China. In the spousal relationship, a husband normally has several roles, including breadwinner, emotional comforter, and caregiver, and so on. However, a seafarer's role as breadwinner is always in conflict with others. When husbands are absent for a long time, their wives are very likely to suffer the loneliness of emotional isolation. Past research on seafarers' wives indicates that the most common responses to their husbands' absence were loneliness, anxiety, frustration, disquiet, and depression. For example, Decker (1978) found that the lack of companionship and loneliness were reported to be two main problems faced by these wives. Another investigation of Australian seafarers' wives indicated that 79 % of them reported that they experienced stress when their partners were on board (Foster and Cacioppe 1986).

Unlike a family in many Western countries where a wife enjoys more freedom and independence, the role of a wife in many Chinese families has some special characteristics. While the traditional family structure and values have changed in recent decades, some customs still remain prevalent. For example, the Chinese family is virilocal in that there is a strong preference for married couples to reside with the husband's parents (Wolf 1994, p. 247). The traditional women's role has been limited to familial roles of wife and motherhood. In recent years, with the expansion of higher education, the industrialisation process, and the modernisation of the economy and society, the role orientation of women has changed significantly compared with the past. Therefore, more and more women have been employed in activities outside the household. In addition, it is also recognised that the employment of a wife-mother has a positive impact on the wife's mental and emotional health and therefore has a positive effect on the marital relationship (Malarkey et al. 1995, p. 142). Over the past several decades, economic factors have brought more and more Chinese women into the workforce. The government has also explicitly promoted gender equality in the workplace.

However, it is nearly impossible for a seafarer's wife in China. When a woman marries, she will enter her husband's household and will assume the role of daughter-in-law. In many cases, she has to be subservient to her parents-in-law. This is particularly common in Chinese rural areas. In the absence of the husband, the wife has to take over all the domestic responsibilities, including typically masculine tasks. Even when the wife has a job, she has to give that up and shift her focus on to the family. In addition, the relationship between daughter-in-law

and mother-in-law in China is always very difficult. In many cases, the husband plays an important role in smoothing their relationship and maintaining a harmonious family. However, when the husband is absent, the conflict between the wife and her parents-in-law might be very tense. This would not only exacerbate the wife's emotional disquiet, but also in the longer term undermine the spousal relationship. As a 42-year-old oiler, coming from Hubei province, depicted his agony in an interview (2013):

I am tired of the fighting between my wife and my mother. When I am at home, I can make both of them happy. However, as soon as I leave home, they will quarrel with each other, even on very tiny issues. Each time when I called my family, both of them would complain too much to me. I have tried all my best to persuade them to be friendly to each other, but it is useless. I know this is commonplace and happens a lot in seafarers' families. Because of our absence, our family members very easily become depressed and have emotional problems. Many times, my wife threatened me with divorce if I continue my seafaring profession (Interview SF 4-4).

2.2.4.2.2 Fathering Role

The fatherhood role in China has been primarily shaped by Confucian philosophy, as the 'dominant cosmology and familial ethic for more than 2000 years' (Meredith 1992, p. 45). In the family ideology of Chinese families, the most important familial relationship is the father-son (or daughter), even surpassing the husband-wife relationship (Stacey 1983). In traditional Chinese society, the next generation is expected to honour their parents and be obedient to the eldership, which has long been considered as an important cultural and family value. Traditionally, discipline or training of children has been the responsibility of fathers. While the mother is portrayed as the nurturer and provider of care and love, the father's role in the family is both an educator and a disciplinarian (Abbott et al. 1995, p. 192). It is considered that a qualified father needs to answer children's questions, teach them new skills and help them solve problems (Abbott et al. 1995, p. 197).

However, as a seafarer a father may encounter various problems. It is not unusual for seafarers to see a son or daughter for the first time when they are already a year old, or find their young children burst out crying because they do not know them when they arrive home (Dauer 2009, p. 163). Seafarers' families become used to doing without a husband and father. Even though there are warm bonds of affection, the lack of daily contact, in particular physical contact, creates an enormous gap. Sometimes seafarers find that they are only 'periodic guests' and they end up playing a role before the children in which they are uncomfortable (Dauer 2009, p. 167). As a 36-year-old Third Engineer, coming from Shandong province, commented in an interview (2013):

I had missed the moments when my son was born, when he first walked and when he first went to school. It was such a pity for me. My wife has done a great job with the kid. However, sometimes I find I have been left out and on many occasions I feel that I am just a current account at a bank. Every time when I was at home I wished that I could live intensely the little time with my son. However, the effect had always been exactly

contrariwise. I have tried all my best, but there is still estrangement between us (Interview SF 4-5).

2.2.4.2.3 Filial Piety Duties

In Chinese society, filial piety is considered as ‘a complex series of duties of children to their parents’ (Ng et al. 2002, p. 138). It has been a pre-eminent Chinese value and stressed by Confucian philosophy (Hsu 1991, p. 23). Filial piety is defined as ‘having respect, honour, fidelity, devotion, dutifulness, and sacrifice for parents’ (Chen 1982). The intergenerational responsibility between parents and children represents the eternal cycle of human development and is a central tenet in Confucian culture (Whyte 2003). While children depend on their parents when they are young, the parents depend on their children when they are elderly. The attitude of placing others’ needs before the self is therefore one of the most common values in Chinese culture (Yu 2008, p. 9). Filial piety is not only an important family value in collectivistic society, but also an inevitable alternative when China does not have an effective welfare and social security system. The elderly will have to be taken care of by their children during their last stages of life. As a result, filial piety plays an important role in promoting the harmony and stability of the family and in leading to increased success of economic function (Wang 2008, p. 40).

In recent years, great efforts have been made by the Chinese government to establish an effective welfare and social security system. However, as will be discussed in more detail in Chap. 4, there are still a large number of people not covered by the system. The Chinese older generation has therefore high expectations that their adult children would take care of them in their old age. Traditionally, it has been part of Chinese belief that the main reason for having children is to ensure that one is looked after in one’s old age (Kong 1998). This has also been written in Chinese law. For example, Article 15 of the Marriage Law states that ‘family members should take care of elderly parents, in particular when they are too weak to work and have no means of earning a living’. The responsibility is brought to bear particularly on the sons because of the patriarchal character of most Chinese families (Li 1994, p. 39). Also, the sons must perform ceremonial duties of ancestral worship for deceased parents. The custom of worshipping ancestors is very important and prevalent in China, especially in rural areas. During important Chinese traditional festivals, it is still the formal duty of sons to perform a memorial ceremony for deceased forefathers (Ho 1987, p. 227). In addition, it is recognised that more weight should also be placed on the emotional consolation of the elderly. For example, the Law on the Protection of the Rights and Interests of the Elderly states that ‘an adult is required to provide the elderly with material well-being as well as emotional consolation’.

However, these duties are very difficult for a Chinese seafarer. As discussed in Sect. 2.2.3, the majority of Chinese seafarers are from rural areas. Their parents are either peasants or manual workers, most of whom are not covered by the Chinese

welfare and social security system. They have to rely on their offspring to provide for their material well-being in their old age. In the past, many seafarers might have brothers or sisters to share the responsibilities with them. Nowadays, with the effectiveness of the China's strict one-child policy, the majority of young seafarers are the only child of their parents. For most Chinese seafarers with about 10 months' seafaring time a year, it is not possible for them to perform the above duties as others. As a 43-year-old Chief Officer from Sichuan province remarked in an interview (2013):

I have been working on board for nearly twenty years. In these twenty years, the total time I spent with my parents is not more than half a year. When I was on leave, I had to attend various training and exams requested by the STCW to promote my career development. Even though I give them enough money to ensure they have good well-being, I cannot satisfy their emotional consolation. I have always been criticised by my neighbours and relatives because I could not stay with my parents when they were in trouble. I think that I shall have to quit the job when they are too weak to take care of themselves (Interview SF 4-6).

2.2.4.2.4 Difficulty in Rejoining Family Life

There is a difference between returning home from holidays in a normal way and seafarers' disembarking for holidays and returning their home. As discussed in the previous context, Chinese seafarers play different roles in their family. However, when seafarers have to leave home and work on board, they become periodic guests or visitors. It is very common for both the seafarer and his family to have a feeling segregation and strangeness that can be caused by the long period of separation. Without living together on a day-to-day basis, they may find it is difficult to maintain intimate relations. As one 56-year-old Chief Engineer from Dalian commented in an interview (2013):

When I was at sea, I had always dreamed of reunion with my family. However, when I went home, I found everything was not the same as I thought. The first few days they would be very glad to see me, just the same glad to see a guest. After a long time of separation, they would become very kind and friendly to me but not intimate as I wanted. In addition, sometimes I found that I was just a fifth wheel on a wagon when they were busy on their daily routines, but I just stayed there without knowing what to do (Interview SF 4-7).

A seafarer returning home may find that he has returned to a home that is not the same as the one he left and that the people—including himself—are not the same as they were (Dauer 2009, p. 180). There are a number of factors that stand as obstacles to the seafarers' rejoining family life. When the seafarer has left home, he will no longer share the experiences of his family members, such as changes in their home, what a neighbour said, what happened in the village, a joy or disappointment experienced by a family member. The seafarer who has left home lives through a series of experiences in which his family members have not participated. He comes into contact with new people, is involved in different situations and takes new responsibilities. After a certain length of time, he will have integrated into the

new group and have developed new habits. Without the common experiences, the seafarer returning home may find that it is difficult for him to explain what he has experienced; many of the things he is describing or trying to describe are not being understood.

2.2.4.2.5 Difficulty in Rejoining Social Society on Land

Apart from the specific and particular difficult to rejoin their family life, seafarers also encounter obstacles in rejoining society on land. During the period when a seafarer is aboard ship, he is more or less separated from a society with which he has maintained only weak contact. Even though he can go ashore and call his family and friends occasionally, that is not the type of regular contact on land. On his arrival home, there would be a cluster of sensations with some of his close friends. However, the joy and happiness of reunion may last only for a few days or moments. Very soon the seafarer may be disappointed to find that he is outside their group. His close friends may drift away because he cannot even attend their marriage or other important events. Naturally, they have formulated their own regular social circles that prevent them from socialising more often with the seafarer.

Lack of common topics to discuss is another block for seafarers' rejoining social society. People prefer to talk and to stay with others with information and knowledge. In the past, seafarers in China were considered as such people with more information and knowledge because they went around the world. With the rapid development of communication technology on land, people today know very easily through the internet and television what is happening in the wider world. However, seafarers on the high seas are very much isolated from what is going on outside their own small world. In addition, the situation of isolation and of being confined to a ship also discourages their interest in the day-to-day events of the distant place. As a result, when they go home, seafarers may find they lack common topics to discuss with others. They cannot understand what others are talking about, and vice versa. Many seafarers talked in their interviews that they would like to travel a long distance to meet their ex-colleagues because they had mutual understandings.

In recent years, China has witnessed rapid developments and dramatic changes. After several months aboard ship, a seafarer may find many things in his home place are totally different. Although seafarers still form part of society, they have been left far behind. When they meet people with other jobs with good salaries, or when it comes to giving their opinions on sundry matters with which land people have day-to-day familiarity, they may often feel inferior. This is particularly difficult to adapt for a seafarer who has a post of authority on board. On the ship, he has been used to simply calling and having all he might need brought to his cabin. However, when he returns home, he finds that he has no authority to dispose over anyone. Sometimes it may be difficult for him to accommodate to the sheer change from 'being someone important in a small community to being nobody in a

large community' (Dauer 2009, p. 182). As a 55-year-old Master, coming from Anhui province remarked in an interview (2013):

Every time when I return home I feel that I am disorientated. When I am on board, I have overall authority. Everyone has to know my habits and get everything ready for me without the necessity of telling them. At port, the ship agents would place a special car at my disposal for getting about in the city. However, when I return home, I cannot give orders to anyone, even my son. It is even annoying when I have to queue a long time to pay my bill in the bank. I know that it is a normal life on land. However, it is indeed difficult for me to get used to it and accept it cheerfully (Interview SF 4-8).

2.2.4.3 Chinese Seafarers' Social Status Changes Across Different Times

In modern China, Chinese seafarers' social status is considered inferior and low for a number of reasons (Sun and Yao 2013). First, even though China is now an important maritime power in the world, it has traditionally been primarily a land power. The majority of Chinese people are not active in seafaring. Second, this has been affected by the Confucian philosophy. According to Confucius' admonition, 'people should not go far from home when their parents are still alive' (fu mu zai, bu yuan you) (Lowry 2008, p. 135). Seafaring as an occupation is the last choice and only when they cannot find a better way for a livelihood.

Second, Chinese seafarers tend to have very limited social network (Zhu 2005), which may restrict the improvement of their social status. Once aboard a ship, they nearly lose all the contacts with the social environment. Even when they are on leave, many seafarers coming from rural areas are often constrained by poor transportation and communication facilities. It is therefore difficult for them to build and maintain their social network. In addition, most of them have an inclination to maintain friendships with other seafarers, with whom they share a similar experience and knowledge. To some extent, poor-quality social relations are related to poor capacity to control or manipulate social resources and finally result in poor social status.

Third, income is a crucial indicator for measuring a person's or group's social status (Lau et al. 2013, p. 71). Payment is a status symbol as well as a means of subsistence. With the rapid economic growth in recent years, the wage increase of land workers has significantly exceeded that of Chinese seafarers. Many Chinese seafarers do not take pride in, or derive meaning from, their work. As a result, the seafaring occupation is always considered inferior in seafarers' own eyes and in the eyes of others. As a 32-year-old Second Officer, coming from Zhejiang province, commented in an interview (2013):

Even though I know shipping industry makes a significant contribution to the whole world, I seldom take pride in my work. On the contrary, in many cases I feel ashamed of doing this job. Sometimes, I am reluctant to attend the reunions of old classmates. Most of them have quit seafarer jobs and have good career development in land industries. Each time when I told them I was still working at sea, they would sympathize with me and ask me when I was going to quit. In addition, the pressures are also coming from my family and relatives.

Nearly all of them think that seafaring as an occupation is not a good choice for my future (Interview SF 4-9).

Even compared with peasants who are traditionally considered as staying at the bottom of Chinese social hierarchy (Guo 2013, p. 203), the attractiveness of seafaring profession is declining. As discussed in Sect. 2.2.3, the major sources for Chinese seafarers have shifted from the coastal cities to some rural areas. Most seafarers have a peasant family background, and their parents and wives are still engaged in agricultural labour. The status of the Chinese seafarers' group has remained between the peasants' class and the workers' class. Indeed, seafarers in China are usually called 'peasants at sea', except the fact that they cannot stay close with their families as real peasants. As a 37-year-old AB from Henan province commented in an interview (2013):

My home town is in Henan province. My parents and my wife are all peasants, and we live in a small village. We have contracted ten mu of land [total, 0.667 hectares] for farming, and the crop each year is just enough to cover our living costs. When I am on leave, I also tend to the land and contribute some labour. I do not think I am too much better than other peasants, except that I can take back extra income. However, I have also lost too much time in not being with my family (Interview SF 4-10).

More importantly, seafarers' social status in China has been affected to a large extent by national strategy and policy that has varied over time. As mentioned in the previous sections, in the early 1950s the national strategy was to build China's 'railway' and 'great wall' at sea. Given that seafarers play the pivotal role in developing the Chinese maritime industry, the importance of seafarers was improved to an unprecedented position. In addition, the serious shortage of Chinese seafarers at that time amplified their importance. There were only a very limited number of seafarers in China; they were therefore considered as very special talents. Compared with many contemporary professions on land, seafaring as an occupation had several advantages. First, seafarers' wages were at the top of the payment list and much higher than those in the land industries. Second, before 1980s the new China had experienced a terrible material deficiency. The Chinese Government therefore implemented a strict rationing policy to control the supply of consumer products. For the majority of Chinese families, it was even a dream to purchase the 'big three items': a television set, a refrigerator and a washing machine (Ju 1996, p. 16). However, many Chinese seafarers had contrived to buy these 'big three items' overseas and had brought them back home. Third, during the period when very few people had the opportunity to go abroad, the fact that seafarers were paid for travelling was also considered by other people as a privilege and a perquisite accruing to their occupation. All these factors gave seafarers unprecedented social status in their own eyes and those of others.

However, Chinese seafarers have not preserved their privileges and prestige since that earlier time. Their social status has been declining for a number of reasons. First of all, there was no law or government policy to establish the importance or status of Chinese seafarers, even at the time when they were considered very special talents and when they enjoyed different privileges and

prestige. Therefore, they could very easily be deprived of their privileges and prestige when the social structure changed. Second, there are two driving forces that determine a group's social status: changes in demands for performance and changes in supplies of talent. The demand and supply relations have significantly affected Chinese seafarers' social status. As will be explained in Chap. 3, during the past 3 decades, the number of Chinese seafarers has increased dramatically. Maritime education and training institutions in China continue every year to output large numbers of maritime graduates. The supply of certain types of Chinese seafarers has far exceeded the demand. Accordingly, the importance of Chinese seafarers is no longer recognised by society. Third, since the implementation of the economic reform policy, especially after the 1990s, China has witnessed dramatic changes in many aspects. China's social and economic structures have experienced some fundamental changes, such as the supply of commodities. The privileges that seafarers previously enjoyed have become available to most of the people. As a result, the prestige and social status of Chinese seafarers have also been impaired in their own eyes and in those of others. As a 58-year-old Master from Jiangsu province commented in an interview (2013):

Now the situation is completely different. In the past, we were properly taken care of by the government because we were considered as a special talent. In addition, during the period of terrible material deficiency, seafaring as a profession was admired and envied by many. When I was a young fellow, I brought the 'big three items' back for my family and for many of my relatives. Wherever I went, others would cast envious eyes when they knew that I was a seafarer. However, now we are looked upon as 'peasants at sea' and sometimes I feel ashamed of doing this job (Interview SF 4-11).

2.3 Impact of the MLC 2006 in China

The world knows that the MLC 2006 has not yet entered into force in China. Does the world know how China has reacted to the introduction of this new international Convention? Has the Convention generated any impact in terms of policy, regulation or legislation, as well as in the attitude and behaviour of the key stakeholders in the country? In the context of law, this section will discuss these issues by examining the main policies, regulations and legislations introduced since 2006, and by analysing the empirical data collected in the fieldwork in 2013 and 2014, and the latest development.

2.3.1 *Changes in Legislation*

As explained in Chap. 1, the word legislation (fa) in Chinese has a wide coverage to include laws, regulations, policies and administrative rules of other formats (falu and fagui). The Legislation Law of the PRC provides five major levels of the Chinese

Table 2.4 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 regions 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: Created by the author in 2014 according to the Legislation Law of the PRC

legislative hierarchy, which is described in Table 2.4 Hierarchy of Chinese Legislation. The highest level of the hierarchy is the Constitution Law of the PRC enacted by the National People's Congress (NPC) in 1982. The second level includes the integrated laws and specialty laws adopted by the NPC or its Standing Committee, such as the Labour Contract Law and the Maritime Code. The third level includes all the regulations formulated by the State Council in accordance with the Constitution and superior laws, such as the Seafarers' Regulations. The fourth level includes the rules adopted by ministries or the people's congress of provinces, autonomous regions and municipalities. The fifth level includes the normative documents passed by the special agencies or local governments other than those mentioned above, such as 'Notices' or 'Decisions' promulgated by the MSA.

2.3.1.1 Maritime Legislation in China: Before and After the MLC 2006

The development of China's maritime legislation has been 'a slow, tortuous and frustrating process' and has 'reflected the corresponding characteristics of the whole country's transformation and evolution in politics and economy' (Liu 2010, p. 26). Most scholars and commentators divide the process into two periods: the first one is the period when China was under the planned economy (1949–1978); the second refers to the period since the 1980s when China opened its doors and gradually changed to the socialist market economy (Li and Ingram 2002). The time framework covered in this work, the 'pre-2006 years' and the 'post-2006 years', refers to the period during the reform.

During the first period, when China was under the planned economy, the main measures used to regulate the maritime industry and its activities were administrative decisions and state intervention. Chinese maritime legislation relied largely on

administrative decisions and documents, the so-called ‘red-letter-headed document’ (*hong tou wenjian*) that seldom required a formal procedure for their adoption and might be changed at whim according to political and social changes. Despite the flexibility it may have had, this practice was criticised for its lack of predictability, transparency and legal certainty (Li and Ingram 2002, pp. 2–5).

The situation was not changed until the reform, the second period when China began to open to the outside world. From the late 1970s, China began to carry out a series of reform measures in the economic system and tried to use the invisible hand of the market, rather than a plan, in the allocation of resources. During this period, a slow transformation took place from the traditional ‘socialist planned economy’ through the ‘socialist commodity economy’ to the ‘socialist market economy’. As a result, China has undergone extensive social, economic and political changes and has reformed its policy and legislation system, including that concerning the maritime industry. This transformation process has covered various aspects of the Chinese economic system, in particular ‘the national industry policy, opening access to markets, the reform of SOEs, rebuilding the legal system and the acceleration of legislation’ on the administration of the economy (Liu 2010, p. 31).

2.3.1.1.1 Pre-MLC Maritime Legislation Adopted Before 2007

Before the MLC 2006, China did not have maritime legislation tailor-made for seafarers, although articles and clauses concerning issues relating to seafarers could be found dispersed in a number of laws and policies. The MLC 2006 has had a significant impact on the development of maritime legislation for seafarers in China. Since 2007, the country has made considerable efforts to keep in tune with the new Convention and, as a result, has introduced a range of new policies and regulations regarding maritime labour. As part of this transformation, China’s maritime transport policy was revised and reformed in tandem with the implementation of a vigorous trade policy (Cass et al. 2003, p. 2).

In the 1980s, with the deepening of the economic reform and the rapid development of the economy, including the emergence of the private sector, China’s imports and exports grew quickly and this, in turn, led to a rapid increase of shipping activities at sea. In these circumstances the Government found that the traditional way of relying primarily on administrative decisions and the ‘red-headed documents’ (temporary policies) would no longer be adequate to meet the increasing demands of the industry, including the handling of the growing number of maritime accidents during the period. In 1983, the Maritime Traffic Safety Law of the PRC (MTSL), the first law related to maritime industry, was adopted at the Standing Committee of the Sixth National People’s Congress. The purpose of this law was to strengthen the control of maritime traffic, to ensure the safety of vessels and offshore installations, human life and property, and to safeguard the rights and interests of the state (MTSL, Art. 1). For example, in Section Three, there are provisions to cover a number of issues regarding the personnel on vessels and on offshore installations; for example, the safety manning levels, the responsibilities of seafarers, the safety

of the vessels and installations in navigation, berthing and operations, and so on. In Section Seven, matters concerning rescue at sea are laid down to ensure the safety of life and property at sea (MTSL, Art. 34-9). Section Nine of the law ‘Investigation and Handling of Traffic Accidents’ regulates the procedure of investigation in the event of a traffic accident that involves a vessel or an installation (MTSL, Art. 42-3). Section Ten, ‘Legal Liability’, provides the competent authorities with a number of penalties to punish those who violate the law, such as warnings, fines, or withholding or revoking competence certificates (MTSL, Art. 44-5). This law is one of the pillars of maritime legal system. Despite the fact that the law does not intend to deal with the rights of seafarers, a number of chapters and articles mentioned above can be taken as useful legal instruments in the promotion of seafarers’ rights in China.

Another pillar of the maritime legal system in China is the Chinese Maritime Code (CMC), adopted on 7 November 1992, at the 28th Meeting of the Standing Committee of the 7th National People’s Congress of the PRC, and entered into force on 1 July 1993. This law is considered a milestone for China in developing its maritime legal framework. The history of the drafting of this legislation, which spanned over 40 years between 1950 and 1992 with many difficulties and delays, reflects the ups and downs in the economic, political and legal development of the People’s Republic. The law was eventually passed with an overwhelming majority (98 in favour out of a total of 101 votes) in 1992, a very rare event in the history of Chinese legislation. To implement the CMC, China has also promulgated a series of Regulations to complement the Chinese maritime legislation system (Li and Ingram 2002, p. 3). These include the Ship Registration Regulations (SRR), which were promulgated on 2 June 1994 and came into force on 1 January 1995.

The main purpose of the CMC is to regulate the relations arising from maritime transport and those pertaining to ships, to secure and protect the legitimate rights and interests of the parties concerned, and to promote the development of maritime transport, economy and trades (CMC, Art. 1). It stipulates that a seafarer’s claim for wages or other remuneration, salvage payment, repatriation or social insurance costs, death or personal injury can be secured by a maritime lien, which is recognised at common law and dealt with by international Convention (CMC, Art. 21-30). For example, a similar clause was introduced in UN’s International Convention on Maritime Liens and Mortgages 1993 to protect seafarers’ wages and other claims (UN 1993). Section Three, ‘Crew’, includes provisions concerning the employment of the crew, as well as their labour-related rights and obligations: in particular, the rights and obligations of the Master of the vessel (CMC, Art. 31-40). In Section Twenty-one, ‘Limitation of Liability for Maritime Claims’, the seafarer’s right to claims for loss of life or personal injury might be limited to an amount calculated according to the Gross Tonnage of a vessel (CMC, Art. 210). In Section Twelve, ‘Contract of Marine Insurance’, it is stipulated that the crew’s wages and other remuneration, and shipowners’ liabilities to seafarer’s loss of life and personal injury, may come under the subject matter of marine insurance (CMC, Art. 218). If these items are insured by a shipowner, the seafarers’ claims can be secured, even if the shipowner becomes bankrupt. Clearly, this legislation has

provisions on seafarers' rights and interests. However, they are scattered in different sections and articles and far from sufficient to cover the full aspects of employment conditions. Nevertheless, this can be considered as great progress towards the improvement of conditions for seafarers in China.

The Maritime Special Procedure Law of the PRC (MSPL) represents another significant step towards a cohesive maritime legal framework. It was adopted on 25 December 1999 at the 9th National People's Congress and entered into force on 1 July 2000. The MSPL consolidates previous laws and practices, and adopted substantial provisions of the International Convention on Arrest of Ships 1999 (Li and Ingram 2002, p. 3). Despite the fact that the MSPL focuses on maritime jurisdiction and the arrest of ships, there are a number of clauses that have a great impact on seafarers' rights in China. For example, in a lawsuit concerning a seafarer's employment contract, it specifies that the courts situated in four places shall have four different jurisdictions. Those are the maritime courts at the domicile of the plaintiff, the place of signature of the contract, the place of the port of embarkation or disembarkation of the seafarer, and the domicile of the defendant (MSPL, Art. 6). This clause would help the seafarer locate more conveniently a case for his litigation. In addition, the MSPL grants seafarers the right to apply for arrest of a ship to secure the claims relating to a crew's wages, maintenance, and other monies, including the costs of repatriation and social insurance contributions payable on behalf of the crew (MSPL, Art. 21).

When China entered the World Trade Organisation (WTO) in 2001, the government committed itself to opening to foreign investment industries that had previously prohibited or restricted foreign participation. In order to honour these commitments, the State Council opened some industrial sectors to foreign participation, including maritime transportation. As a result, Regulations on International Maritime Transportation (RIMT) came into force on 1 January 2002. These regulations were enacted to normalise the activities of international ocean shipping, to protect fair competition, to maintain the order of the shipping market, and to guarantee the lawful rights and interests of various parties. Clearly, even though the main purpose of the Regulations was to regulate the carriage of goods by sea, seafarers also gain benefits from this legislation.

The discussion so far indicates that a number of maritime laws and regulations were introduced in China during the reform years before the adoption of the MLC 2006. Provisions concerning seafarers' treatments and rights are scattered in these regulations, but before 2007 no particular law was made focusing on seafarers.

2.3.1.1.2 Post-MLC Maritime Legislation Since 2007

The adoption of the MLC 2006 in the ILO has had significant positive implications for seafarers worldwide. In China, this international law works as a catalytic accelerating the process of establishing a coherent framework of maritime legislation that takes seafarers' conditions, treatments and rights into serious consideration.

One most important achievement is the adoption in 2007 in Beijing of the Regulations on Seafarers of the People's Republic of China (ROS), shortly after the introduction of the MLC in Geneva. So far, this law can be said to be the most important legislation concerning seafarers' rights in China. The ROS was passed at the 172nd executive meeting of the State Council on 28th March 2007, and entered into force on 1 September in the same year. The objective of ROS is to strengthen the administrative apparatus governing seafarers, to improve its quality and capacity, to safeguard seafarers' legal rights and interests, to ensure maritime traffic safety, and to protect the marine environment (ROS, Art. 1). For the first time in Chinese history, seafarers' rights were substantially laid down in law. The provisions of the law include, for instance, the minimum requirements to be registered as a seafarer (Art. 5), the seafarers' special identification and competence certificate (Art. 7-19), seafarers' occupational health and protection (Art. 25-34), and seafarers' training and recruitment (Art. 35-44). Although the ROS can be criticised as focusing mainly on the administration of seafarers, rather than on seafarers' rights and protection, it is good to see special legislation tailor-made for workers in this particular sector, an occupation that has many features making it drastically different from land-based industries.

It is worthwhile noting that making this particular legislation for seafarers in China was by no means a politics-free process. During the fieldwork in China in the summer of 2013, the author was informed by a senior trade union official in Beijing, '(A)ctually, there was no Charter 4 'Seafarers Occupational Protection in previous drafts of the ROS. It is there now because our trade union leaders involved in the policy-making insisted there must be a chapter to protect seafarers' rights.' Indeed, this chapter was drafted by the Chinese Seafarers and Construction Union (CSCU) and 'inserted' into the final draft of the ROC after fierce struggle between the union and other stakeholders, especially the employers.

Policy-making in China is clearly also a political process that mirrors the negotiation and compromises of different social groups of interests, as in many other countries. A very similar process was found by Zhao in 1993 when China adopted its first Company Law. A senior official of the All-China Federation of Trade Unions (ACFTU) said in the interview, '(T)here was no provision on trade unions at all in the first fifty-three drafts (of the Company Law). We had to fight, fight very hard until the chapter on workers' rights to be in a union was included.'

In addition, the ACFTU had played an irreplaceable role in drafting and implementing a number of pieces of labour legislation. For example, from 2001 to 2005 the ACFTU had a role to play in drafting more than a 100 national laws and regulations. Working with some other government departments, it also promulgated over 30 circulars with regard to the protection of workers' rights. The three most important laws on labour rights are the Labour Law of 1994, the Trade Union Law of 2001 and the Labour Contract Law of 2008. In particular, the ACFTU made a significant contribution to the drafting and implementing of the Labour Contract Law of 2008 with its strong pro-labour position (Qi 2013, p. 290).

Between 2007 and 2012, around 36 maritime policies were adopted by the MOT in a variety of forms. These include, for instance, the Administration Rules of

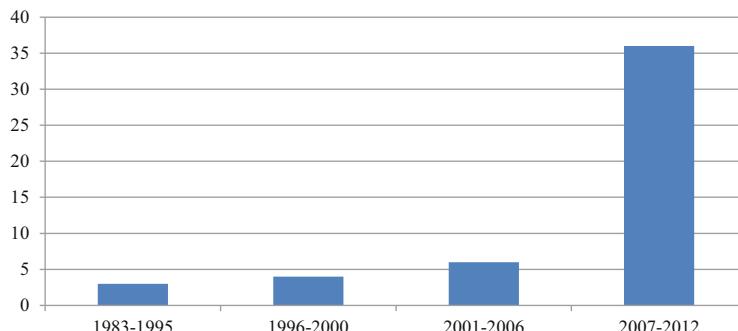


Fig. 2.4 Number of maritime legal instruments adopted in China in the last 3 decades, 1983–2012 (created by the author in 2013)

Seafarers' Registration of PRC adopted on 4 May 2008 (ARSR), the Provisions of Seafarers' Service Management on 20 July 2008 (PSSM), and the Provisions of Seafarers' Despatch Management on 7 March 2011 (PSDM). In addition, the Provisions of Seafarers' Occupational Security have been drafted by the MOT and will enter into force in the near future (PSOS). Figure 2.4 clearly indicates the dramatic progress made by China in maritime law-making in terms of the numbers since 2007 after the ILO's adoption of the MLC 2006 in Geneva.

In order to implement the ROS and to cope with the requirements of the MLC 2006, the Ministry of Transportation (MOT) has also adopted a large number of maritime policies in the form of 'Decisions', 'Notices' or other 'red-letter-headed' documents. These 'Decisions' or 'Notices' are of course not laws and cannot be viewed as part of Chinese legislation. However, they may carry significant weight in the administration and treatment of seafarers. For instance, the Maritime Safety Agency (MSA), a branch in charge of maritime issues in the MOT, has issued a total of five 'Notices' since 1994. The first such 'Notice' was in 1994 (Number 208), and entitled as 'The Notice Regarding Implementation of "The Requirements of Seafarers' Medical Examination" in the Maritime Profession'. According to the Requirements, people with positive Hepatitis B virus Surface Antigen (HBSAG) could not join the industry as seafarers and were prevented even from entering a college for nautical studies. The situation was not changed until 2010, when the MSA issued another 'Notice', "The Notice Regarding Amendments of 'the Requirements of Seafarers' Medical Examination (Number 306)". In this amended 'Notice', the clearly prejudiced article was deleted. Furthermore, the MSA have issued another three 'Notices'—all on seafarers' medical examination. All these documents grant more rights to individual seafarers when compared with previous 'notices'. The influence of the MLC 2006, which emphasises the rights and interests—indeed the spirit of decent work promoted by the ILO—is clearly seen in these new documents from government agencies.

2.3.1.2 The Establishment of the Chinese Labour Law Framework

Over the past few years, the Chinese labour law framework has taken shape initially by enacting some major national laws covering a number of aspects. However, none of them has ever addressed seafarers' affairs. The majority of the legal instruments in respect of maritime labour issues in China are at the lowest level of legislative hierarchy. The recent development of legislation that can be related to seafarers' labour conditions shows a trend that more regulatory instruments have been introduced but by increasingly lower levels of the legislation-making hierarchy. Table 2.5 lists the major laws, regulations and other legal instruments relevant to seafarers' labour conditions. It is interesting to note that the majority of these legal instruments have been introduced since 2006, *after* the adoption of the MLC at the ILO in Geneva. There is an apparent phenomenon that the legislative action on seafarers' affairs has become especially intensive since 2007. In addition, China has developed a legislative structure with a certain degree of decentralisation. This means that more regulations concerning seafarers have been introduced but at lower levels of the hierarchy. The MOT and the MSA have very limited power in the legislation-making process; the majority of legal instruments concerning seafarers have been adopted within their jurisdiction, as shown in Table 2.5.

It is noteworthy that the majority of the above legal instruments were formulated by bodies that are at the lowest level of Chinese legislative hierarchy. Except for the Regulations on Seafarers enacted by the State Council (2007), nearly all other pieces of seafarer legislation were adopted and implemented by the MOT and MSA. Figure 2.5 shows the distribution of the regulatory instruments made by the legislative bodies that can be related to seafarers' work conditions.

The national laws enacted by the NPC and its Standing Committee have the highest legal effect and this extends to every aspect of maritime affairs. However, in many cases these laws provide very limited protection for Chinese seafarers. For example, the Labour Contract Law 2007 (LCL) is a major milestone in the legislation of Chinese labour law. However, when the law was drafted, it did not take into consideration the special characteristics of seafaring labour, the characteristics that differentiate these workers from workers in land-based industries. As a result, it is unable to provide the special protections that are necessary for Chinese seafarers. Secondly, many Chinese seafarers are parties to foreign-related employment contracts. However, the LCL does not have any clauses or provisions dealing with labour or employment relationships concerning foreign employers. In addition, the LCL has certain negative impacts on the seafarers' employment opportunities. For example, some key provisions of the LCL tend to cause confusions to the employment relations that are normal in the Chinese maritime labour market, such as the relevant provisions on labour dispatch. The confusions have impaired Chinese seafarers' employment opportunities and have restricted the development of Chinese labour market.

Since 2007, the MOT and MSA have adopted and implemented a good number of maritime legal instruments that are directly related to the seafarer profession. However, the level of these policies is too low for them to have any teeth in

Table 2.5 Regulations introduced at various levels (1982–2014)

Legislative bodies/levels	Name of laws and policies which can be related to seafarers' labour conditions	Year of adoption
NPC (Highest Level)	The Constitution Law of the People's Republic of China	1982
Standing Committee of the National People's Congress (SCNPC) (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 in the People's Republic of China	2007
	Social Security Law of the People's Republic of China	2010
	Amendment to Labour Contract Law of the PRC	2013
The State Council of the People's Republic of China (PRC) (Third Level)	Regulations on the Settlement of Labour Disputes	1993
	Regulations on Work-related Injury Insurance	2003
	Seafarers' Regulations of the PRC	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 People's Republic of China	2013
Ministry of Transport (MOT) of the People's Republic of China (Fourth Level)	Administration Rules of Maritime Penalty and Punishment of the People's Republic of China	2003
	Administration Rules of Seafarers' Registration of the People's Republic of China	2008
	Administration Rules of Seafarer Recruitment Services Management	2008

(continued)

Table 2.5 (continued)

Legislative bodies/levels	Name of laws and policies which can be related to seafarers' labour conditions	Year of adoption
Ministry of Human Resources and Social Security (MOHRSS) of the People's Republic of China (Fourth Level)	Administration Rules of Seafarers' Training of the People's Republic of China	2009
	Administration Rules of Seafarers' Dispatch of the People's Republic of China	2011
	Administration Rules of Seafarers' Examination 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 the People's Republic of China	2013
	Amendment to the Administration Rules of Seafarers' Examination and Certification	2013
	Amendment to the Administration Rules of Ship's Minimum Manning	2014
	Administration Rules of Workers' Minimum Wages	2004
	The Notice on the Implementation of Labour Contract Law of the People's Republic of China	2007
Ministry of Labour and Social Security (MOLSS) of the People's Republic of China (Fourth Level)	Administration Rules of Workers' Employment Service and Management of the People's Republic of China	2007
	The Notice on the Implementation of Employment Promotion Law of the People's Republic of China	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 People's Republic of China	2009
	The Organising Rules for Labour Dispute Arbitration of the People's Republic of China	2010
	Administration Rules on the Determination of Work-related Injuries	2010
	The Notice on the Implementation of the Law on Social Security of the People's Republic of China	2010
	Administration Rules on the Permission of Labour Dispatch	2013

(continued)

Table 2.5 (continued)

Legislative bodies/levels	Name of laws and policies which can be related to seafarers' labour conditions	Year of adoption
	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 (MSA) of the People's Republic of China (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 Purposes	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 the Export of Seafarers	2011
	The Notice on the Implementation Proposal of the Qualification of Exporting Manning Agencies	2011
	Provisions on the Administration of Seafarers' Medical Certificates	2012

(continued)

Table 2.5 (continued)

Legislative bodies/levels	Name of laws and policies which can be related to seafarers' labour conditions	Year of adoption
	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 the MLC 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: Created by the author in 2014

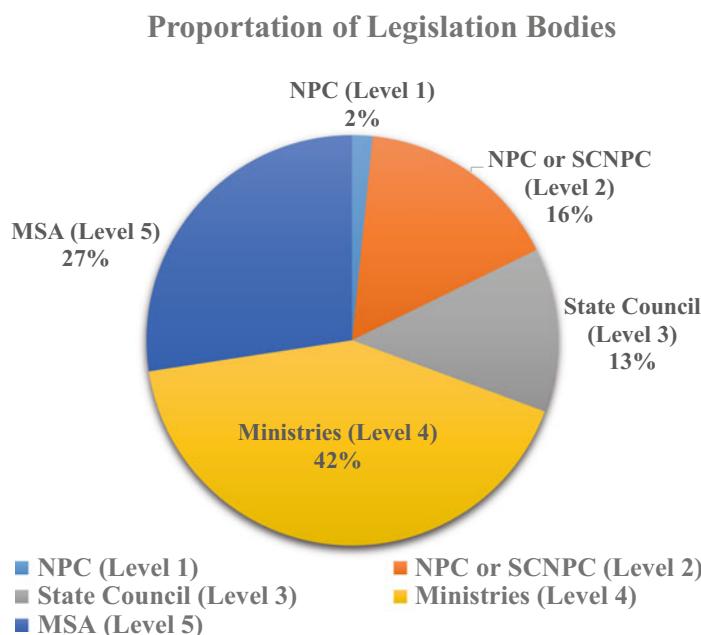


Fig. 2.5 Distribution of the regulations made by different levels of the legislative bodies in China (1982–2014). Source: Created by the author in 2014

practice, in particular when they are in conflict with laws produced at upper levels. In fact, the majority of these policies focus on the administrative affairs of Chinese seafarers, in particular the issues related to the control of seafarers' training, qualification and certification. Very few of these 'new' regulations pay real attention to the rights and interests that seafarers deserve to have, such as decent wages, decent working and living conditions, collective bargaining, their social security, and their political rights such as the right to strike and of freedom of association.

The low level of legislation with respect to seafarers' affairs in China has a number of negative outcomes. First of all, compared with the laws and regulations made at the national level, they have very little legally binding force and are usually applicable only within the jurisdiction of the Ministry of Transportation. For example, when seafarers claim their rights based on a normative document issued by the MSA, they are usually challenged by other government departments. The MOT and MSA have very limited capacity to coordinate legislative resources, which need sufficient public power, financial support and professional law-making teams. Many legal instruments have been made without adequate consultation and discussion before their adoption and implementation. Some of these policies are therefore very short-sighted and can serve only as stop-gap measures. Various existing shortcomings and loopholes have made the maritime legal system in China fragmented and inconsistent.

2.3.2 The Awareness and Attitudes of Major Stakeholders

What are the awareness and the attitude of the Chinese stakeholders towards the MLC 2006? The following discussion attempts to gain some knowledge and insight of this dimension.

Although China has not officially implemented the MLC 2006, the Convention has provoked various responses among a wide range of stakeholders in the Chinese maritime industry (Zhang and Zhao 2015). As discussed in the previous context, China has become a top player in global trade and in maritime activities with the contribution of the largest population of the maritime labour force. As a unique maritime power in the world, China has typically combined together the three roles as major flag state, port state and seafarer supplying state. To some extent, therefore, the Convention has more significant impact on China than on any other country, given the close connection of the major stakeholders of Chinese maritime industry to the MLC 2006's impacts.

First of all, since the adoption of the MLC 2006, China has been preparing for its ratification. According to Dr. Cleopatra Doumbia-Henry, the Director of the International Labour Standards Department of the ILO, a country 'can ratify the Convention only if it is in a position to implement it' (ILO 2007). To achieve that result, there are at least two preconditions to be met. First, China must have the necessary laws or regulations already in place or approved that meet the minimum requirements, and it must take necessary measures to give effect to the rights recognised in the Convention. Although there will be a 12 month grace period after ratification before it will enter into force for a ratifying country, it usually takes considerably longer for a country to enact or revise its national laws and regulations. Secondly, China must have sufficient administrative and technical infrastructures for the proper and effective implementation of those laws or regulations.

Since the advent of the MLC 2006, the Chinese government has taken a series of legislative actions in response to the Convention. As described in the previous context, in 2007 the State Council of the PRC promulgated the Seafarers'

Regulations, which is viewed as the first labour legislation specifically for seafarers in China. The Regulations include a body of provisions that were designed to protect seafarers' rights and interests and that cannot be found in previous laws and regulations. In addition, the MOT and MSA, as government departments specialising in maritime affairs, adopted in the following years a series of maritime labour policies. These new policies prescribe more detailed requirements with respect to seafarers' rights and benefits, many of which are considered to be the direct response to the MLC 2006 (Xu 2012).

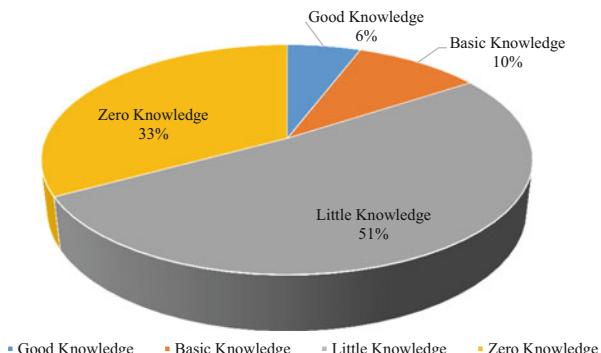
However, the principles or doctrines of the Convention have not been addressed by any of the major labour laws in China. The year 2007 has been marked as 'a landmark year for labour legislation' in China (CLB 2009, p. 17). In that year the Standing Committee of the National People's Congress (SCNPC) passed three major new labour laws: the Labour Contract Law, the Employment Promotion Law and the Law on Mediation and Arbitration of Labour Disputes. In 2010, the SCNPC further implemented Social Security Law of the PRC to complement Chinese Labour Law System. However, although these laws were enacted later than the MLC 2006, neither of them has taken account of requirements relating to seafarers' special entitlements.

In practice, there have been various responses from different stakeholders since the adoption of the MLC 2006. For example, in order to facilitate the services for Chinese seafarers, the MOT and MSA have streamlined administration and delegated more power to the lower levels. To protect seafarers' rights and interests has become an important task of their daily administrative work. As a result, it appears to be easier for Chinese seafarers to get access to effective and efficient protection. Moreover, the adoption of MLC 2006 and the development of the labour legislation in China since 2007 have certainly helped strengthen Chinese seafarers' awareness of their rights and interests. According to annual report of Chinese Maritime Courts, in recent years there has been a significant increase of caseload with regard to seafarers' labour disputes (NBHSFY 2014). More and more Chinese seafarers know how to use legal weapon to safeguard their rights and interests. The sharp increase of maritime labour disputes in China and the demands for improved salary rates and other conditions can well illustrate this point.

Shipping companies are usually at the forefront of the implementation of the MLC 2006. Many companies claimed that they have directed much more attention to seafarers' rights and benefits than ever before, such as working and living conditions on board, seafarers' welfare and social security, and so on. The change has resulted from two major factors that were identified in the fieldwork. The first one is that the MLC 2006 prescribes mandatory requirements to improve seafarers' treatment. Failure to meet these requirements can result in the detention of vessels after a PSC inspection. In addition, more intense competition for seafaring talents has compelled shipowners, operators and manning agencies to take action to attract and retain high-quality seafarers.

However, a survey indicates that the attention directed to the contents of MLC 2006 is insufficient in China by a considerable margin. The survey was undertaken in 2014 among major stakeholders, such as shipowners, ship operators, manning agencies, maritime education and training institutions, and seafarers. In the survey

Fig. 2.6 Distribution of the respondents' knowledge about the MLC 2006.
Source: Created by the author in 2014



the respondents were asked about the extent of their familiarity of the MLC 2006, as well as their attitudes towards the implementation of the Convention in China. Among 191 received questionnaires, their answers were grouped into various categories. Figure 2.6 describes the distribution of the respondents' knowledge about the MLC 2006. It shows that only about 6 % of the respondents claimed that they had a good knowledge about the contents of the MLC 2006. This offers a sharp contrast with 84 % of the respondents who admitted that they had little or even no knowledge about the MLC 2006.

The survey uncovered a diversity of attitudes among different stakeholders towards the implementation of the MLC 2006 in China. The respondents were asked whether they were in favour of the ratification and implementation of the MLC 2006 in China. As Fig. 2.7 shows, there were more objectors than supporters to the Convention among the respondents from shipowners and ship management companies. On the other hand, there were more approvals for the Convention among manning agencies, maritime trainers and seafarers. Although a small group of seafarers showed opposed or indifferent opinions, 82 % of them had a supportive attitude.

The survey also analysed the attitudes towards the implementation of the MLC 2006 in China among respondents with different levels of knowledge of the Convention. According to Fig. 2.8, it appears that people with more knowledge of the Convention tended to hold a supportive attitude toward it. Compared with an 82 % approval rate among the people with good knowledge of the Convention, there were slightly more objections than approvals among the people without that knowledge.

The above analyses indicate that there is an urgent demand among the major stakeholders in China for more training on the MLC 2006. However, maritime education and training in China have not yet covered any content of the MLC 2006. Government departments have no motivation to disseminate the Convention, especially when China has not yet officially implemented it. In addition, even most government officials do not have basic knowledge about it. Shipowners, ship operators and manning agencies have a conflict of interest in connection with the Convention so that they usually hold a very negative attitude towards promoting it. As a deputy director in Shanghai Maritime University explained in an interview (2013):

Compared with the STCW, SOLAS and MARPOL Convention, the MLC 2006 has attracted much less attention in most maritime education and training institutions. We



Fig. 2.7 Attitudes towards the implementation of MLC 2006 in China. *Source:* Created by the author in 2014

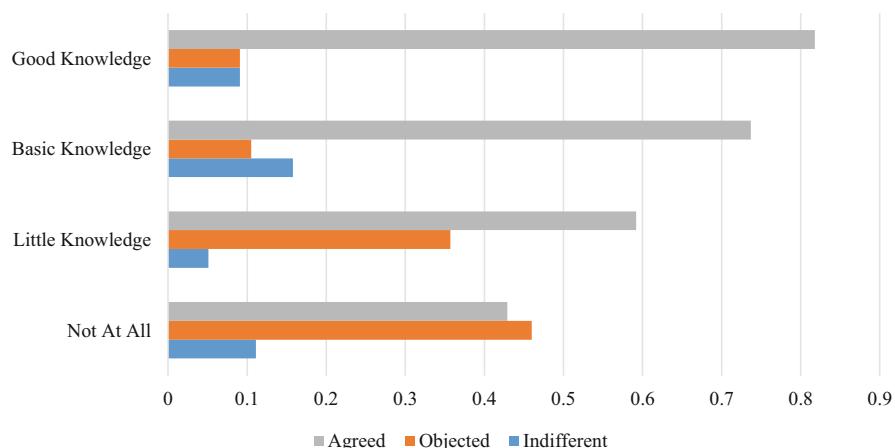


Fig. 2.8 Attitudes held by respondents with different knowledge about MLC 2006. *Source:* Created by the author in 2014

cannot see any significant training demand for the MLC 2006; we have therefore never made any preparation for it. As far as I know, in our University very few scholars have done any significant research on the subject. It is indeed a sad message for Chinese seafarers (Interview MET 4-1).

Although most seafarers have a vague appreciation that the MLC 2006 will improve their rights and benefits, very few of them have the relevant knowledge of its content. Most seafarers in China cannot get access to even the basic training or short courses to help them understand the Convention. It is difficult for them to figure out what kind of changes the Convention will bring to them and how they can

use this ‘weapon’ to protect their rights and interests. As a 38-year old Chief Officer, coming from Jiangsu province, stated in an interview (2013):

We know that the MLC 2006 is good, but we do not exactly know how good it is. When our ship went to some foreign ports, I could see some brochures on basic knowledge about the Convention. However, I have never seen such materials in the Chinese ports, neither could I see any publications in the Chinese language. So it is very difficult for us to truly understand the complicated Convention without proper training. I therefore strongly suggest that the MSA and the universities provide free training and short courses for us (Interview SF 4-12).

2.4 Prospects of Ratification of MLC 2006 in China

From a legal perspective, it is one of the guiding principles of China’s foreign policy to work within the confines of international law and to respect commonly accepted international practice. The importance and necessity for China to work within the global regulatory framework has been discussed by many scholars (Zhang 1991). Also, as an emerging shipping power in the world, China has more important reasons to comply with international conventions in respect of maritime labour standards and its practical operations (Chang 2002).

As far as the MLC 2006 is concerned, there are a number of reasons for China to ratify the Convention. First of all, the MLC 2006 is an unavoidable matter for any country wanting to take a share of the international shipping market. When the Convention came into force in August 2013, the new sanction mechanism of the PSC was able to use the principle of ‘no more favourable treatment’ (MLC, 2006: Art. V-7). This principle will make ships registered with flag states that have not ratified the MLC 2006—and hence staying out of the regulatory regime of the Convention—subject to more detailed or aggressive inspections. China is one of the most important flag states in the world and the Chinese flag has a good reputation in the maritime industry. To maintain the good name and to avoid detriment to its reputation and loss of registrations, it will work in China’s best interest for it to ratify and implement the Convention.

Second, China is one of the largest port states and implements Port State Control on foreign vessels entering China’s ports according to Tokyo Memorandum of Understanding (Tokyo MOU 2013). Once the MLC 2006 came into force and China has chosen to stay outside the regulatory regime, as it is now, the ports in China run the risk of being chosen as target destinations by those substandard ships that seek to avoid the risk of detention. As a result, the ports in China may face tremendous risks for safety and marine pollution. The ratification and implementation of the MLC 2006 is therefore a strategy for China to reduce and prevent the entry of substandard ships.

Third, as mentioned above, China is the country with the largest population of seafarers. However, there are two negative factors in the situation. On the one hand, the average quality of Chinese seafarers is considered low by some shipowners and overall seafaring skills are found by some researchers to be in decline. It is therefore

urgent to attract and retain high-quality seafarers and to prevent the talent outflow (Zhang and Cai 2003). On the other hand, despite the fact that China has a rich resource of seafarers, the development of the export of seafarers to foreign ships is relatively slow. The Philippines are a country with a population of only 94 million, and every year as many as 400,000 or more seafarers are dispatched onboard foreign ships and more than \$4 billion is earned (MOT 2011). In contrast, China has a population of more than 1.37 billion and a total number of seafarers of 650,000, but only about 40,000 seafarers have been exported to foreign ships each year since the late 1990s. In fact, most of these 'foreign' ships are actually owned or controlled by Chinese nationals. By ratifying the MLC 2006, implementing international standards and improving seafarers' benefits, we should expect that more qualified seafarers would be retained in the maritime industry and the export of Chinese seafarers be further developed.

There are of course some serious challenges to China if it is to ratify and implement the MLC 2006 standards. As already discussed, some stakeholders in the industry may resist the change on various grounds. First, some shipowners and operators may feel that the ratification of the Convention would inevitably increase the costs of the operation of ships, as minimum standards concerning seafarers' work and living conditions are set out in the Convention and they must be met. Indeed, while it seems a shared view that levelling the playing field among shipowners, states of registries and labour-supplying states is the underlying motive for the adoption of the MLC 2006 (Dimitrova 2010, p. 82), some practitioners in China believe that the intention of the convention is to protect the interest of shipping industries in Traditional Maritime Nations (TMNs) by suppressing the competition from developing countries.

Resistance may come also from crewing agencies. In their view, as is indeed true, the export of seafarers in China relies very much on the low cost of labour. Although the MLC 2006 does not set or require a minimum wage level, the improvement of seafarer protection will have a profound impact on seafarers' wages and other welfare. Once international employment standards are implemented, seafarers' wages and other welfare costs will be improved; hence Chinese seafarers may well lose their competitive advantages in the global labour market for seafarers.

The third source of resistance may come from the various parties of government authorities. The ratification of the Convention will need consolidation of the government authority in maritime law-making and management and this in turn will demand restructuring and redistribution of the existing power in China's maritime governance. Currently, labour affairs are under the administration of the Ministry of Human Resources and Social Security (MOHRSS), while maritime affairs come under the jurisdiction of the MOT. Although the MSA of the MOT has always been the authority in charge of seafarers' affairs, the MOHRSS considers that the implementation of the MLC 2006 should be within its jurisdiction rather than that of the MOT. As one senior official in the MOHRSS explained his opinion in an interview (2013):

The MLC 2006 was adopted by the ILO, not the IMO. It is indisputable that the implementation of the Convention should fall within the jurisdiction of the MOHRSS. The implementation tasks involve various matters relating to the establishment of social security, labour conditions inspection, and so on. These tasks are beyond the competence of the MSA. Even though seafarers are maritime professional workers, they are still labourers subordinated to the administration of the MOHRSS. The MOT should assist us in implementing the Convention properly (Interview GOV 4-1).

However, as the special agency in charge of maritime affairs in China, the MSA apparently has attempted to claim the exclusive jurisdiction of implementing the MLC 2006. As one senior official declared his position in an interview (2013):

Chinese seafarers have always been subject to the MSA's jurisdiction. As a matter of fact, the MSA has been played the most important role in the services and administration of Chinese seafarers and the role cannot be replaced by other departments ... Given that seafaring is a special profession and requires special skills and knowledge, we are of the opinion that the MOHRSS does not have the required ability to implement the Convention (Interview GOV 4-2).

China had been expected to ratify the MLC 2006 before it entered into force in August 2013 (Chen 2011). However, primarily due to the dispute over who should have the authority between the MOHRSS and the MOT, the ratification progress has been delayed. Whilst this is sad, there seems a clear consensus even between groups with conflicting interests. For example, the latest development suggests that there has been a temporary agreement between these two departments. Officials from both ministries believe that '(The) question is not whether China will ratify the MLC 2006; it is when to ratify the Convention and how to implement it.' However, although the issue has been temporarily worked out for now, the conflict between them continues to exist before the division of jurisdiction between these two departments can be officially clarified by their higher level authority.

2.5 Conclusion

In this chapter, a critical examination of the development of maritime legislation in China under the impact of the MLC 2006 was given. China has a significantly chequered history and the maritime infrastructures in China were seriously damaged or destroyed before the founding of the new China in 1949. Nevertheless, in recent years China has become one of the most important shipping nations, with the largest number of seafarers for the world fleet. However, China is a developing country with a considerably deficient maritime legal system, in particular in the areas regarding maritime workers. As a result, seafarers in China still face various problems in respect of labour conditions, and seafarers' rights are frequently violated by shipowners, manning agents and other maritime stakeholders, as will be discussed in the next chapter.

The adoption of the MLC 2006 has a significant impact on the maritime legislation in China. Although China has not yet officially implemented it,

substantial efforts and significant progress have been made. Since 2007 China has adopted a series of maritime legal instruments to keep it in tune with international standards. This chapter compares the maritime legislation in China before and after the adoption of the MLC 2006, and it shows that the reconstruction of maritime labour legislation in China is in progress. Awareness and attitudes of major stakeholders in China towards the MLC 2006 have also been investigated. According to the results of one survey, a certain number of people were shown as opposed or indifferent, but the majority of Chinese stakeholders in the maritime sector took a supportive attitude.

However, it is also worth noting that seafarers' issues have not been addressed sufficiently by the Chinese legislative process. First of all, since 2007 the Chinese labour law framework has taken shape initially by enacting some major national laws covering a number of aspects. However, none of these laws has touched on seafarers, even though they have addressed the issues with regard to miners, railway workers, and so on. Secondly, the majority of the legal instruments about maritime labour issues in China are at the lowest level of the legislative hierarchy. Except that the *Seafarers' Regulations* were adopted by the State Council, all other legal instruments on seafarers were enacted by the MOT or the MSA, which are at the lowest level of the Chinese legislative hierarchy. Because their sponsors have considerably limited power in the legislation-making process, these legal instruments therefore have in practice a significantly limited legal effect. Finally, it is interesting to note that nearly all the maritime labour legislation available in China concentrate on seafarers' pre-employment conditions, whilst their in-employment conditions have been scarcely addressed. As such a differentiation has importance to seafarers' rights, these two aspects of Chinese seafarers' employment conditions will be specifically examined in the following two chapters.

References

- 54seaman (2014). Analysis and countermeasures for seafarers' negative mental conditions. Available at <http://www.54seaman.com/template/newsView.asp?id=6932> (Assessed 23 July 2015). [in Chinese]
- Abbott, D. A., Zheng, F., & Meredith, W. H. (1995). An evolving redefinition of the fatherhood role in the People's Republic of China. In M. S. Das & V. K. Gupta (Eds.), *Gender roles and family analysis* (pp. 191–202). New Delhi: M D Publications PVT LTD.
- Alderton, T., & Winchester, N. (2002). Globalisation and de-regulation in the maritime industry. *Marine Policy*, 26, 35–43.
- Bauer, P. J. (2008). The MLC 2006: An adequate guarantee of seafarer rights, or an impediment to true reforms? *Chicago Journal of International Law*, 8(2), 643–659.
- Cass, D. Z., Williams, B. G., & Barker, G. (2003). Introduction: China and the reshaping of the World Trade Organisation. In D. Z. Cass, B. G. Williams, & G. Barker (Eds.), *China and the world trading system: Entering the new millennium*. Cambridge: Cambridge University Press.
- Cai, G. (2009). *The big navigation era: Record of sixty years of Chinese maritime development*. Baoding: University of Hebei Press [in Chinese].
- Chambers, S. (2003). Operators discriminating against crews from China. *Lloyd's List*. 19 August 2003.
- Chang, Y. (2002). Sino-Korean maritime co-operation. In T. W. Lee, M. Roe, R. Gray, & M. Shen (Eds.), *Shipping in China*. Hampshire: Ashgate Publishing Limited.

- Chen, P. (1982). Eroding filial piety and its implications for social work practice. *Journal of Sociology & Social Welfare*, 9(3), 511–523 [in Chinese].
- Chen, K. (2011). *Labour law in China*. Alphen aan den Rijn: Kluwer Law International.
- Christodoulou-Varotsi, I. (2012). Critical review of the consolidated maritime labour convention (2006) of the International Labour Organization: Limitations and perspectives. *Journal of Maritime Law and Commerce*, 43(4), 467–476.
- CLB. (2009). *China labour bulletin, going it alone: The workers' movement in China (2007–2008)*. Available at: http://www.clb.org.hk/en/files/share/File/research_reports/workers_movement_07-08_print_final.pdf. Accessed 16 January 2015.
- COSCO (2013). Introduction of COSCO Group. Available at <http://www.cosco.com/en/about/index.jsp?leftnav=/1/1>. Accessed 28 February 2013.
- Dauer, R. R. M. (2009). *The merchant vessel: A sociological analysis*. Barcelona: Edicions UPC.
- Decker, K. B. (1978). Coping with sea duty: Problems encountered and resources utilised during periods of family separation. In E. J. Hunter & D. S. Nice (Eds.), *Military families: Adaptation to change*. London: Praeger Publishers.
- Dimitrova, D. N. (2010). *Seafarers' rights in the globalised maritime industry*. London: Kluwer Law International.
- Donn, C. B., & Zhao, M. (2011). Freedom of association: A comparison of China and US approaches to International Labour Organization standards. In M. Zhao, W. Zhao, & L. Fan (Eds.), *Chinese trade union and labour law: A critical review and reflection* (pp. 110–135). Beijing: Social Sciences Academic Press.
- Erickson, A. S., Goldstein, L. J., & Lord, C. (2009). *China goes to sea: Maritime transformation in comparative historical perspective*. Annapolis: Naval Institute Press.
- Falkus, M. (1990). *The Blue Funnel legend: A history of the Ocean Steam Ship Company, 1865–1973*. London: Macmillan.
- Fan, J. (2015). *Shanghai port encourages the use of low sulphur fuel oil*. Available at: http://xinmin.news365.com.cn/jd/201503/20150313_1751516.html. Accessed 09 April 2015 [in Chinese].
- Forsyth, C. J., & Bankston, W. B. (1983). The merchant seaman as a social type: A marginal lifestyle. *Free Inquiry in Creative Sociology*, 11(1), 8–12.
- Foster, D., & Cacioppe, R. (1986). When his ship comes home: The stress of the Australian seafarer's partner. *Australian and New Zealand Journal of Family Therapy*, 7(2), 75–82.
- Gardiner, P. (2013). *Chinese seafarers honoured with blue plaque*. Available at: <http://www.clickliverpool.com/news/liverpool-news/1220356-chinese-seafarers-honoured-with-blue-plaque.html>. Accessed 5 December 2013.
- Garland, D. R. (2012). *Family ministry: A comprehensive guide* (2nd ed.). Downers Grove: Inter Varsity Press.
- GOVCN. (2013). *The overview of China*. Available at: http://www.gov.cn/test/2005-08/11/content_27116.htm. Accessed 27 February 2013 [in Chinese].
- Grey, M. (1999). Chinese may end manning shortage, *Lloyd's List*, 20 July, p. 5.
- Grey, M. (2011). *The maritime labour convention: Shipping's "fourth pillar"*. Available at: https://www.seafarersrights.org/seafarers_subjects/maritime_labour_convention_mlc. Accessed 30 June 2014.
- Guo, S. (2013). *Chinese politics and government: Power, ideology and organisation*. Oxon: Routledge.
- Heine, I. M. (1989). *China's rise to commercial maritime power*. New York: Greenwood Press.
- Ho, D. Y. F. (1987). Fatherhood in Chinese culture. In M. E. Lamb (Ed.), *The father's role: Cross-cultural perspectives* (pp. 227–245). Hillsdale: Lawrence Erlbaum Associate Inc.
- Hohman, E. (1952). *Seamen ashore*. New Haven: Yale University Press.
- Hsu, J. C. H. (1991). Unwanted children and parents: Archaeology, epigraphy and the myths of filial piety. In J. Ching & R. W. L. Guisso (Eds.), *Sages and filial sons: Mythology and archaeology in ancient China* (pp. 23–43). Hong Kong: Nans Fung Printing Co., Ltd.
- ILO. (2004). *Consolidated maritime labour convention: Commentary to the recommended draft*. Available at: <http://www.ilo.org/public/english/standards/realm/maritime/pdf/cmlc-comment.pdf>. Accessed 3 May 2014.

- ILO. (2005). *Adoption of an instrument to consolidate maritime labour standards, Report I (1A)*. Geneva: International Labour Office, p. 9.
- ILO. (2007). *Introductory speech to the ILO tripartite seminar for South American countries on the MLC 2006*. Available at: http://www.trabajo.gov.ar/seminarios/2007/maritimo/files/intro_Doumbia_Henry_ingles.pdf. Accessed 29 July 2012.
- ILO. (2011). *Joint Maritime Commission of the ILO*. Available at: http://www.ilo.org/tokyo/events-and-meetings/WCMS_162320/lang--en/index.htm. Accessed 03 April 2015.
- ILO. (2013). *About the ILO*. Available at: <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>. Accessed 5 October 2013.
- ILO. (2015). *Ratifications of maritime labour convention, 2006 (MLC, 2006)*. Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312331. Accessed 29 April 2015.
- ISPS. (2004). *International Ship and Port Facility Security (ISPS) code*. Available at: <http://www.imo.org/OurWork/Security/Instruments/Pages/ISPSCode.aspx>. Accessed 8 March 2013.
- Ju, Y. (1996). *Understanding China: Centre stage of the fourth power*. Albany: State University of New York Press.
- Kong, S. L. (1998). *Chinese culture and lore*. Hong Kong: Kensington Educational Press.
- Lau, M., Cho, R., Chang, J., & Huang, J. (2013). Measurement and methodological issues in social class research: A call for theorization and study. In W. Liu (Ed.), *The Oxford handbook of social class in counselling*. Oxford: Oxford University Press.
- Li, E. B. C. (1994). Modernization: Its impacts on families in China. In P. L. Lin, K. Mei, & H. Peng (Eds.), *Marriage and the family in Chinese societies* (pp. 39–52). Indianapolis: University of Indianapolis Press.
- Li, S. (2010). Retrospective of seafarers' development in New China. *China Water Transport*, 11, 14–15 [in Chinese].
- Li, K., & Wonham, J. (1999). Who mans the world fleet? A follow-up to the BIMCO/ISF manpower survey. *Maritime Policy & Management*, 26(3), 295–303.
- Li, K., & Ingram, C. W. N. (2002). *Maritime law and policy in China*. London: Cavendish Publishing Limited.
- Lillie, N. (2004). Global collective bargaining on flag of convenience shipping. *British Journal of Industrial Relations*, 42(1), 47–67.
- Lillie, N. (2006). *A global union for global workers: Collective bargaining and regulatory politics in maritime shipping*. New York: Taylor & Francis.
- Lillie, N. (2008). The ILO maritime labour convention, 2006: A new paradigm for global labour rights implementation. In K. Papadakis (Ed.), *Cross-border social dialogue and agreements: An emerging global industrial relations framework* (pp. 192–210). Geneva: International Institute for Labour Studies.
- Liu, H. (2010). *Liner conferences in competition law: A comparative analysis of European and Chinese law*. Berlin: Springer.
- Lowry, D. S. W. (2008). *Relative expectations in rural China: Later-life distinction, duty, dreams, and discontent*. Ann Arbor: Pro Quest, LLC.
- Malarkey, R., Bootsma, M., & Vyn, C. (1995). Marital relations and Canadian women in the urban workforce. In M. S. Das & V. K. Gupta (Eds.), *Gender roles and family analysis* (pp. 137–154). New Delhi: M D Publications PVT LTD.
- McConnell, M. L. (2008). Making labour history. In A. Chircop, T. L. McDorman, & S. J. Rolston (Eds.), *The future of ocean regime-building: Essays in tribute to Douglas M. Johnston*. Danvers: Martinus Nijhoff Publishers.
- McConnell, M. L., Devlin, D., & Henry, C. D. (2011). *The maritime labour convention, 2006: A legal primer to an emerging international regime*. Leiden: Martinus Nijhoff Publishers.
- Menzies, G. (2012). *1421: The year China discovered the world*. London: Bantam Press.
- Meredith, W. H. (1992). *International Journal of Sociology of the Family* (22). Lucknow: Lucknow Publishing House.
- Mignard, P. (2003). *The New Encyclopaedia Britannia* (8). Chicago: Encyclopaedia Britannica, Inc.

- MLC (2006). Maritime Labour Convention 2006. Available at <http://www.ilo.org/global/standards/maritimelabour-convention/lang--en/index.htm>. Accessed 8 March 2013.
- MOT (1982). Chinese Seafarers before and after Liberation. Ministry of Transport of the People's Republic of China, p. 36. [in Chinese]
- MOT (2011). Seafarers' employment and their earnings in the philippines. <http://www.mofcom.gov.cn/article/i/jyjl/j/201109/20110907760328.html> (Accessed 6 October 2013). [in Chinese]
- MSA. (2012). *The directory of International Shipping Enterprises 2012*. <http://www.msa.gov.cn/Notice/Notice/d5afef67-a66e-4b49-87c1-2429a1678e6b>. Accessed 28 February 2013 [in Chinese].
- MSA. (2014). *The information of Chinese seafarers*. Available at: <http://www.msa.gov.cn/Notice/Notice/954cfa3d-3fc2-4f1b-9b06-b78d194b59d5>. Accessed 29 June 2014 [in Chinese].
- Muller, D. G. (1983). *China as a maritime power*. Boulder: Westview Press.
- NBHSFY. (2014). *The 2013 Annual Report of the Judge Situation of Ningbo Maritime Court*. Available at: <http://www.nbhsfy.cn/info.jsp?aid=24295>. Accessed 6 July 2015.
- Ng, A. C., Phillips, D. R., & Lee, W. K. (2002). Persistence and challenges to filial piety and informal support of older persons in a modern Chinese society: A case study in Tuen Mun, Hong Kong. *Journal of Aging Studies*, 16(2), 135–153.
- Pai, H. (2012). *Scattered Sand: The story of China's rural migrants*. London: Verso.
- Peng, K. (2012). A discussion on the historical evolution of maritime strategy of New China. *Tribune of Social Sciences*, 10, 232–236.
- Qi, D. (2013). Chinese working class and trade unions: Transformation and predicament in the reform era. In G. Wang & Y. Zheng (Eds.), *China: Development and governance*. Singapore: World Scientific Publishing Co. Pte. Ltd.
- Ruths, M. (2002). *Temporary foreign worker programmes: Policies, adverse consequences, and the need to make them work*. Cambridge: Centre for Comparative Immigration Studies of University of Cambridge.
- SACU. (1988). *China now issue index 127, winter 1988/89: culture*. London: Society for Anglo-Chinese Understanding.
- SACU. (2001). *Setting sail: Chinese seafarers*. Available at: <http://www.sacu.org/sailing.html>. Accessed 5 December 2013.
- Shen, G., Zhao, M., & Li, L. (2005). *Chinese seafarers, a study on Chinese seafarers' working and personal lives*. Shanghai: Shanghai University Publishing House [in Chinese].
- Somavia, J. A. (2006). *New 'bill of rights' for the maritime sector: A model for fair globalisation', statement from the ILO Office of the Director General, April 2006*. Available at: <http://www.ilo.org/public/english/bureau/dgo/speeches/somavia/2006/maritime.pdf>. Accessed 8 March 2013.
- Stacey, J. (1983). *Abbott archy and socialist revolution in China*. Berkley, CA: University of California Press.
- Sun, P., & Yao, W. (2013). Chinese maritime education: Changing environment and development strategy. *Maritime Education Research*, 1, 1–6 [in Chinese].
- The Lloyds Register. (2013). *Global marine trends 2030*. Lloyds Registers Strategic Research Group QinetiQ and the University of Strathclyde.
- Tokyo MOU. (2013). *Memorandum of understanding on port state control in the Asia-Pacific Region*. <http://www.tokyo-mou.org/doc/memorand.pdf>. Accessed 11 March 2013.
- Tsai, S. (2009). *Maritime Taiwan: historical encounters with the East and West*. New York: M.E. Sharpe, Inc.
- UN. (1993). *International convention on Maritime Liens and Mortgages 1993*. Available at: <http://www.jus.uio.no/lm/un.imo.maritime.liens.and.mortgages.convention.1993/doc.html>. Accessed 2 April 2013.
- UN. (2005). *General assembly resolution A/Res/59/24, oceans and the law of the sea, 4 February 2005, paragraph 38*. Available at: http://oceansbeyondpiracy.org/sites/default/files/un_general_assembly_resolution_59-24.pdf. Accessed 3 May 2013.
- UN. (2013). *Report of the UN Secretary-General on oceans and law of the sea, 2013*. Available at: http://www.un.org/Depts/los/general_assembly/contributions_2013_2/ILO%20SG%20Report%20v5.pdf. Accessed 29 April 2015.

- UNCTAD. (2011). *Review of Maritime Transport, 2011*. Geneva: United Nations Conference on Trade and Development.
- UNCTAD. (2012). *Review of Maritime Transport, 2012*. Geneva: United Nations Conference on Trade and Development.
- UNCTAD. (2013). *Review of Maritime Transport 2013*. Geneva: United Nations Conference on Trade and Development.
- UNCTAD. (2014). *Review of maritime transport 2014*. Geneva: United Nations Conference on Trade and Development.
- Wang, F. (2005). *Organising through division and exclusion: China's Hukou system*. Stanford: Stanford University Press.
- Wang, J. (2008). *Research on the legal problem of fair treatment of seafarers during maritime incidents*. Unpublished LLM Thesis, Dalian Maritime University.
- Wang, G., & Ng, C. K. (2004). *Maritime China in transition 1750–1850*. Wiesbaden: Harrassowitz Verlag.
- Warrick, K. C. (2010). *Sandra Cisneros: Inspiring Latina author*. Melrose Park: Lake Book Manufacturing, Inc.
- Wei, Y., & Liu, X. (2001). *Foreign direct investment in China: Determinants and impact*. Glos: Edward Elgar Publishing Limited.
- Whyte, M. K. (2003). The persistence of family obligation in Baoding. In M. K. Whyte (Ed.), *China's revolutions and intergenerational relations* (pp. 85–120). Ann Arbor: Universities of Michigan Centre for Chinese Studies.
- Wit, B. D., & Meyer, R. (2010). *Strategy: Process, content, context, an international perspective* (4th ed.). Hampshire: Cengage Learning EMEA.
- Wolf, M. (1994). Women and the family in rural Taiwan: Excerpts. In H. Jacobson (Ed.), *Comparative sociology of the family* (pp. 225–248). Burnaby, BC: Open Learning Agency.
- Wright, P. G. (2012). Shipping regulatory institutions and regulations. In W. K. Talley (Ed.), *The Blackwell companion to maritime economics*. Oxford: Blackwell Publishing Ltd.
- Wu, B. (2008). *Vulnerability of Chinese contract workers aboard*. Nottingham: China Policy Institute of the University of Nottingham.
- Wu, B., Shen, G., & Li, L. (2007). *The transformation of the Chinese labour market for seafarers*. Cardiff: Seafarers International Research Centre (SIRC).
- Xu, Z. (2012). Respect seafarers' labour and develop seafarers' team. *China Maritime Safety*, 8, 25–26 [in Chinese].
- Yamashita, M. S. (2006). *Zheng He: Tracing the epic voyages of China's greatest explorer*. Michigan: White Star Publisher.
- Yu, I. A. (2008). *Lost in translation: Outcomes of Asian value integration and the perfect self*. Ann Arbor: Pro Quest LLC.
- Zhang, Y. (1991). China's entry into international society: Beyond the standard of 'civilization'. *Review of International Studies*, 17(1), 3–16.
- Zhang, Z., & Cai, W. (2003). The shortage in senior officers market. *China Maritime Safety*, 10, 16–17 [in Chinese].
- Zhang, P., & Zhao, M. (2014). Maritime Labour policy in China: Restructuring under the ILO's maritime labour convention 2006. *Marine Policy*, 50, 111–116.
- Zhang, P., & Zhao, M. (2015). Maritime labour convention, 2006 and the Chinese seafarers: How far is China to ratification? *Marine Policy*, 61, 54–65.
- Zhao, M. (2000). Chinese seafarers at the end of the 20th century. *Seaways*, 2, 7–10.
- Zhao, M. (2002). The consequences of China's socialist market economy for seafarers. *Work, Employment and Society*, 16(1), 171–183.
- Zhao, M. (2009). Building China's 'Railway' at sea: process and policy in the development of the ocean shipping in the People's Republic. paper presented to Workshop 'China and Its Infrastructure', Fairbank Centre of Chinese Studies, Harvard University, 30 October.
- Zhu, G. (2005). The presentation and causes of seafarers' negative mental conditions. *Journal of Dalian Maritime University*, 3, 45–48 [in Chinese].

Chapter 3

The Pre-employment Conditions of Chinese Seafarers

3.1 Introduction

The sea has been the world's greatest highway and can be used by all countries. However, the power of the sea and the weather are still uncontrollable, and seafaring is one of the world's most dangerous occupations (Ozcayir 2001, p. 35). First, working aboard a ship is unlike occupations on land. Seafarers are exposed daily to 'an unusual hazardous situation, natural disasters, highly risky and dangerous working environment and poor living conditions' (Dimitrova 2010, p. 32). In addition, seafarers are at a great distance from shore, it is therefore very difficult for them to obtain external assistance, and they have to rely primarily on themselves when the ship is in an emergency situation. Seafaring is therefore considered as one of the most dangerous professions 'involving high fatality', and seafarers are working in an 'extremely complex and strenuous environment' (Zevallos et al. 2014).

Because of the unique nature of the seafaring profession, it is recognised that not all people are eligible to work on board a ship (Zhu and Wang 2007). Seafarers should be well trained and master a range of skills and expertise before they board a ship. Incompetent seafarers at sea not only puts themselves in danger, but also imposes a potential risk to their colleagues, as well as to the safety of ship and marine environment (IMO 2013). There are therefore a number of strict criteria with regard to the eligibilities and qualifications to be accomplished before a seafarer can be employed on board a ship. For example, both the ILO and the IMO have established a series of standards for seafarers' qualifications, particularly the STCW 1978 (as amended), which prescribed comprehensive and inclusive requirements of watchkeepers' training and certification (STCW 1978).

China has the largest maritime labour force in the world (MSA 2015). During the last decade, the Chinese government has made many efforts to develop its maritime labour market, with the training of seafarers being its main concern. In order to increase the supply of highly qualified seafarers to both the Chinese flag fleets and

to the international maritime labour market, China has established strict standards to regulate various affairs with regard to the seafaring profession. However, despite the significant improvement in many aspects, there are still many problems that directly or indirectly affect Chinese seafarers' rights.

As discussed in Chap. 2, the concept 'pre-employment conditions' means the conditions faced by a seafarer before the commencement of employment. The term was introduced in the leading academic literature titled *Seafarers' Rights*. In the book, this term covers a range of issues that were considered as pre-employment conditions, such as eligibilities, qualifications, and recruitment services. However, a literature survey indicates that research on Chinese seafarers' pre-employment conditions has not been extensively discussed. In the following context, a number of typical issues regarding Chinese seafarers' pre-employment conditions will be critically examined.

In the light of the above concerns, this chapter has a number of objectives:

- to present a clear and concise explanation of the legislation on the eligibilities of Chinese seafarers, which include seafarers' registration and physical conditions, and the main problems existing in practice that may impair Chinese seafarers' benefits and other rights;
- to outline the Maritime Education and Training (MET) system in China, and to examine the major issues with regard to the qualification and certification of Chinese seafarers;
- to examine the relevant regulations on seafarers' recruitment and placement with international standards, in particular the MLC 2006, comparing these with those under the Chinese legal system, and to investigate the practices in China; and to illustrate relevant regulations with regard to the employment of foreign seafarers in China, which results in the loss of employment opportunities for Chinese seafarers; and
- to critically examine the major responses of the Chinese government and other key stakeholders to the MLC 2006, and to summarise the improved seafarer protection due to these responses.

In sum, this chapter draws the above themes together in the discussion of some major issues relating to Chinese seafarers' pre-employment conditions from the perspectives of theoretical policy studies and empirical analysis.

3.2 The Eligibility of Chinese Seafarers

Unlike many professions on land, there is a strict criterion of eligibility of seafarers. It includes a range of requirements that determine who can apply for a job on board a ship, such as nationality, age and general physical and mentor condition. The term 'eligibility' boils down to whether or not a person has the 'status' to apply for the specific profession. The eligibility of seafarers is therefore of significant importance for seafarers. The special nature of the seafaring profession requires that only a

specific group of people can be engaged in the vocation. Also, the strict criterion is a certain protection for seafarers by excluding those people who are not eligible for the profession.

3.2.1 Seafarers' Registration in China

As already noted, seafaring has always been one of the world's most dangerous occupations. It is assumed that whoever goes to sea is aware of its dangers (Ozcayir 2001). Because of its high level of specialisation, not all people are eligible to engage in the seafaring profession. In China, to register as a seafarer in Maritime Safety Administration (MSA) is one of the preconditions of being employed on board, as discussed in detail in the next paragraphs. After registration, the seafarer will be issued with a series of identification documents with which to prove his eligibility for this profession.

3.2.1.1 The Distribution of Chinese Seafarers

In China, the MSA is in charge of seafarers' registration. Under the supervision of National MSA, there is a total of 14 local MSAs providing registry services for the seafarers within their jurisdiction. However, before 2014 there was no accurate and effective database of statistics of seafarers' registrations in China. Many local MSAs provided only a rough estimate of the number of seafarers within their jurisdiction. For example, Shandong (SD) province has the largest population of seafarers in China. By the year 2012 it was estimated there were more than 85,000 seafarers registered in the MSA Shandong branch (Shipman 2012). Liaoning (LN) is another province with a large population of seafarers. In 2013 the total number of registered seafarers in the LNMSA was around 43,000 (LNMSA 2013). It was also reported that, in 2013, there were more than 650,000 seafarers registered in China (GOV 2013). However, before 2014 none of them could give an accurate number or breakdown of categories of seafarers' registrations.

In 2014 the National MSA claimed that they had established an accurate statistical database of seafarers' registrations in China. The information was published first in Shanghai in the Conference of Chinese Seafarers' Development Strategy on 25 June 2014. According to the database, at the end of 2013 there were a total of 574,117 seafarers registered in China, including 419,029 seafarers serving on ocean-going vessels and 155,088 seafarers engaged in coastal travel. It is noteworthy that the total number of Chinese seafarers was considerably fewer than what had been anticipated before 2014. Figure 3.1 describes the information and comparison of Chinese seafarers serving on different types of vessels, not including those working on board river-trade vessels (MSA 2014).

Figure 3.2 gives comparative data on the top ten largest seafarer-supplying regions in China. These data were collected by the MSA according to Chinese

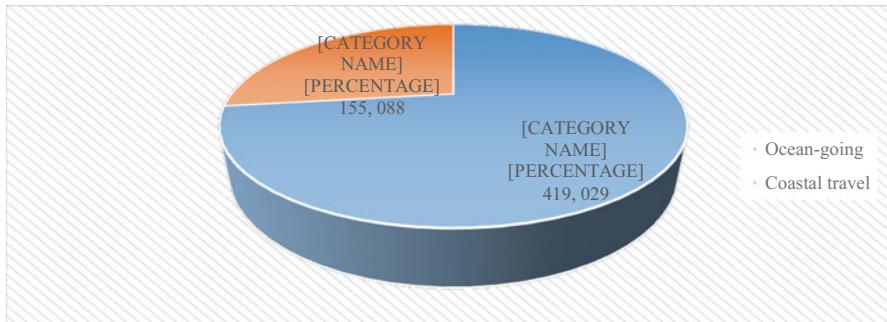


Fig. 3.1 Distribution of Chinese seafarers serving on different vessels (2014). *Source:* created by the author on data from MSA (2014)

seafarers' places of birth. It is noteworthy that although Henan is an inland province that is hundreds of miles from the sea, it has become one major seafarer-supplying region. Most interestingly, many seafarers had never seen the sea before they first served on board, even after they had completed all training courses and been granted the relevant qualifications. As one 22-year-old cadet coming from Henan province explained in an interview (in 2013):

I was born in a small town in Puyang prefecture of Henan province. After I completed my studies in high school, I was recruited by Henan Xinxiang Seafarers' Training Centre. It was said that seafarers got decent payment and visits around the world. I had never seen the sea, and so I joined their programme without any hesitation. However, Henan is so far away from the coast that even after we had finished our courses, we had never had the opportunity to see the sea. It was my first time of seeing it when I joined my first ship in Qingdao and I was very impressed with the roughness and magnificence of the sea (Interview SF 5-1).

Chinese seafarers are registered under the jurisdiction of 14 local MSAs. For the convenience of seafarers' registering and dealing with local marine administrations, these local MSAs are primarily situated along the PRC's coastline and the Yangtze River, Pearl River and Heilongjiang Rivers. Figure 3.3 shows the number of seafarers' registrations in each local MSA.

3.2.1.2 The Significance of Seafarers' Registration

The registration of seafarers is of great value and importance. First, official registration is a precondition for one to engage in the seafaring profession and to benefit from seafarers' welfare or other advantages. As discussed in the previous chapters, seafaring is a special profession and seafarers' labour has unique characteristics. Seafarers should therefore be entitled to special rights and protections because of the characteristics of their profession and their special contribution. To some extent, these special rights and protections should be different from those of people in many other industries; such rights and protections cover welfare, social security, education and training, and tax reduction or exemption. Because public resources

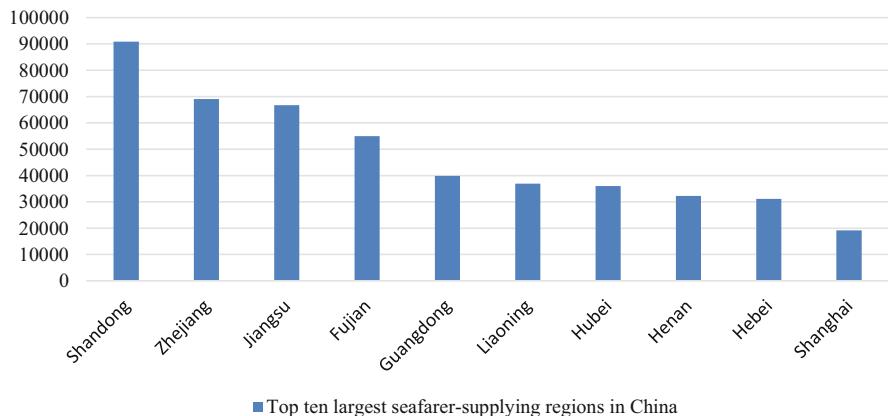


Fig. 3.2 Top ten largest seafarer-supplying regions in China (2014). *Source:* created by the author on data from MSA (2014)

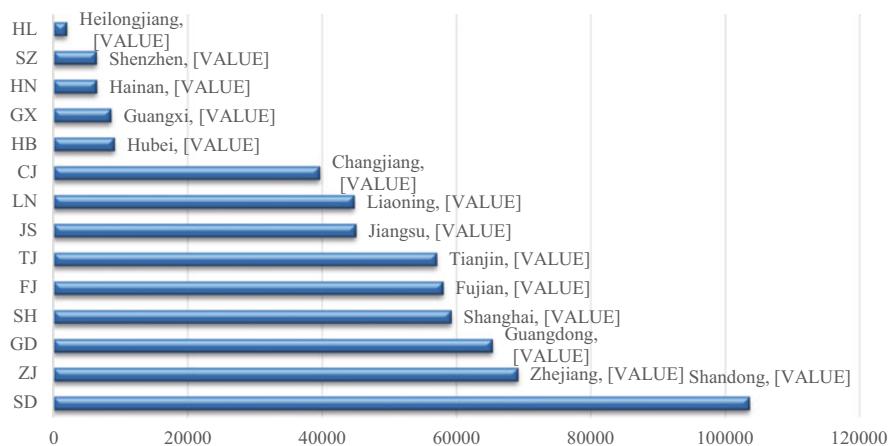


Fig. 3.3 Top ten largest seafarer registration bureaus in China. *Source:* created by the author on data from MSA (2014)

are limited, these special entitlements cannot be granted to everyone. It is therefore important that seafarers' registration should be restricted to those who are regularly engaged in the seafaring profession.

Second, seafarers' registration helps the authorities and other stakeholders to keep track of seafarers working on board. Through registration, the MSA can set up a database of seafarers and can know about the structure and inventory of the seafarers' labour force. The overall view and analysis of the seafarers' labour force is important in order to analyse the supply and demand of seafarers, and it helps to maintain the total number of seafarers within a reasonable range. In addition, seafarers' registration contributes to the availability of data for tabulation and

analysis for the study of the maritime labour market. Accurate, complete and well-updated data are useful to improve efficiency in dealing with seafarers' affairs, extending seafarers' benefits and privileges and preventing discrimination and unfair treatment.

However, before 2007 there was no regulation with regard to seafarers' registration in China. In practice, whoever had completed certain training courses was eligible to be registered as a seafarer. In 2007 the Seafarers' Regulations gave more concrete requirements for seafarers' registration, such as minimum age, fulfilling certain medical conditions, completion of training, and passing certain examinations. In 2008 the MOT adopted the Provisions on Administration of Seafarers' Registration of the PRC (PASR). For the first time, a detailed procedure with specific requirements was regulated with regard to seafarers' registration in China. However, the Provisions do not distinguish whether or not an applicant is regularly engaged in the seafaring profession. Even a person employed in a land-based job can be registered as a seafarer without any difficulty. As discussed in the next section, the primary reason is that there is confusion about the seafarer's identity in China.

3.2.1.3 The Confusion Concerning Seafarer's Identity

There appears to be certain confusion with regard to the seafarer' identity in China. In order to examine nautical graduates' options for a seafaring vocation, a survey (2014) was carried out in two classes of Dalian Maritime University (DMU), namely 'Navigation 97-1' and 'Navigation 97-2'. These two classes were recruited in September 1997 and graduated in July 2001. There were a total of 64 students in these 2 classes and all were majoring in Nautical Studies in 4-year courses. At the time of graduation, most of these students preferred to register as seafarers in order to obtain the full set of seafarers' documents. Even though some of them were not going to work on board ships, they preferred to hold the documents in case they needed a second choice in the future. According to the survey, 1 year later, only 30 people were still working in the seafaring vocation. There were a number of reasons given by those who had quit seafaring jobs. First, if one wants to obtain a set of seafarer's certificates, one has to complete 1 year's sea training. Most graduates liked to keep a set of certificates (for future use—just in case), even though they did not have a long-term intention to be seafarers. Second, some of them gave up the seafaring vocation after they had experienced a hard time on board. Third, the seafaring experience is useful for one applying for a land-based position in the shipping industry, especially for positions requiring empirical skills; some people therefore wanted just to gain some practical experience through a temporary period in seafaring. As indicated in Fig. 3.4, the survey also shows that there were only 12 people regularly working on board 5 years later and only 2 after 10 years.

According to the latest information provided by the National MSA, by the end of 2013 there were 472, 439 certified seafarers, including 325, 859 ocean-going seafarers and 146, 580 seafarers qualified for coastal voyages. However, in 2013

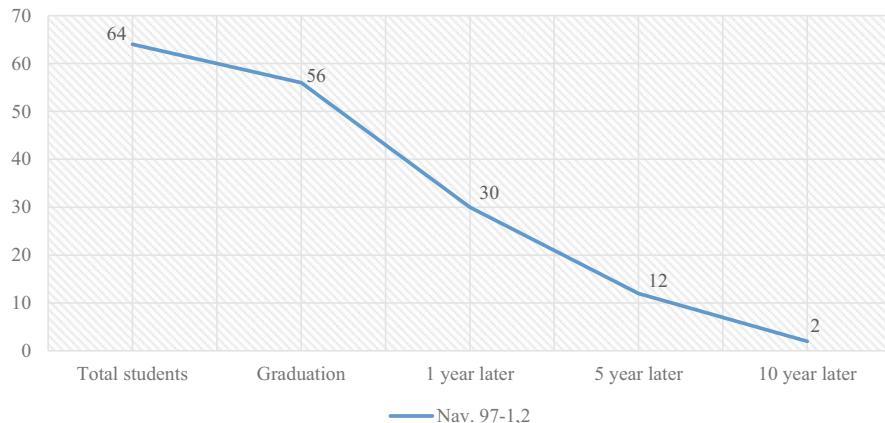


Fig. 3.4 The decrease of seafarers in two classes of DMU within 10 years. *Source:* created by the author with data drawn from fieldwork in 2014

there were only 242,437 ocean-going seafarers who had ever worked on board ships, and 50,143 seafarers with on-board experience engaged in coastal voyages (MSA 2014). Figure 3.5 describes the comparison of numbers of certified seafarers with and without on-board experience in 2013.

However, as a proverb in the shipping industry goes, '*once a seafarer, always a seafarer*'. Once they have registered as seafarers and hold valid certificates, they would be counted as seafarers in China, even though they might never work on board a ship again. The MSA would not prevent these people from registering as seafarers as long as they made an application with a set of documents. Thus, in China's data provided by the MSA, there is no distinction between 'active seafarers' and 'inactive seafarers'.

There are a number of negative effects brought about by this non-discriminatory registration. First of all, huge public educational and training resource would be spent unavoidably on those who did not take seafaring as their future career at the beginning. China has the largest output capacity of prospective seafarers in the world. In 2012 there were around 75 maritime training and educational institutions (Edulife 2012), and the latest number announced by the MSA in 2015 is 296 (MSA 2015). The number is still increasing because every year the Ministry of Transportation grants new licences for seafarers' training institutions. As stated by the Minister of Transportation of the PRC, the annually increased number of registered seafarers surpasses 30,000 (CNSS 2013). In a seafaring talents working conference of the MOT, the number was targeted at 40,000 by 2015 and 60,000 by 2020 (Chinanews 2010). However, only a limited number of them would finally choose a seafaring career after graduation.

Furthermore, some seafarers choose to work on board again for high payment if they are still registered as seafarers. However, because they do not regularly work aboard ships, their seafaring skills may have declined significantly. This may impose high risk to the safety of the ship and also reduce the level of overall quality

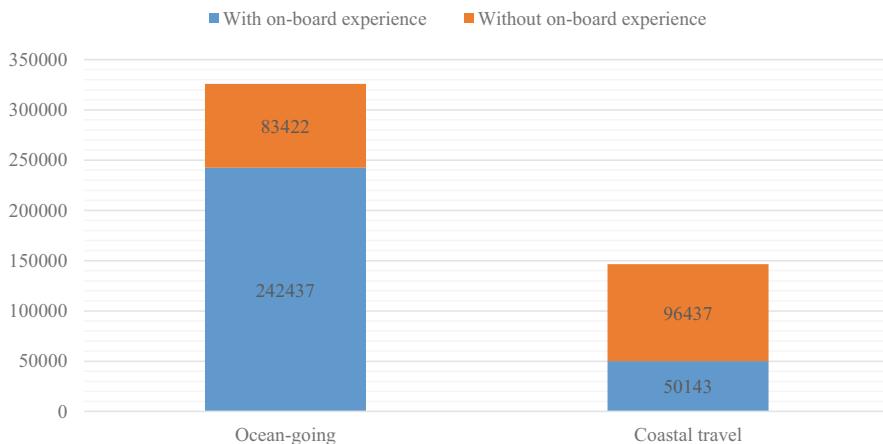


Fig. 3.5 The comparison of numbers of certified seafarers with and without seafaring experience in 2013. *Source:* created by the author on data from MSA (2014)

of Chinese seafarers. In addition, the unrestricted registration misrepresents the real situation of the supply and demand relationship in the maritime labour market. As a result, the employment opportunities of 'real' seafarers will be affected by those who are just registered as seafarers but never intend to work on board. As one senior official of MSA explained in an interview with him (2013):

We need to establish an accurate seafarers' registration database to reflect the real situation of the maritime labour market in China to keep good track of seafarers' records and information. Seafarers' registration should be kept strictly for those who are regularly working on board because the seafaring profession needs continuous practice. Those who are away from ships for more than eighteen months should be excluded from the database because they may affect the safety of a ship. When they re-enter the labour market, they need proper training and re-registration. (Interview GOV 5-1)

3.2.2 *Physical Conditions of Chinese Seafarers*

As indicated by the International Maritime Health Association (IMHA), 'seafaring is one of the most physically demanding professions in one of the most dangerous work environments: the sea' (IMHA 2012, p. 14). Life at sea encounters a set of unique pressures, risks and hazards. According to the statistics obtained from official maritime authorities in different countries, the main causes of death at sea include maritime disasters, occupational accidents, illness, suicides and homicides (Nielsen and Roberts 1999; Roberts and Hansen 2002). Among the fatal accidents, illness is one of the main causes resulting in seafarers' deaths at sea. It was suggested that many deaths could have been avoided if proper, and regular, medical examinations had been conducted (ILO 2013).

Seafaring is a stressful and demanding profession, with a set of unique pressures, risks and hazards. When a ship is sailing at sea, it is a separate, isolated and confined place. In circumstances of injury or acute illness, even though there is a person in charge of medical treatment aboard, it is not of the kind that would be provided by a medical doctor on land. Therefore, it is of great importance to ensure that all seafarers are medically fit to perform their duties on sea-going vessels. To ensure hard labour and emergency situations can be handled properly and swiftly, the seafaring profession requires higher standards of physical fitness than what is normally required on land. In addition, a high rate of suicides aboard has also drawn professional and public attention to seafarers' mental health (Iversen 2010, 2012). They also need to be mentally fit to deal with the high pressure and loneliness on board. Every seafarer on a seagoing merchant ship is required to have a valid certificate of medical fitness.

The international organisations, including the ILO and the IMO, have a long history of establishing uniform standards to regulate seafarers' physical requirements. These standards have played an important role in ensuring that seafarers are medically fit to work aboard ships. China, as the largest seafarer supplying nation, has made various efforts to keep in tune with international standards. As discussed in the following sections, China has ratified a series of international conventions on seafarers' medical examinations, and since as early as 1993 it has also enacted its own legislation on this subject. However, before new measures to be taken in the future, there are still many problems faced by Chinese seafarers.

3.2.2.1 The International Standards on Seafarers' Medical Fitness

The international standards with regard to seafarers' physical requirements have been extensively regulated by the ILO and IMO. It was announced that 'adequate protection for the life and health of workers in all occupations' is one of ILO's fundamental principles of occupational health and safety (Alli 2008, p. 19). For example, as early as 1921, the ILO adopted the Medical Examination of Young Persons (Sea) Convention to regulate that '[t]he employment of any child or young person under 18 years of age on any vessel . . . shall be conditional on the production of a medical certificate attesting fitness for such work' (ILO C016, Art. 2). This was followed by the Medical Examination (Seafarers) Convention in 1946, which stipulated that all seafarers should produce certificates attesting to their fitness for the relevant work before they are employed at sea (ILO C073, Art. 3). Both instruments have now been consolidated into the MLC 2006. Regulation 1.2 and the Code provisions set out a series of requirements, including that seafarers are required to undergo regular medical examinations and hold a valid certificate attesting to their physical fitness.

Since its establishment, the IMO has also developed a series of standards for the health fitness of seafarers. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978, as amended) is the major one. It requests that not only physical fitness is a precondition for seafarers to

work on board, but also they must possess a valid medical certificate to prove that. Under the STCW Convention, all seafarers must meet minimum standards of competence, age and medical fitness. These standards are prescribed by each national administration, provided they should be equivalent to or above the STCW standards. However, before 2010 it was only mandatory in the STCW that seafarers needed to be 'reasonably fit and in good health', and each administration established its own standards for seafarer's medical health. Unfortunately, many administrations had not established and enforced strict standards. Therefore, when the STCW was amended in 2010, the relevant provisions were revised. More detailed mandatory minimum standards of medical fitness for all international seafarers were stipulated (ITF 2010, p. 51). The new amendment also provides that the issuance of certificates of competence is conditional upon providing satisfactory proof of having met the standards of medical fitness specified in section A-I/9 of the STCW Code, including, in certain cases, minimum standards for eyesight and hearing (ILO/IMO/JMS 2011). In addition, the implementation of the International Safety Code has also put a requirement on seafarers' medical fitness. According to Chapter 5/6.2, a 'Company should ensure that each ship is manned with qualified, certificated and medically fit seafarers in accordance with national and international requirement' (ISM 2010). However, the ISM has not prescribed the detailed requirement of 'medically fit' and left it to other IMO instruments.

With national medical examinations for seafarers varying widely, the ILO, corporately with World Health Organisation (WHO), in 1997 adopted the Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations for Seafarers (Guidelines). The Guidelines provided detailed information on the conduct of seafarer medical examinations, but they failed to 'assist by proposing the appropriate criteria to be used when deciding whether a medical fitness certificate could be issued for other conditions' (ILO/IMO/JMS 2011, p. 2). There were still many 'differences in the application of medical requirements and examination procedures'. Sometimes medical certificates were unable to indicate 'the medical fitness for the work they will perform'. In order to 'reduce the differences' and ensure 'valid indicators', the ILO jointly with the IMO developed revised Guidelines (hereinafter Revised Guidelines) on the Medical Examinations of Seafarers in 2012 (ILO 2013, p. 7). It is recognised that the endorsement of these revised Guidelines will 'provide complementary advice to competent authorities, medical practitioners and all stakeholders of the shipping industry on the application of the MLC 2006, and the STCW Convention, 1978, as amended, with regard to safeguarding the health of seafarers and promoting safety at sea' (ILO/IMO/JMS 2011/12: 1).

3.2.2.2 The Minimum Age of Employment at Sea

To prevent under-age employment is a primary issue with regard to workers' physical requirements (UNHCHR 2003). The ILO has at various times adopted

13 conventions to deal with the issue and 5 of them are directly related to occupations at sea. Merchant seafaring has been traditionally treated as the most hazardous work of all occupations in the world, not only because it is likely to jeopardise health or safety for seafarers, but also it often involves exposure to more fatality risks than in other occupations. It is therefore important to prevent under-age persons from working on a ship. Since its establishment in 1919, the ILO has taken a series of measures to regulate the minimum age of employment. The fifth Convention adopted by the ILO was the 'Minimum Age (Industry) Convention, 1919. The Convention stipulates that children 'under the age of fourteen years shall not be employed or work in any public or private industrial undertaking' (ILO C005, Art. 2). This Convention was revised in 1937 by the Minimum Age (Industry) Convention (Revised), and the minimum age was set at 15 years (ILO C059, Art. 2). In 1920 the ILO adopted Minimum Age (Sea) Convention to prohibit the employment of children under 14 years of age on all ships and boats of any nature (ILO C007, Art. 2). The convention was revised in 1936 by the ILO C058, Minimum Age (Sea) Convention (Revised), in which the minimum age to be employed on vessels was raised to the age of 15 years (ILO C058, Art. 2).

In 1973, in order to 'ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons', the ILO adopted Minimum Age Convention, 1973 (ILO C138). In this Convention, the minimum age for general admission to any occupation was set at 15 years. However, for the 'employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons', the minimum age shall not be less than 18 years. In 1996 the minimum age for seafarers working on board was set at 16 years in the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (ILO C180, Art. 12).

Considering the need to adopt new instruments of the prohibition and elimination of the worst forms of child labour and to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, the ILO adopted the Worst Forms of Child Labour Convention, 1999 (ILO C182). The ILO C182 requests each Member State to take measures to prohibit and eliminate the worst forms of child labour, which shall apply to all persons under the age of 18 (ILO C182, Art. 2). Both the ILO C138 and the ILO C182 are recognised as the fundamental and core Conventions for the rights of the human being at work (Fitzpatrick and Anderson 2005, p. 43). In 2006, all the previous regulations with regard to seafarers' minimum age of employment were revised by the Regulation 1.1 in the MLC 2006, in which the minimum age for persons working on board was formulated at 16 years.

With regard to the above Conventions, China has ratified four of them, which are the ILO C007, the ILO C059, the ILO C138 and the ILO C182. However, both the ILO C007 and ILO C059 have been automatically superseded in 2000 by the ILO C138. Even though China has ratified only a limited number of the ILO's Conventions, it has established strict standards on workers' physical requirements. For example, when China ratified the ILO C138, it announced that the general

minimum age of employment in China would be 16 years, 1 year above the minimum requirement. Also, since the 1990s China has promulgated a series of laws and policies to regulate the minimum age of employment. In 1991, the Law on the Protection of Young Persons of the PRC was enacted to ensure the physical and mental health of young persons under the age of 18 years, and safeguard their lawful rights and interests (LPYP, Art. 1–2). Moreover, in the Labour Law of the PRC, adopted in 1995 by the National People's Congress (NPC), it was stipulated that young persons under the age of 16 years should be forbidden from employment by any employers of any nature (CLL, Art. 15). Furthermore, in 2002 the State Council of the PRC promulgated the Provisions on the Prohibition of Child Labour Employment, in which detailed stipulations were laid down to prevent employers of any nature from employing young persons under the age of 16 years (PPCLE, Art. 2).

In addition, the minimum age of employment is also stipulated in a number of legal instruments specifically for seafarers. In 2004, the MOT promulgated the Provisions on the Seafarers' Examination, Assessment and Certification of the PRC (PSEAC). According to the PSEAC, people who apply for certificates for master and officers should be above 20 years old, while application for certificates for able bodied seaman (AB) and duty oiler should be not less than 18 years old (PSEAC, Art. 4). Both in the Regulations of the People's Republic of China on Seafarers (ROS), adopted in 2007, and the Administration Rules of Seafarers' Registration of PRC, which was adopted in 2008 (ARSR), the minimum age to register as a seafarer was set at 18 years.

As discussed above, China has attached much importance to the prevention of under-age employment by setting a higher threshold than the minimum requirement when ratifying the ILO C138. At the same time, stricter requirements have also been established for the minimum age of employment in the maritime industry. People under 18 years old are considered as juveniles and should be under the protection of their parents or guardians. As seafaring has always been considered a dangerous profession, it is not widely encouraged among parents. For example, one 50-year-old father, coming from Shandong province, was interviewed in 2013. He expressed his concerns about his son, who had almost completed the nautical in Shanghai Maritime University:

My son is going to finish his training courses soon. If truth be told, I do not want him to go into the seafaring profession. As the proverb goes, 'we would rather climb a mountain than go into the sea'. He is just nineteen years old, but the sea is full of dangers. At home, I have never asked my son to do any hard work or any physical labour. I think he is not ready to live alone without my protection. How can he handle the tough work on board a ship? I am worried about that so much (Interview SF 5-2).

3.2.2.3 The Physical Requirement for Seafarers in China

It was noted earlier that seafarers' physical fitness is the precondition for them to cope with the stressful workload on board and the adverse circumstances at sea. The

Republic of China (ROC) ratified the ILO C016 in 1936 and the PRC Government recognised the ratification after the founding of new China in 1949. However, the ILO C016 was outdated and needed revision. China has not ratified the ILO C073 and implemented the MLC 2006, which has inherited and strengthened the requirements in the ILO C016. Nevertheless, China has implemented the standards of the STCW Convention and has been included on the STCW ‘white list’. The IMO White List is the official list of all Parties who are deemed to be giving ‘full and complete effect’ to the STCW and continuously meet the minimum requirements of the Convention. Other member states are entitled to assume that certificates issued by or on behalf of a state on the White List as being in conformity with the Convention. According to Standard A1.2 of the MLC 2006, ‘[a] medical certificate issued in accordance with the requirement of STCW shall be accepted by the competent authority’.

In addition, China has taken a variety of measures to comply with the Revised Guidelines on the Medical Examination of Seafarers, introduced jointly by the ILO and IMO. As early as 1993, the MOT promulgated the first compulsory industry standards for seafarers’ medical examination (Standards JT2025-93 1993). In the standards, a body of requirements for seafarers’ medical examination are laid down; for example, the minimum requirements with regard to the abilities of hearing and sight, colour vision, and dark adaptation.

The standards were revised several times in response to the development of maritime technology and the improvement of medical levels, and to meet the new requirements of the STCW Amendments. In the ROS and PSR, medical fitness was regulated as a precondition to register as a seafarer (ROS, Art. 5; PASR, Art. 5). As required, an acceptable Health Examination Report issued by a duly qualified medical practitioner is one of the fundamental documents to apply for seafarer’s registration (ROS, Art. 9; PASR, Art. 6).

However, in these regulations there is no detailed clause about the procedure and content of medical examination. The MSA therefore has to formulate the relevant ‘Notices’ and ‘Decisions’ to regulate more detailed matters. As discussed in Sect. 2.3, ‘Notices’ and ‘Decisions’ are very commonly used in China’s administrative management, in particular when there is no legal ground for an administrative order. These documents play an important role in improving administrative efficiency in China. However, the force of these Notices is only temporary and they are very easily replaced by further Notices, Decisions or by formal legal instruments. For example, in 1994, the MSA issued ‘The Notice Regarding Implementation of ‘The Standards of Seafarers’ Medical Examination’ in the Maritime Profession’. According to the Standards, people with positive Hepatitis B virus Surface Antigen (HBSAG) could not join the industry as seafarers and were even prevented from entering a college for nautical studies. This requirement was obviously unfair and not in accordance with the international standards.

The situation had not changed until 2010, when the MSA issued another ‘Notice’, ‘The Notice Regarding Amendments of “the Requirements of Seafarers” Medical Examination (2010 Number 306)’. In this amended ‘Notice’, the clearly prejudiced article was deleted. In 2012, the MSA promulgated the Provisions on the

Administration of Seafarers' Medical Certificates (PASMC); for the first time the medical certificate was regulated in a formal instrument. According to the Article 4 of the PASMC, every Chinese seafarer must be in possession of a certificate signed by a doctor before being employed aboard a seagoing ship. The certificate should indicate that the seafarer is physically able to perform the required duties, including having satisfactory eyesight and hearing, and not having some types of illness.

3.2.2.4 Difficulties in Obtaining Medical Certificate

Although much progress has been made, in practice there are still a number of problems faced by Chinese seafarers about their medical examination. First, except for the PASMC, which was adopted in 2012, most of the instruments or Notices are outdated and lack consistency. Moreover, these provisions are unable to distinguish different requirements among different posts on board. For example, a seafarer regularly working in the engine room does not need to have as good eyesight as a navigation officer. Sometimes those who apply for ordinary positions are prevented from working on board because of the application of unitary and single standards. Second, there is no clear regulation about the time when a seafarer should take a medical examination. Sometimes medical examinations are requested by the MSA discretionarily, though on many occasions there is not necessity. According to the MSA requirements, a seafarer is requested to produce an acceptable medical examination report before registering as a seafarer, taking the qualification examination, and applying for a competence certificate or a medical certificate. One therefore has to become accustomed to repeated medical examinations when dealing with various applications. As one 32-year-old Second Officer, coming from Yunan province, complained in an interview in 2013:

In the past half year, I have taken medical examinations three times. When I applied for the qualification examination, I was required to produce a Health Examination Form; otherwise they would not allow me to take the examination. When I passed the examination and applied for the competence certificates, I was again required to take another medical examination. I presented the old form but they said it was not acceptable because it was not original and it was not issued within one month. Several weeks later, when I applied for the medical certificate before I worked on board, I was not surprised that I had to take the third examination; otherwise, they would not issue the certificate to me. I cannot understand why one Health Examination Form cannot prove my physical fitness (Interview SF 5-3).

Apart from the above difficulty, due to medical fitness being a precondition for employment on board, seafarers have to handle the issue at their own cost and by themselves. According to the notice of the MSA, only a limited number of medical practitioners in a few designated hospitals have the 'recognised qualification' to conduct the special medical examination (MSA-231 2012). These hospitals are clustered in a number of big coastal cities. If a seafarer lives in a remote rural place, which is actually a common feature of most Chinese seafarers, he has to travel a long distance and wait several days to obtain the medical examination report. One

thirty-nine-year-old Third Engineer, coming from Sichuan province, described his annoying experience in an interview (2013):

I live in a mountain village far away from the coastal cities. In order to join a vessel, I was instructed by the recruiting agent to take a physical examination and apply for a medical certificate as soon as possible. I travelled a long distance to Shanghai and went for a physical examination. Unfortunately, due to my tiredness in the long journey, the level of ALT [Alanine Aminotransferase] indicated abnormal. Sometimes many doctors are very lax even on very serious items. However, this time the doctor instructed me to rest for one week and then test the item again. I had to stay in a small hotel and wait for one week and then had another examination. After my continuous urging, three days later I got the medical certificate. However, when I came back to the agent, I was told that the ship had left and I had to wait for the next opportunity (Interview SF 5-4).

3.2.2.5 Unreliability of Medical Certificates

Medical certification is a precondition for a seafarer to work on board a ship and to ensure the physical condition of the seafarer can meet the requirements of the occupation (ILO 2013). The strict threshold set in medical examinations is not only for the sake of seafarers, but also for the shipowners and other stakeholders. Through a proper medical examination the potential risks of health condition could be detected. If a seafarer is not suitable for working on board, he will be prevented from pursuing a seafaring occupation (Grime 2014). As a result, morbidity and mortality rates on board can be decreased. Unfit seafarers aboard not only disable themselves from work and even risk their own lives, but also put at risk the health and safety of the rest of the crew. A reliable medical certificate that reflects the real health situation of a seafarer is therefore of essential importance to all the parties in the maritime industry (Saarni 2002).

However, sometimes medical examination is just a procedure and cannot reflect the seafarer's real medical situation, at least in China's context (CNSS 2014). This situation will therefore result in risks for their future working on board. In China only a limited number of medical institutions are eligible to carry out seafarers' medical examinations. According to Chapter Three of the PASMC, these medical institutions must meet the prescribed standards and be licensed by the Maritime Safety Administration. In addition, those doctors who sign the certificates need to be approved and have their names published by the MSA (PASMC, Article 17). As a matter of fact, seafarers' medical examination does not require extra medical resources and special expertise. The only key issue is that the examination should follow the prescribed procedure and ensure the result reflects the real health condition. However, the relevant regulations make it seem special for the designated medical institutions and doctors. The MSA gives a list of eligible medical institutions and doctors to conduct seafarers' medical examination, and the list is revised each year. For example, there were 50 hospitals on the list in 2013, and the number increased to 121 in 2014 (Wanzheng 2014).

In practice, the special eligibility tends to mean a special business opportunity and hence profit. According to a survey, the cost of a seafarer's examination is

much higher than the cost for an ordinary person checking the same items. For example, in Shanghai, the cost for seafarer' medical examination is 700–800 Yuan (about £ 80–90), while for the same items an ordinary person only pays 300 Yuan. As a result, seafarers' examinations have become a lucrative business, which gives rise to corruption. Many medical institutions compete with each other for more clients by simplifying their procedure and lowering their standards. As one 39-year-old Third Engineer explained the matter in an interview (2013):

Every time before I worked on board, the manning agency would recommend me one medical institution with which they had a good relationship and the medical certificate could be processed very fast. On many occasions, they never checked my body seriously once they knew that I was a seafarer and I had paid the money. Moreover, if I told them I was in urgent need of a medical certificate to board a ship, they would let me fill in a form myself and then issue a medical certificate to me immediately (Interview SF 5-5).

What is most striking is that sometimes even an incapacitated and unfit seafarer can also obtain a suitable medical certificate without any difficulty. In Chapter Five of the PASMC, the responsibilities of medical institutions and their doctors are stipulated if they cannot perform their duties properly. However, the most serious consequence for them is to be temporarily removed from the approved list, and for 2 years only. Many doctors may never care about the consequence because it does not seriously affect their businesses or careers. They also do not know the special characteristics of the seafaring profession; they therefore do not know what exact physical requirements a seafarer must meet. One senior crewing manager from a manning agency in Beijing narrated one bad experience in an interview (2013):

We had a seafarer who was implanted with an artificial heart pacemaker. With this condition he obviously could not work on board a ship. When a medical examination doctor found out the situation, he just asked the seafarer whether he could work aboard a ship. In order to make money, the seafarer replied that working on board was no problem for him. However, two month later when the ship was at sea the seafarer developed a critical situation and needed to be sent to hospital immediately. It was very lucky that the position of the ship was not far from a nearby coastal port. The master of the ship had to deviate from its original route and the seafarer was saved at the last moment. The shipowner consequently lost a huge sum of money. We were also blamed for the incident and now the shipowner no longer accepts our seafarers (Interview SM 5-1).

3.2.2.6 Excessive Administrative Intervention

The medical examination for seafarers tends to face excessive administrative intervention from the perspectives of different government departments. As discussed in the preceding section, the special requirement for seafarers' medical examination has brought about a lucrative business for some doctors, and so also an opportunity for corruption. This has also been accompanied by conflicting interests, which not only exist among different medical institutions but also between the different government departments, such as the Ministry of Health (MOH) and the MOT. The MOH is the higher authority of the General Administration of Quality

Supervision, Inspection and Quarantine (AQSIQ), which is directly responsible for the quarantine inspection of seafarers at Chinese ports.

In the past, seafarers' medical certificates were the same as those of ordinary people who were engaged in international trips. The AQSIQ was in charge of all the medical examination and issuance of medical certificates for all people. To monopolise this business, the AQSIQ generally authorise only its affiliated institutions to operate the business. As discussed above, before the implementation of STCW 2010, there was no detailed requirement at the international level and the content of medical certificates was mainly regulated by each national authority. With the implementation of STCW 2010 and the MLC 2006, the medical certificate issued by the AQSIQ cannot satisfy international requirements and therefore is not recognised at foreign ports.

In 2013, the MSA decided to address this issue, and developed its own 'Seafarers' Medical Certificate' (SMC) which was in conformity with international standards. This unavoidably violated the interest of AQSIQ. Even though the SMC had been recognised by a foreign quarantine authority at foreign ports, many ships were detained at Chinese ports because some Chinese seafarers failed to present medical certificates recognised by the AQSIQ.

In addition to the medical certificate, a seafarer also needs to be vaccinated and granted a valid vaccination certificate, which is within the proprietary authority of the AQSIQ. In China all vaccine medicines are controlled exclusively by the AQSIQ. Even though a seafarer has been medically examined and obtained a SMC from the MSA, he has to go to the AQSIQ again for vaccination. Under this situation the AQSIQ would request the seafarer to check all the items again, including a blood test and a chest X-ray examination, although it is totally irrelevant and unnecessary. Otherwise, the application for vaccination would be declined. Many seafarers had to spend more money and do double blood tests and X-ray examinations. As one 42-year-old Second Engineer complained in an interview (2013):

It was unbelievable that I had to draw two tubes of blood for the medical examination. When I presented the medical certificate issued by the MSA and applied for the yellow book from the AQSIQ (the certificate of vaccination), they declined my application and requested me to check every item again, although they were well informed that I had already checked every item properly. Of course, I spent another 800 RMB on the medical examination for one piece of useless paper except the vaccination (Interview SF 5-6).

Moreover, the conflict between the AQSIQ and the MSA has resulted in more serious consequences. For example, a number of ships were delayed in Chinese ports because the AQSIQ did not recognise the medical certificates of Chinese seafarers issued by the MSA. In several cases, foreign ships were detained because of the deficiency alleged by quarantine officers. As one ship agent of Qingdao port explained an incident in an interview (2013):

On the first of May in 2013 we represented a prestigious European shipowner. Most Chinese seafarers were very proud of being able to work for the company. However, the ship was detained by a quarantine officer because several Chinese seafarers were holding medical certificates issued by the MSA rather than by the AQSIQ. Of course, the most

efficient solution was to send the seafarers to do another medical examination and get new certificates. Unfortunately, it was on the Labour Day holiday and the AQSIQ refused to provide any service. After the master paying US\$500 'penalty' and ten hours' delay which resulted in a loss of more than US\$50,000 loss, the ship was finally released (Interview SA 5-1).

This disgraceful incident attracted widespread attention in the global maritime industry. As a consequence, many foreign shipowners started to lay off Chinese seafarers because they were afraid that their ships would be detained for the similar reasons at Chinese ports. It was not until 30 July 2013 that the problem was resolved by the AQSIQ and the MOT jointly issuing a notice in which a compromise was made and Chinese seafarers do not now need to undergo medical examination twice (MOT/AQSIQ 2013). Even though the problem was temporarily resolved under the joint efforts of the AQSIQ and the MOT, the conflict of interest will continue to exist until more clear responsibilities are regulated in the legal system.

3.3 Professional Qualifications of Chinese Seafarers

'Qualification' is based on education, competence and relevant work experience. As with any other industry, an employee needs to have certain skills, an appropriate educational background, and related work experience in order to be qualified for a given position. Shipping is one of the safest means of transport, and yet seafaring is one of the most dangerous vocations. Thousands of accidents at sea still occur each year and 'the great majority of these involve human error' (EMSA 2013). All seafarers need to be trained and qualified before they carry out duties on board ship. The system of training and certification is very important in order to minimise the potential of human error and prevent sea accidents. To ensure seafarers aboard ships are qualified for their emergency and regular duties, the education, training, examinations and certification system in the countries that issued the original certificates must be fully in accord with the international standards. The IMO's STCW Convention prescribed international standards on training, certification and watchkeeping for seafarers. In addition, the ILO has also played a role in adopting and implementing standards with regard to the training and qualification of seafarers.

3.3.1 *International Standards of Seafarers' Qualification*

Both the ILO and IMO have laid down a series of rules with regard to seafarers' training and qualification. As the UN's agency specialising in maritime affairs, the IMO has prescribed comprehensive rules to regulate the training and qualification of seafarers. For example, the STCW 1978 Convention, as amended in 1991, 1994, 1995 and 2010, is the most important one. The ILO has not been competing with the

IMO in regulating seafarers' qualification. Instead, it plays an irreplaceable role in many areas that the IMO has not covered completely.

First of all, the ILO has a long history in formulating rules regarding seafarers' training and qualification. As early as 1936, the ILO adopted the Officers' Competency Certificates Convention. In this Convention, maritime countries were required to establish a minimum requirement of professional capacity in the case of captain, navigating and engineer officers in charge of watches on board merchant ships (ILO C053). To complement the ILO C053, the Certification of Able Seamen Convention was adopted in 1946 (ILO C074). It was stipulated in the ILO C074 that each competent authority of a ratified State 'shall make arrangements for the holding of examinations and the granting of certificates of qualification' for able seamen (ILO C074, Art. 2). In the same year, the Certification of Ship's Cooks Convention regulated that a ship's cook responsible for the preparation of meals for the crew of the ship should be trained and certified with a qualification (ILO C069). All these three Conventions were revised by Regulation 1.3 in the Title 1 of the MLC 2006.

Second, the STCW Convention focuses on the qualifications of watchkeepers, in particular the masters and the deck/engine officers. This Convention does not address much about the training and qualification of ratings. It was not until the adoption of STCW 2010 amendments (Manila Amendments) that the training for categories of 'able seafarer deck' and 'able seafarer engineer' was regulated. However, the ratings without watchkeeping duties are still not covered by the STCW Convention.

Third, although efforts have been made to reduce the ILO's role in regulating technical requirements for the training of seafarers, the ILO continues to play an important role in a number of issues (McConnell et al. 2011, p. 258). At the 2004 Preparatory Technical Maritime Conference (PTMC) jointly held by the ILO and IMO, a consideration was made to transfer the entire responsibility for training and qualifications of seafarers to the IMO (PTMC, 2004, p. 7). However, the proposal was not finally approved. For example, the IMO did not consent to take on the responsibility of dealing with the training and qualification of ship's cooks, which still remains a responsibility of the ILO.

Nevertheless, the IMO has been considered as the most appropriate body to deal with the matters on seafarers' training and certification. Before the MLC 2006 was drafted, it was determined that some provisions should be 'formally transferred' to the IMO (McConnell et al. 2011, p. 258). As a result, the MLC 2006 does not provide detailed training standards; as a substituted approach, the ILO cooperatively works with the IMO to develop complementary international standards; for example, the STCW Convention as amended. The negotiating history at the first Subgroup meeting in June 2002 notes (HTLWG 2002, p. 22):

131. The secretary of the Seafarers' group said that consideration should be given to the integration of the ILO training and certification instruments into the STCW95 Convention. What was important was that there would be no vacuum on training issues. Perhaps there was a need to include certain principles concerning training and certification in the new Convention in view of the role the ILO is afforded in the Articles of the IMO STCW95

Convention. However, specific provisions, such as the training requirements for able seafarers and ships' cooks might better be incorporated in the STCW Convention.

132. The observer from the International Maritime Organization said that he saw no reason why such issues as training of able seamen and ships' cooks could not be brought into the STCW Convention. He noted, however, that the existing ILO requirements were not very detailed, and that if such matters were included in the STCW Convention, it would be necessary to develop detailed provisions on the competencies required¹.

3.3.2 Seafarers' Qualification Standards in China

The Chinese Government has been very active in regulating the standards of seafarers' qualifications. Although China has not ratified any of the above-mentioned ILO's Conventions (except the ratification of MLC 2006 in 2015), it has established a higher standard than the minimum requirements of the STCW Convention. The STCW, adopted by the IMO in June 1981, came into force in China on 28 April 1984. Since then, the Chinese Government has adopted a series of maritime legal instruments to perform the obligations under the Convention. The Chinese seafarers' qualification was first regulated in Clause Seven of Maritime Traffic Safety Law of the PRC. However, the Law did not provide detailed requirements about seafarers' training and qualification.

Since the mid-1990s, the MOT and its subordinate department, the Maritime Safety Administration, have played an important role in maritime legislation on behalf of Chinese Government. In 1995, the MOT promulgated the first policy with the title 'the Provisions on the Administration of Seafarers' Training', which was revised in 1997. In this policy, not only the categories, contents and procedures of seafarers' training, but also the responsibilities of the authority-in-charge and training centres were clearly regulated (PAST). In 1997, the MOT promulgated the Provisions on the Seafarers' Examination, Assessment and Certification. In the Provisions, detailed regulations were laid down to cope with a major revision of the STCW, which was amended in 1995 and came into force in 1997 (PSEAC). This policy was subsequently revised in 2004 after the entry into force of the STCW 1998 Amendments in 2003 (PSEAC). In 2007, the State Council enacted the ROS, which further promoted the regulations in respect of seafarers' training and certification. To complement the ROS, the MOT and MSA subsequently promulgated a number of administrative rules and provisions.

Thus far, there have been sufficient and comprehensive standards established to adapt the requirements of the STCW Convention in China. In September 1997, the country submitted the first report concerning the implementation of the STCW Convention in China. After that, China passed the STCW Audit and was approved on the first so-called 'White List'. Countries on the List are deemed to be given 'full and complete effect' to the revised STCW Convention. However, ships of countries that are not on the List will be increasingly targeted by Port State Control inspectors. A flag state party that is on the White List may, as a matter of policy, elect not

to accept seafarers with certificates issued by non-White List countries for service on its ships ([IMO STCW 2013](#)).

As the largest seafarer-supplying country, China's standards in respect of training and qualification have exceeded the minimum requirements in the STCW Convention ([Liu 2008](#)). However, despite the large number of maritime policies that the MOT has issued, these have been criticised as 'too mixed and disorderly, [with] lack of predictability, transparency and legal certainty, and always changed according to discretion' ([Li and Ingram 2002](#), p. 4). For example, at the end of 2009, the Maritime Safety Authority declared that 169 maritime normative documents were void, some of which had been promulgated not more than 3 years previously ([MSA 2009](#)). As one senior administrator from the Seafarers' Training Centre of Shanghai Maritime University stated in an interview (2013):

We are very proud to say that the standards with regard to seafarers' training, examination and certification are higher than those of the STCW Convention. We are very much concerned about the changes and amendments of the STCW Convention and take appropriate measures immediately; as a result, every time we passed the STCW audit easily. However, we must complain about the policies made by the MOT and Maritime Safety Authority. We cannot even follow their changes. Their policies are issued frequently without any further notice or discussion and then withdrawn without any advance warning. We admit that the MOC and the Maritime Safety Authority have made great efforts to establish national standards, but we have to say that we find it easier to follow the STCW Convention than the maritime legal instruments in China (Interview MET 5-2).

3.3.3 Maritime Education and Training in China

China has established a considerable, complicated and extensive maritime education and training system. There are three major forms of seafarer education and training in China; these are higher education (*HE*), vocational training (*VT*) and certification training (*CT*). The *HE* is delivered by maritime universities or colleges, and the courses cover comprehensive basic knowledge; for example, physics, advanced mathematics, and information technology. From the second or third year, students start to learn specialised knowledge in maritime skills. The *VT* concentrates on maritime skills only and is organised by a series of maritime universities, *HE* colleges and vocational training institutions. The major intention of the *VT* is for training specialised talents seeking jobs at sea, rather than for education. The *CT* is commissioned by the MSA and delivered by the universities, colleges or training institutions in order that China meets its obligations under the STCW Convention ([Wu et al. 2007](#), p. 35). As indicated in the above context, currently more than 150 institutions have been granted licences to educate or train seafarers, and the number is still increasing, with the MOT issuing more licences to newly established training institutions.

In China, the academic degree is still an important leverage to secure a job after graduation. The graduates from *VT* and *CT* are granted only junior college educational certificates rather than bachelor's degrees. Normally the certificate is not

sufficient for them to get good jobs on land. The majority of them therefore have more inclination to work aboard ships. However, only a small proportion of graduates from *HE* will pursue an occupation at sea; many of them simply want to obtain a degree and then seek other professions on land. Nevertheless, the proportion of graduates from *HE* recruited by shipping companies or crew agencies continues to grow and constitutes a major source of labour. For instance, it is estimated that 80–90 % of seafarers employed by a crew agency in Dalian come from Dalian Maritime University, the most prestigious maritime university in China (Shen et al. 2005, p. 65).

Enrolment information from Dalian Maritime University shows that more than half of the new students in 2001 and 2002 came from coastal areas. There is a similar picture in Guangzhou Higher Maritime Specialist College (GHMSC); 64.3 % (146) and 61.2 % (142) of students enrolled at the GHMSC in 2002 and 2003 respectively came from coastal provinces, and 35.7 % (81) and 38.8 % (90) came from inland provinces (Wu et al. 2007, p. 41). One of the reasons was probably that, at this time, very few inland people knew about the seafaring profession. In recent years, with rapid economic development in the coastal provinces, especially in the coastal cities, fewer new students from coastal cities choose nautical studies. The main sources of new students at maritime education institutes have moved away from coastal to inland areas and from cities to farming villages (Shen et al. 2005, p. 60). One student counsellor from Dalian Maritime University witnessed this change and explained in an interview (2013):

A decade ago, our major source of students came from coastal provinces. Although we had a limited number of students from inland and rural places, most of them even did not know what seafaring was. They chose this major at random, just for the purpose of leaving their hometown and entering the university. However, most of them chose this profession because seafaring can bring a good reward. In recent years, with the rapid economic development in China, we have fewer students coming from coastal cities or other developed areas. In addition, most of them have refused to work on board because seafaring is deemed to be a boring and hazardous profession (Interview MET 5-3).

3.4 Seafarer Recruitment Services in China

In the context of law, the right to work is one of the fundamental rights to all citizens and no person shall be denied the opportunity to obtain and retain employment (McNaughton and Lazar 1954, p. 241). In addition, it is the state's responsibility to create sufficient jobs and to take measures to reduce the rate of unemployment (Imhasly 2007, p. 53). Seafarers are recruited from various sources in the international labour market; manning agencies and recruitment companies have therefore become an integral part of the maritime industry. To some extent, they make significant contribution to the maritime labour supply chain and maintain the maritime labour market's stability. However, without an effective supervision system, seafarers tend to be easily exploited by some greedy manning agencies and

recruitment companies. It is therefore necessary to establish a legislative framework to ensure that seafarers' rights and working conditions are protected at both international and national levels.

3.4.1 International Standards of Seafarers' Recruitment

International organisations have established a wide range of standards with regard to seafarers' recruitment and placement. For example, as early as 1919, the ILO adopted the Unemployment Convention mandating that each ratifying state shall establish a system of 'free public employment agencies' and take steps to coordinate the operations of 'both public and private free employment agencies' on a national scale (ILO C002). In order to protect the seafarers' right to work by establishing facilities for finding employment for seafarers, in 1920 the ILO adopted the Placing of Seamen Convention to regulate all employment services for seafarers (ILO C009). The ILO C009 obligated the ratifying states to organise and maintain an efficient and adequate system of public employment offices for finding employment for seafarers without charge. The Convention was revised in 1996 by the Recruitment and Placement of Seafarers Convention (ILO C179).

The ILO C179 took several significant steps forward to regulate a state's responsibilities concerning recruitment and placement services in its territory. For example, it was requested that private recruitment and placement services established in any ratifying states should be in conformity with a system of licensing or certification or other form of regulation (ILO C179, Art. 2). The responsibilities were directed not only to the flag states and shipowners, but also to the states where these services were located, in particular to labour-supplying states. However, the Convention was not widely accepted by the member states; until 2014, there have only ten ratifications (ILO, 2014). To complement the ILO C179, the 'Recruitment and Placement of Seafarers Recommendation, 1996' was adopted to prescribe the competent authority's responsibilities and to encourage international cooperation (ILO R186).

The MLC 2006 took further measures to promote seafarers' employment opportunities and entitlements. It is important to note that the regulations and clauses with regard to the seafarers' recruitment and placement are among the most complex parts in the Convention. As a successor of ILO's previous maritime instruments, the MLC 2006 drew on various concepts from the ILO C009, the ILO C179 and the ILO R186. Also, it took into account the important developments of the legislation and practice in the recruitment and placement of seafarers in the contemporary maritime industry.

There are three key strategic points in this part of the MLC 2006. First, it is difficult for a flag state to verify the situation of recruitment and placement services in other countries where seafarers are recruited. It is particularly true if the country where the recruitment and placement services are provided has not ratified the

Convention. The MLC 2006, therefore, following the strategy of the ILO C179, requires labour-supplying states to regulate, supervise and control these services.

Secondly, the MLC 2006 encourages Member States to establish a system of licensing or certification of recruitment and placement services. It is not mandatory to establish a system and shipowners do not necessarily use such services, even though they are available. However, the ‘market response’ will ‘discourage ship-owners from using services in countries that do not ratify the MLC 2006’ or are outside the system (McConnell et al. 2011, p. 263). For example, recruitment and placement through a service that is based in a country outside the system tends to face stricter port state inspection and to lose more business opportunities.

Finally, Title Five of the MLC 2006, which is on Compliance and Enforcement, innovatively introduces the responsibilities of the flag and port state on the issues of recruitment and placement. Taken from the Guidelines for Flag State Inspections under the MLC 2006 (Guidelines 2009, p. 43), Fig. 3.6 describes the basic requirements in the procedure of inspections.

3.4.2 The Relevant Legislation on Seafarers’ Recruitment in China

As discussed in Chap. 2, the Chinese Government has made a great deal of effort to create a maritime legal system that is in compliance with international standards. However, China has not yet ratified any of the above-mentioned Conventions relating to seafarers’ recruitment and placement (except the ratification of MLC 2006 in 2015). Nevertheless, the Chinese Government has promulgated a series of policies to regulate the recruitment and placement of workers in Chinese enterprises. For example, the Labour Law of the PRC, adopted in 1994, stipulated that ‘the State shall create conditions for employment and increase opportunities for employment’ and ‘the local governments at various levels shall take measures to develop various kinds of recruitment agencies and provide sufficient employment services’ (CLL, Art. 10, 11).

In March 2007, the Regulations on Seafarers (ROS) were the first instrument to regulate the services of recruitment and placement agent for seafarers (ROS, 2007). According to the ROS, all seafarers’ services should publicise their service items and corresponding charging rates and should be honest and credible (ROS, Art. 42, 43). It is noteworthy that the standard established in the ROS is far below international standards. For example, under the MLC 2006 the services provided for seafarers should be free of charge while, under the ROS, all kinds of charges are permitted as long as they are publicised.

In August 2007, the NPC of the PRC adopted the Employment Promotion Law (EPL). As the first special law with regard to the promotion of employment in China, the law is formulated ‘to promote employment, improve coordination between economic development and job growth, and to promote social harmony

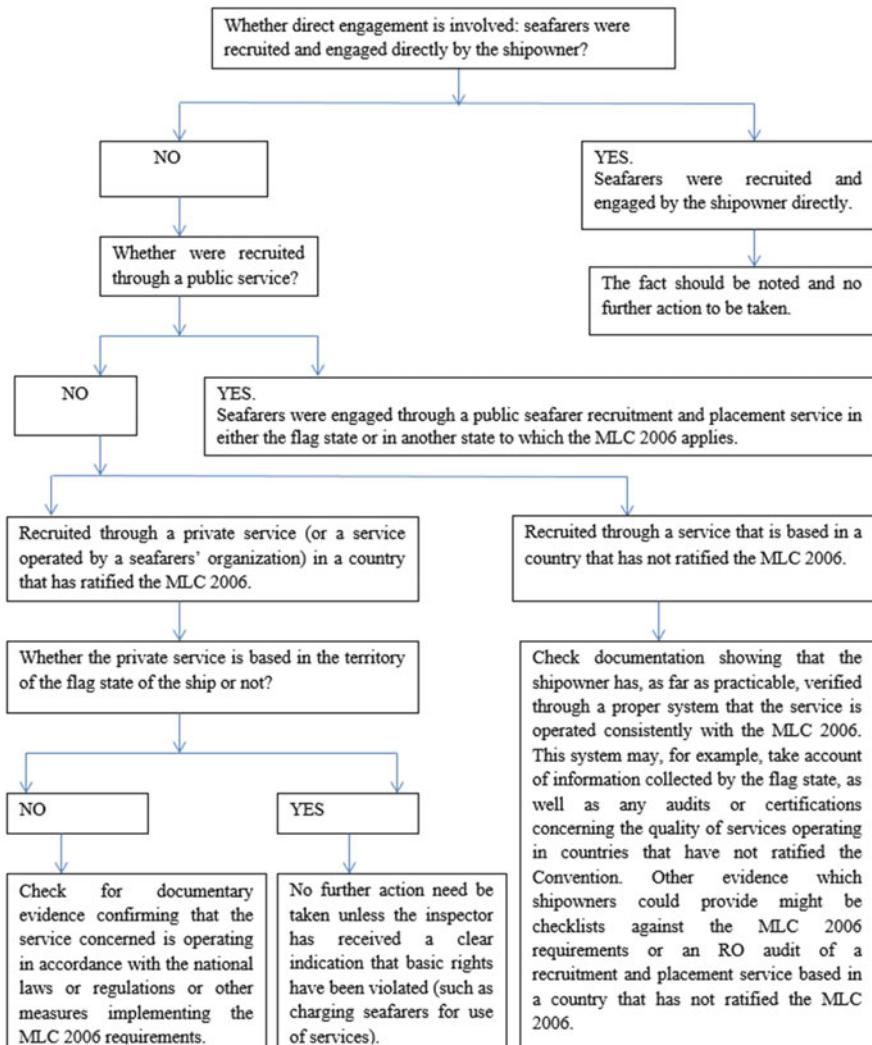


Fig. 3.6 The procedure of inspections for seafarer recruitment. *Source:* created by the author in 2014 according to Title 5 of the MLC 2006

and stability'. To achieve these objectives, a large body of provisions were designed to regulate recruitment and placement services in China, which include 'regulations on fair employment, employment service and supervision, occupational education and training, employment assistance, monitoring, inspection and legal liability'. As a result, the responsibilities of the state, local governments and employment agencies were clearly proscribed in the EPL (EPL, Art. 32–43). It is expected that its implementation will 'increase employment opportunities and help more people

to earn income, thereby contributing to a reduction in income inequality' (OECD 2010, p. 134).

To implement the EPL, the Ministry of Human Resources and Social Security of the PRC (MOHRSS) promulgated in November 2007 the Provisions on the Employment Services and Employment Administration (PESEA). In the PESEA it was stipulated that local government should establish public employment service institutions and should provide employment services freely for all workers (PESEA, Art. 24, 25). However, both the EPL and the PESEA simply laid down some general provisions. Although these articles also apply to seafarers, it is difficult in practice to invoke these provisions because of lack of their enforcement.

The MOT took further measures in 2008 by enacting the Provisions on the Administration of Seafarers' Employment Service (PASES). The PASES was a step forward in that a number of minimum requirements were laid down to regulate the competence of seafarers' employment services. Also, the rights and obligations, the supervision and the legal liabilities of the various parties were stipulated. Furthermore, to promote the development of the export of Chinese seafarers, in 2011 the MOT promulgated the Provisions on the Administration of Seafarer's Export (PASE).

The PASE prescribed a very strict standard for the export of seafarers' services, which is much higher than for ordinary seafarers' employment services. For example, the minimum registered capital for a seafarers' export company (SEC) is five million RMB. However, for an ordinary seafarers' employment service company, the minimum registered capital is only RMB 30,000. Furthermore, when registered as a SEC, the company is required to put one million RMB as a deposit (PASE, Art. 5). The deposit will be reserved to cope with emergency situations or to ensure that seafarers abroad can be repatriated if the SEC becomes bankrupt or is liquidated. In addition, the MSA is responsible for the continuous supervision and annual verification of the operations of SECs. However, the issue of charges for services is not addressed in the provisions. Free access to recruitment services is still an unattainable dream for Chinese seafarers.

While significant progress has been made in various aspects for seafarers' recruitment in China, there are still a number of limitations and there is still a need for improvement in the future. For example, both the MLC 2006 and the ILO C179 gives a clear definition of a 'seafarer recruitment and placement service' (MLC 2006: Art. 2; ILO C179, Art. 1-b). However, the definition of seafarer employment services is not clear in Chinese law and regulations. In practice, there are various forms of seafarer employment services and it is not clear whether they all fall within the scope established in the law and regulations or how to identify their differences.

In addition, some stipulations with regard to the obligations of manning agencies are impractical and contradict each other. For instance, the PASE stipulates that a SEC should ensure that a labour contract must be signed between the foreign shipowner and each seafarer (PASE, Art. 24). In practice it often is impossible to satisfy this requirement. According to the Labour Law and Labour Contract Law of the PRC, a foreign shipowner does not have the competence to sign a labour

contract with a Chinese seafarer (CLL, Art. 2; LCL, Art. 2). The labour contract has therefore to be signed between the seafarer and the manning agency instead of with the shipowner. Another clause stipulates that SECs shall purchase Personal Accident Injury Insurance for seafarers (PASE, Art. 25). However, in practice seafarers' injury compensation is often covered by protection and indemnity (P & I) insurance, a form of mutual maritime insurance provided by a P&I Club and purchased by the shipowner for the general operation of a ship. Because of this additional requirement, many SECs have to purchase separate insurance for seafarers. This therefore increases SECs' operational cost. Some companies even deduct the cost from seafarers' wages.

3.4.3 The Industry Practice of Seafarers' Recruitment in China

Seafarers' recruitment and placement services usually act on behalf of shipowners. According to the MLC 2006, seafarer recruitment and placement service means 'any person, company, institution, agency or other organisation, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners' (MLC, 2006: Art. II-1 h). It inherited the definition in the Recruitment and Placement of Seafarers Convention (ILO C179, Art. 1-b). In the ILO C179, it stated that recruitment and placement service should be 'on behalf of employers'. The MLC 2006 made it more specific that the shipowner should be ultimately responsible for the activities conducted by service providers.

In Chinese law, there is no clear definition about the recruitment and placement services except an ambiguous definition in the Provisions on the Administration of Seafarers' Employment Service. According to Article 2 of the PASES, a seafarer's employment service means any activity on behalf of seafarers applying for training, examination and certification, and, on behalf of employers managing seafarers' affairs and providing ship-manning activities (PASES, Art. 2).

In practice, there are four types of seafarer's recruitment and placement companies. The first type is affiliated to state-owned enterprises and licensed by the MSA. For example, in the late 1970s, in order to place surplus seafarers, the COSCO started to despatch self-employed seafarers to foreign shipowners. This has gradually become one of their main businesses and has generated considerable profit (COSCOMAN, 2011). China Shipping (Group) Company (CSGC) is the second-largest state-owned shipping enterprise. The CSC established its seafarer's recruitment and placement company, Chinese Marine & Seamen Service Corporation (MASES), in 1984. Currently, the MASES employs more than 1600 seafarers (MASES, 2013).

The second type is private companies registered in China and licensed by the MSA. These companies are established according to the PASES and the PASE, and

currently they have become the backbone force for handling seafarers' employment affairs. The MSA has prescribed three grades for recruitment and placement companies with different qualifications. Grade A is permitted to dispatch Chinese seafarers to work on board ships flying the flags of foreign countries, or Hong Kong, Taiwan or Macau. Grade B is qualified to recruit or place seafarers for international and domestic ships, while Grade C can recruit or place seafarers only for ships engaged in domestic voyages.

The third type is the representative office (RO) of foreign shipowners. In order to conveniently recruit, train and manage Chinese seafarers, some foreign shipowners establish their RO in China. However, according to Chinese law, an RO of a foreign company is prohibited from directly employing Chinese nationals. As a solution, a foreign shipowner nominally initiates a joint venture company with a Chinese company; but the RO is in practical control of the joint venture company, which is also licensed by the MSA.

Apart from the above mentioned categories, there are a large number of small private companies without appropriate licences. These companies have no qualification to apply for relevant formalities for seafarers to work on ocean-going ships. In order to obtain the necessary documents, they often cooperate with one licensed company and act under their name. Although they are working around the edges of Chinese law, they are still very active in the maritime labour market, playing an important role to match seafarers with ships.

As a result, it tends to be difficult to create a uniform legal instrument to regulate all the above-mentioned recruitment and placement services. Chinese seafarers therefore still face a number of problems. First of all, the definition and legal character of seafarers' recruitment and placement system is not clear under Chinese law. If a seafarer is not recruited directly by the shipowner, there will be three parties in the seafarer's employment—the seafarer, the shipowner, and the third party as a manning agency. However, the legal status of the manning agency is very ambiguous, as well as is the legal relationship among the three parties (Jiang 2001).

The relationship between the three parties is made complicated by a special legal concept under Chinese labour law of a 'labour relation'. According to the CLL adopted in 1994, a labour relation is a relatively stable social relation between individual workers and their employers. In addition, the legal statuses of workers and employers are not equal, with employers being dominant in the relationship and employees undertaking a subordinate role. The special arrangement under Chinese labour law is to pursue social stability by 'maintaining harmonious and stable labour relations' (Xinhua 2002). Once a labour relationship is established, the employer will be responsible for not only the wages but also all kinds of benefits, insurance, welfare and social security even though these have not been agreed in a labour contract.

However, the relations between most Chinese seafarers and shipowners are not stable, but temporary, flexible and unfixed. On many occasions, manning agencies have to step in and play the part of the employer in order to establish labour relations between shipowners and seafarers. Nonetheless, manning agencies are not the real users of seafarers' labour. As a result, the rights, obligations and

responsibilities among the three parties can become avoidably confused. Furthermore, many agencies coerce seafarers into signing a long-term contract, commonly for 5 or 10 years of sailing time. These seafarers do not have any income unless they are despatched to work on board. According to the CLL, one person can be engaged in only one labour relation. They are unable to be employed by other parties, even if they have waited despairingly for a long time to be despatched to a ship; if they break this arrangement, they have to pay high indemnity damages to the agency in order to terminate an existing labour contract.

Secondly, according to international Conventions, each country shall establish 'both public and private free employment agencies'. However, in China there is no public free employment agency for seafarers. All the manning agencies, including those affiliated to state-owned enterprises, are for the purpose of profit. As a result, it is not possible for Chinese seafarers freely to enjoy recruitment and placement services. One twenty-nine-year-old second officer, coming from Hubei province, explained his experience in an interview (2013):

I have never enjoyed free recruitment service; on the contrary, I was charged a large sum of money for every employment opportunity. However, I am lucky to be an officer seafarer. As I know, those rating seafarers are charged more than one month's salary. Somebody told me that the agency service should be free of charge under the MLC 2006. I do not know the Convention, but I cannot imagine that they will provide us a free service (Interview SF 5-7).

A cost-free recruitment service is not realistic in the current maritime labour market. Manning agencies are not forbidden under Chinese law from charging for their services, and they do not have any responsibility to provide a free service. Also, as in any other market, the maritime labour market is dominated by the supply and demand mechanism. Without a free public employment service, the current situation has given Chinese seafarers no choice but to rely on private agencies. As a result, private agencies have ample opportunities to make a good profit in providing recruitment services. As one senior crewing manager indicated in an interview (2013):

We know the MLC 2006 requests that no cost should be charged to seafarers for our services. However, it is not realistic in the Chinese maritime labour market. Frankly speaking, we depend on that, and we wish to increase the charges. We would become bankrupt if we were deprived of the right. We trust whether we charge and how much we charge should be determined by the market. Now it is our market. Every day many more seafarers come to us for opportunities than we can offer. Under this circumstance, how can we provide free services? (Interview SM 5-2).

In China, the seafarers' recruitment and placement service is a franchise business. Only those licensed by the MSA are allowed to recruit and place seafarers on board all ships including foreign-flagged ships. With rapid development in the maritime labour market, an increasing number of private companies are licensed by the MSA and join in the market for profit motives. Many of these companies are intermediary agencies engaged in land-based labour services. They do everything possible to obtain a licence from the MSA and to take part in the maritime manning business. However, some of them are incapable of managing this special industry and bring about damage both to shipowners and seafarers. One thirty-six-year-old

AB from Shandong province narrated his terrible experience in an interview (2013):

One time, a manning agency instructed me to join a vessel berthing in Fremantle in Australia. It was quite a simple matter. I got everything ready and flew to Perth, which is nearby the port of Fremantle. However, there was nobody waiting for me because the manning agency misunderstood the meaning of GMT [Greenwich Mean Time]. The worse thing was the agency did not take account the time difference and the distance from Perth to Fremantle and then to the ship. As a result, when I arrived at the port, the ship had already left and I had to fly back at my own expense (Interview SF 5-8).

In addition, there are also unscrupulous manning agencies that do not have a licence, but pretend that they have. They attract innocent seafarers and by every means persuade them to pay a deposit for employment opportunities. However, once a deposit is made, the seafarer may have to wait for a very long time or never to be given an opportunity. Even when finally a job is arranged, the condition of the ship may be far from what is described by the agency. Furthermore, the agency is always able to enter into collusion with a shipowner, or request the seafarer's wages be settled with them directly without the seafarer's knowledge. Once the seafarer has finished the contract, they may find all kinds of excuses to withhold or deduct the wages. As one 26-year-old Third Officer, coming from Henan province, complained in an interview (2013):

In 2011, I was cheated by a manning agency. They boasted that they had sufficient working opportunities, but I had to pay a deposit (3000 Yuan) to join the queue. However, after my continuous pressure, they despatched me to board a ship that they claimed was a five-year-old new ship. However, eventually I found out it was a thirty-one-year-old ship nearly ready for dismantling. I accepted that, but the worst thing was that they even deducted half my wages. Until now, I have not been able to get them back (Interview SF 5-9).

3.4.4 Employment Competition of Foreign Seafarers

The shipping industry has a long history of internationalisation, whereby ship-owners have always operated their ships internationally and employed foreign seafarers for both economic and political reasons (Gekara 2008). For example, as early as the eighteenth century, Pacific commercial shipowners started recruiting foreign seafarers for low costs and maximum profits (Couper 2009, p. 75). Since the middle nineteenth century, Britain as a traditional maritime nation has also used foreign seafarers to reduce operational costs (Coles and Watt 2009, p. 4). China has become one of the main labour-supplying nations due to the advantage of low cost in the last decade. However, in recent years the average wages of Chinese seafarers have increased dramatically (Li and Wang 2007). Many Chinese shipowners are therefore considering recruiting seafarers from the Association of Southeast Asian Nations (ASEAN) or some nations in Africa. As one crewing manager of a manning agency company in Shanghai explained the tendency in an interview (2013):

With the considerable increase of Chinese seafarers' wages, more and more Chinese shipowners tend to recruit seafarers from cheaper labour countries, such as: Myanmar, Indonesia, and Vietnam and so on. However, the problem is that in these countries, the maritime education and training is not as well as in China. The competency of these seafarers is therefore not very satisfactory. However, one strategy advocated by many shipowners is to equip a ship with Chinese senior officers and junior ranks from cheaper labour countries (Interview SM 5-3).

With regard to the employment of foreign seafarers, one key issue is whether they are allowed to work on board Chinese flag ships. Due to the multitude of legislative authorities and jurisdictions in China, there are bound to be conflicts and inconsistencies among the laws, regulations and provisions, especially for the government rules issued by different central and local authorities (Chen 2008, p. 195).

Under Chinese law, employers in China can hire only Chinese citizens unless they have a special employment licence granting them the entitlement legally to hire foreigners. Employment of foreign personnel by employers in China is regulated under the Provisions on Administration of Employment of Foreigners in China (PAEF). It was jointly adopted by four Ministries of the PRC in 1996, including the Ministry of Public Security, the Ministry of Foreign Affairs, the Ministry of Labour, and the Ministry of Foreign Trade and Economic Cooperation. A ship on the high seas is assimilated to the 'territory of the state' whose flag it flies and the state exercises 'exclusive jurisdiction and authority' over the ship (Potgens 2006, p. 342). For Chinese flag ships, the employment conditions will be solely subject to Chinese authority and jurisdiction. According to the legal provisions, foreign seafarers must obtain special employment licences before being employed aboard Chinese flag ships.

There are a number of criteria to be met before a special employment licence for a foreign employee is granted; for example, when there is no suitable Chinese candidate for the position at the moment of employment, and the position is of vital importance for the employer (PAEF, Art. 6). According to the Ship Registration Regulations (SRR) of the People's Republic of China, the Chinese flag ships should be manned by Chinese seafarers. Once it is necessary to employ foreigners, special work permits must be granted by the Ministry of Transportation (MOT) (SRR Art. 7). China is a signatory country to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978). According to the Convention, foreign seafarers need to hold competence certificates before they can work on board Chinese flag ships. These certificates should be issued by a signatory country of the STCW and recognised by the PRC MSA (Jiang 2005, p. 263). In addition, foreign seafarers need also to obtain visas issued by the Chinese Government before they can work aboard Chinese flag ships. With these restrictions, such flag ships would be scarcely ever be manned by foreign seafarers. These provisions require that all Chinese flag ships be manned entirely by Chinese nationals.

However, the Regulations on Seafarers of the People's Republic of China (ROS), adopted in 2007, deal with this matter in a different way, which stipulates

that only key personnel should be Chinese nationals. According to the ROS, the posts of master and officers of a ship flying the Chinese flag shall be assumed by Chinese seafarers. Where it is necessary to employ any foreign seafarers to take the posts of officers, it shall be reported to the MOT for approval (ROS, Art. 12). It is implied in this Article that it is not necessary to obtain special approval if foreign ratings are employed aboard Chinese flag ships.

The new requirement in the ROS is in conflict with the provisions in the PAEF and the SRR. According to the principles established in the Law on Legislation of the PRC, a legal instrument passed at a higher level prevails over one at a lower level (LOL, Art. 78–80). Both the ROS and the SRR were enacted by the State Council of the PRC. However, the PAEF was promulgated collaboratively by three Ministries of the State Council, which is at a lower level than the ROS. In addition, where a special provision is inconsistent with general provisions at the same level, the special provision applies. New provisions apply when they are not in conformity with old ones (LOL, Art. 83; Zou, 2006, p. 98). The ROS and the SRR are not only at the same level but also are both special provisions, one for the registration of ships and the other for seafarers. However, the ROS was enacted at a later date than the SRR. Where there are any inconsistencies between them, the ROS should prevail over the SRR. For the rating seafarers employed aboard Chinese flag ships, it is not therefore necessary for them to apply for special work permits from the MOT.

Since the Eighteenth National Congress of Communist Party of China (CPC), the Government has made great effort in ‘streamlining administration and delegating power to lower levels’ (Yuan 2013, p. 370). In 2014, the State Council of the PRC took a further step by simplifying the Government’s approval procedures. According to the list promulgated by the State Council, a series of administrative approval procedures were abolished or delegated to lower authorities. The approval rights with regard to foreign seafarers working on board Chinese flag ships have been transferred from the MOT to the MSA. It has therefore tended to become easier for a shipping company to recruit foreign seafarers and to place them on board a Chinese flag merchant ship.

With the prevalence of Flags of Convenience (FOC) and open registration, many Chinese shipowners register their companies and ships in foreign countries to avoid unfavourable legislation and taxation. In recent years, more and more foreign seafarers have been employed aboard FOC ships owned by Chinese shipowners. There are two main reasons for this. The first one is that, despite there being half a million seafarers in China, their average quality is still very low. Compared with seafarers from India, Singapore and some other nations, Chinese seafarers are still considered as of inferior quality and of low standard (Chi 2005).

In practice, ships’ crew are usually divided into two groups. The officers at management level include master, chief officer, second officer, third officer, chief engineer, second engineer, third engineer, fourth engineer and electrician officer. Among them master, chief officer, chief engineer and second engineer are senior officers and the others are junior officers. The ratings at supporting level include all the rest of the crew members, including Bosun, AB, OS, wipers, oilers, cook and

fitter. The majority of Chinese seafarers are employed on bulk carriers, container ships and general cargo ships, which do not require sophisticated skills. As for the high technology ships that need special handling skills and a high management ability, Chinese seafarers can satisfy only rarely the high requirements of ship-owners, in particular for the senior officer positions. For example, the Liquefied Natural Gas Ships (LNG), Very Large Crude Carriers (VLCC), Ultra-Large Crude Carriers (ULCC), Cruise Vessels, and Pure Car and Truck Carriers (PCTC) are always equipped with foreign senior officers with high salaries, even though the ships are owned by Chinese nationals or a Chinese shipping company. As one senior manager from a state-owned oil tanker company in Nanjing explained in an interview (2013):

Our company has a number of VLCC ships and LNG ships, and the fleets will expand in the near future. These ships are registered in FOC countries for the convenient operation and low costs. However, these ships are equipped with foreign senior officers – for example, seafarers from India, the EU, and Singapore, especially for the positions of Master and Chief Engineer. Frankly speaking, we prefer to use Chinese senior officers at a much lower cost. Unfortunately, there are in China very few good senior officers with VLCC or LNG experience. In addition, our ship management company (V-Ship) insists on employing foreign senior officers to manage risk. If things go on like this, we surely shall not be able to have enough senior officers with VLCC or LNG experience. I am afraid that most Chinese seafarers will never have the opportunity to work on board high-technology ships (Interview SM 5-4).

In addition, due to the rapid increase in Chinese seafarers' wages, for the less important positions on board, such as junior officer and the rating positions, more and more shipping companies are seeking cheaper labour from foreign countries. Unlike the high-technology ships, bulk carriers, container ships and general cargo ships do not call for very special skills. Under the pressure of cost-cutting strategies, many shipowners contrive to reduce the operating costs by using sources of cheaper labour. Compared with Chinese seafarers, the labour costs for those from Vietnam, Laos, Myanmar and some African countries are much lower. As one recruiting manager of a ship management company in Beijing explained in an interview (2013):

Because of the economic recession and the very low freight market, all the shipowners are making every endeavour to reduce their operating costs as much as possible. Nowadays we surprisingly notice that seafarers from Vietnam, Laos and Myanmar are replacing Chinese seafarers and becoming the most popular 'merchandise' in the labour market. As some shipowners have commented, albeit with low skill and sometimes an unprofessional performance, they are humble, obedient, and diligent – in particular, they are cheap and are indifferent about insurance, pensions and leave payment. Most shipowners now prefer a 'mixed crew structure', equipped by Chinese senior officers and foreign crew members. In recent years, we are frequently instructed to recruit cheaper seafarers from Southeast Asian countries (Interview SM 5-5).

As a result, Chinese seafarers tend to face intense competition from foreign seafarers. The competition has caused a certain degree of difficulty for Chinese seafarers in obtaining employment opportunities. The fieldwork of this study found out that junior officers (including second officers, third officers, third engineers,

fourth engineers and cadets) and ratings tend to have difficulties in securing an employment contract, while masters and senior officers (including chief officers, chief engineers and second engineers) are more easily employed. First, China has a significantly large population of seafarers. The number is still increasing considerably each year due to a huge output capacity of prospective seafarers from maritime education and training institutions. The supply of Chinese seafarers has far exceeded the demand (Li 2014), leading to cut-throat competition. The composition of the Chinese maritime labour force cannot match the demand. As discussed in the previous context, the total number of junior officers and ratings is excessive, whilst there is a shortage of senior officers and of crew with special expertise. In addition, the employment of foreign seafarers for their special expertise or at a cheaper price has caused more redundancy among Chinese seafarers. The employment situation for Chinese seafarers becomes worse when the international maritime market is in recession, leading to a large number of ships being laid off.

3.5 The Trade Union Protection for Chinese Seafarers

The maritime industry is ‘the first global industry with one of the most significant transnational union strategies and a well-developed model of a union-driven transnational bargaining coordination system covering large numbers of workers’ (Dimitrova 2010, p. 46). By virtue of the fact that they are workers, seafarers can find a wide range of conventions and standards granting them trade union rights. The ILO has adopted a series of Conventions to ensure workers’ freedom of association and to protect their right to organisation and to collective bargaining. These include the Freedom of Association and Protection of Right to Organise Convention (ILO C087), the Right to Organise and Collective Bargaining Convention (ILO C098), the Workers’ Representative Convention 1971 (ILO C135), and so forth. In addition, the International Covenant on Economic, Social and Cultural Rights (ICESCR) also provides that every worker has the right to form and join the trade union of his or her choice (UN 1966: Art. 8). Both the ILO C087 and the ILO C098 have been directly incorporated into the MLC 2006. Moreover, freedom of association and the effective recognition of the right to collective bargaining are considered as fundamental rights and principles in the MLC 2006.

The Chinese Government has attached great importance to workers’ rights and interests and has enhanced the functions of the trades unions. The lawful rights and interests of workers have been ‘noticeably protected’ (Zeng 2006, p. 229). However, China has not yet ratified any of the above-mentioned ILO Conventions (except the ratification of MLC 2006 in 2015). In many aspects, China still falls short of fulfilling its responsibilities as a member of the ILO, such as respecting and promoting the principles of free association and collective bargaining.

3.5.1 *The ACFTU and CSCU*

Trade union protection is of particular significance for Chinese seafarers. First of all, as discussed in Chap. 2, the legal protection in China for seafarers is considerably weak. It is even difficult to find significant and sufficient clauses and provisions with regard to seafarers' rights. The trade union protection should therefore play a highly important role in seafarer protection. Second, when Chinese seafarers sign off from their ships, they tend to scatter into different regions of China. It is difficult for them to gather together and to take collective action to bargain with their employers for better employment conditions. Trade unions can unite them together and negotiate with their employers (Li 2006). Third, Chinese seafarers have never actively participated in public affairs, such as in maritime legislation, tripartite consultation and labour affairs negotiations (Yun 2007). It has been necessary for trade union to do such work on their behalf. Finally, with an increasing number of Chinese seafarers working for foreign shipowners, it is especially important for trade unions to provide consultation and protection when they are dealing with international labour affairs with which they are usually not familiar (Wang 2011).

In China, the only legal trade union is the All-China Federation of Trade Unions (ACFTU). The ACFTU was officially founded in 1925, during an era when China was facing special challenges and complications. The trade unions' function of protecting the interests of workers is now stipulated in the amended Trade Union Law of the PRC (Taylor et al. 2003, p. 113). The Law defines that 'the basic function of trade unions is to protect the legitimate rights and interests of workers' and 'the ACFTU and its subordinate unions represent and protect legitimate rights and interests of workers in accordance with law' (TUL, Art. 6).

The ACFTU plays an important role in promoting and protecting Chinese workers' labour rights. For example, it actively urges all employers to sign contracts with their employees and to work hard to push forward with the implementation of a collective bargaining system in enterprises and industries (ACFTU, 2007). However, the Trade Union Law does not permit workers to organise and form trade unions outside the ACFTU (TUL, Art. 2). All workers in China have the right to join and organise unions, but those must be part of the sole nationwide labour union.

The National Committee of the Chinese Seamen and Construction Workers' Union (CSCU) is the national industrial union of Chinese seafarers and construction workers, and this is affiliated to the ACFTU. At an operational level, the CSCU has developed a clear strategy to support seafarers, in particular those employed in the foreign sector. Also, the CSCU is actively cooperating with the Chinese Government to implement more effective state control and regulation over manning agencies and maritime employers (CSCU 2011).

3.5.2 The Interaction Between CSCU and ITF

Unlike seafarers' unions in many other countries, the CSCU is not affiliated to the International Transport Workers' Federation (ITF). While there are around 700 unions in the ITF, representing workers from some 150 countries (ITF, 2015), there are no ITF-affiliated trade unions for seafarers in China. In the highly globalised maritime industry, there is increasing competition among the strong trade unions based in developed countries and weak ones based in the major labour-supplying developing countries. Western trade unions attempt to improve wages on an international level and to safeguard jobs at home, whereas trade unions in developing countries try to undermine international wage standards and to obtain more jobs for their members. In the past, the CSCU had a tense relationship with the ITF due to their actions on behalf of different interests. For example, in most Chinese SEAs there was a clause preventing Chinese seafarers from making contact with the ITF and its affiliations:

Party A [the seafarer member] shall not have contact with the ITF and other reactionary organisations; in accordance with the regulations of the China Mariners' Overseas Technical Services Company, Party A may not engage jointly with other seafarers to make demands on the shipowner that are damaging to the image of Chinese seafarers, or damaging to relations between Party B [the labour export agency] and the shipowner. In the case of violation, Party B will exact an economic penalty from Party A. Where circumstances are serious, Party B shall pursue a legal liability in accordance with the law (CLB, 1999: 90; ALU, 2001: 41).

In recent years, the CSCU has established more communications and cooperation with the ITF. In order to develop further constructive dialogue and a clearer understanding of the issues facing Chinese maritime unions, a high-level meeting was held in Beijing in 2005 between an ITF delegation and the ACFTU and CSCU. According to the MOU developed between the ITF and the CSCU, the two organisations will continue to cooperate on issues of mutual interest relating to seafarers, and this will include an annual meeting to discuss general maritime issues and to review progress in cooperation (ITF, 2006). One of the clauses is the following:

The ITF will organise education and training seminars for officials at various levels of the CSCU structure to inform them of ITF Flag of Convenience campaign policies and procedures and to assist in developing organising and negotiating skills for the growing number of private-sector shipping employers in China.

In July 2010, a workshop on the MLC 2006 was held in Beijing collaboratively by the CSU and ITF. In the 2-day workshop, the experts from the ITF gave a detailed explanation of the MLC 2006, including its significance, the main contents and the future impact on the international maritime industry. The CSCU also reported its latest research results with regard to the Convention and the implementation prospects of the Convention in China (CSCU 2010). As the first formal cooperation between CSCU and ITF, it established a foundation for the further communications and cooperation between them. In November 2010, the CSCU

negotiated with the Norwegian shipowners and seafarers' union on behalf of seafarers employed on board Norwegian flag ships. As a result, a CBA covering more than 3000 Chinese seafarers was reached, according to which their wages were increased by at least 6 % (Li 2011). Gradually, the CSCU has been playing a more influential role among Chinese seafarers.

3.5.3 The Weakness of the CSCU

However, although significant efforts on trade union protection for Chinese seafarers have been made by the CSCU and the ACFTU, these are far from meeting the requirements of the MLC 2006 and other international standards. First of all, Chinese seafarers may not form their own trade unions outside the ACFTU, and they are prevented from joining unions of their own choosing, such as the ITF. All Chinese seafarers are automatically affiliated to the CSCU, regardless of their consent or objection. Whether on national or international occasions, the CSCU can speak and act on behalf of all Chinese seafarers without the necessity of any authorisation in advance. This is obviously in conflict with the principles that inspired the freedom of association and the protection of the right to organisation.

Second, the nature of the role of the ACFTU in China means that it cannot on some occasions protect seafarers' rights effectively and efficiently. First of all, the ACFTU itself does not have enough freedom because it is not independent of the influence of the Chinese Government. Instead, it is controlled by the Chinese Communist Party (CCP) and its position of chairman is always assumed by a high-level official of the Chinese Politburo. Although the law states that trade union officers and leaders at each level should be elected by workers, most are actually appointed by higher levels of the union or by the Communist Party. Even in the local industries where direct election of union officers does take place, the local authorities or their supervisors usually manipulate the election by retaining the selection and final approval of candidates. Furthermore, the ACFTU has a bureaucratic structure that is subtly integrated at each level into the Chinese Government structure. It appears that the primary goal of the ACFCU is not to protect workers' interests but to 'consolidate the CCP's regime through stabilising labour relations and maintaining industrial order' (Qi 2013, p. 290). In order to create a stable political and economic environment, both the constitution of the ACFTU and the Labour Union Law emphasise the CCP's absolute leadership in all Chinese trade unions. For example, the Labour Union Law states that the ACFCU should 'uphold the leadership of the Communist Party'.

Third, Chinese seafarers have never attracted enough attention in the ACFTU, which in 2013 had a massive over-280 million members. Compared with workers in other industries, such as railways, mining, and construction, seafarers are only a small group. In the structure of the ACFTU, seafarers do not even have their separate trade union. Instead, all Chinese seafarers are integrated into the Chinese Construction Workers' Union, making up the National Committee of the Chinese

Seamen and Construction Workers' Union (CSCU). Compared with Chinese seafarers, construction workers are a far-larger population and it is a group that more easily brings about industrial conflict and social instability. In contrast, Chinese seafarers are either working on board or dispersed alone in different regions. They appear to be less likely than construction workers to cause social unrest. The emphasis of CSCU's work tends therefore to concentrate on the construction workers. As an agency dependent on the ACFTU, the CSCU has very limited manpower and resources. Thus, it is very unlikely that Chinese seafarers can attract enough attention of the Union to be properly taken care of. Most Chinese seafarers may never have been assisted by the Union. As a 46-year old Second Engineer, coming from Jiangsu province, complained in an interview (2013):

I know that I am a member of the CSCU or the ACFTU because it is a compulsory policy of our company. However, I really do not know what they can do for us. Once our employer had not paid our wages for more than six months. We tried to contact the CSCU seeking for assistance. One Union officer expressed his sympathy but in the end he suggested that we should employ a lawyer (Interview SF 5-10).

Finally, the CSCU has very limited influence at the international level, and it lacks handling capacity in international affairs. For most seafarers who are usually travelling abroad, it is very important for them to be able to obtain union protection when they encounter difficulties at a foreign port. In addition, with an increasing number of Chinese seafarers employed by foreign shipowners, they need the Union to fight for their interests and benefits. However, dealing with international affairs requires special skills and competence, which most union officers do not adequately possess. As a high-ranking officer of the CSCU explained the challenges faced by the CSCU in an interview (2013):

As the sole legal representative of Chinese seafarers, the CSCU has made extraordinary efforts to help them at foreign ports and in the process of negotiating with foreign shipowners. However, I have to admit that we lack the necessary capacity and competence in handling international affairs. The majority of our union officers have never been to a foreign country, and they cannot even speak fluent English. Some of them do not have enough legal knowledge, and they do not know the procedure for handling international affairs. We want to do better but we need more time (Interview CSCU 5-1).

3.6 Conclusion

In this chapter, a critical examination of the major issues concerning Chinese seafarers' pre-employment conditions has been presented. The pre-employment conditions of seafarers include a number of aspects that are unique and different from those of most land-based professions. For Chinese seafarers, several typical issues exist with regard to eligibilities, qualifications, recruitment services and the seafarers' trade union. These issues are further related to seafarers' registration, seafarers' physical requirements, maritime education and training, seafarers' employment opportunities, and so on.

As discussed in Chap. 2, Title One of the MLC 2006 prescribes the minimum requirements for seafarers to work on board ships, covering the major issues relating to seafarers' pre-employment conditions. Since the adoption of the Convention at the ILO in Geneva, the Chinese Government has made continuous efforts to comply with the requirements by promulgating a series of legal instruments. Since 2007 there have been around 22 legal instruments adopted with regard to Chinese seafarers. However, compared to the objectives of the MLC 2006 that seafarers' right should be strengthened in all respects, nearly all these instruments focus on issues in connection with seafarers' pre-employment conditions.

Although recent years have witnessed a significant improvement of Chinese seafarers' pre-employment conditions, many problems continue to exist and some of these appear to be getting much worse. For example, as a developing country, China has overcome many difficulties and has established a remarkable maritime education and training system. However, much educational and training resource is spent on students who will not pursue a seafaring profession. As a result, the quality and competence of seafarers is impaired because many nautical students cannot even be provided with a sufficient number of practical training hours. In addition, as clearly discussed in this chapter, many Chinese seafarers still experience various difficulties with regard to medical certificates and employment services. All these factors may degrade the competitiveness of Chinese seafarers and further depress their employment opportunities and wages in the international maritime labour market.

Unlike seafarers' pre-employment conditions, the in-employment conditions take effect after a seafarer has engaged in an employment or started to work on board a ship. In the following chapter, some major issues with regard to Chinese seafarers' in-employment conditions will be critically examined in order to determine how the MLC 2006 has influenced the reconstruction of seafarers' rights in China in that respect.

References

- Alli, B. O. (2008). *Fundamental principles of occupational health and safety* (2nd ed.). Geneva: International Labour Office.
- Chen, J. (2008). *Chinese law: Context and transformation*. Leiden: Martinus Nijhoff Publishers.
- Chi, H. (2005). Comparative study on seafarer labour market of China and main seafarer export states. *Journal of Zhejiang Ocean University (Natural Science)*, 24(4), 339–345.
- Chinanews. (2010). *The great progress of seafarers' training in Zhejiang Province*. Available at: <http://www.chinanews.com/sh/2010/09-18/2541165.shtml>. Accessed 26 October 2013.
- CNSS. (2013). *The special report of China Seafarer Conference of 2013*. Available at: <http://www.cnss.com.cn/html/oldspecial/2013/0628/2013seafarer/index.html>. Accessed 26 October 2013 [in Chinese].
- CNSS. (2014). *The False Medical Examination in the Chinese Maritime Industry*. Available at: http://www.cnss.com.cn/html/2014/cydt_0527/151151.html. Accessed 4 July 2015.
- Coles, R., & Watt, E. (2009). *Ship registration: Law and practice* (2nd ed.). London: Informa Law.

- Couper, A. (2009). *Sailors and traders: A maritime history of the pacific peoples*. Hawaii: University of Hawaii Press.
- CSCU. (2010). *The Workshop of the Maritime Labour Convention 2006*. Available at: <http://hyjs.acftu.org/template/5/file.jsp?aid=7262&keyword=ITF>. Accessed 14 April 2013 [in Chinese].
- CSCU. (2011). *The Construction of Chinese Seamen's Union*. Available at: http://acftu.workercn.cn/c/2011/04/06/110406144242707813124_2.html. Accessed 13 April 2013 [in Chinese].
- Dimitrova, D. N. (2010). *Seafarers' rights in the globalised maritime industry*. London: Kluwer Law International.
- Edulife. (2012). *The list of seafarers' education and training institutions*. Available at: <http://sy.edulife.com.cn/school/sychuanyuan/fulltext-25324.html>. Accessed 26 October 2013.
- EMSA. (2013). *Training of seafarers of European Maritime Safety Agency*. Available at: <http://www.emsa.europa.eu/implementation-tasks/visits-and-inspections/training-of-seafarers.html>. Accessed 30 October 2013.
- Fitzpatrick, D., & Anderson, M. (2005). *Seafarers' rights*. Oxford: Oxford University Press.
- Gekara, V. O. (2008). *Globalisation, state strategies and the shipping labour market: The UK's response to declining seafaring skills*. Cardiff: School of Social Sciences of Cardiff University.
- GOV. (2013). *650,000 Chinese seafarers transport more than 93% foreign trade in China*. Available at: http://www.gov.cn/jrzq/2013-06/24/content_2433227.htm. Accessed 25 October 2013 [in Chinese].
- Grime, P. (2014). In this issue of occupational medicine. *Occupational Medicine*, 64(4), 227–227.
- Guidelines. (2009). *The guidelines for flag state inspections under the Maritime Labour Convention 2006*. Geneva: International Labour Office. Available at: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_101788/lang--en/index.htm. Accessed 22 March 2013.
- HTLTWG. (2002). *Final Report of Tripartite Subgroup of the High-level Tripartite Working Group on Maritime Labour Standards (First Meeting)*. Geneva: International Labour Organization. Available at: <http://ilo-mirror.library.cornell.edu/public/english/dialogue/sector/techmeet/stwgmls02/stwgmls-r.pdf>. Accessed 16 March 2013.
- ILO. (2013). *Guidelines on the Medical Examinations of Seafarers*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_174794.pdf. Accessed 1 November 2013.
- ILO C016. (1921). *Medical Examination of Young Persons (Sea) Convention, 1921*. Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C016. Accessed 18 March 2013.
- ILO C073. (1946). *Medical Examination (Seafarers) Convention, 1946*. Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C073. Accessed 18 March 2013.
- ILO/IMO/JMS. (2011). *Proposed revised guidelines on the Medical Examinations of Seafarers*. Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/meetingdocument/wcms_162824.pdf. Accessed 18 March 2013.
- IMHA. (2012). *International Maritime Health Association*. Newsletter, January 2012.
- Imhasly, B. (2007). *Goodbye to Gandhi: Travels in the New India*. New Delhi: Penguin Books.
- IMO STCW. (2013). *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and the White List*. Available at: http://www5.imo.org/SharePoint/contents.asp?doc_id=651&topic_id=257#26. Accessed 17 March 2013.
- IMO. (2013). *Training and Certification*. Available at: <http://www.imo.org/OurWork/HumanElement/TrainingCertification/Pages/Default.aspx>. Accessed 6 November 2013.
- ISM. (2010). *ISM Code and Guidelines on Implementation of the ISM Code 2010*. Available at: <http://www.imo.org/OurWork/HumanElement/SafetyManagement/Pages/ISMCode.aspx>. Accessed 13 November 2013.
- ITF. (2010). *STCW, a Guide for Seafarers: Taking into Account the 2010 Manila Amendments*. Available at: http://www.mptusa.com/pdf/STCW_guide_english.pdf. Accessed 13 November 2013.

- Iversen, R. (2010). The mental health of seafarers: A brief review. In *Maritime Medicine—An International Challenge. 11th International Symposium on Maritime Health* (Vol. 6, pp. 10–52).
- Iversen, R. (2012). *The mental health of seafarers – Good news and bad news*. Available at: http://www.bairdmaritime.com/index.php?option=com_content&view=article&id=12030:the-mental-health-of-seafarers-good-news-and-bad-news&catid=103:magazine-editorials&Itemid=124. Accessed 1 November 2013.
- Jiang, P. (2005). Introduction to China chapter. In D. Fitzpatrick & M. Anderson (Eds.), *Seafarers' rights*. Oxford: Oxford University Press.
- Jiang, Y. (2001). A study on the Chinese system of seafarers' recruitment and placement. *Contemporary Law Review*, 6, 67–70 [in Chinese].
- Li, Y. (2011). *The Work Report of Chinese Seafarers' Union, 2010*. Available at: <http://hyjs.acftu.org/template/5/file.jsp?aid=7431&keyword=ITF>. Accessed 14 April 2013 [in Chinese].
- Li, B. (2004). On the Nation's role and status on the realising the social security protection of the seafarers. *Journal of Dalian Maritime University (Social Sciences Edition)*, 3(3), 23–26 [in Chinese].
- Li, D., & Wang, J. (2007). The impact and countermeasures of ratification of Maritime Labour Convention 2006. *Navigation of China*, 72(3), 49–53 [in Chinese].
- Li, K., & Ingram, C. W. N. (2002). *Maritime law and policy in China*. London: Cavendish Publishing.
- Li, Y. (2006). Protect seafarers' rights and promote the development of maritime industry: The interview to Ziheng Wu, the Chairman of the Chinese Seamen and Construction Workers' Union. *China Ocean Shipping Monthly*, 5, 162–164 [in Chinese].
- Liu, S. (2008). STCW Convention and its Amendments will enter into force on 1 January 2008. *World Shipping*, 31(1), 52 [in Chinese].
- LNMSA. (2013). *The World's Seafarers' Day celebrated in Liaoning*. Available at: http://www.moc.gov.cn/zizhan/zhishuJG/haishiju/tupianxinwen/201306/t20130625_1438273.html. Accessed 25 October 2013 [in Chinese].
- McConnell, M. L., Devlin, D., & Henry, C. D. (2011). *The Maritime Labour Convention, 2006: A legal primer to an emerging international regime*. Leiden: Martinus Nijhoff Publishers.
- McNaughton, W. L., & Lazar, J. (1954). *Industrial relations and the government*. New York, NY: McGraw-Hill.
- MOT/AQSIQ. (2013). *The Joint Notice of MOT and AQSIQ with regard to the Medical Examination of Chinese Seafarers' on board International Ships*. Available at: http://www.moc.gov.cn/zfxxgk/bzsdw/bhsj/201307/t20130730_1458263.html. Accessed 13 November 2013 [in Chinese].
- MSA. (2009). *The Notice about denouncement of 169 maritime normative documents* on 30 December 2009. Available at: <http://wenku.baidu.com/view/d653190e6c85ec3a87c2c563.html>. Accessed 17 March 2013 [in Chinese].
- MSA. (2014). *The Information of Chinese Seafarers*. Available at: <http://www.msa.gov.cn/Notice/Notice/954cfa3d-3fc2-4f1b-9b06-b78d194b59d5>. Accessed 29 June 2014 [in Chinese].
- MSA. (2015). *The Big Data of Chinese Seafarers*. Available at: <http://www.msa.gov.cn/Seafarersday2015/dashuju.html>. Accessed 03 July 2015 [in Chinese].
- MSA-231. (2012). *The list of Designated Hospitals and Duly Qualified Medical Practitioners for Seafarers' Medical Examination*. Available at: <http://www.msa.gov.cn/Notice/Notice/80a10d08-f63c-4a32-a53e-e4adc7dde5df>. Accessed 19 March 2013 [in Chinese].
- Nielsen, D., & Roberts, S. (1999). Fatalities among the world's merchant seafarers (1990–1994). *Marine Policy*, 23(1), 71–80.
- OECD. (2010). *Tackling inequalities in Brazil, China, India and South Africa: The role of labour market and social policies*. OECD Publishing.
- Ozçayir, Z. O. (2001). *Port state control*. London: Informa Professional.
- Potgens, F. (2006). *Income from International Private Employment: An analysis of Article 15 of the OECD model*. Amsterdam: IBFD.

- Qi, D. (2013). Chinese working class and trade unions: Transformation and predicament in the reform era. In G. Wang & Y. Zheng (Eds.), *China: Development and governance*. Singapore: World Scientific.
- Roberts, S. E., & Hansen, H. L. (2002). An analysis of the causes of mortality among seafarers in the British merchant fleet (1986–1995) and recommendations for their reduction. *Occupational Medicine*, 52(4), 195–202.
- Saarni, M. (2002). Medical examination of seafarers—Who is fit for work at sea? *Medicina Maritima*, 2(5), 299–306.
- Shen, G., Zhao, M., & Li, L. (2005). *Chinese seafarers, a study on Chinese seafarers' working and personal lives*. Shanghai: Shanghai University Publishing House [in Chinese].
- Shipman. (2012). *Seafarers' registration reaches 850,000, the number one in China*. Available at: <http://www.shipman.org.cn/forum.php?mod=viewthread&tid=319288&page=1&extra=>. Accessed 25 October 2013.
- Standards JT2025-93. (1993). *The Compulsory Industry Standard JT2025-93 for Seafarers' Medical Examination*. Available at: <http://wenku.baidu.com/view/30ffa26d7e21af45b307a8bb.html>. Accessed 19 March 2013 [in Chinese].
- STCW. (1978). *The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended between 1978 and 2010*. Available at: <http://www.imo.org/OurWork/HumanElement/trainingcertification/pages/stcw-convention.aspx>. Accessed 17 March 2013.
- Taylor, B., Chang, K., & Li, Q. (2003). *Industrial relations in China*. Cheltenham: Edward Elgar.
- UN. (1966). *International Covenant on Economic, Social and Cultural Rights*, 1966. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Accessed 2 May 2015.
- UNHCHR. (2003). *Convention on the rights of the child*. Haiti: Committee on the Rights of the Child.
- Wang, M. (2011). *The First Chinese Industrial Collective Contract Will achieve Full coverage in 2012*. Available at: http://news.xinhuanet.com/fortune/2011-04/06/c_121272825.htm. Accessed 16 April 2015.
- Wanzheng. (2014). *The Latest List of Hospitals for Seafarers' Medical Examination*. Available at: http://wanzhengcrew.com/news_view.asp?id=376&classid=28. Accessed 05 July 2014.
- Wu, B., Shen, G., & Li, L. (2007). *The transformation of the Chinese labour market for seafarers*. Cardiff: Seafarers International Research Centre (SIRC).
- Xinhua. (2002). *Labour and Social Security in China*. Available at: http://news.xinhuanet.com/zhengfu/2002-11/18/content_633162.htm. Accessed 22 February 2015 [in Chinese].
- Yuan, Z. (2013). China: Promoting equity as a basic education policy. In Y. Wang (Ed.), *Education policy reform trends in G20 members* (pp. 359–376). Berlin: Springer.
- Yun, Z. (2007). Our hope: The interview to Wei Wei, the Director of the Chinese Seamen and Construction Workers' Union (CSCU). *China Ocean Shipping Monthly*, 4, 46–47.
- Zeng, X. (2006). Freedom of the employee in bargaining with the employer for wage rates. In X. Li (Ed.), *Assessing the extent of China's marketisation*. Hampshire: Ashgate Publishing Limited.
- Zevallos, J., Hulshof, C. T., Mutsaerts, T., & Sluiter, J. K. (2014). Outcomes of seafarer work fitness qualifications in the Netherlands. *Occupational Medicine*, 64(4), 267–70.
- Zhu, Y., & Wang, X. (2007). Comparative analysis on certificate of competency and certificate of qualification for seafarers. *Journal of Dalian Maritime University (Social Science Edition)*, 6 (2), 58–60 [in Chinese].

Chapter 4

The In-Employment Conditions of Chinese Seafarers

4.1 Introduction

When seafarers are employed, they are faced with a variety of in-employment conditions. The rights and obligations of seafarers and their employers will be subject to the seafarers' employment contract and to the compulsory requirements under national laws and regulations. In this chapter, the term 'in-employment conditions' refers to the other aspect being compared with pre-employment conditions. To certain extent, seafarers' employment relationship are primarily determined by the terms and conditions in their contract. The seafarer's employment contract is therefore of essential importance to the seafarer, and all seafarers have the right to have a signed contract as evidence of their employment relationship. Moreover, seafarers' in-employment conditions rely on the proper implementation of the terms and conditions of the contract.

However, although an employment contract is an agreement between an employer and an employee, the seafarer normally does not have the negotiating power or skills in the establishment of the contract. Most seafarers lack the 'appropriate knowledge and understanding of the legal terminology and language used in the contract' (Dimitrova 2010, p. 49). At the same time, good employment conditions tend to rely on two major factors. One is collective bargaining practices under the auspices of a seafarers' trade union. The other is that national laws or regulations confer upon seafarers some statutory rights that cannot be displaced by contractual agreement.

In China, although Chinese seafarers' in-employment conditions have been protected in a number of ways, there are still many major problems. First of all, as mentioned in Chap. 2, nearly all the legal instruments relating to seafarers adopted in recent years are focused on seafarers' pre-employment conditions. Seafarers' in-employment conditions have never been addressed sufficiently in Chinese legislation. Secondly, Chinese seafarers do not have the choice to join any union other than the All-China Federation of Trade Unions (ACFTU), neither

can they establish their own labour organisations. However, in many cases, as discussed in Chap. 3, the ACFTU is not efficient or effective in achieving their goals to protect seafarers' in-employment conditions. Finally, the Chinese Ship-owner's Association reached a collective agreement with the ACFTU on behalf of seafarers in 2010. However, during the drafting of the agreement, the ACFTU did not widely seek the opinions of seafarers. It does not therefore reflect Chinese seafarers' substantial needs. Furthermore, the collective agreement has not yet been extensively introduced in the Chinese maritime industry.

Chinese seafarers' in-employment conditions include a wide range of aspects and factors. It is therefore difficult to conduct an all-embracing and comprehensive analysis within the terms of this study. The aim of this chapter is to analyse a number of major issues, such as Chinese seafarers' employment agreements, payment of wages, working and living conditions, and shore-based welfare and social security. This chapter draws these themes together from the perspectives of theoretical policy studies and empirical analysis and provides a critical and extensive examination of Chinese seafarers' in-employment conditions.

4.2 Employment Agreement for Chinese Seafarers

It is an accepted legal principle that the employment contract should be signed by both parties 'prior to the commencement date of employment', and a copy should be provided to the employee for his/her 'personal record' (Maguire 2014). As discussed in the previous chapter, seafarers' placement and employment relationships tend to be more complicated than those of shore-based workers. A written employment agreement is therefore of particular importance for seafarers to help them understand and claim their employment rights. According to international standards, before employment, a seafarer's employment agreement (hereinafter SEA) should be signed in written form between the seafarer and the shipowner or its representative, and some minimum information and items must be stated in it. The SEA not only establishes the clauses and terms by which both parties should abide, but it also identifies the responsible employer/shipowner and his obligations in the event of any dispute between these two parties.

4.2.1 *Seamen's Article of Agreement Convention, 1926*

The importance of the seafarer's employment agreement was recognised as early as 1926, when the Seamen's Article of Agreement Convention was adopted by the ILO (ILO C022). The Convention has a very high ratification level; it has thus far been ratified by 60 countries, including China. It was stipulated in the ILO C022 that 'Articles of agreement shall be signed both by the shipowner or his

representative and by the seaman' and the agreement shall 'state clearly the respective rights and obligations of each of the parties'.

Specifically, the Convention prescribed 12 particulars that must be contained in all cases of the article of agreement, including voyage information, amount of wages, annual leave, pay, and so forth. In addition, the essential provisions, particularly those set out in Articles 10–15, aim to establish adequate protection for seafarers at the time when their employment relationships end, and call specifically for 'laws rather than other methods of application', despite 'the fact that some minor points could be established by alternative methods' (ILO 1926). In this Convention, a number of provisions are not self-executing but rely on the appropriate measures being taken by member states, including Article 3, 4(1), 5, 8, 9(2), 9(3), 11, 12, and 15. For example, under Article 15 'national law shall provide the measures to ensure compliance with the terms of the present Convention'.

In some national constitutions, there is usually a provision declaring that the duly ratified international convention is part of domestic legislation. For example, in Chinese Constitution Law it is announced that the duly ratified international convention is automatically incorporated into the Chinese legal system. However, it is commented that this kind of announcement 'is not sufficient to give effect to the provisions of the Convention'. To ensure this, ratifying states are required 'to take specific legislative measures for their application' (Pentsov 2008, p. 125).

Furthermore, according to Article 2 (b) of Seamen's Article of Agreement Convention, it is not applicable 'to masters, pilots, cadets and pupils on training shipping and duly indentured apprentices and other persons in the permanent service of a Government'. Moreover, it was not explicitly stipulated in the Convention that an 'Article of agreement' is a precondition for seafarers to work on board. Before the advent of the MLC 2006, the ILO C022 had been outdated for a very long time and seafarers were in need of new standards to regulate their employment agreement.

4.2.2 *'The Heart' of the MLC 2006*

The SEA, contained in Regulations 2.1, is of fundamental importance and is considered as 'the heart' of the MLC 2006. This is primarily because of its 'multiple and essentially arterial' connection to many other regulations with regard to the enforcement and compliance system established in the Convention. For example, the SEA is an important matter that must be inspected for all ships, and certified for some ships, and is subject to the inspections of both flag states and port state control (McConnell et al. 2011, pp. 278–91). On the one hand, Regulation 2.1 and Standard A2.1 inherit a wide range of provisions, clauses and terminology that exist in the Seamen's Article of Agreement Convention, 1926. On the other hand, it is also noteworthy that a number of changes have been introduced into the new Convention.

First, in the MLC 2006, it has become an explicit requirement for ratifying members that all seafarers working on ships flying their flags have an SEA that contains the prescribed minimum information. A copy of the SEA should be therefore kept on board and be accessible for review by inspectors of the flag state and the port state to be visited, whereas the ILO C022 did not establish any such requirement. Second, unlike the former Convention, Title 2 of the MLC 2006 specifically requires that, where the language of the SEA is not in English, a copy of a standard form of the agreement and the portions of the collective bargaining agreement that are subject to a port state inspection shall be available in English. Third, the Title also requires that relevant provisions be included in the SEA relating to the health and social security benefits to be provided to the seafarer by the employer. Finally, the seafarer's entitlement to repatriation, as well as reference to the collective bargaining agreement if applicable, should also be included in the SEA.

However, another two changes tend to have negative impact on the rights of seafarers. First, the ILO C022 provided the seafarer with the right to obtain from the master a separate document as to the performance of his work, or a certificate indicating whether he had fully discharged his obligation under the agreement. This study has no intention to discuss the significance of the document or certificate. However, in the MLC 2006 there is no such requirement. Second, under the ILO C022, the duration of the minimum period of notice for the early termination of an employment contract shall not be less than 24 h (ILO C022). However, in the MLC 2006, the duration was increased to 7 days. In most cases, the stay of a ship at a port is less than 7 days. Under the ILO C022, a seafarer still has the opportunity to request compassionate leave if he receives a message relating to an urgent situation of his family. However, under the MLC 2006, the seafarer does not have the entitlement to an early termination of the contract unless a notice has been given 7 days beforehand, or he has to wait for a longer time to satisfy the requirement. In many cases, the seafarer has to wait for the next port of call to request repatriation, which might therefore have been delayed for a long time.

4.2.3 *Collective Bargain Agreement (CBA)*

A collective bargaining agreement (CBA) means 'a formal contract between an employer and a group of employees that establishes the rights and responsibilities of both parties in their employment relationship' (Barth 2006, p. 189). It is also referred to as a 'union contract'. In some industries and businesses, certain categories of employee may belong to an organised trade union, which was formed 'to protect the rights of workers' and to establish specific employment conditions that would 'be agreed to and carried out by both parties'. Through a process of collective bargaining, a group of employees will elect to make one collective employment agreement with an employer that will 'outline specific characteristics of their job positions', such as the wages, hours of working, and hours of rest. The arrangement

can be extended to cover anyone employed in the similar position. This is a type of employment agreement, referred to as a collective bargaining agreement (Barth 2006, p. 189).

In order to encourage and promote workers' rights to collective bargaining, the ILO adopted the Right to Organise and Collective Bargaining Convention in 1949 (ILO C098). This Convention has been widely accepted by its member states, and has a very high ratification level of 163 countries. It has also been consolidated in a series of subsequent maritime labour conventions: for example, the Merchant Shipping (Minimum Standard) Convention, 1976, the Recruitment and Placement of Seafarers Convention, 1996 and the MLC 2006.

Transnational CBA plays a unique and important role in the shipping industry. The idea of a transnational CBA on terms and conditions of work covering the entire industry came at a time when the growth of the ITF and its FOC campaign 'pressed maritime employers to the wall and made them sit at the bargaining table' (Dimitrova 2010, p. 46). As a result, the International Maritime Employers' Council (IMEC), formed by a group of maritime employers, started from the early 1990s to negotiate on an international level with the ITF on seafarer employment conditions (Dimitrova 2010, p. 46). In 2003, the International Bargaining Forum (IBF) was established as the mechanism within which representative maritime employers' organisations and seafarers unions could negotiate and reach agreement over the wages and conditions of employment (IBF 2003). The IBF system for pay negotiations represents an innovative approach to collective bargaining in the maritime sector and in the wider global approach to multinational industrial relations (IMEC 2013).

In the MLC 2006, the right to collective bargaining was recognised as one of the four fundamental rights, together with the elimination of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination. The Convention therefore requires that machinery appropriate to national conditions should be established to ensure the effective recognition of seafarers' right to collective bargaining. The substantive content of the SEA should not only be in accordance with national laws and regulations, but also be compliant with the agreement of collective bargaining. Also, the CBA (if any) should be incorporated into the SEA, and a copy of that agreement should be kept available on board for the purpose of flag state and PSC inspections.

4.2.4 Seafarers' Employment Agreements in China

Prior to 2007 (as discussed in Chap. 2), the 1994 Labour Law of PRC (CLL), was the only law relating to Chinese workers' employment conditions. There are no specific terms in the CLL providing for seafarers. It was generally stipulated in the CLL that 'labour contracts shall be concluded between workers and employers before they establish labour relations' (CLL, Art. 16). The Chinese seafarer therefore has a right to have a signed employment contract specifying the terms and

conditions of employment. However, the CLL did not provide any provision to regulate employer's liability if there was no contract concluded between the two parties. Furthermore, the CLL prescribed several circumstances that could lead to the invalidity of a labour contract. An invalid labour contract is not legally binding from the moment when it is concluded (CLL, Art. 18). However, the CLL did not provide any remedies for employees if their labour contracts are revealed as invalid. Aside from the above deficiencies, although the CLL introduced the concept of 'collective contract', it has no substantial clauses with regard to collective 'bargaining' or 'consultation'; instead, it provides only a general clause that 'a collective contract shall be concluded by the trade union on behalf of the workers with the enterprises', and the contract 'shall be submitted to the labour administrative department for approval' (CLL, Art. 33-4).

The Trade Union Law (TUL) was a step forward in the area of collective contracts when it was revised in 2001. It is noteworthy that in its original version adopted in 1992 there were no provisions on collective labour contracts. The new Trade Union Law 2001 recognises the practice of signing collective contract between enterprises and employees. In the text of the revised TUL, the terminology of 'collective consultation' was used, rather than that of 'collective bargaining'. In Chinese, collective 'consultations (*xie shang*)' or 'negotiation' or 'discussion' are more friendly and compromising ways of saying 'bargaining (*tan pan*)', because the latter implies that there is an adversarial relationship or conflicting interests between the employers and employees (Huang 2013, p. 50). Shortly after the revision, more detailed terms were prescribed in the Provisions on Collective Contract adopted in 2004. For example, in Article Three of the Provisions, a collective contract was defined as 'a written contract for collective consultations between an employer and its employees regarding labour remuneration, working and rest hours, labour health and safety, professional training, insurance, welfare and other matters in accordance with the law and regulations' (MOHRSS 2004).

The Labour Contract Law of the PRC (LCL) made significant progress in a number of respects. According to the LCL, it is one of the major responsibilities of the employer is to sign a labour contract with each worker (LCL, Art. 2). It is stipulated in the LCL that 'a written labour contract shall be concluded before the establishment of the labour relation' or 'within one month from the date when the employee begins to work' (LCL, Art. 10). Where an employer fails to conclude a labour contract as required by the law, the treatment of the employee should conform to the provisions of the collective agreement. If there is no collective agreement or if there is no such stipulation in the collective agreement, the principle of 'equal pay for equal work' shall be observed (LCL, Art. 11). In addition, the LCL introduced a 'punishment' mechanism in order to ensure that there is a signed employment agreement. Any employer who fails to conclude a written contract with an employee after the lapse of 1 month from the date when the employee begins to work, the employee should be paid double the amount of his/her wages (LCL, Art. 82). Nevertheless, the risk and cost to the employer from violation of the provision are very low. In practice, many employers are not afraid to refuse to provide a written contract with workers.

In consideration of the special significance of collective bargaining, the LCL provided a body of provisions relating to the Chinese workers' collective contract in terms of payment, working and rest hours, vacation, safety protection, health care, social insurance and welfare, and so on. The new provisions were considered as 'the most important among its many progressive elements' and 'the historic replacement of the previously-used, much weaker concept of "collective consultation" with the term "collective bargaining" for the first time in China's labour laws and regulations' (Liu et al. 2011, p. 287). China Labour Bulletin (CLB 2008) commented that the LCL 'may effectively transform collective bargaining in China from a vague concept into, potentially, a genuine right that can be utilised by ordinary workers to improve their terms and conditions of employment'.

However, while the LCL represents a significant step towards strengthening the right to collective bargaining of Chinese workers, there are still serious problems to be resolved in the future. First, there was criticism that the provisions concerning collective bargaining in the LCL 'are only those articulated in the law and do not extend beyond the text of the legislation'. Although the LCL made reference to collective labour contracts, it did not provide substantial protection for any special arrangements, such as the procedure for collective bargaining. Second, it left the direct representatives of workers 'out of the contract bargaining process and omits specific reference to the importance of collective bargaining' (Potter 2001, p. 102). Taylor et al. (2003, p. 33) commented that the LCL provided 'incomplete regulations on collective labour rights' for Chinese workers, and Shen (2007, p. 88) raised the question of whether 'China's collective labour contract system is really a collective bargaining system'.

There are certain justifications for the above criticisms. First, although the concept 'collective labour contract' was introduced in the CLC, it has not yet been widely implemented in many enterprises. Second, even where a collective labour contract exists, in many cases there is no real 'bargaining' during the formation of the contract between the trade unions and employers (Tian 2014). As discussed in the Chap. 3, the ACFTU, as the only official trade union allowed in China, has special roles and bureaucratic functions prior to defending workers' interests. As a result, on many occasions the trade unions in China have no power or even the will to 'bargain' seriously on behalf of the workers. Finally, most Chinese employees do not have sufficient knowledge and strong awareness with regard to collective bargaining. The level of employee involvement and participation in the collective labour contract is remarkably low, and employers only rarely consult their employees over employment issues (Wang and Zhong 2014). The employers are therefore not obliged to conduct collective bargaining with their employees.

Although the collective labour contract was introduced in the CLL in 1994 and reconfirmed in the LCL in 2007, it is noteworthy that before 2010 there was no collective labour contracts in any Chinese industrial practice. Chinese seafarers' collective contract, which was introduced in 2010, was the first and unprecedented industrial collective contract in China (Wang 2011). According to the ACFTU, in 2009 the CSCU, on behalf of Chinese seafarers, started to negotiate the collective contract with the China Shipowners' Association (CSA). The contract was reached

between the two parties at the end of 2009 and was introduced into practice in 2010 (ACFTU 2011). It was considered as a significant achievement of the CSCU and was expected to change the employment mode of Chinese seafarers (Mou 2011).

However, although the achievement represents unprecedented progress in Chinese maritime employment relationships, a range of factors make it difficult for Chinese seafarers truly to benefit from the collective contract in the workplace. First, as discussed in Chap. 3, the CSCU is not an independent 'bargaining agent', and it lacks the interest to truly safeguard the interests of Chinese seafarers. As a result, there was no real 'bargaining' during the formation of the contract. Second, the implementation of Chinese seafarers' collective contract has been a top-down process pushed by administrative forces, rather than driven by Chinese seafarers. In the process, the trade union is simply following the superordinate imperative in promoting collective contracts. There were scarcely any opportunities for Chinese seafarers to participate in the negotiation of the terms of the contract. The contract cannot therefore reflect the real situation of the Chinese seafarers. Finally, the introduction of the contract appears to be 'a part of an official movement toward a tripartite system of labour relations' recommended by the ILO (Shen 2007, p. 88). The contract demonstrates only a formalistic expression of a wide range of seafarers' rights and interests. Moreover, it has considerably limited effect in serving as a foundation for the significant enforcement of these rights and interests for seafarers. These are therefore articulated only in the terms of the contract, but it is difficult to extend these beyond the text of the contract (Potter 2001, p. 102). As the General Manager of a ship management company in Guangzhou commented in an interview (2013):

Our company recruit and despatch more than 1,500 seafarers every year. I do not see much difference between the Chinese seafarers' collective contract and an ordinary seafarer employment contract. Although the new contract is very inclusive, covering a wide range of seafarers' rights, there are not so many meaningful clauses that can be enforced in practice. We were suddenly informed by the CSCU to use it, even though we had never been informed about taking part in the negotiation of the content of the collective contract (Interview SM 6-1).

Moreover, merely signing a contract is not enough to guarantee a proper implementation of the seafarer employment agreement. For example, despite the fact that the seafarers have the right to receive one original set of the signed contract, sometimes they cannot get any document or even a copy to prove that they have signed a contract. Without a copy of the contract to safeguard their rights, those seafarers would be left totally at the mercy of their employers. The ship-owners could renege on their promises and arbitrarily change terms and conditions of employment. In many cases, the seafarers were left with no other option but to accept the shipowner's new terms and conditions. As Chapman (1992, p. 40) commented, 'once the seafarer is aboard the vessel, he must accept the wage and terms of employment dictated by the ship's operator', or he will face the choice of 'going home without any money'.

In addition, a worse situation is that many seafarers are recruited and despatched through manning agencies. This three-party relationship makes the matter more

complicated. In many cases, the labour relationship is organised through a tripartite agreement, but it is difficult to identify the true employer and who is finally responsible for the employment conditions on board. Many seafarers who are ignorant of their employment rights find it difficult to appreciate the significance of the expressions 'as agent only' or 'on behalf of' the shipowner. Some manning agencies would even conceal their genuine identities. Even where a contract has been concluded between the seafarer and the manning agency, the terms and conditions in the contract might be denied by the shipowner who would resort to various excuses, such as that the manning agency has not been duly authorised. Furthermore, there are also many other issues to be resolved in this respect, including the doctrine of privity of contract, misrepresentation, deceit and coercion. All these issues may result in the consequence that the seafarer is unable to rely on the contract to protect his rights. As a 35-year-old third engineer from Xiamen complained in an interview (2013):

I have been cheated many times by shipowners and manning agencies. I was once recruited by an agency and we signed the contract. In the contract, they described the ship as ten years old with good maintenance. However, when I got on board I found out it was a twenty-six-year-old ship with very poor maintenance. The shipowner just told me that the agency got the wrong information. Another time, an agency persuaded me to sign my name first in a contract. When I requested a copy of that, the agency told me they needed to send it to the shipowner for signature and the copy would be sent on board for my collection. But after I joined the ship, I never received the copy of the contract. The worst situation was that sometimes they would change the terms and conditions in the contract. I did once receive a copy of the contract but it was totally different from the previous one, and I was told that the contract had been modified according to the shipowner's format, but I had to accept that (Interview SF 6-1).

4.3 Chinese Seafarers' Monthly Wages

Labour remuneration is the primary incentive for seafarers to leave their families and risk their lives in the maritime profession. Seafarers' right to wages is regulated by a number of international conventions, and should also be protected by national laws and regulations. On the one hand, seafarers have entitlements to legal protection provided for all employees, including minimum wages, regular and full payment, and so on. On the other hand, the maritime industry has developed special legal principles that are not available to land-based workers to protect seafarers' right to payment, such as maritime lien.

4.3.1 Minimum Wages

Seafarers' wages vary significantly between different countries, in particular between the major labour-supplying nations in Asia and the traditional maritime

nations (TMN) in the Western world. Although ‘fair wages and equal remuneration for work of equal value’ was written as a basic human right into the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966), seafarers from developing countries still face discriminating treatment. According to a survey conducted in 2006 by the International Shipowners’ Federation (ISF), the average monthly wage for chief officers was US\$ 4000. The highest payment level was for Dutch, Polish, Spanish and Belgian chief officers with US\$ 14,935, while the lowest was for Chinese chief officers with only US\$ 2090. With regard to ratings, the average monthly wage in 2006 was US\$ 1310. The highest- and lowest-recorded rates were for Australians (US\$ 8311) and for Bulgarians (US\$ 256) respectively (ISF 2006). Although the survey was conducted almost 10 years before, there is no significant change in the general pattern.

The considerable difference in wages between different countries has a number of detrimental effects. First, the unfair treatment seriously dampens the seafarers’ incentives for good performance. Nowadays, more and more ships are equipped with multinational seafarers. It is not unusual for one seafarer to have a higher rank than another but to receive lower wages just because they come from different countries. This discrimination will have a negative impact on the psychology of those seafarers with lower wages, and accordingly will result in reduced performance. In addition, the huge difference in crew wages creates ‘unfair economic competition’ among shipowners and labour-supplying states. Shipowners gain competitive advantage by employing cheaper labour. Also, the competition will undermine the motivations of those countries to improve the level of seafarers’ minimum wages.

Throughout its history, the ILO has made significant efforts to establish minimum wage levels for seafarers. There are various benefits to establishing a minimum wage system, such as protecting the most vulnerable, ensuring fair wages across the economy, creating a safety net, attracting labour and minimising labour turnover, and promoting macroeconomic growth and stability (Cunningham 2007, p. 66). In 1946, the ILO adopted the Wages, Hours of Work and Manning (Sea) Convention to set minimum wage levels for able seamen (ILO C076). However, no country has ever ratified the Convention. In 1949 and 1958, the ILO revised the Convention twice to attract ratifications (ILO C093; ILO C109). However, although these two Conventions were recognised by a number of countries, neither of them has ever met the requirement of coming into force. In 1996, they were eventually replaced by the Seafarers’ Hours of Work and the Manning of Ships Convention (ILO C180). In order to ensure that the ILO C180 would have more ratifications, as indicated by the changed title of the new Convention, the issue of minimum wages was excluded from its provisions. The new Convention therefore entered into force in 2002. As an alternative, the issue of minimum wages was addressed in another ILO instrument, Seafarers’ Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (ILO R187).

However, the ILO R187 has no compulsory effect on its member states. The minimum wage level recommended by the ILO cannot impose any obligations on shipowners. In addition, the ILO R187 refers only to the basic wages of able seaman

and does not concern other ranks, nor did it deal with bonuses, overtime payments, allowances or any other additional remuneration. While the recommendation represents a limited sort of progress, the ILO still fails to establish a compulsory minimum wage system for seafarers.

Attempting to establish a minimum wage level tends to bring about a wide range of resistance from less developed countries or major labour-supplying nations. The disparity and uneven development of the economy between different countries is the primary obstacle to establishing a global minimum wage level. For the developing countries, lower labour costs may be the only advantage on which they can rely to grow the shipping industry and expand their merchant fleet. In addition, the lower wage level can help them export their labour force and obtain more job opportunities and revenue. In contrast, Western industrialised countries attempt to increase minimum wages on an international level. The global wage standards will not only create a 'level playing field' for shipowners, but will also safeguard more employment opportunities for their seafarers. As a result, different interests make it difficult to establish a system of global minimum wages. In the MLC 2006, the issue of the minimum wages once again was addressed in the Guideline B.2.2, which is not binding on the ratifying member states but has recommendatory effect. Nevertheless, the optional requirement will be given due consideration when implementing the obligations under the MLC 2006. As Dimitrova (2010, p. 57) commented, 'even though the ILO Recommendation on minimum wage is not obligatory, it manages to influence the minimum wage for many seafarers around the world'.

The ITF has taken more concrete and serious measures in establishing minimum wage standards. Among its several actions, the ITF flag of convenience (FOC) campaign provides shipowners who agree to ITF standards with a 'collective agreement' between the shipowner and the union. The ship that complies with the requirements will then be given 'a blue (or green, depending on the process by which the agreement is negotiated) certificate, attesting to its acceptance of these standards'. One of the most important contents of the coverage of the certificate is 'a specific scale of acceptable minimum wages' (DeSombre 2009, p. 137).

The ITF conducts direct actions or boycotts to attempt, with a certain degree of success, to compel shipowners to accept its standards. A shipowner who accepts these standards indicates an intention to be bound by the obligations under the ITF-approved collective agreement. A ship covered by a collective agreement but paying wages below the ITF minimum levels will be subject to the risk of a work boycott or labour action in port. The shipowner will then be requested to contribute 'back pay', which is calculated as 'the differential between the rate of pay previously in effect and the higher ITF scale for the time from when the seafarer signed on board the ship' (DeSombre 2006, p. 144).

The levels of minimum wages and other financial benefits set by the ITF are much higher than the ILO levels and the average levels of the maritime labour market. To meet them is therefore costly and even difficult for many shipowners (Dimitrova 2010, p. 57). However, the benefit for seafarers covered by the ITF-approved collective agreement is significant. On the other hand, the costs of

not complying with the ITF standards are high for ships that travel to ports with a strong ITF influence, such as the ports in Australia. As commented by the ITF about its FOC campaign: ‘while the political campaign has not so far succeeded in preventing a constant growth in ships using FOC registers, the industrial campaign has succeeded in enforcing decent minimum wages and conditions on board nearly 5000 FOC ships’ (ITF 2005).

Chinese seafarers appear to be the largest beneficiary of the recommended system of minimum wages for global seafarers. As discussed in Chap. 2, the average monthly wage of a Chinese seafarer is not the same or even close to the one that a European seafarer receives (Galic et al. 2012). Even in Asia, Chinese seafarers’ wages are among the lowest level in the maritime labour market, much lower than those of Korean, Japanese, Singaporean, Indian, Philippine and Bangladeshi seafarers. According to China Crew’s Salary Index (CCSI), compiled by Shipping on Line (SOL), Chinese seafarers’ wages have steadily increased since 2008 (SOL 2015). Since 2014, however, the payment of Chinese seafarers has become quite close to that of Indian, Philippine and Bangladeshi seafarers, although it is still much lower than what Korean, Japanese and Singaporean seafarers receive (Liu 2014). As one crewing manager of a ship management company in Dalian commented in an interview (2013):

About five years ago, Chinese seafarers were still paid much less than seafarers from many other Asian developing countries, including India, the Philippines and Bangladesh. Over the past five years, under the pressure of minimum wage levels set by the ILO and the ITF, the average of Chinese seafarers’ wages has significantly increased. Nowadays, the wage differentials are disappearing. Franking speaking, it was what we could not have expected in the past. It has increased our operational costs, but we hope Chinese seafarers’ wages can catch up with those of seafarers from developed countries (Interview SM 6-2).

At the national level, a minimum wage system has also been established under the CLL in China in order to ensure workers’ basic incomes. The levels of minimum wage vary between different provinces and regions, as determined by their local government. When a local authority determines the minimum wage, a number of factors will be considered, such as the minimum living expenditure of the worker, the number of people dependent on the worker, productivity of labour, the nationwide average wage level, the regional employment situation, and the difference between regional economic development levels (CLL, Art. 48-9). In 2004, the Provisions on the Minimum Wages, adopted by the MOLSS, prescribed the overall implementation of the minimum wage system in China’s labour market (GOV 2004a). The Provisions also include ‘detailed, concrete and operable provisions on the definition, categories, application, formation and adjustment of minimum wage standards’ (OECD 2010, p. 131). For example, if an employer pays the employee below the minimum wage level, the employee is entitled to receive the difference between the actual wage paid and the minimum wage level determined by the local authority. In addition, an amount up to five times of the shortage should be paid to the employee as compensation (GOV 2004b).

However, in recent years, with the overall increase in Chinese workers’ wages, the wage differentials between Chinese seafarers and Chinese land-based workers

are also disappearing. As discussed in Chap. 2, due to the special challenges of seafaring labour, seafarers are usually paid much more than most land-based workers. In many cases this is the primary motivation for seafarers to leave their families and to risk their lives at sea. Although there has been a considerable increase in Chinese seafarers' wages, the increase is far less than that for most land-based workers (Pu and Cheng 2015). In addition, due to the high inflation rate and sharp rises of major commodity prices in China, the real wage increases of Chinese seafarers have become less significant (Xiao 2013). The seafaring profession in China is therefore becoming less attractive. As one 48-year-old Chief Officer from Fujian province commented in an interview (2013):

If truth be told, my wages has increased a lot over the past several years. Now my wage is only a little bit less than a Philippine Chief Officer receives. It was what I could not have dreamed of a few years ago. However, several years ago I had a sense of psychological superiority being a seafarer, but now the sense has disappeared. The first reason is that nowadays many land-based workers are paid not less than what I receive. The second one is that the living expenditure in China is much higher than in most Asian countries, including the Philippines, India and Bangladesh. The real situation is therefore becoming worse. All these factors make me consider whether I should continue in the profession (Interview SF 6-2).

4.3.2 Payment of Wages

Seafarers are entitled not only to receive their wages in full, but also regularly and in a timely manner. However, before the adoption of MLC 2006, there was no international labour standard explicitly requiring that seafarers were to be paid for their work regularly and routinely. For the first time, the issue was addressed in the MLC 2006. According to Regulation 2.2, 'all seafarers shall be paid for their work regularly and in full in accordance with their employment agreements' (MLC 2006: Reg. 2.2). The particular meaning of 'regularly' was once worded as 'monthly or at some other regular interval' (ILO R187, Art. 6-d). However, the wording was amended and replaced by the words 'at no greater than monthly intervals' at the Intercessional Meeting held after the Preparatory Technical Maritime Conference (PTMC 2005). This amendment sets a minimum requirement that seafarers should be paid in full at least once a month.

4.3.2.1 Delay in Payment

Wages should be paid on a monthly basis directly to seafarers or to their bank accounts without delay. In China, there are a number of laws and policies to prevent an employer from delaying payment of a worker's wages. In the CLL, it is regulated that 'wages shall be paid monthly to workers themselves in cash' and the payment shall not be delayed 'without justification' (CLL, Art. 50). However, the CLL does not provide any remedy or redress if an employer delays payment of wages. To

complement the CLL, the Ministry of Labour (MOL) of the PRC adopted the Provisional Rules on Payment of Wages on 6 December 1994 (PRPW). In these rules, the MOL mandates local labour authorities to monitor the situation of payment of wages and to ensure that the employers in their jurisdiction pay workers' wages on time and in full. If any violations of workers' legal rights are found, the local labour authority is obligated to put it right and to instruct the employer to pay indemnity and compensation (PRPW, Art. 18). In 1995, the MOL promulgated the Supplement to the Provisional Rules on Payment of Wages (SPRPW). In the Supplement, the wording of 'without justification' is clarified as 'without a legal foundation or proper excuse'. However, two circumstances of delay are prescribed as 'justification' and will be permitted by the law and the rules. One is force majeure (any incident which is outside the control of the employer, such as war), when it may not be possible for the employer to pay wages in a timely manner. The other circumstance is difficulties in operation of the business, if the employer cannot manage its circulating capital properly. After consulting with the trade union of the company and obtaining approval for deferment of payment, the employer may temporarily postpone payment. The maximum period of postponement is subject to the regulation of the local government (SPRPW, Art. 4). According to the LCL, 'an employer shall pay the worker thereof the full amount of remunerations in a timely manner in accordance with the contractual stipulations and the provisions of the state'. This is an employer's primary obligation under the Labour Contract Law. In the case where an employer, without justification, postpones or fails to pay the full amount of remuneration, the worker is entitled to apply for an 'order of payment' in the local court and the court shall issue an 'order of payment' immediately (LCL, Art. 30).

The above regulations and provisions provide a safety net for land-based workers to ensure they can receive their full amount of wages in a timely manner. However, for seafarers, the above remedies and redresses are to very little avail. First, seafarers are working in an isolated place at sea, which is totally different to a land-located industry under the supervision of a local government. In particular, for those FOC shipowners who register their ships and offices abroad, it is very difficult for the local labour authority to trace the person responsible and impose Chinese jurisdiction. Even for the shipowners situated within its jurisdiction, the local authorities would not know in most cases that the employer has failed to pay the wages on time. Second, most wages today are paid into seafarers' accounts by Telegraphic Transfer (TT). Usually only a small amount of remunerations is paid on board in cash. Seafarers need to work and stay on board once they are engaged in an employment contract. They seldom have the opportunity to check their accounts and confirm the safe receipt of their wages. They may therefore not find out the delay in payment, which may encourage employers to default their obligations of payment. Third, even when seafarers discover that payment has been delayed, it is virtually impossible for them to place a complaint and apply for an 'order of payment' to a local court that has relevant jurisdiction, as land-based workers can do. Fourth, according to Article 4 of the SPRPW, an employer can postpone the payment of wages having once obtained the approval of the trade union of the

company, if any. However, it is unclear what kind of approval can satisfy the requirement. In many shipping companies, there are only nominal trade unions, which are controlled and manipulated by the executives of these companies. Many employers can very easily obtain nominal approval, thereby gaining the entitlement to defer the payment of wages. In addition, according to the doctrine of privity of contract, right to wages is the contractual right of the individual employee. The private and fundamental right of an employee should not be decided by the trade union. The approval should therefore be accepted by every individual worker. Otherwise, the approval can bind only those workers who grant their consent. The employer is still obliged to pay the wages in due time to those workers who refuse to give their approval.

Delay in payment of wages is a very common issue encountered by Chinese seafarers. There are many reasons for this delay by a shipowner. The most common reason is to reduce operating costs. External financial aid is of essential importance to every shipowner. In China, there are only a very limited number of state-owned shipping enterprises that can get loans or other financial support from banks. Most shipping companies have to borrow money from 'underground banks', where illegal money exchanges take place. Because it is illegal and highly risky for the money lender, the interest is very high. If a shipowner defers the payment of the seafarer's wages for some time, significant labour costs can be reduced by saving interest. The profit made by many shipowners relies on the introduction of a 'delay in payment' strategy. As one Chief Executive Officer (CEO) of a private shipping company in Fuzhou explained in an interview (2013):

I believe every shipping company needs to borrow money from external sources. However, the banks support only those big-size and state-owned shipping companies. We usually borrow money from 'underground banks' through 'money brokers'. It is also called the 'black exchange market'. The interest is as high as ten to fifty times that of bank interest but we have to live on it. I have to postpone seafarers' wages to save the high interest. On each payday, I usually call masters of our ships and ask them to placate the seafarers. I promise a 'good offer' of bonus if any seafarer agrees to collect his wages once he is discharged. As a matter of fact, it is a win-win method if he is not so anxious to get his wages. There are some seafarers pleased to collect their wages before signing off in exchange for bonuses (Interview SM 6-3).

However, normally seafarers do not have much choice but to accept the shipowner's 'good offer'. When they are employed on board, they can do very little except wait in despair. As one 43-year-old third engineer from Hunan province complained in an interview (2013):

In recent years, I seldom even expected to get my wages on time, because I knew they would delay the payment each time. I know their tricks very well. Normally we can get the wage for the first month on time because the shipowner wants us to settle down on board and lower our alertness. From the second month they will keep promising and keep defaulting. Sometimes they may promise you a 'good bonus' if you agree to collect the whole wages when you are discharged, but they seldom honour their word. It is very common for them to default more than half a year's wages. In the end, you will be very happy when you get full payment before signing off. Of course, not everyone is so lucky each time (Interview SF 6-3).

Higher profit is the primary reason for encouraging a shipowner to default. However, there are many other reasons that may cause the shipowner to act more unscrupulously and without any fear. First, because of the lack of a powerful trade union, seafarers do not have a strong background to strive for their basic rights. Second, the cost for a shipowner in violating the seafarer's right is very low. Even though it is clearly stated in law that it is illegal for the employer to default on the payment of wages, there is no effective punishment available to prevent that from happening. Third, seafarers are normally not legally aware. A shipowner can easily take advantage of their ignorance without any punishment. In most cases, seafarers put up with the shipowner's delay in payment. Even though they may urge shipowners to make the payment on time, they seldom put in a formal notice in a written format. Therefore, a seafarer's continuous condonation of delay without formal and clear objection may result in the application of the legal principle of estoppel which results in the loss of the right to claim compensation from the shipowner. One judge in a maritime court in Zhejiang province expressed his concern about seafarers' lack of legal awareness (2013):

Delay in payment of wages is a most abominable thing and it is a very common dispute in this maritime court. However, in most cases, seafarers do not know how to use legal weapons to protect their lawful rights. When their employers fail to pay the wages on time, they prefer to choose continuous condonation or private complaints without any written notice or objection. In law this will be deemed that seafarers accept the delay, and then a further delay. The right way is to issue a written notice immediately to object to the delay and clearly reserve the right to claim compensation. A formal lawyer's letter is the best choice (although it is not always very easy to have one). However, even though it is not available, a written notice issued to the captain who acts on behalf of the shipowner can also serve the intention (Interview JUR 6-1).

4.3.2.2 Deduction

Deduction of wages is also clearly forbidden in Chinese laws and policies if it is 'without justification' (CLL, Art. 50; LCL, Art. 60; PRPW, Art. 15&18). Some justifications for deduction are prescribed in different laws and regulations. For example, in the PRPW, an employer is allowed to deduct a worker's wages directly under four circumstances (PRPW, Art. 15):

- Personal income tax that has been paid by the employer for his employee;
- The cost of social security and insurance that should be the duty of the employee to pay and has been paid by the employer;
- The maintenance cost for dependants according to the judgements of a court or arbitration;
- Other costs to be deducted from wages according to relevant laws and regulations.

Furthermore, if any economic loss is incurred by the employer due to a fault of the employee, the latter is obliged to compensate the employer for the loss according to the terms of the employment contract. The employer is entitled to

deduct the compensation directly from the wages of the employee. However, the monthly deduction shall be no more than 20 % of the employee's monthly wage. If the wage after the deduction becomes less than the minimum wage, then the minimum wage shall be paid (PRPW, Art. 16). In the SPRPW, the wording 'deduction' is further explained and five exceptions to the restriction of deduction are provided (SPRPW, Art. 3):

- Deductions that are prescribed in the national laws and regulations;
- Deductions that are permitted in the employment contract;
- Deductions that are allowed by the company rules and regulations approved by the employees' representatives committee;
- If the gross wages are connected to economic benefits offered by the company, the reduction of employees' wages when the economic benefits offered by the are reduced;
- The reduction of employee's wages because of leave taken for personal reasons.

In addition, all Chinese workers have an entitlement to sickness and injury benefits. For example, in the event of work-related illness and injury, which include 'injuries suffered on business trips and even injuries suffered during the journey to and from work', the employer is not entitled to deduct the wages of the employee. Even in the event of a non-work-related sickness or injury, an employee is entitled to a period of medical treatment during which time the employer is still liable to continue paying the wages (CBM 2004, p. 500). However, in consideration of special features of seafarers' labour, it is uncertain under the Chinese law that whether seafarers held hostage by pirates have an entitlement to the continued payment of their wages. As professor Staniland (2013) has argued, taking into account the widespread of piracy and their fast evolving business models, the need to protect the wages of seafarers and to reform the law is urgent.

From a legal perspective, both the PRPW and SPRPW give a wide range of opportunities for a shipowner to deduct seafarers' wages. If an economic loss is the fault of a worker, it is fair for the worker to compensate the employer's loss. However, the rules fail to provide more detailed instructions to solve at least five further issues. Who has the authority to determine whether or not a worker is at fault or not? How to establish the exact direction of causation between the loss and the worker's fault, if any? How to determine the amount of compensation? Whether a seafarer enjoys a limitation of compensation? Otherwise he may work without return even for an unintentional mistake. Is the employer still entitled to deduct an employee's wages if a dispute arises about the 'fault' or about the amount of compensation? Unfortunately, so many questions and issues are left for employers to determine. To certain extent, a shipowner's profit relies on seafarers' proper handling and operation of the ship. Also, seafarers tend to be blamed for losses incurred to shipowners. A survey carried out among 20 Chinese seafarers found that 16 of them had experienced deduction of wages, while most of them considered that they had been treated unfairly. As one 38-year-old AB from Sichuan province complained in an interview (2013):

In the past, my wages have been deducted a number of times, even though I had argued that I should not be blamed, at least not for all the losses. Once, when I was handling mooring ropes, I slipped down and my walky-talky dropped into the sea. Then I had to pay for a new one. Another time I was instructed to operate a pump. When I started the pump it was burnt for some unknown reason. The incident was again reported to the shipowner and a large part of my wage was deducted. Of course, I am not the only one with bad luck. Many of my colleagues faced the same problem. One of my friends had to pay for a set of kitchen equipment that was broken because of his wrong operation (Interview SF 6-4).

The survey indicated that high-rank seafarers may face a higher risk of deduction of wages. The ranks of captain, chief engineer, chief officer and second engineer have to bear the brunt of blame when loss occurs because they have more accountability. One 48-year-old chief engineer from Zhejiang province told his sad story in an interview (2013):

It was really the worst thing I have gone through on board. It was a terrible vessel with an engine in very poor condition. After I joined the vessel, I made great efforts to maintain the engine in proper condition. However, during one voyage we suffered an engine failure at sea. The shipowner instructed me immediately to fix the problem; otherwise the ship would not catch the laycan as required by the charterer and the voyage charter party might be cancelled. We spent several days working continuously and finally fixed the problem. Unfortunately the ship still failed to arrive the destination on time and the shipowner had to seek another voyage. To my surprise, a deduction was made to my wage, while I felt that I should be rewarded for fixing the problem of the poor engine (Interview SF 6-5).

The master of a vessel has the overall authority on board. At the same time he also has the overall responsibility to prevent any loss from occurring on board. As a result, once a shipowner suffers any loss, the master of the vessel might be the first person to blame. One 52-year-old master from Jiangxi province described his experience in an interview (2013):

I was once employed by a Fujian shipowner. In an Indonesia port we were instructed to load bulk cargo and then to discharge it in China. Before the ship took in cargo we needed to wash and clean all the cargo holds properly and to request the cargo-owner's inspection and approval. Our crew had worked very hard to do it, though we failed the first inspection. As a result there was a one-day delay and of course the shipowner suffered huge losses. At first, both the chief officer and I were requested to lose two months' wages as compensation. After negotiation one month's wage was deducted. It is a huge amount of money for us and we were so upset about that (Interview SF 6-6).

Compared with the PRPW, the SPRPW provides more opportunities for a shipowner to deduct a seafarer's wages. According to Article 3 of the SPRPW, deductions may be made if it is permitted in the employment contract. Most seafarers' employment agreements are provided by shipowners without any previous negotiations with seafarers. Most seafarers are short of legal awareness and almost ready to sign any instrument that may be proposed to them. In many cases they are unable to identify the terms and provisions that are not in their interest and to foresee any adverse legal consequences. In a standardised seafarer's employment contract, one of the clauses in Part Three, quoted in full below, puts a seafarer in a very adverse legal position:

Part Three: Seafarer's Responsibilities

[4] In accordance with the relevant national laws and policies, Part B [crew member] shall perform his duties and responsibilities properly and try his very best to prevent damage and losses to Part A [shipowner]. However, if such damage and losses occur as a fault of Part B, Part A is entitled to deduct the amount of damages and losses from the wages of Part B as compensation.

In addition, 'company rules and regulations' can also provide a pretext for deducting from a worker's wage. Although the 'rules and regulations' need to be approved by an employees' representatives committee that is not in most cases a difficulty for an employer. This provision gives an employer more justification to deduct a worker's wages. As a matter of fact, the rights and obligations of a seafarer are determined by the laws and employment contract. The 'company rules and regulations' are the unilateral intentions of the employer. Despite the fact that they are probably approved by the employees' representatives committee, a seafarer is not necessarily bound by these rules and regulations if they violate the seafarers' basic rights. However, many shipowners take advantage of the clause and use it as an efficient tool against seafarers. As one 29-year-old fourth engineer from Hebei province described his unpleasant experience in an interview (2013):

We know many companies' rules and regulations. They are posted in the ship office, corridors, engine room and other workplaces. They may be different in wording but the essential meaning is that we must handle everything properly; otherwise we need to compensate shipowners' damage and losses. Even in the recreation room, sometimes they post notices indicating 'indemnify damage and losses'. The compensation will be deducted directly from our wages and I know a number of such cases (Interview SF 6-7).

4.3.2.3 Unpaid Wages

Besides delay in payment and deduction of wages, sometimes seafarers may not receive any payment at all. Their wages may be withheld by the shipowner with an empty promise that he never intends to honour. In China, the problem of unpaid wages is clearly prevented by a number of laws and policies. In the CLL, 'if an employer refuses to pay the wages, the local labour department shall order him to pay arrears wages, and make up for the worker's losses, and may also order him to pay compensation' (CLL, Art. 91). The amount of compensation is stipulated as 25 % of arrears wages in the Measures on Indemnity against Violations or Provisions Relating to Labour Contracts under the Labour Law. According to the provisions in the LCL, if the employer fails to pay the full amount of wages in a timely manner, the employee is entitled to terminate the labour contract and receive economic compensation (LCL, Art. 38). The amount of economic compensation is not more than 1 month's wages and shall be determined by how long the employee has worked for the employer (LCL, Art. 40). In the Seafarers' Regulation of PRC, it is stipulated that 'seafarers' wages shall be paid in full and in a timely manner and unpaid wages are forbidden in any shipping enterprise' (ROS, Art. 29).

However, among the most common and serious abuses, unpaid wages are at the top of the list of seafarers' complaints. Particularly during periods of economic

recession and poor freight markets, this may become a ‘normal practice’ for some unscrupulous shipowners in order to allow themselves to survive. The practice constitutes a fundamental breach of the seafarer’s employment contract and also impairs the reputation of a company. However, compared with other operating costs, such as bunkering, maintenance, tonnage tax and port disbursement, seafarers’ wages always become the target for any savings. Many shipowners consider the practice as the preferred choice when they encounter financial difficulties. There are several factors encouraging a shipowner to make that choice. First, seafarers are the most vulnerable group with a lack of legal awareness. Even though their wages are seriously delayed, they continue to work hard in the hope of being paid before their discharge. Second, unlike land-based workers, most seafarers are temporarily employed. After a seafarer signs off, the shipowner may not need any more service from him. Third, a ship is mobile and the shipowner may be a paper company situated in an unknown place. A seafarer’s pressing for payment of a debt can be very easily disposed of. Fourth, it is difficult for a seafarer to bring a lawsuit against the shipowner, in particular when he does not have a copy of the contract or other supporting evidence. Fifth, to complete a lawsuit procedure takes a very long time. Most wages disputes will be terminated between the two parties by the settlement that the employer may pay the wages in arrears. Sixth, punishment against offending employers is too lenient. Even though they may be finally sentenced to compensate the employee, the legal cost and compensation are not severe enough to prevent their further violations.

4.3.2.4 Maritime Lien

The particular features of international shipping often prompt a maritime claimant to pursue one or more pre-judgment remedies in order to obtain security for the plaintiff’s claim (Harter and Preaus 2001, p. 237). As mentioned in Chap. 1, the law of maritime lien plays an important role in securing seafarers’ wages and other disbursements or costs. A maritime lien is a ‘rough security device invented in the nineteenth century to keep ships moving in commerce while preventing them from escaping their debts by sailing away’ (Schoenbaum 2001, p. 495). A maritime lien has a number of characteristics. First, it is a non-possessory security device that is created by the operation of the law. Parties do not enjoy contractual freedom to create new forms of maritime liens or to exclude the creation of certain forms of maritime liens (Force et al. 2006, p. 583). Second, a maritime lien is independent of possession. Under the principles of commercial law (originating in English common law) it is essential that a person claiming a lien should, until payment, continue to have possession over the property on which the lien is attached (Halsbury 1979, p. 231). However, a maritime lien exists irrespective of possession and confers upon the holder the right to a judicial sale (Halsbury 1979, p. 245). Third, the lienor has the right to ‘follow’ the ship and is entitled to preferential treatment from the proceeds of the sale of the ship or from a release bond that is a substitute for the ship (Force et al. 2006, p. 583). Fourth, the maritime lien still exists where the

ownership of the ship passes without notice to a bona fide purchaser for value. It enables *in rem* proceedings to be taken, notwithstanding any subsequent sale of the ship to a third party and notwithstanding that the purchaser had no notice of the lien and no personal liability on the claim from which the lien arose (McDermott 2000, p. 185).

In the Maritime Code of the PRC, a maritime lien is the right of some designated claimants to take priority in compensation against shipowners, bareboat charterers or ship operators with respect to the ship that gave rise to the said claim (CMC, Art. 21). There are five categories of claims that are entitled to maritime liens, including seafarers' wages, repatriation and social insurance costs, loss of life or personal injury and salvage payment. Among these items, claims for unpaid wages, repatriation and social insurance costs in accordance with the relevant labour laws, administrative regulations and employment contracts have the highest priority (CMC, Art. 22). In addition, under the Maritime Special Procedure Law of the PRC, in order to secure their claims for unpaid wages, seafarers may make an application for the arrest and auction of a ship in a maritime jurisdiction (MSPL, Art. 21). However, arresting a vessel is typically an expensive proposition, in particular for seafarers. One of the preconditions for applying for the arrest of a ship is to provide sufficient counter-security for wrongful arrest. Although the specific amount of security varies from case to case, generally a maritime court requires a cash deposit of not less than 30 days' income of the ship before it will allow service of any arrest papers to be served on the ship. The amount is normally far beyond that which a seafarer can afford.

4.4 Working and Living Conditions for Chinese Seafarers

It is settled in the ICESCR that everyone has the fundamental right to enjoy 'safe and healthy working conditions' (ICESCR 1966: Art. 7-b). For seafarers as a specific group of workers, the working conditions are of essential significance because a ship is both a workplace and a home. Seafarers are normally isolated from the world ashore, their countries and their homes for however many days or weeks that the voyage takes. The circumstances of living and working in the community mean that the crew is not only a working team, but also a human group whose members must be able to satisfy their private human and basic needs for relating to others in human terms in the community around them (Dauer 2009, p. 31). This special phenomenon is illustrated by the sociological concept of a 'total institution', defined as 'a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed formally administered round of life' (Goffman 1961: xiii). It is therefore necessary to establish certain standards with regard to accommodation, recreation, food and catering in order to ensure the working and living conditions on board ship at sea.

The ILO has adopted many international Conventions and Recommendations for defining the main principles of seafarers' minimum employment conditions. In 1946, the ILO adopted the Food and Catering (Ships' Crews) Convention to promote a proper standard of food supply and catering service for the crews of sea-going vessels (ILO C068). In the same year, the ILO adopted the Accommodation of Crew Convention (ILO C075), which was revised in 1949 by ILO C092 to set substantive standards regarding the structure and arrangement of crew accommodation and the related sanitary, ventilation, safety and security requirements (ILO C092). These Conventions were later appended to the Merchant Shipping (Minimum Standards) Convention 1976, jointly to establish the minimum internationally acceptable labour and social security standards for all merchant vessels (ILO C147). In addition, a number of Recommendations have also been laid down to establish the standards with regard to bedding, mess utensils, air conditioning, and noise control (ILO R78; ILO R140; ILO R141). Ultimately, all these instruments have been revised and incorporated into the MLC 2006. For example, Title 3 and Title 4 of the Convention specify the requirements relating to accommodation, recreational facilities, food and catering, health and safety protection. To ensure these standards are implemented, the MLC 2006 took a new step toward state responsibility by imposing effective compliance and enforcement mechanisms of certification and inspections on ships.

Despite the efforts made in the shipping industry, many seafarers continue to work and live in poor conditions. The most common complaints about inappropriate working and living conditions include incommodious cabins and poor air-conditioning, hot and noisy living space, shared toilets and bathrooms, nutritionally inadequate food and unsafe working space. The working and living conditions vary among different ships and different companies. Generally, tankers (especially those covered by the oil industry's Ship Inspection Report Programme), gas carriers and modern container ships tend to have better accommodation than cruise ships and general cargo and bulk carriers. Among different countries, ships owned, and/or managed, by shipowners of northern European countries (Nordic ships are particularly likely to fall into the good category), America, Japan, and the Republic of Korea tend to have higher standards of living conditions (ILO 2001a, p. 66). However, according to data collected from a manning agency in Shanghai, only a small number of Chinese seafarers have the opportunity to work on board these high-standard ships. Most of them continue to be employed on dangerous and substandard vessels with terrible living and working conditions.

4.4.1 Food and Catering

Food in residential institutions often takes on a particular significance, and this is especially true for ships' crews (Fricke 1972, p. 31). As seafarers are denied many of the pleasures of their shore-based contemporaries, food is more important to them than simply satisfying hunger (ILO & SIRC 2004, p. 121). Inappropriate food

and diet issues for different religions, cultures and nationalities could lead to stress and illness (Dimitrova 2010, p. 65).

Ships continue to have formal hierarchical structures and the crew are generally divided into officers and ratings, where officers form approximately 40 % and ratings 60 % of total complements (ILO & SIRC 2004, p. 98). In most of the world's fleet, a ship's dining room is separated into two parts. One is for officers, including a deck apartment for the captain to third officer and the engine department for the chief engineer to fourth engineer. The other is for ratings, including the bosun, AB, OS, Oiler, cook and others. Generally, the officers' mess room has better decorative and sanitary conditions than the ratings' mess room. It is also a normal practice for a cook to serve food and catering with higher priority to the officers' mess room. However, the arrangements of separate messing are thwarted on board Chinese vessels or vessels equipped entirely with Chinese seafarers. Both Chinese officers and ratings, irrespective of their ranks, prefer to eat in the same space at the same time. In addition, they prefer to eat together with colleagues with whom they have good relationships or are from the same department. For them, shared meals can turn into an important form of social interaction. It is one of the few opportunities for seafarers to spend time together, which is essential for their emotional well-being.

It is the shipowner's responsibility that meals are made available to seafarers for minimal cost. For most Chinese seafarers there is a special clause called 'provision wages', which indicates that a shipowner shall pay the cost of seafarers' food. For Chinese seafarers, the cost varies around 4–8 dollars per day according to the different voyages. If the ship is engaged in voyages to the EU, America, or Australia, where the provision cost is high, the provision wages will be accordingly high. However, if the ship tramps in Southeast Asia, in particular going to China frequently, the provision wage will be very low. Provision wages are paid to the master of a ship in order to purchase provisions in the ports of call. However, Chinese seafarers seldom spend all the provision wages on food. They usually save a part and distribute it evenly to each seafarer as extra income. On most Chinese vessels or vessels equipped with Chinese seafarers, there is a special food committee composed of a number of active seafarers. The committee will deal with the issues with regard to the purchase of provisions, counting the income and expenditure, and distributing the balance to seafarers. A survey indicates that, in order to improve their income, most seafarers spend only one third to a half of the provision wages on their food. However, this practice will significantly impair the standard of food on board and have negative consequences for the health of the seafarers. As one 33-year-old OS from Henan province explained his preference in an interview (2013):

I definitely prefer to work on board ships where we can distribute the balance of provision wages. You know my wage is low, and so I need the special distribution to improve my income. Of course, after distribution we have to bear inadequate nutrition and bland food. Sometimes we need to take Vitamin pills to make up what we lack in our diet. Nevertheless, I am happy to get some extra income each month. That is the most important thing for me, not the diet (Interview SF 6-8).

4.4.2 Accommodation and Recreational Facilities

For seafarers, accommodation and recreational facilities are one of the most important components of shipboard life, especially when they are on a long voyage. It has been recognised that standards of shipboard accommodation need to be 'very much in advance' of those ashore to attract sufficient numbers of people to a career at sea (Duckworth 1956, p. 439). Some commentators have also asserted that shipowners have the 'moral obligation' to ensure that accommodation aboard offers seafarers a 'high standard of comfort'. In addition, when seafarers are provided with living conditions, careful attention should be given 'not only to their safety and comfort but also to the state of mind which an environment inculcates' (Meek and Ward 1973, p. 208). For example, there is evidence that accommodation design has a significant effect on mental health and well-being of seafarers on cargo vessels (54seaman 2015). However, there are today still significant numbers of ships that fail to provide even basic standards of accommodation and recreational facilities to seafarers.

A study was carried out by the SIRC and the Lloyd's Register Educational Trust (LRET) in 2012 to ascertain the levels of satisfaction that seafarers felt in relation to the accommodation and recreational facilities of the vessels on which they worked. The sample seafarers constituted 39 % Filipinos, 32 % Chinese, 15 % Indian, 12 % UK nationals, and 3 % from other nationalities. The study indicated that Chinese seafarers appeared to report the most negative experiences and to be particularly badly catered for in terms of access to communication (email, the internet, telephone) and recreational facilities on board. The most common complaints from Chinese seafarers included shared cabins, narrow and confined spaces, unadjustable light levels, poor air-conditioning, noise and vibration (Ellis et al. 2012). Compared with some ships providing swimming pools, libraries, pool tables, cinema and computer games, many Chinese seafarers have only access to intermittent TV and radio transmission, which are not even available when the ship is far from shore. These adverse conditions significantly exacerbate the sense of loneliness and isolation among Chinese seafarers and impair their health and mental well-being.

It is recognised that accommodation and recreational facilities are difficult to change because they relate to ship construction and design. At the same time, these are the elements that are most likely to need updating in order to keep pace with changes in ship design and construction and technology and with changing knowledge regarding environmental factors and human health; for example, exposure to noise, vibration, or ambient factors (McConnell et al. 2011, p. 340). However, when shipowners place new building orders, the most important factors about which they are concerned are the cargo space and the ships' cost. The standard of comfort of accommodation is always the last element among their considerations. Especially during a period of market downturn, shipowners are growing increasingly motivated by such considerations and take measures to optimise available cargo space by reducing living space for the crew. To limit the levels of noise and vibration, the accommodation and recreational facilities should be located as far as practicable

away from the engines, steering gear rooms and other noisy machinery and apparatus. In addition, acoustic insulation or other appropriate sound-absorbing materials and self-closing noise-isolating doors should be used in the construction of a ship in accordance with the relevant standards. In 2012, China was ranked as the number one shipbuilding country with 18.9 million Compensated Gross Tonnage (CGT) output, which far exceeded the Republic of Korea as the second largest shipbuilding country with 13.6 million CGT output. However, as far as the total contract price of the output is concerned, the situation is reversed. The Chinese yards' 2012 contract tally is valued far less than that of South Korea (CRSL 2012). In 2011, South Korean shipbuilders logged 37.8 billion dollars in orders, in sharp contrast to 10.3 billion dollars of China (Park 2011). Under the pressure of low contract prices, many shipbuilders have to manage to cut costs by reducing basic standards. As a result, in relation to country of build, South Korean-built vessels were more likely to be reported to have spacious and well-maintained accommodation and Chinese-built vessels were less likely to be reported to have this (Ellis et al. 2012, p. 46).

4.4.3 Occupational Health and Safety

Occupational health and safety is another important aspect of living and working conditions on board. In the CLL, a number of basic principles covering occupational health and safety are clearly set out in order to prevent accidents in the course of work and to reduce occupational hazards. For example, it is stated that the employer must provide safe and healthy working conditions and all necessary labour protections in line with national standards (CLL, Art. 54).

China has ratified the International Convention for the Safety of Life at Sea 1974, as amended, and Protocols thereto (SOLAS). The International Safety Management Code (ISM), under Chapter IX of the SOLAS Convention, has also been implemented in the Chinese shipping industry. At the national level, the MOT has adopted a number of maritime policies to regulate safety operations of ships. In 1997, the MOT promulgated the Provisions on Safety Inspection of Ships of the PRC, which were further revised in 2009. The provisions laid down detailed instructions and requirements relating to the operation and inspection of a ship to ensure the safety of life and ship and to prevent marine pollution (PSIS). In 1997, China enacted the Minimum Standards for Safe Manning for Vessels of the PRC (MSSM) to set out the minimum manning requirements, certification procedures, and supervision and inspection for Chinese vessels and for foreign vessels entering Chinese ports. The Standards were further revised in 2004 by the MOC (MSSM).

With regard to the safety of seafarers, the MOC promulgated the Ship's Doctors Rules (SDR) and the Standards for the Medical Equipment and Medicines Supplied to the Ship's Hospital (MEMH). According to the SDR, each Chinese merchant ship should be equipped with a doctor. However, the instrument was annulled by the MOC in 2003 because a ship's doctor was no longer a requirement for merchant

ships. The MEMH prescribes a detailed list of the medical equipment and medicines that should be carried on board a ship. However, on-board medical care facilities and equipment are not sufficient to provide medical treatment of the kind that would be provided by a hospital on land. In the event of serious illness or injury, seafarers should be promptly admitted to clinics and hospitals ashore and, when necessary, continuation of treatment to supplement the medical facilities should be arranged for them. However, a survey indicated that many Chinese seafarers have experienced difficulty in going to hospital ashore. Some of them have been denied many times. As one 43-year-old AB from Guangdong province complained in an interview (2013):

Seeing a doctor ashore is considered as a luxurious and costly thing for the shipowner, especially in some inconvenient ports. The shipowner needs to pay expensive medical costs. In addition, the transportation cost is also high if the berth is far from a hospital. I have been denied many times. My finger was once badly injured in a winch operation. The second officer gave me only very simple treatment. I applied to see a doctor when the ship entered a Japanese port. However, the master told me that the shipowner denied my application because medical costs in Japan are very expensive. I had to endure the pain of my finger for a very long time. Another time I got red eyes and felt very uncomfortable. Again, I was given only a small bottle of eye drops instead of admitting me to see a doctor (Interview SF 6-9).

4.4.4 Rights to Leave

Regular shore leave and annual leave are of essential importance to a seafarer's physical and mental well-being. Shore leave can allow a seafarer to go ashore for a couple of hours when the ship is at a port. On the one hand, it allows the seafarer to make use of the port-based welfare services. On the other hand, a short period of stay on dry land can maintain the seafarer's health and well-being and ensure that his performance is consistent with the operational requirements of his responsibilities. However, although seafarers are granted shore leave or occasionally furlough on board, such breaks are not of the kind that a land-based worker can enjoy. As a result, at the end of their contract or at certain other times, seafarers are entitled to regular annual leave with pay and to be repatriated to their home at no expense to themselves. The seafarers' employment agreement shall in all cases contain the provisions with regard to 'the termination of the agreement and the conditions thereof' (MLC 2006: Sta. A2.1) and 'the seafarer's entitlement to repatriation' (MLC 2006: Reg. 2.5).

4.4.4.1 Shore Leave

Shore leave is an important aspect of seafarers' rights. Compared with the workers in land-based industries, seafaring labour has unique characteristics. The ship is not only the means of labour, but also the place where seafarers live, sleep and socialise

in a secluded place far from land. After the working day is over, seafarers cannot go home but continues to stay on board. Even when the ship is in port, seafarers have very limited opportunity to communicate with the outside world. Sometimes for long periods they cannot even contact their families.

In addition, the seafarer's work on board is very complex, lengthy and highly stressful. A merchant ship is an isolated place, and the seafarers on board must be self-sufficient and able to improvise. Despite there being a regular work-and-rest regime on board, when the ship departs or arrives at a port, or if it is involved in an emergency situation, all the crew will be called upon and the rest period will be interrupted. In addition, the seafarer has to deal with hazardous cargoes, severe weather and every now and then emergency situations, which may result in nervous and mental stress. As a result, these special factors impose a particularly difficult workload for seafarers, and the quality of seafarers' labour may be compromised by the need to be available at all times.

In order to make sure that seafarers' performance can meet the operational requirements of their positions, seafarers must be granted regular shore leave in order to maintain their health and well-being. The entitlement has been prescribed in a number of international and national instruments. For example, in 1958 the ILO adopted the Seafarers' Identity Documents Convention (ILO C108), which states that each Member shall permit temporary shore leave to a seafarer while the ship is in port. The Convention was revised in 2003 (ILO C185), which required that each Member shall, 'in the shortest possible time', 'permit the entry into its territory of a seafarer holding a valid seafarer's identity document'. In the MLC 2006, Guideline B4.4.6 recommends that 'effort should be made' to 'facilitate shore leave for seafarers as soon as possible after a ship's arrival in port'. In the United States Navy and Marine Corps, shore leave is considered as 'liberty' (Dowlen 2008, p. 35). Part 630.704 of the Code of Federal Regulations states that 'an employee has an absolute right to use shore leave' (CFR 2003, p. 718).

However, in the modern maritime industry, the seafarer's right to shore leave has been undermined significantly by a number of factors. First of all, nearly 13 years after the adoption of the C185, only 30 Members have ratified the Convention or were 'provisionally applying it' (no China). It was also noted that 'the fingerprint technology and biometric products developed for the implementation of the Convention were out of date' (ILO 2015, p. 3). It is therefore now under discussion for further revision. Secondly, in recent years, the average deadweight tonnage and cargo capacity of merchant ships have increased significantly. However, there has been no corresponding coordination to increase crew sizes to handle the larger ships. On the contrary, the average size of ship crews has decreased because of increasing labour costs. For example, China Shipping's 19,100 TEU container ship is the largest container ship in the world when it was delivered on 7 January 2015. There are only 23 Chinese seafarers working on board the vessel. Thirdly, enormous technological development has brought more efficient cargo-handling, faster turnarounds and shorter port-stays of ships. Furthermore, with a growing number of international conventions entering into force, maritime regulations are becoming stricter, and seafarers are facing increasing paperwork, more inspections and longer

working hours. As a consequence of all these factors, the seafarer has very limited time and opportunities to take shore leave. In addition, shore leave is also usually denied because of lack of visas, port regulations, inaccessibility to transportation and so on.

A shore leave survey conducted by the Seamen's Church Institute's (SCI) Centre for Seafarer' Rights indicated a very high level of denied shore leave among Chinese seafarers (Keefe 2014). The survey was carried out in May 2014 and covered 27 ports in the United States; 416 ships were visited, having a combined total of 9184 seafarers representing 60 nationalities. Among these, 1030 seafarers on 97 ships were denied shore leave. The survey found that lack of visas was the major reason for shore leave denial in the US ports, with an overwhelming majority of 86 % among these seafarers. Other reasons included terminal restrictions (7 %), ship operations (7 %) and the US Customs and Border Protection restrictions (below 1 %). According to the survey, among 1058 Chinese seafarers, more than 14 % were prohibited from leaving their vessels for a variety of reasons. As a senior manager in a ship management company in Shanghai explained, 'although most seafarers engaged in American route in our company have visa to enter the US, but many of them were still denied of shore leave for various reasons' (Interview SM 6-4, 2013).

For example, for many Chinese seafarers it appears to be ship operations that usually prevent them from going ashore. In addition, compared with Chinese rating seafarers, their officers have fewer opportunities to take shore leave because they have more duties to attend to during the ship's operation. As one 32-year-old Chinese Second Officer from Shanxi province stated in an interview at Shanghai port (2013):

It is the first shore leave for me during the past four months. I have to keep cargo watch during port twelve hours a day, divided into two periods. This time I changed shifts with the third officer, and so I have to keep twelve hours' cargo watch when I go back on board, which means I cannot get to sleep for at least twenty-four hours. In addition, I have to prepare the voyage plan for next trip, and a load of other paperwork. Rating seafarers have fewer responsibilities and less paperwork. They usually can go ashore immediately after the ship has been made fast, if nothing is required otherwise (Interview SF 6-10).

The Chinese government has made efforts to facilitate easier shore leave for Chinese seafarers and for foreign seafarers at Chinese ports. Thus far, China has signed visa exemption agreements with five countries, including Poland, Ukraine, Russia, and the Republics of Lithuania and Romania. However, the agreement with Romania was withdrawn in 2011. According to the agreements, Chinese seafarers can go ashore in the above four countries for maximum of 30 days without any further permission in advance. Likewise, the seafarers of these four countries can take shore leaves at Chinese ports without any visa or immigration requirements. Seafarers from other countries visiting Chinese ports need to apply for temporary landing permits before they can disembark. The procedure for applying for the permits is very easy, and in most cases it is processed by the shipowner's agent at a port. As one ship agent at Tianjin port explained in an interview (2013):

The port regulations at Tianjin port are very strict because it is near to Beijing. However, there is usually no difficulty for foreign seafarers to get a shore pass (temporary landing permit). When we are dealing with incoming ships' port formalities, we usually apply for shore passes for seafarers as well by submitting an application form and a copy of the crew list to the local immigration office. We do not need to wait for a shipmaster's notification because we definitely know that the seafarers will go ashore, and it is our duty to make them happy. As such, the seafarers can obtain their shore passes on arrival, instead of having to wait for a couple of hours. Shore passes are usually granted, except on some exceptional occasions, such as security control because of important national or local activities (Interview SA 6-1).

4.4.4.2 Annual Leave

In 1926, the Seaman's Articles of Agreement Convention regulated that 'the annual leave with pay granted to the seaman' should be provided in the SEA (ILO C022, Art. 6-3/11). Subsequently, the right to annual leave with pay was reasserted in a series of Conventions, such as the Holidays with Pay (Sea) Convention (ILO C054), Paid Vacations (Seafarers) Convention, as revised (ILO C072; ILO C091), and the Seafarers' Annual Leave with Pay Convention (ILO C146). However, except for the ILO C022, the above Conventions have very low ratifications. Ultimately, the above Conventions and certain other Recommendations were revised and incorporated into the subsequent MLC 2006. Compared with the previous Conventions, the MLC 2006 made some changes with regard to annual leave in order to attract a higher level of ratification. For example, in the ILO C146, it was stipulated that seafarers' annual leave shall in no case be less than 30 calendar days for 1 year of service (ILO C146, Art. 3-3). However, some governments reported that they were having difficulty with the 30 days' minimum requirement (ILO 2005, p. 37). As a result, in order to meet these difficulties, a viable solution was made in the MLC 2006. The MLC 2006 takes the monthly equivalent of the annual 30 days as the basis and provides for a calculation on the basis of a minimum of 2.5 calendar days per month of employment (MLC 2006: Sta.A2.4/2).

A number of principles have been established by the above Conventions. For example, first, any agreement to relinquish the right to annual leave with pay should be null and void (ILO C146, Art. 11). Second, temporary shore leave, and interruptions of service due to sickness or injury, shall not be counted as part of the annual leave with pay (ILO C146, Art. 6). Third, the seafarer taking annual leave shall be recalled only in cases of extreme emergency, with due notice, but not in cases of 'exceptionally heavy workload' (ILO C146, Art. 12). Fourth, a seafarer whose length of service in any year is less than that required for the full entitlement prescribed in the Conventions shall be entitled in respect of that year to annual leave with pay proportionate to his length of service during that year (ILO C146, Art. 4-1). In addition, seafarers shall be entitled to a proportionate holiday regardless of the reason for the termination of employment. Therefore, the provisions of national legislation according to which seafarers are entitled to proportionate payment for holidays only when discharged without due cause is contrary to the requirements of

the Convention. By the same token, the provisions of the national legislation according to which seafarers are not entitled to compensation for annual leave accumulated at the end of the contract in the event of early termination of the seafarers' initiative, their serious misconduct, force majeure, or their non-renewal of a renewable contract, would also be incompatible with the Convention (Pentsov 2008, p. 138).

However, China has not yet ratified the above Conventions (except the ILO C022 and MLC 2006). In addition, there is no national law or policy to regulate the question of seafarers' annual leave with pay. As a result, Chinese seafarers' right to annual leave is frequently violated by shipowners. First, the length of many Chinese seafarers' contracts is very long. Some of them have to work more than 12 months before they can take annual leave. Shipowners have a wide range of strategies for increasing the duration of an employment contract. For example, in many Chinese seafarers' SEAs, there is a key clause quoted in full as:

[T]he length of Employment contract mutually agreed upon between the seafarer and the employer shall be for a period of not more than twelve plus or minus two months with the employer's option.

According to the clause, the seafarer is entitled to request annual leave after the elapse of 10 months. However, the clause is not as fair as it appears on the surface to be. Most seafarers will neglect the words 'employer's option' or do not comprehend the effect of the wording. Sometimes, even without a request for annual leave, the shipowner may discharge the seafarer after 10 months if a cheaper substitute can be found. In most cases, the shipowner has full authority to withhold allowing the seafarer's application until the elapse of 14 months. Second, many Chinese seafarers do not have any payment during their annual leave. Once they are discharged from employment, they do not have any income. Third, some shipowners explain that the monthly wage offered to seafarers includes a portion as 'leave pay'. However, the seafarer's monthly wage would become very low once the portion of leave pay had been deducted. According to international standards, the leave pay should be paid separately at the end of the contract and its amount should be proportionate to the length of the seafarer's service. Fourth, even though some seafarers are granted so-called 'leave pay', the amount is so low that it cannot even cover basic living costs. In addition, some shipowners prescribe many restrictive conditions to seafarers' entitlement to leave pay, such as good performance on board, entire completion of the contract, only a short period of annual leave, and acceptance of a further contract.

4.4.4.3 Repatriation

Repatriation is the most important and basic right for seafarers after the termination of their services on board. When a seafarer is discharged in a foreign port, it is normally very difficult for him to deal with the foreign port formalities and make the arrangements for his return. In 1926, the ILO adopted the Repatriation of Seamen Convention mandating that any seafarer shall be entitled to be 'taken

back to his own country, or to the port at which he was engaged, or to the port at which the voyage commenced' (ILO C023, Art. 3-1). However, the Convention excluded its application to masters, cadets and pupils on training ships. In the ILO's Repatriation (Ship Master and Apprentices) Recommendation, national governments were recommended to take steps to provide for the repatriation of masters and duly indentured apprentices (ILO R027). The ILO C023 was revised by the Repatriation of Seafarers Convention (Revised) (ILO C166). Compared to the ILO C023, the revised Convention extends its coverage to masters and apprentices. In addition, it establishes seafarers' entitlement to repatriation in the event of a ship being bound for a war zone, as defined by national laws or regulations, unless there has been specific agreement or consent to travel to such zones (ILO C166, Art. 2-1). Furthermore, it constructs a safety net for seafarers' repatriation by introducing an innovative arrangement. If a shipowner fails to make arrangements for, or to meet the cost of, repatriation of seafarers, the obligation will be imposed on the competent authority of the flag state or even to the labour-supplying states (ILO C166, Art. 5).

The MLC 2006 makes much further progress in this respect. It not only clearly states that seafarers have the right to repatriation at no cost to themselves, inherited from the previous instruments, but it also requires shipowners to provide financial security to ensure that the right can be duly realised. If a shipowner fails to make arrangements for repatriation, the flag state, the port state and seafarer-supplying state are under a duty to facilitate the repatriation of the seafarer; they shall not renege on the obligation to a seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace the seafarer. Once they have paid the cost of repatriation pursuant to the Convention, they may detain, or request the detention of, the ships of the shipowner concerned until reimbursement has been made (MLC 2006: Sta. A2.5/6).

To assist seafarers in the event of their abandonment, the MLC 2006 was amended in 2014 by establishing new requirements to ensure the provision of an expeditious and effective financial security system. According to the new requirements, the financial security system shall provide direct access, sufficient coverage and expedited financial assistance to any abandoned seafarer on a ship flying the flag of the Member of the Convention. The system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements, which shall be determined by the Member after consultation with the shipowners' and seafarers' organisations concerned.

China ratified the ILO C023 on 2 December 1936. However, the Convention is outdated and China has not ratified the following revised Conventions, which are of essential importance to Chinese seafarers' right to repatriation. The CLL and LCL, as the most important national labour law in China, do not have any provisions relating to seafarers or seafarers' repatriation. In the Regulations of the People's Republic of China on Seafarers (ROS), seafarers' repatriation was regulated in China for the first time. A seafarer may request repatriation for the following reasons (ROS, Art. 31):

- The seafarer's employment contract is terminated or cancelled in accordance with the law;
- The seafarer is incapable of duty on board;
- The ship is lost;
- The ship proceeds to a war zone without the consent of the seafarer;
- The shipowner fails to perform his contractual or legal obligations by reasons of bankruptcy, sale of ship, cancellation of the ship's registration or any other reasons.

In addition, under the ROS, the seafarer may choose the destination of repatriation, with options such as recruitment place, boarding place, place of residence, and so on. In the event that the shipowner fails to repatriate the seafarer, the Ministry of Civil Affairs or the overseas consulate of the PRC shall provide the necessary assistance or repatriate the seafarer directly. The relevant cost incurred shall be refunded by the employer of the seafarer or the shipowner (ROS, Art. 34). The provisions in the ROS accord basically with the MLC 2006. In addition, the Provisions of Seafarers' Despatch Management of the PRC take a further step to secure Chinese seafarers' repatriation. According to the provisions, the manning agency needs to deposit 1 million RMB with the Maritime Safety Authority (MSA) as security before they place seafarers on foreign-flag ships (PSDM, Art. 5). The enforcement of these two instruments plays an important role in ensuring Chinese seafarers' right to repatriation and in reducing the risk of abandonment of seafarers in foreign ports. As one senior manager of a manning agency in Nanjing noted in an interview (2013):

Chinese seafarers are now seldom abandoned in foreign ports. In recent years, I have never heard about any case of abandonment, except some seafarers who missed their ship in foreign ports and then were immediately repatriated. According to the new regulation, we need to deposit one million RMB as a security. It is a large amount of money and many manning agencies closed their doors because they were incapable of putting up the deposit. The deposit is very good for seafarers. If a shipowner becomes bankrupt or fails to repatriate a seafarer, the manning agency that recruited the seafarer is obliged to immediately do so; the MSA will otherwise use the deposit to repatriate the seafarer without any delay (Interview SM 6-5).

4.5 Shore-Based Welfare and Social Security in China

Shore-based welfare and social security are key factors for the well-being of seafarers; these include a number of issues, such as the relief of stress, sickness insurance, unemployment indemnity, and so on. In the MLC 2006, states are encouraged to promote the development of shore-based welfare facilities that are easily accessible for the use of all seafarers on their territories. In addition, a social security system should be established to provide seafarers with protection that is 'no less favourable than that enjoyed by shore workers' (MLC 2006).

4.5.1 Shore-Based Welfare for Seafarers in China

Unlike many shore-based workers, seafarers have to spend a very long time confined in their workplace with the limitation of having only a very few workmates for company. It is difficult for them to have access to social intercourse with people other than their fellow crew. Seafarers' welfare therefore needs additional special features. A good shore-based welfare service plays a vital role in preserving seafarers' mental and physical well-being. In contrast, the inability to have access to shore-based welfare aggravates stress, fatigue and complaints, which may result in environmental damage and loss of life and property. Shore-based welfare therefore not only constitutes an important aspect of seafarers' working and living conditions, but it also helps to maintain the safety operation of a ship and to improve efficiency.

The standard of shore-based welfare services varies substantially between different countries and regions. However, it is widely agreed that shore-based welfare should include at least three categories. First, there should be transport and access to the seafarers' centre, shops and town centres. Second, seafarers are entitled to use international telephone and internet facilities at an economical rate. In addition, shore-based welfare should include counselling services, places of worship, and medical facilities.

In Regulation 4.4 of the MLC 2006, shore-based welfare facilities became a responsibility of each Member of the Convention. The purpose of the Regulation is to ensure that 'seafarers working on board a ship have access to shore-based facilities and services to secure their health and well-being'. A state shall implement measures to promote the development of welfare facilities in appropriate ports of the country, and the facilities existing on its territory shall be available for the use of all seafarers, irrespective of nationality, race, religion, or any other factors. In addition, a state shall encourage the establishment of welfare boards to regularly review welfare facilities and services in order to ensure appropriate operation for seafarers' needs.

However, in China, there is no regulation, provision or administrative practice with regard to port-based welfare services. It is not clear which government department should be responsible for the establishment and operation of such facilities. Because there is no uniform requirement in China, some ports might have this kind of service, while other ports might not. Even for those ports with welfare facilities, there is a lack of supervision and standards of services vary significantly. The MLC 2006 provides guidelines that urge representative ship-owners' and seafarers' organisations to participate in the supervision of welfare facilities and services. However, in China both these two parties fall far short in providing appropriate supervision. As one staff in the Chinese Seamen and Construction Workers' Union commented in an interview (2013) in Beijing:

We do not want to be involved in the supervision of shore-based welfare facilities and services. As a matter of fact, there is not this kind of supervision in China. In many ports, shore-based welfare services are controlled by interested local parties. This is their business

and they do everything as they like. Both we and the shipowners' organisations are unable to impose any influence on them. (Interview CSCU 6-1).

The lack of regulation and supervision results in various problems in shore-based welfare services. For example, transportation is a key issue for seafarers to have access to shore-based welfare facilities. In recent years, most sea ports have been increasingly situated in more remote areas, typically far away from urban centres. In these areas, seafarers cannot get access to taxis or other public transport. Most of them therefore have to rely on private taxi-like services without approved licences. In China, unauthorised taxicab operation is considered as a victimless crime. According to the Decision of the Chinese State Council on the Administrative Penalty of Illegal Taxicab Operation promulgated in 2005, a violator can face 15 days' administrative detention or a fine up to 100,000 RMB. Although seafarers can still have access to the services in some Chinese ports, they have to pay high costs due to the significant risks being run by taxicab operators.

Another problem of shore-based welfare is poor maintenance in many Chinese ports of seafarers' centre facilities. Although in some Chinese main ports there are international seamen's clubs, these have become a business rather than a seafarers' welfare facility. In many cities, seamen's clubs have become luxurious places with hotels and restaurants, which are far beyond ordinary seafarers' purchasing ability. For example, many of them even comprise VIP villas, presidential suites and deluxe apartments (ACFTU 2008). In addition, in some cities seafarers are perfect targets to be extorted in seamen's clubs. As one staff from a shipping agency company in Qinhuangdao commented in an interview (2013):

In this port (Qinhuangdao), the seamen's club is the last place that seafarers should visit. Seafarers cannot find any free internet or cheap telephone calling facilities there. Instead, all the stuff there is very expensive. I once brought some Filipino seafarers here and they drank some beer. They had not thought that an outrageous bill was waiting for them. A manager of the club explained that they charged a service fee for opening bottles, which was more than 10,000 RMB. Finally, these poor seafarers had to request their captain to send more money before they were allowed to leave the place. In addition, the club has a policy of rewarding shipping agents or taxi drivers if they can bring more 'target' seafarers to this place (Interview SA 6-2).

4.5.2 Social Security for Chinese Seafarers

In the context of law, social security protection is clearly regulated in UN instruments and ILO conventions as a basic human right. According to the ILO's definition, social security is 'the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner'. It is a fundamental means for the well-being of workers, their families and the whole community that helps to create social cohesion and eventually to ensure social peace and social inclusion. It therefore

constitutes an ‘indispensable part of government social policy and an important tool to prevent and alleviate poverty’ (ILO 2001b).

However, the nature of their work makes it difficult to provide social security coverage for seafarers. According to Article 94 of the United Nations’ Law of the Sea Convention, the flag state is the country with international responsibility for social matters on ships flying its flag. Unlike many shore-based workers, seafarers are usually on relatively short-term contracts. Working on ships operating under different flags, they might not be resident in, or nationals of, the flag state concerned. As a result, seafarers working on foreign-flag ships may not be eligible for social protection under the national security system of the flag state. In addition, they may also be left without any social security protection at all from their country of residence or nationality (ILO 2004, p. 32).

Under the MLC 2006, Regulation 4.5 and the Code clearly place the primary responsibility for social security on to the country where the seafarer is ordinarily resident. Flag states are encouraged to provide social security protection for non-resident seafarers only where the seafarer’s country of residence fails to do that. According to the requirements, seafarer-supplying states have the responsibility to provide seafarers with social security protection that is no less favourable than that enjoyed by shore-based workers resident in their country. The categories of 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.

Social security protection has always been a major problem in China. Before the PRC was established in 1949, China was under the reign of feudalism or semi-feudalism and semi-colonialism, and it was simply impossible to construct a social security system. It was not until the 1950s that China started to establish a social security system in a real sense (Tian 2006, p. 4). In 1953, the State Council promulgated the Labour Insurance Regulations of the PRC, in which the methods of providing material assistance were stipulated for employees of various enterprises in cases of illness, injury, disability and death, upon the birth of their children, and in retirement (GOV 1953).

After nearly 3 decades of effort, China gradually established a social security system that was compatible with its planned economic system. Everything was planned, including recruitment, and ‘once recruited, always recruited’. No one could be fired from his or her job, and everyone was secure to some extent. In this system, the labour relationship was akin to a social relationship. Although there was no Chinese law providing protection of employee rights, workers worked for themselves within state-owned units or enterprises, and so there was no need to have any labour contract (Guthrie 1999, p. 66). Since the ‘Reform and Opening’ policy was launched in 1978, China has been gradually reforming its planned economic system. In 1986, for the first time, China introduced a labour contract system.

Following the Labour Law effected in 1995, a new social security system has been set up (Feldstein 2000, p. 7). China’s new social security system includes social insurance, social welfare, the special care and placement system, social relief

and housing services. As the core of the social security system, social insurance includes old-age insurance, unemployment insurance, medical insurance, occupational injury insurance, and maternity insurance (Andersen and Cheng 2009, p. 231). In the meantime, China has made significant steps down this road by establishing a legal system that ensures social security and also protects the rights of workers and disadvantaged groups (Lin 2010, p. 336).

However, the achievements made are far from enough. As a developing country with a weak economic base and unbalanced development between regions and between urban and rural areas, it is an extremely difficult task in China to establish a sound social security system (Wang 2004). First, the amount and coverage of insurance is not enough to provide a minimum level of security. Once a worker becomes unemployed, suffers a work-related injury or serious illness, the amount normally provided by the insurance, if there is any, cannot satisfy basic necessities. Second, the multilevel administration of social security makes it difficult for a worker to benefit fully from various insurance systems in separate accounts, especially for the special *hukou* system in China. *Hukou* is basically a residence permit given by the government of China, which is issued on a family basis. The benefits of social security are normally connected with *hukou*. However, to move one's *hukou* from one place to another is very difficult, in particular for those who wish to move from rural areas to a city (Wang 2004, p. 70; Yusuf and Nabeshima 2006, p. 56; Fan 2008, p. 41; Wang 2010, p. 81). When one worker changes his job and moves from one place to another, he has to spend a great deal of time and cost in transferring the various security accounts. He might sometimes give up all the benefits deposited in his insurance account because of multilevel restraints. This issue is particularly difficult for seafarers, who may change their employers frequently because of voyage-related 'temporary' contracts. For example, one 46-year-old seafarer with more than 20 years' seafaring experience explained in an interview (2013):

I know that nearly all my previous employers have paid social security costs for me. I really appreciate that. However, I never count that as my income because I have never benefited from that. I am a freelance seafarer and I have changed my boss more than ten times. Because the various insurance accounts are controlled by local government, it is very difficult for me to transfer my deposit to the next place. In addition, my previous deposits are separated throughout more than ten accounts. I know that my money is there, but I have no way to collect that (Interview SF 6-11).

In addition, the Chinese legal system is unable to ensure that all employers respect the mandatory requirements. Some unscrupulous and irresponsible employers may never pay social security costs for their employees by taking advantage of the innocence of workers and lax enforcement of regulations. Even where there is a dispute between an employer and a worker, it is very difficult for the worker to pursue a case through litigation. Due to the 'Principle of the Plaintiff's before the Defendant's Convenience', the worker has to travel to the registration place of the employer and to present his case in the local court. Apart from any good relationship between the employer and the local court, it is sometimes very difficult to even find out the place of registration. Even when the case reaches a court, the

long, costly and uncertain lawsuit would be far beyond what an average worker can afford to sustain. This is again particularly difficult for seafarers who spend most of their time at sea. To engage in a lawsuit is something beyond their imagination. For instance, one Third Officer from Henan province who broke his leg on board explained in an interview (2013):

I broke my leg and lay in bed for more than six months. At the beginning they promised me that they would pay all medical costs and other compensation. However, after I had called them many times, they refused to pay any money. I had to find another ship to work as soon as I was able to stand up. I know my rights might have been infringed. However, it would be very difficult for me to travel a long way to complain in the local court. A lawyer told me that I could win a lawsuit. However, I was frustrated when he also told me that the long and costly procedure was beyond my imagination (Interview SF 6-12).

4.6 Conclusion

This chapter contains an analysis of the major issues of Chinese seafarers' in-employment conditions. These issues have been extensively regulated in Title 2, Title 3 and Title 4 of the MLC 2006, and constitute the main part of the Convention. This special analysis suggests that in-employment conditions are of great importance for the protection of seafarers' rights. Among these issues, the most important is the seafarer's employment agreement (SEA), which is considered as the heart of the MLC 2006. Failure to maintain proper SEAs for the crew can result in the detention of the ship during a PSC inspection. Most Chinese seafarers, however, lack negotiation power and relevant knowledge and skills to bargain for advantageous terms favourable to them.

As discussed in Chap. 2, since 2007 the Chinese government has promulgated a series of regulations and administrative rules. However, the majority of these pieces of legislation focus on seafarers' pre-employment conditions, and almost no provision or clause is directly related to their in-employment position. This fact indicates that Chinese seafarers' in-employment conditions have not yet attracted sufficient attention in the Chinese maritime industry, and this constitutes a major challenge for the further improvement of seafarers' rights in China.

The trade union therefore plays an important role in concluding collective bargain contracts on behalf of seafarers. Chapter 3, however, has explained that in many cases the trade union in China is unable to protect seafarers effectively and efficiently. Although collective contracts were concluded between the shipowners' association and the ACFTU on behalf of seafarers in 2010, they have in practice had a very limited significance. One reason is that there is only a recommended standard and it has never been widely introduced in the Chinese maritime industry. Also, it does not reflect the true needs of Chinese seafarers, who were never widely consulted during the negotiation of the contract.

Chinese seafarers have to face a number of further major problems. One of these is that they receive unfair wages. Their wages are almost the lowest even in Asia,

never mind by international and European standards. Their wages in many cases are subject to unfair deductions, are delayed and even not paid at all. Although Chinese law provides various solutions for seafarers wanting to claim their right to wages, including maritime lien, seafarers are in many cases unable to effectively challenge shipowners.

Working and living conditions are another major issue for seafarers' physical and mental well-being. It has been widely agreed that good working and living conditions on board can be essential motives for seafarers to increase their efficiency and diligence, and eventually to increase the safe operation of their ship; for a low standard of conditions on board gives a competitive disadvantage when seeking the best talent. This is therefore an important aspect of the MLC 2006. Under the Chinese Labour Law, the employer has an obligation to provide a reasonably safe place in which to work. However, there are no detailed provisions specifically for seafarers. In many cases, Chinese seafarers continue to face unfair treatment, including inappropriate food and catering, substandard accommodation and recreational facilities, and threats to their occupational health and safety.

Other issues have also been discussed, including shore-based welfare, annual leave, repatriation, and social security. There is no regulation, provision or administrative practice in China regarding port-based welfare. This lack of regulation and supervision results in various problems with shore-based welfare services. Social security is one of the biggest problems for Chinese people. Although, following the Chinese Labour Law in 1995, a new social security system has been set up, this achievement is far from fully satisfactory; and the problem is worse for Chinese seafarers. When many seafarers work for foreign shipowners, they are not covered by the national social security system. The special Chinese *hukou* system makes it very difficult, if not impossible, for seafarers to transfer or to claim their social security benefits.

References

- ACFTU. (2008). *The introduction of Seamen's Club in Qinhuangdao City*. Available at: <http://stclub.acftu.org/template/1/file.jsp?cid=22&aid=2107>. Accessed 02 May 2014.
- ACFTU. (2011). *The background of Chinese seafarers' collective labour contract*. Available at: <http://acftu.workercn.cn/c/2011/04/06/110406144754399023228.html>. Accessed 16 April 2015 [in Chinese].
- Andersen, P. P., & Cheng, F. (2009). *Case studies in food policy for developing countries. Vol. 1. Policies for health, nutrition, food construction, and poverty* (p. 231). New York: Cornell University Press.
- Barth, S. (2006). *Hospitality law: Managing legal issues in the hospitality industry* (2nd ed.). New Jersey: Wiley.
- CBM. (2004). *China briefing: Business guide to the Greater Pearl River Delta*. Hong Kong: China Briefing Media Ltd.
- CFR. (2003). *L.S.A., List of C.F.R. sections affected*. Washington: Office of the Federal Register National Archives and Records Administration.

- Chapman, P. K. (1992). *Trouble on board: The plight of international seafarers*. Ithaca, New York: Cornell University Press.
- CLB. (2008). *China labour bulletin. A turning point for China's trade unions*. Available at: <http://www.clb.org.hk/en/content/turning-point-china%E2%80%99s-trade-unions>. Accessed 15 April 2015.
- CRSL. (2012). *Shipbuilding market overview*. London: Clarkson Research Service Limited.
- Cunningham, W. V. (2007). *Minimum wages and social policy: Lessons from developing countries*. Washington, DC: The World Bank.
- Dauer, R. R. M. (2009). *The merchant vessel: A sociological analysis*. Barcelona: Edicions UPC.
- DeSombre, E. R. (2006). *Flagging standards: Globalisation and environmental, safety and labour regulations at sea*. Cambridge: The MIT Press.
- DeSombre, E. R. (2009). Voluntary agreements and the shipping industry. In M. Potoski & A. Prakash (Eds.), *Voluntary programs: A club theory perspective* (pp. 133–156). Cambridge: Massachusetts Institute of Technology.
- Dimitrova, D. N. (2010). *Seafarers' rights in the globalised maritime industry*. London: Kluwer Law International.
- Dowlen, D. D. (2008). *Enemy in my bed: Triumphs of a military war bride*. Wheaton: Tyndale House Publishers, Inc.
- Duckworth, A. D. (1956). Crew accommodation for the improved type of dry cargo vessel. *Transaction of the Royal Institute of Naval Architects*, 98, 432–442.
- Ellis, N., Sampson, H., Acejo, I., Tang, L., Turgo, N., & Zhao, Z. (2012). *Seafarer accommodation on contemporary cargo ships*. Cardiff: Seafarers International Research Centre (SIRC).
- Fan, C. (2008). *China on the move: migration, the state, and the household*. Oxon: Routledge.
- Feldstein, M. (2000). Social security pension reform in China. In J. Z. Yin, S. Lin, & D. F. Gates (Eds.), *Social security reform: Options for China*. Singapore: World Scientific Publishing Co. Pte. Ltd.
- Force, R., Yiannopoulos, A. N., & Davies, M. (2006). *Admiralty and maritime law*. Abridged Edition. Washington: Beard Books.
- Fricke, P. H. (1972). *The social structure of crews of British dry cargo merchant ships: A study of the organisation and environment of an occupation*. Cardiff: Department of Maritime Studies, University of Wales Institute of Science and Technology.
- Galic, S., Lušić, Z., & Pušić, D. (2012). Seafarers market. *International Journal of New Trends in Arts, Sports & Science Education*, 1(3), 33–39.
- Goffman, E. (1961). *Asylums: Essays on the social situation of mental patients and other inmates*. New York: Doubleday Anchor Books.
- GOV. (1953). *Labour insurance regulations of the PRC*. Available at: <http://www.bjld.gov.cn/LDJAPP/search/fgdetail.jsp?no=2025>. Accessed 17 April 2015 [in Chinese].
- GOV. (2004a). *The labour insurance regulations of the People's Republic of China*. Available at: http://news.xinhuanet.com/ziliaoj/2004-12/17/content_2347271.htm. Accessed 5 March 2013 [in Chinese].
- GOV. (2004b). *The provisions on the minimum wages*. Available at: http://www.gov.cn/gongbao/content/2004/content_62936.htm. Accessed 17 April 2015.
- Guthrie, D. (1999). *Dragon in a three-piece suit: The emergence of capitalism in China*. Princeton, NJ: Princeton University Press.
- Halsbury. (1979). *Halsbury's laws of England* (4th ed.). London: Butterworths.
- Harter, S., & Preaus, E. R. (2001). Admiralty and maritime law: The use of bonds and other security devices in the legal framework of international shipping. In T. C. Kazlow & B. C. King (Eds.), *The law of miscellaneous and commercial surety bonds*. Chicago: American Bar Association.
- Huang, X. (2013). Collective wage bargaining and state-corporatism in contemporary China. In J. Hsu & R. Hasmath (Eds.), *The Chinese Corporatist State: Adaption, survival and resistance*. Abingdon: Routledge.

- IBF. (2003). *International Bargaining Forum*. Available at: <http://www.imec.org.uk/ibf.html>. Accessed 13 April 2013.
- ICESCR. (1966). *International covenant on economic, social and cultural rights*. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Accessed 13 May 2015.
- ILO. (1926). *Seamen's articles of agreement: collection of laws and regulations on the engagement, dismissal, repatriation and discipline of seamen*. Geneva: International Labour Office.
- ILO. (2001a). *The impact on seafarers' living and working conditions of changes in the structure of the shipping industry: Report for discussion at the 29th Session of the Joint Maritime Commission*. Geneva: International Labour Office.
- ILO. (2001b). *Social security: A new consensus*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---secsoc/documents/publication/wcms_209311.pdf. Accessed 3 May 2014.
- ILO. (2004). *Towards a fair deal for contracted workers in the global economy, ILO, 92nd Session*. Geneva: International Labour Office.
- ILO & SIRC. (2004). *The global seafarer: Living and working conditions in a globalised industry*. Geneva: International Labour Office.
- ILO (2005). Adoption of an instrument to consolidate maritime labour standards, Report I (1A). International Labour Conference, 94th (Maritime) Session, International Labour Office, Geneva
- ILO. (2015). *Outcome of the meeting of experts concerning the seafarers' identity documents convention (Revised), 2003 (No. 185)*. Geneva: International Labour Office.
- IMEC. (2013). *Pay negotiations: IBF central negotiations*. Available at: <http://www.imec.org.uk/ibf/pay-negotiations.html>. Accessed 13 April 2013.
- ISF. (2006). *ISF Annual Survey of Seafarers' Wages and Employment Cost 2006*. London: International Shipping Federation.
- ITF. (2005). *About the FOC campaign*. Available at: http://www.itfseafarers.org/FOC_campaign.cfm. Accessed 19 April 2015.
- Keefe, J. (2014). *Seafarer shore leave: MLC business, or not?* Available at: <http://www.marineline.com/news/seafarer-business-leave378034.aspx>. Accessed 9 January 2015.
- Lin, L. (2010). The rise of rights and protections for the disadvantaged. In C. Wang & D. Cai (Eds.), *China's journey toward the rule of law*. Leiden: Martinus Nijhoff Publishers and VSP.
- Liu, C. (2014). *A study on seafarers' minimum wages*. Unpublished LLM thesis, Dalian Maritime University [in Chinese].
- Liu, M., Li, C., & Kim, S. (2011). Chinese trade unions in transition. In P. Sheldon, S. Kim, Y. Li, & M. Warner (Eds.), *China's changing workplace: Dynamism, diversity and disparity*. New York: Routledge.
- Maguire, P. (2014). *HR for small business for dummies*. Milton: Wiley Publishing Australia Pty Ltd.
- McConnell, M. L., Devlin, D., & Henry, C. D. (2011). *The maritime labour convention, 2006: A legal primer to an emerging international regime*. Leiden: Martinus Nijhoff Publishers.
- McDermott, P. (2000). Maritime securities. In M. White (Ed.), *Australian maritime law* (2nd ed.). Sydney: The Federation Press.
- Meek, M., & Ward, N. (1973). Accommodation in ships. *Transactions of the Royal Institute of Naval Architects*, 115, 201–218.
- MLC (2006). Maritime Labour Convention 2006. Available at <http://www.ilo.org/global/standards/maritime-labourconvention/lang--en/index.htm>. Accessed 8 March 2013.
- MOHRSS. (2004). *The provisions on collective contract*. Available at: http://www.gov.cn/gongbao/content/2004/content_62937.htm. Accessed 16 April 2015.
- Mou, A. (2011). To protect maritime labour relations: The interview to Linqing, Zhu, the Vice-Chairman of the Chinese Seamen and Construction Workers' Union. *Trade Union Information*, 6, 04–05 [in Chinese].
- OECD. (2010). *Tackling inequalities in Brazil, China, India and South Africa: The role of labour market and social policies*. Paris: OECD Publishing.

- Park, K. (2011). *Shipbuilding: The market China hasn't cracked*. Available at: <http://www.businessweek.com/magazine/shipbuilding-the-market-china-hasnt-cracked-10132011.html>. Accessed 27 April 2013.
- Pentsov, D. A. (2008). Standards of the International Labour Organization (ILO). In I. C. Varotsi & D. A. Pentsov (Eds.), *Maritime work law fundamentals: Responsible shipowners, reliable seafarers*. Berlin: Springer.
- Potter, P. B. (2001). *The Chinese legal system: Globalisation and local legal culture*. New York: Routledge.
- PTMC (2005). Compendium of proposed amendments to the draft consolidated maritime labour convention, 2006. Available at <http://www.ilo.org/public/english/dialogue/sector/techmeet/ptmc05/ptmc05-2.pdf>. Accessed 20 April 2013.
- Pu, Y., & Cheng, X. (2015). Export trade, labour productivity and wage level-empirical research based on the data of Chinese export sectors. *Economic Survey*, 1, 61–65.
- Schoenbaum, T. J. (2001). *Admiralty and maritime law* (3rd ed.). St. Paul: West Group Publishing.
- Shen, J. (2007). *Labour disputes and their resolution in China*. Oxford: Chandos Publishing (Oxford) Limited.
- SOL. (2015). *The trend of China crew's salary index*. Available at: <http://crew.sol.com.cn/ccsi/ccsiindex.asp>. Accessed 18 April 2015 [in Chinese].
- Staniland, H. (2013). Protecting the wages of seafarers held hostage by pirates: the need to reform the law. *International Journal of Public Law and Policy*, 3(4), 345–366.
- Taylor, B., Chang, K., & Li, Q. (2003). *Industrial relations in China*. Cheltenham: Edward Elgar Publishing Limited.
- Tian, X. (2006). *Social security in China*. Beijing: Wuzhou Propagation Publisher.
- Tian, Y. (2014). The international policy dissemination and national policies transformation: The Chinese path of collective bargaining. *World Economics and Politics*, 7, 118–138 [in Chinese].
- Wang, D. (2004). *Social security white paper of China*. Available at: <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019944.pdf>. Accessed 6 March 2013.
- Wang, F. (2010). Conflict, resistance and the transformation of the hukou system. In E. J. Perry & M. Selden (Eds.), *Chinese society: Change, conflict and resistance* (3rd ed.). Oxon: Routledge.
- Wang, K., & Zhong, G. (2014). A study on the labour right protection for construction workers. *Science & Technology View*, 26, 137–138.
- Wang, W. (2011). The problems in the Chinese seafarers' social security programme and countermeasures. *Shipping Management*, 33(11), 12–28 [in Chinese].
- Xiao, Y. (2013). The impact of QE3 on the Chinese maritime industry. *China Maritime*, 11, 26–27 [in Chinese].
- Yusuf, S., & Nabeshima, K. (2006). *China's development priorities*. Washington: The World Bank.
- 54seaman. (2015). *A review of the effect of accommodation design on mental health and well-being of seafarers on cargo ships*. Available at: <http://www.54seaman.com/template/newsView.asp?id=8861>. Accessed 19 July 2015.

Chapter 5

Seafarers' Rights in China Calling for More Research

This chapter summarises the key findings from the study and highlights how the research contributes to the understanding of the impact of the MLC 2006 on Chinese seafarers' rights. It discusses the way in which the book has answered the research question and acknowledges some of the significance and limitations of the research process. It also identifies a number of supplementary findings that emerged from the study and that have an indirect yet important influence on the effective implementation of the MLC 2006. The final section draws out the policy and practice implications of the research and suggests how further research is essential for a better understanding of the subject.

5.1 Introduction

This research explores the restructuring process of Chinese seafarers' rights under the impact of the ILO's MLC 2006. Like seafarers in many other countries, seafarers in China are working within a sector with a very strong traditional occupational culture. In addition, Chinese seafarers face a number of unique conditions and challenges. First of all, China has the largest population of seafarers in the world. By the end of 2014, the official statistics had reached 608, 467 (MSA 2015), accounting for more than one third of the total number of seafarers in the whole world. Chinese seafarers therefore make critical contributions to the stability and health of the maritime industry and international trade. Secondly, the Chinese maritime industry has experienced a chequered history. Through radical reform and development, China has constructed the third-largest fleet in the world, starting from scratch in the 1980s. The process has had a profound impact on the recruitment, employment and management of Chinese seafarers. Thirdly, as primarily a land power in modern history, Chinese values were primarily shaped by a number of factors. In the new era of globalisation, the values of Chinese seafarers, to a certain extent, conflict with their role as maritime labour. Most importantly, while

China has made great efforts to promote and protect seafarers' rights, both policy and practice in China still lag far behind compared with international standards and practice. As a result, there is still far more to be done in the future.

In consideration of these concerns, this study focuses on the impact of the MLC 2006 on the policy and practice in China in relation to seafarers' rights. Through the preceding chapters, some key issues have been examined and extensively discussed. In this conclusion, some final points about the research will be revisited and examined. First of all, attention will be given to the key research findings, in particular the impact of the MLC 2006 on maritime legislation and industry practice in China. In addition, the limitation and significance of the study itself will be considered. Finally, inspiration for future academic research as well as suggestions for industry practices will be explored and recommended.

5.2 The Main Contributions of This Research Project

This research makes its contribution in different ways. While some findings of this study parallel or confirm the conclusions of earlier scholars, this research has also added new information and has made significant contributions to contemporary academic and practical knowledge. It also throws light on similar issues faced by seafarers in other jurisdictions, not just China. The major contributions include adding to the literature, methodological innovation and a contribution to the theory of seafarers' rights.

5.2.1 *Contribution to Literature*

This book has itself constituted a substantial and much-needed contribution to the literature related to seafarers' rights, in particular, the issue in the Chinese context. As discussed in Chap. 1, although there is a great volume of published work on seafarers, the availability of literature specifically on seafarers' rights is significantly scarce. At the same time, the published Chinese literature on seafarers in China is even less. Furthermore, the increasing research interest in the Chinese maritime industry also highlights the limited quantity of literature in this field.

The contribution of this research to the literature on seafarers' rights is at least threefold. First of all, while there is a considerable field of knowledge and an abundance of work related to seafarers, the literature review of this research has proposed a framework for reviewing that knowledge. The framework highlights an area in which, despite a great body of knowledge, there is still a significantly small amount on Chinese seafarers' rights. Second, the book provides a comprehensive discussion not only of the current status of seafarers' rights in China, but also of the restructuring process under the impact of MLC 2006. Third, in the literature that I reviewed I was unable to find any elaborating Chinese legal instruments related to

seafarers' rights. Throughout the body of this book there is a detailed and systematic account of a large body of materials on international standards that are directly or indirectly related to Chinese seafarers, as well as of domestic legislation.

In addition, the research and fieldwork conducted for this book has facilitated my contribution to more than twenty publications, covering a number of prominent peer-reviewed journals and publishers, including *Marine Policy*, *Journal of Navigation*, *Marine Environment Science*, and *Springer* (Appendix VIII: List of Author's Publications and Conference Papers). These publications, covering a wide range of topics related to maritime affairs, were all inspired by this research project. In the meantime, I also actively participated in a number of international conferences and seminars, and delivered speeches and conference papers there. These activities not only enabled me to enrich and enhance this book, but also provide additional literature for the research of other scholars in this area.

5.2.2 Contribution to Methodology

This research project makes unique contributions to the methodology in this subject. First of all, as discussed in Chap. 1, it is an interdisciplinary study that integrates information, techniques, data, concepts, perspectives and theories in both sociology and also the legal domains. As will be discussed in Sect. 5.4, one major strength of the research is that it combines my educational background in Dalian Maritime University, my continuous work experience in the maritime industry and my studying at the Greenwich Maritime Institute (GMI), and subsequently in the Law School. I worked in various sectors of the maritime industry, including as a lawyer dealing with a large number of maritime labour disputes. As a master mariner, I had the opportunity to witness almost the full spectrum of the maritime industry. I have also gained relevant sociological knowledge through the training under the supervision of my supervisors. All these factors have enabled me to think from different perspectives on maritime affairs, and to successfully conduct an interdisciplinary study.

Furthermore, the research combined both qualitative and quantitative approaches. Considering the nature of this research, a qualitative methodology was the most appropriate approach to accomplish its objectives. However, in order to overcome the restrictions and disadvantages that are inherent in qualitative methods, a quantitative approach was also utilised as an auxiliary on some particular occasions, such as for the analysis of respondents' attitudes towards the MLC 2006; these data are presented with pie charts and histograms. I would submit that the introduction of quantitative methods significantly enriches and enhances the methodology of this study. It helped me to test the data collected through the qualitative approach and so more critically to examine how different mechanisms jointly affect the restructuring process of seafarers' rights in China.

In addition, the fieldwork of this research employed a variety of data collection methods, including a field trip map, semi-structured interviews and a questionnaire

survey. This strategy facilitated a productive and efficient data-collection process. The information sources of this research cover a wide range of stakeholders in the Chinese maritime industry, including seafarers, government officials, trade unions, shipping companies, seafarer education and training institutions, judges in maritime courts and maritime lawyers. In the fieldwork, I introduced a number of incentives (for instance printed materials on MLC 2006) to improve the rate at which participants in the questionnaire surveys returned completed questionnaires. To analyse the data collected in the fieldwork, I adopted an inductive reasoning strategy. Throughout the discussion of different opinions, the chapters of the book develop the investigation, debate and examination of seafarers' rights in the wider context of maritime legislation and industry practices in China.

5.2.3 ***Contribution to Theories***

This research project attempts to provide an original and significant contribution to theories of seafarers' rights. Chapter 1 examined the very limited quantity of literature and a lack of theory on seafarers' rights. It is therefore necessary to create and develop new theories to analyse the relevant issues and phenomena that previous theories can hardly explain. In this book, the contribution to theories is threefold. First of all, Sect. 1.4 provided a framework of the concept and theory of seafarers' rights. In this framework, different categories of seafarers' rights can be divided into types: procedural rights and substantive rights. The latter can be further divided into three specific groups: *basic rights* (*jiben quanli*), *statutory rights* (*fading quanli*) and *contractual rights* (*hetong quanli*).

A further key objective of this research was to identify and examine the gaps between international standards and seafarer protection in China. To serve this purpose, the book brought the new concepts of existing rights (*shiran quanli*) and desired rights (*yingran quanli*) into the discussion of relevant issues. As discussed in Chap. 1, the concept of seafarers' existing rights (*shiran quanli*) means the rights that seafarers already have, and seafarers' desired rights (*yingran quanli*) include the rights that they ought to have. In practice, there is a historical tendency to privilege the 'ought' (*yingran*) over the 'is' (*shiran*) and to blur the distinction between 'what they ought to have' and 'what they actually have'. The introduction of these two concepts into this research helps to distinguish these two statuses and makes a significant contribution to this subject.

In addition, the discussion of the major issues of seafarers' rights in China is divided into two categories: pre-employment conditions and in-employment conditions. The concept of pre-employment conditions means the conditions faced by a seafarer before the start of employment. In contrast, the in-employment conditions take effect after a seafarer has been engaged in an employment or has started to work on board a ship. All major issues discussed in this book fall within these two domains, which I have separated for analytical purposes and have highlighted their different significance. As discussed in Chaps. 3 and 4, compared with the

considerable improvement of Chinese seafarers' pre-employment conditions, their in-employment conditions have not received sufficient attention. The creation of these two concepts not only facilitates the explanation and understanding of some particular issues in this study, but also makes a significant contribution to future research.

5.3 Summary of Key Findings

This research has critically examined seafarers' rights in China by providing an extensive analysis of the impact of the MLC 2006 on the restructuring process of Chinese seafarers' rights. It first identifies the gaps in the existing knowledge through a series of research questions. Also, the research seeks to answer these questions by a combination of theory and empirical evidence. During the literature review, thematic analysis was employed to identify the major points discussed by other scholars. The same approach has also been introduced in primary data collection when fieldwork was conducted. In the fieldwork, some key points were identified through a means of organising and summarising the findings from a large, diverse body of primary data. The themes summarised from the literature review can be helpful to conduct an efficient and productive body of fieldwork. Also, when looking at different themes in the literature review and fieldwork, it is easy to establish whether the information gathered is broadly corroborated by other scholars and other sources. Crucially, it also emphasises the issues that have not previously been discussed by other scholars in this area. Based on the discussion in the above context, it is clear that all the research questions identified in Sect. 1.3 of Chap. 1 have been sufficiently addressed and answered.

5.3.1 *Examination of the Unique Background of Chinese Seafarers Working on Board Merchant Ships Trading Internationally*

The research has not only confirmed the view presented in other studies that seafarers make a crucial contribution to the global economy, but it has also identified some unique conditions faced by Chinese seafarers. Since the end of 2013, China has owned and been operating the third-largest fleet in the world. Chinese seafarers not only constitute the labour force for the PRC fleet, but they also work on board numerous ships either owned or flagged in other countries. In recent years, with the rapid increase of the international fleet on one side, and exacerbated shortage of seafarers on the other, Chinese seafarers have indisputably become the mainstays of international trade.

However, Chinese seafarers, in commentators' eyes, have always been an invisible group when compared with the growth of the Chinese fleet, the development and modernisation of Chinese ports and the rapid increase of foreign trade. In recent years, China has become noticeable as an increasingly important player in the maritime industry. Even so, Chinese seafarers themselves have not yet attracted sufficient attention. While many countries allow their national law to exempt seafarers on the basis of the special nature of maritime transport (MTS 2014), Chinese law generally applies to all workers in all sectors. In addition, even construction labourers, miners and catering workers have been specially addressed in a number of Chinese laws, but not seafarers. Therefore, unlike seafarers in many other countries, Chinese seafarers are not entitled to a potential differentiation of treatment from many land-based counterparts.

The literature review of this study shows that very little systematic research has been conducted directly on Chinese seafarers. The study revealed some major reasons for this phenomenon. First of all, unlike the research on ships and the shipping business (which make a direct profit for society), seafarers appear to be less important than the vessels on which they serve. Secondly, China, despite its impressive economic performance in the last several decades, remains a developing country with relatively limited resources allocated for public service. While the Chinese government places overriding emphasis on economic development, the importance of seafarers has been placed second to fleet construction, which seems to attract greater attention. Thirdly, although a list of international conventions has been enacted to promote the importance of seafarers, China has not yet ratified many of those. Therefore, many widely recognised standards have not yet been implemented in China and so fail to attract extensive attention. Even the seafarers' trade union in China has not played its due role as effectively as it could have done. Furthermore, China has a very large population that includes workers from various trades and industries. Compared with builders, platelayers and miners, seafarers are only a small group, the total number of which is not sufficient to draw special attention. In addition, seafarers are working at sea, which is out of the sight of most people on land. As a result, although Chinese seafarers have played an increasingly important role in the maritime industry, they tend to be an invisible group compared with most workers on land.

5.3.2 *Responses of Major Stakeholders to the MLC 2006*

Although China has not yet officially implemented the MLC 2006, the Chinese government has taken a series of legislative actions in response to the Convention. In 2007, the State Council of the PRC passed Seafarers' Regulations, which is viewed as the first labour legislation in China specifically for seafarers. A major part of the Regulations was designed to protect seafarers' rights and benefits to comply with the requirements of the MLC 2006. In addition, the MOT and MSA, as governmental departments specialising in maritime affairs, have adopted a series

of maritime labour policies since 2007. This new legislation and policies prescribe a large body of detailed requirements with respect to seafarers' rights and benefits, most of which are a direct response to the MLC 2006 and other international standards.

In practice, there have been various responses from different stakeholders since the adoption of the MLC 2006. For example, in order to facilitate the services for Chinese seafarers, the MOT and MSA have streamlined administration and delegated more power to the lower levels. Protecting seafarers' rights and interests has become an important task of their daily administrative work. As a result, it has become easier for Chinese seafarers to have access to effective and efficient protection. Secondly, in many shipping companies, more attention has been paid to seafarers' rights and benefits, such as working and living conditions on board, seafarers' welfare and social security, and so on. The change results from two major causes that were identified in the fieldwork. On the one hand, the MLC 2006 prescribes mandatory requirements to improve seafarers' treatment. Failure to meet these requirements can result in the detention of vessels in a PSC inspection any part of the world. On the other hand, more intense competition for seafaring talents puts pressure on shipowners, operators and manning agencies to take action to attract and retain high-quality seafarers.

In addition, the adoption of the MLC 2006 and the development of the labour legislation in China since 2007 have certainly helped to strengthen Chinese seafarers' awareness of their rights and interests. The sharp increase of maritime labour disputes in China and demands for improved salary rates and other conditions can well illustrate this point. Although the research indicates that very few Chinese seafarers clearly know about the contents of the MLC 2006, most of them have a simple comprehension that the Convention will improve their rights and represent their interests. However, although the Convention has attracted widespread attention, most seafarers in China cannot gain access even to basic training or workshops to help them understand the contents of the Convention. It therefore appears to be difficult for many Chinese seafarers to figure out what kind of changes the Convention will bring to them and how they can use this 'weapon' to protect their rights and interests, such as on-board and onshore complaint procedures.

5.3.3 Examination of Improvements in Seafarer Protection in China and Identification of Existing Gaps

Seafarer protection in China has been improved significantly since the adoption of the MLC 2006. The major improvement exists with regard to seafarers' pre-employment conditions, which include seafarers' registration, physical requirements and medical examination, maritime training and qualification, and seafarer recruitment services. For example, in 2008 the MOT implemented the Administration Rules of Seafarers' Registration. The Rules prescribe clear preconditions and

procedures for seafarers' registration and deregistration, which have never been regulated before. Most importantly, the Rules also lay down the MSA's responsibilities of supervision and inspection to ensure that a proper seafarers' database can be established in China.

Another significant improvement is related to seafarers' recruitment and placement services. In recent years, the MOT has adopted a series of maritime legal instruments to regulate seafarers' recruitment and placement. For example, the Administration Rules of Seafarer Recruitment Services Management, issued in 2008, prescribes a large body of requirements with respect to the qualification of seafarer recruitment and placement agencies, their rights, obligations and legal responsibilities, and the supervision obligation of the MSA as the competent authority in China. In 2009 and 2010, the MOT and Ministry of Commerce collaboratively adopted the Administration Rules on the Prevention and Disposal of Oversea Labour Disputes (PDOLD) and the Administration Rules on Seafarer Export and Oversea Labour Cooperation (SEOLC) respectively. These new standards play an important role in preventing the exploitation of seafarers by recruitment agencies and in improving seafarer protection abroad.

Furthermore, the MSA has also implemented the relevant normative documents specifying detailed requirements on seafarer recruitment and placement service. For example, according to the Notice on the Implementation of the Administration Rules of Seafarers' Export, recruitment agencies engaging in seafarer export services need to provide the MSA with one million RMB as financial security. The purpose is to ensure seafarers can be duly repatriated at no cost to themselves in the specified circumstances and protected from the financial consequences of sickness, injury or death occurring in connection with their employment. The Notice was implemented in 2011, much earlier than the amendments of 2014 to the MLC 2006, which regulates the minimum requirements of financial security. These new requirements have become part of the MSA's inspection purview, and any failure to meet this may result in the revocation of the relevant certification of the recruitment agency.

In addition, as the largest seafarer-supplying country, the national standards in respect of seafarer training and qualification have been improved significantly in recent years. For example, China is maintained as a member state on the 'White List' through its high standard of maritime training and education. This means that the IMO has considered China to be in 'full and complete' compliance with the STCW Convention. Accordingly, other countries should accept certificates and amendments issued by the competent Chinese authority. It is easier for seafarers holding the certificates or endorsements to find employment opportunities on any foreign-flagged ship than those seafarers whose certificates are issued by countries not on the 'White List'. At the same time, a high standard of maritime training and education helps Chinese seafarers earn a high reputation and respect in the international maritime labour market. Consequently, when Chinese seafarers are dispatched on board foreign ships, their wages, working and living conditions, and other treatment have been improved accordingly.

However, compared with the improvement of seafarer protection in the areas of pre-employment conditions, there are still some major gaps with regard to Chinese seafarers' in-employment conditions. The most important issue is seafarers' employment agreements (SEAs), which have been considered as 'the heart of the MLC 2006. Member states of the Convention are obliged to adopt national laws or regulations that comply with the relevant requirements. In China, the Labour Law and Labour Contract Law (LCL) have prescribed a body of requirements in respect of a worker's employment contract. There are special provisions in the two instruments in relation to construction workers, miners and catering workers. However, neither of them provides any special provisions for seafarers. The MOT has implemented a number of maritime legal instruments in response to the new requirements of the MLC 2006. However, the standard of protection in these policies is much lower; therefore, they usually have little effect in practice, in particular when they are in conflict with laws at upper levels. Also, very few of these policies have direct clauses on employment issues, such as seafarers' wages, working and living conditions, collective bargaining agreements, and seafarers' social security.

As discussed in the Chaps. 3 and 4, the Labour Contract Law, although it is a major milestone in the legislation of Chinese labour law, provides very limited protection for Chinese seafarers. First, when the law was drafted it did not take into consideration the special characteristics of seafaring labour. As a result, it is unable to provide the special protections that are necessary for Chinese seafarers. Moreover, many Chinese seafarers are parties to foreign-related employment contracts. However, the LCL does not have any clauses or provisions dealing with foreign-related relationships. In addition, the LCL has a certain negative impact on seafarers' employment opportunities. Some key provisions of the LCL cause confusion to the employment relations that are normal in the Chinese maritime labour market, such as the relevant provisions on labour dispatch. As explained in Chap. 3, this confusion has impaired Chinese seafarers' employment opportunities and prevented the development of the Chinese labour market.

In practice, there also exist a number of problems that prevent Chinese seafarers from accessing their legal employment entitlements. First of all, many Chinese seafarers have serious difficulties in respect of employment opportunities, in particular for those with lower ranks, such as ratings and junior officers. According to the MLC 2006, there should be a public recruitment system available for seafarers to ensure that they can have access to an efficient and well-regulated recruitment service. The Employment Promotion Law of the PRC also states that local governments shall establish public employment service institutions that provide labourers with free recruitment services. However, despite the rapid growth in the economy, China has not yet established an effective public employment system. In the Chinese maritime labour market, most recruitment and placement businesses are controlled by private manning agencies or ship management companies. Many Chinese seafarers have to pay large sums of money for employment opportunities and become targets of exploitation. Also, under Guideline B2.8.2, the MLC 2006 recommends that seafarer registration should be properly maintained 'so as to

achieve levels adapted to the needs of the maritime industry'. However, the registration system of Chinese seafarers does not deregister those who have quit the seafaring profession. In consideration of the very limited public resources in China, 'detrimental effects' on 'real' seafarers may result because of the non-discriminatory registration system, in particular when a reduction in the number of seafarers becomes necessary.

In addition, many Chinese seafarers still tend to face the most unfair and serious treatment in several aspects. Without an adequate and feasible legal system to protect them, the nature of their work may easily subject them to exploitation by unscrupulous shipowners, operators and manning agencies. For example, many seafarers do not have an employment contract. It is even the case that some ships maintain two separate sets of seafarer employment contracts, one real and one false, with the false one just for PSC inspections. As discussed in Chap. 4, the fieldwork for this study found that even some major state-owned Chinese shipping companies were practising double book-keeping aimed at evading PSC inspection. Secondly, compared with seafarers in many countries, the general wages of Chinese seafarers are still very low. Moreover, delayed or unpaid wages and substandard working and living conditions are still very common among Chinese seafarers, in particular when the shipping market is poor. Thirdly, because there is no relevant regulation of seafarers' annual leave in China, many Chinese seafarers tend to have a longer annual contract and cannot be repatriated in a timely manner even when they have completed their agreed terms. Furthermore, when labour disputes arise, on many occasions seafarers cannot access effective and efficient legal assistance and remedies. This may be a common problem for seafarers world-wide but it has a bigger impact on Chinese seafarers, for all the reasons described above. In addition to the lack of sufficient relief avenues, some local courts or tribunals tend to provide favourable judgement for employers with whom they may have a better relationship than with seafarers.

As the research found, the significant improvement of seafarer protection exists with regard to seafarers' pre-employment conditions, rather than in-employment conditions. The major reason appears to be that the Chinese government has attached great importance to seafarers' training, qualification and competency. These aspects are closely associated with the export of seafarers, the development of the Chinese maritime industry and increased tax revenue. Secondly, in theory, Chinese workers have the right to participate in the process of Chinese labour law-making. However, in practice, it is very difficult for them to deliver their views and be involved in decision-making. This is especially because of the lack of a strong and effective trade union movement in China. The issue is particularly because the unique employment conditions for seafarers are not familiar to most law-makers. Therefore, compared with the employment conditions of construction workers and miners, which have been addressed to some extent in several major labour laws, seafarers' in-employment conditions have never attracted much concern in Chinese labour law-making. In addition, China has not yet established a labour market that is capable of offering adequate protection for its workforce. Shipowners, operators and manning agencies are motivated by the need to make

profits. When anticipatory gain outweighs possible punishment, they are more likely to take risks as to the safety of life and to provide the lowest in-employment conditions.

5.3.4 Identification of Challenges for Future Improvement

The adoption and entry into force of the MLC 2006 has had a significant impact on the legislation and practice in the Chinese maritime labour sector. The Convention takes into account the specific features of the maritime transport industry, and it aims to close some loopholes and ensure that seafarers are treated on an equal footing with land-based workers. It is therefore expected by the ILO that it will help to promote employment, improve living and working conditions, provide proper social protection and enhance the dialogue between seafarers and their employers. With the largest population of seafarers in the world, China is expected to stay inside the international maritime regulatory regime and respect commonly accepted international practice. Chinese seafarers have been longing for significant changes in respect of their treatment, social and employment conditions.

Although in recent years China has made great efforts to meet the requirements of the MLC 2006, the further improvement of seafarers' rights in China is restricted by a number of obstacles and challenges. Among them, the biggest is that China has not yet ratified some fundamental Conventions. These include the Freedom of Association and Protection of the Right to Organise Convention 1948, the Right to Organise and Collective Bargaining Convention 1949 and so on. Although freedom of association has actually been inscribed in the Chinese Constitution, as a basic right for all citizens, the relevant labour law has prevented Chinese workers from fully enjoying their rights. For example, under the Chinese Trade Union Law and the Chinese Labour Law, the ACFTU is the only trade union recognised by the government for Chinese workers to join. Any other trade union organised outside the ACFTU is not protected by law and can be banned by the government. However, there has been criticism that the primary goal of the ACFTU is not to protect workers' interests but to consolidate the CCP's regime through stabilising labour relations and maintaining industrial order' (Qi 2013, p. 290).

The CSCU is the national industrial union of Chinese seafarers and construction workers that is affiliated to the ACFTU. At an operational level, it has developed a clear strategy to support seafarers, in particular those employed in the foreign sector. However, the protection provided by the CSCU is far from satisfactory and cannot meet the requirements of the MLC 2006 and other international standards (Zhang 2009). Most importantly, there is a serious lack of seafarers' participation in the process of 'collective consultation'. The obviously unequal bargaining power between individual seafarers and maritime employers makes it indisputable that collective bargaining is an essential element of seafarers' rights. However, it is actually absent in practice (Han 2008). Secondly, the CSCU appears to be very weak and passive in many ways, and has very limited influence at the

international stage. Therefore, it is not able to provide effective and efficient assistance and protection for Chinese seafarers when they encounter difficulties at foreign ports. In addition, with an increasing number of Chinese seafarers employed by foreign shipowners, the seafarers need the Union to fight for their interests and benefits. However, dealing with international affairs requires special skills (including language skills) and other competencies, which are lacking among most union officers.

These challenges and obstacles are also the result of the fact that some stakeholders in the industry may resist change on various grounds. This study has examined various problems and challenges for a better change in the future from different perspectives. First of all, the Convention has set a body of minimum standards concerning seafarers' treatment, welfare, work and living conditions that must be met on board. In the history of the Chinese maritime industry, cheap labour has been a key advantage for Chinese shipowners and operators to enable them to remain profitable in the international shipping market. Shipowners and operators may therefore feel that the implementation of the Convention would inevitably increase the costs of the operation of the ships and so impair their competitiveness. In addition, some practitioners in China believe that the 'true' intention of the MLC 2006 is to protect the core interest of the shipping industries in Traditional Maritime Nations (TMNs) by suppressing the competition from developing countries.

Secondly, the resistance may also come from crewing agencies and ship management companies. It is their view, accurately, that the export of seafarers in China relies very much on low labour costs (Zhang 2013a). Compared with seafarers from some other major labour-supplying countries, the majority of Chinese seafarers are perceived to be less satisfactory in respect of English skills, technical level and even dedication and obedience. This justifies their lower wages. Once the international employment standards are implemented, seafarers' wages and other welfare will be improved significantly; hence the Chinese seafarers may well lose their advantages of competitiveness in the global maritime labour market. As indicated in Chap. 3, even the seafarers' organisation in China expressed a pessimistic opinion about the effect of improving Chinese seafarers' benefits. Like the concerns in the above context, there are also practitioners in China who argue that the intention of the MLC 2006 is also to protect the employment opportunities in developed countries by impairing the advantage of countries supplying cheap labour (Zhang 2013b).

Thirdly, there is resistance coming from the various parts of the government authorities. The ratification of the Convention will need consolidation of the government authority in maritime law-making and management and this in turn will demand restructuring and redistribution of the existing power in China's maritime governance. Currently, labour affairs are under the administration of the Ministry of Human Resources and Social Security (MOHRSS), while maritime affairs come under the jurisdiction of the Ministry of Transportation (MOT). Although the Maritime Safety Administration (MSA) of the MOT has always been the authority in charge of seafarers' affairs, the MOHRSS considers that the implementation of the MLC 2006 should be within its jurisdiction, rather than that of the MOT.

5.3.5 Major Proposals for Future Improvement

In this section, the research offers four major suggestions for changes in legislation and practice that the researcher believes are of vital importance. The significance is both because of their inherent merit and also because together they could be the foundation stones upon which China can build a better seafarer protection system that would suit the development of the maritime industry in China.

The first suggestion is related to research question two and four. It aimed at the Chinese government, on which further improvement with regard to seafarer protection in China will primarily depend. With 66 ratifications thus far, the MLC 2006 cannot be ignored by any country participating in the international shipping business. China is expected to ratify the Convention as early as possible. This would mean that China needs to take more legislative action to meet the requirements of the Convention. To adopt the Seafarers Act of the PRC is of key importance to improve Chinese seafarers' rights, as well as to implement the MLC 2006. However, the Act has been discussed and debated for two decades, but not much progress has been made so far. The government is therefore advised to take more concrete and efficient measures to speed up the legislation process of the Chinese Seafarers Act.

Furthermore, the MOT and MSA, as the government departments specialising in maritime affairs, need to take on more responsibilities with regard to seafarers' rights in China, in particular the flag state inspection. Over the past two decades, the MOT and MSA have promulgated a large number of legal instruments. However, many of them are outdated, short-sighted and inconsistent with each other. It could be argued that this is because of a general lack of understanding of the particular problems faced by seafarers and a lack of training of the administrators themselves. Therefore, the MOT and MSA need to streamline their legislative activities and to establish a rational and effective maritime legal system. In addition, the MOT and MSA also need to harmonise their relationship with other departments, such as the MOHRSS, to ensure that their policies can be implemented effectively and that the conflict of authority between them will not affect seafarers' rights and interests. Therefore, it is necessary to establish a formal, continuing and effective coordination mechanism at the national level to deal with seafarers' affairs.

The second suggestion is related to research question one and four. It is necessary to detach the seafarers' trade union from the CSCU, and to establish a more independent, pragmatic and effective seafarers' union in China. As discussed in Chap. 4, currently the ACFTU packs all Chinese seafarers and construction workers into the CSCU. Under that arrangement, the special characteristics of maritime labour are easily overlooked. Compared with the huge number of construction workers in China, the number of Chinese seafarers is very small. The importance of seafarers is undermined because of their low level of representation rate and limited voice. The priority of the CSCU is focused mainly on the maintenance of labour stability and resolving labour disputes for the numerous construction workers. Furthermore, the CSCU has very limited influence on the international

stage. The majority of union officials appear to be short of experience and expertise in handling international affairs and in protecting seafarers' benefits abroad. It is therefore urgent to separate these two irrelevant unions and let the seafarers' trade union operate alone and to develop its own needs and expertise.

In addition, China has not yet ratified the Freedom of Association and Protection of Right to Organise Convention (ILO C087) and the Right to Organise and Collective Bargaining Convention (ILO C098). However, as explained in Chap. 1, both these two Conventions have been incorporated into the MLC 2006. The freedom of association and the right to collective bargaining are considered as fundamental rights of seafarers. According to Article III of the MLC 2006, each Member State to the Convention shall ensure its national laws or regulations comply with the requirements of these Conventions. The ratification of MLC 2006 will pose significant challenges for the Chinese government in relation to the freedom of association and the right to collective bargaining. It is therefore also suggested that China needs to reform its trade union system and make sure the requirements of ILO C087 and ILO C097 will be fully observed together with MLC 2006.

These include the Workers' Representative Convention 1971 (ILO C135, 1971), and so forth. In addition, the International Covenant on Economic, Social and Cultural Rights (ICESCR) also provides that every worker has the right to form and join the trade union of his or her choice (UN 1966: Art. 8). Both the ILO C087 and the ILO C098 have been directly incorporated into the MLC 2006. Moreover, freedom of association and the effective recognition of the right to collective bargaining are considered as fundamental rights and principles in the MLC 2006.

The third suggestion is related to research question two and four. It is crucial to promote best practice in the maritime industry by implementing corporate social responsibility (CSR) and maintaining a sustainable maritime labour force. The implementation of CSR can attract high-quality talents, enhance a company's image and eventually improve its marketing performance. It is recognised that a skilled, loyal and well-motivated seafarer is 'an essential factor in reducing operational costs by increasing efficiency, safe operations' and in protecting the employer's 'investment in expensive vessels and equipment' (Progoulaki and Roe 2011). In contrast, stress, fatigue and complaints can lead to reduced performance, which is usually the reason for environmental damage, loss of life and property. It is therefore becoming more commonly accepted that voluntary corporate social responsibilities (CSR) should be embedded into maritime business because respecting seafarers' rights has become a strategy with the reward of more profit than is produced by ignoring corporate social responsibilities (Lillie 2008, p. 196). As one of its advantages, the MLC 2006 will lead to 'a more socially responsible shipping industry' (ILO 2011). It is important to note that the Convention requires the maritime industry to pay greater regard to their social responsibilities.

Maritime employers should respect and fairly reward the contribution of seafarers for the sustainable development of the maritime labour market. The quality of the industry relies ultimately on the quality of people who are competent and committed and who provide safe and efficient services, as well as making an effort

to prevent loss and damage. As discussed in Chap. 2, maritime employers are well aware of the importance of aggregating the talents of those who are committed to the industry and have the required expertise. It is therefore of great importance to improve both the conditions of employment as well as the image of the industry so that those who serve in it can have safe, rewarding, and fulfilling career prospects (Alexander and Richardson 2009, p. 563).

Good employment conditions on board are fundamental factors for good labour relations between the employer and the seafarer and for attracting and retaining qualified labour (ILO 2001, p. 108). It is indisputable that good payment and proper treatment can be essential motives for young people to choose the seafaring profession. Also, enjoyable working and living conditions are vital elements in encouraging them to overcome social isolation and separation from their families and to spend a longer time at sea (Dimitrova 2010, p. 49). In contrast, a miserable life on board and unfair treatment can result in ‘reduced lifespan among highly skilled seafarers who are in short supply’ (Smith 2007).

In the absence of a sound and effective legal system and employment environment, the fourth suggestion is for Chinese seafarers themselves, which is related to research question one and four. As discussed in the previous chapters, Chinese seafarers tend to face special conditions and challenges. For future improvement of their entitlements, they should be more pro-active, to the extent that this is possible in domestic Chinese affairs, and participate more effectively and effectively in the legislative process in China. Under the impact of the MLC 2006, China has started to promote tripartite negotiation platforms, and seafarers are encouraged to take part in policy-making and collective bargaining activities. There are many opportunities for Chinese seafarers to become involved and to deliver their message more clearly and loudly. At the same time, there is an urgent need for Chinese seafarers to acquire as much legal knowledge as possible, in particular of the legal protections under the MLC 2006. In addition, it is crucial for the seafarers to make the best use of traditional rights and remedies as enshrined in maritime law, such as maritime liens and the action in rem. As discussed in Sect. 2.5.1, seafarer’s right to wages can be secured by a maritime lien and can be enforced directly against the ship. Also, as Seafarers’ Rights International (SRI) recommended, although the MLC 2006 provides complaint procedures, in many occasions seafarers still need to invoke maritime liens in support of the maritime claims for wages (SRI 2015). In the event of future labour disputes, they need to know how to utilise various procedures to defend their rights, such as on-board and onshore complaint procedures, arbitration, and court procedures.

5.4 Strengths and Limitations of This Research

My background has been a key advantage in ensuring the successes of this study. As a mariner master myself, I experienced particular difficulties when I worked on board, and this motivated me to examine the spectrum of rights to which Chinese

seafarers are entitled. Therefore, one of the significant aspects of this research is that being a seafarer enabled me to have access to a large number of seafarers, who knew that I understood what they were talking about and were willing to share their experience with me. This was an important point in collecting the very rich primary data and in understanding Chinese seafarers' major concerns. Furthermore, I had practised as a maritime lawyer for more than 5 years before I initiated this study, specialising in maritime labour disputes. My legal expertise has helped me to engage with the key points of conflict and examine some key issues from a legal theoretical perspective.

There are several innovations introduced in the research. First of all, the literature review adopted a combination of chronological and thematic analysis. This strategy helped me identify the development of scholarly research on seafarers' rights at different periods in China's history. It also enabled me to identify the gaps in existing knowledge and then to establish my research direction. Secondly, a field trip map was designed to facilitate productive and effective fieldwork. The map not only presented a clear trip plan including the major cities to visit, but also delineated the general distribution of data resources available to me. It ensured that my fieldwork was always going in the right direction, and also improved my efficiency by saving time and cost. In addition, when discussing the specific rights of Chinese seafarers, the major issues were divided into two categories: pre-employment and in-employment conditions. Since seafarers' rights involve numerous complicated issues, this strategy was able to provide a clear layout of key issues of the book. The categorisation also enabled me to determine the fact that the major stakeholders in China, in particular the Chinese government, treated these two categories differently.

Another strength of this research is the extensive use of face-to-face interviews. The interviews cover not only a large number of Chinese seafarers, but also took in the major stakeholders of the Chinese maritime industry, which included government authorities, shipping companies, maritime education and training institutions, trade unions, and so on. The wide range of interviews enabled the study to avoid bias by considering and summarising various and even conflicting opinions from different perspectives. During the fieldwork, I utilised all my resources and networks from my professional life as a seafarer and maritime lawyer to contact as many potential interviewees as possible. On different occasions, four major data collection methods were applied: in-depth face-to-face interview, group interviews, telephone interviews, e-mail interviews. Some other informal methods were also introduced in order to gather as much information as possible, such as LinkedIn, WeChat, QQ talk, Skype, and WeiBo. As discussed in Chap. 1, these additional methods enabled me to improve the quality of data collected and to verify the findings.

Furthermore, as I have been working in maritime industry for more than 18 years, a wide range of relationships helped me to gain access to a wealth of information that is not freely open to the public. In recent years, the MSA has established a database with regard to Chinese seafarers. However, the database is classified as confidential with very limited content open to the public. At the

beginning I was refused access to the database. However, I contacted some key persons in the MSA who are in charge of seafarers' affairs. I explained to them that my study would contribute to Chinese seafarers' welfare and I was then granted permission to use their database. This meant that I had access to data that was not easily available to other researchers. Various academic studies on Chinese seafarers had also been conducted by some universities, including Dalian Maritime University, Shanghai Maritime University and Jimei University, and so on. Most of the studies were entrusted to the MOT or MSA, so that these research reports were revealed only to the governmental departments. Through my efforts and special relationships with these academic institutions and governmental offices, I was occasionally granted permission to read their research reports. The additional information has been very helpful in enriching my knowledge, verifying my research findings and expanding my outlook on some specific issues.

In addition, during the research I have published a significant number of peer-reviewed journal articles and book chapters. These publications not only helped me to reflect, summarise and disseminate my major findings, but also enabled me to elicit some helpful feedback from peers and the wider academic community. In the meantime, I also actively participated in a number of international conferences and seminars, and delivered my presentations. In the course of these activities, the questions, insights, and feedback received strengthened the direction of the research, improved the quality of the data analysis, and verified my key findings and opinions.

While my experience suggests that this study is significant, there are also a number of limitations in this research, and future work is in need to improve on these areas. First of all, as the starting point for this study, the literature relating to Chinese seafarers' rights is very limited. The theoretical basis was therefore lacking for me to follow at the beginning of the study. As a result, I had to overcome the shortage of academic research and to read a large quantity of material, most of which later proved to be not directly relevant to my study. Secondly, the research was challenging in terms of very limited time and financial resources. In all I spent 92 days on my fieldwork and covered more than 10 major seaports in China. In my study the interviewees constitute seven different stakeholders in the Chinese maritime industry. To complete my fieldwork, I had to distribute my resources equally on different types of interviewees and so the resources that I put into each group of stakeholders were very limited. Although the fieldwork produced a large amount of qualitative data, a longer period of time on each group could have generated a more in-depth inquiry. Thirdly, the research was conducted from both sociological and legal perspectives. Although I have a strong background in Chinese law, I would not claim to be equally strong in sociology. Consequently, although I have taken a multi-disciplinary approach, the research has largely focussed on the legal issues that have arisen in this area.

5.5 Suggestions for Future Studies

There remains a need for considerable further studies in the area of seafarers' rights in China. This research makes some suggestions for future research directions, which if followed should address some of the present gaps and shortcomings in this study. In the course of fieldwork, various interesting examples relating to Chinese seafarers' rights emerged. While this study has contributed to a better understanding of what determines and influences the rights of Chinese seafarers, it is by no means exhaustive. As the limitations discussed in the preceding section show, further research is necessary to explore the conclusions raised in this book, perhaps from a more in-depth sociological perspective, as suggested above. In addition, it is also important to expand the scope of any such study by looking into the views of more stakeholders in order to appreciate their perspective on the underlying issues that affect the implementation in China of the MLC 2006.

First of all, as indicated in the literature review, there is still a paucity of studies in Chinese seafarers' rights. Although this research has made an effort to fill the gap in this area, it is far from enough. It is imperative that new light is shed on more topics and that different facets of problems are explored. The matters in relation to seafarers' rights in China are very complicated. There are two major aspects on which the study has shed light. First, the study prompts interesting and relevant questions about the government's response to the MLC 2006 as series of maritime legal instruments were adopted. Secondly, these new policies have brought about various changes in the practices of the Chinese maritime industry. However, the research has not touched on the economic effects of the MLC 2006 on the Chinese maritime industry. In addition, Chinese seafarers' social role and legal status, and the special characteristics of maritime labour, are worth further investigation and examination.

Secondly, one of the major contributions of this study is that it portrays a detailed picture of seafarers' rights in China. However, due to the limited length of this book, some important issues could not be elaborated in depth. For example, one disadvantage revealed in relation to Chinese seafarers is the right to freedom of association. Although Chinese law states that all workers in China have the right to join and organise unions, Chinese seafarers have various difficulties in realising the rights and seeking protection from their own trade unions. However, to expand on the topic would demand a great deal more space, which is unrealistic in the limited length of this book. A number of specific issues, although discussed in the preceding sections, therefore warrant further investigation and examination. In future research of this type, greater length of fieldwork, deeper immersion in the environment and closer relationships with the stakeholders will be required in order to generate more sophisticated insights into the key issues.

Thirdly, Chinese seafarers are an inseparable part of the international maritime labour force. In order to have a better understanding of Chinese seafarers' rights, it is necessary to investigate and comparatively study seafarers' rights in other countries. The literature review has extensively examined the literature available

with regard to seafarers' rights in a number of maritime nations. However, the fieldwork of this study took place only in China. As such, the discussion on the subject in relation to seafarers from other countries was based only on limited second-hand information. It appears that in the future a study comparatively analysing seafarers' rights in China and other countries should be conducted in order to generate deeper inquiry.

References

- Alexander, Y., & Richardson, T. B. (2009). *Terror on the high seas: From piracy to strategic challenge*. Santa Barbara: ABC-CLIO, LLC.
- Dimitrova, D. N. (2010). *Seafarers' rights in the globalised maritime industry*. London: Kluwer Law International.
- Han, D. (2008). Collective bargaining and the new labor contract law. *China Labor Bulletin*. Available at: <http://www.clb.org.hk/en/node/100210>. Accessed 16 June 2010.
- ILO. (2001). *The impact on seafarers' living and working conditions of changes in the structure of the shipping industry: Report for discussion at the 29th Session of the Joint Maritime Commission*. Geneva: International Labour Office.
- ILO. (2011). *Advantages of the Maritime Labour Convention, 2006*. Available at: http://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_153450/lang--en/index.htm. Accessed 3 April 2015.
- Lillie, N. (2008). The ILO Maritime Labour Convention, 2006: A new paradigm for global labour rights implementation. In K. Papadakis (Ed.), *Cross-border social dialogue and agreements: An emerging global industrial relations framework* (pp. 192–210). Geneva: International Institute for Labour Studies.
- MSA. (2015). *The big data of Chinese seafarers*. Available at: <http://www.msa.gov.cn/Seafarersday2015/dashuju.html>. Accessed 3 July 2015 [in Chinese].
- MTS. (2014). *The mission to seafarers: Deal reached on EU seafarers*. Available at: <http://www.missiontoseafarers.org/uploads/pdfs/media-centre/sea-nov-dec-14.pdf>. Accessed 30 March 2015.
- Progoulaki, M., & Roe, M. (2011). Dealing with multicultural human resources in a socially responsible manner: A focus on the maritime industry. *WMU Journal of Maritime Affairs*, 10, 7–23.
- Qi, D. (2013). Chinese working class and trade unions: Transformation and predicament in the reform era. In G. Wang & Y. Zheng (Eds.), *China: Development and governance*. Singapore: World Scientific Publishing Co. Pte. Ltd.
- Smith, A. (2007). *Adequate crewing and seafarers' fatigue: The international perspective*. Cardiff: Centre for Occupational and Health Psychology. Available at: <https://orca-mwe.cf.ac.uk/48168/1/ITF%20FATIGUE%20REPORT%20final.pdf>. Accessed 3 February 2015.
- SRI. (2015). *Maritime Liens*. Available at: <http://seafarersrights.org/seafarers-fact-file-maritime-liens/>. Accessed 27 December 2015.
- UN. (1966). *International Covenant on Economic, Social and Cultural Rights, 1966*. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Accessed 2 May 2015.
- Zhang, L. (2009). Research on the social protection for seafarers in China. *Law Science Magazine*, 30(5), 130–132 [in Chinese].
- Zhang, P. (2013a). The negative impact of maritime labour convention 2006 on Chinese maritime industry. *Ship Management*, 35(4), 32–34 [in Chinese].
- Zhang, P. (2013b). The negative impact of maritime labour convention 2006 on the export of Chinese seafarers. *World Shipping*, 6, 11–14 [in Chinese].

Appendices

Appendix A: Indicative Questions for Interviews

Part 1: To International Organisations Such as IMO, ILO, etc.

1. Recent legislative efforts by international organisations.
2. Adoption of the Maritime Labour Convention 2006 and ILO Guidelines on the standard of seafarers' working and living conditions.
3. Global review of the shipping industry, including manning industry and seafarers' rights conditions (both about seafarers' rights protection and seafarers' rights abuse)
4. Analysis of leading shipping countries' attitudes towards implementation and enforcement of international standards of seafarers' rights protection,—from an "outer" or independent perspective.
5. Flag states' responses. In particular the stances of those major FOC countries.
6. Port state control over seafarers' working and living conditions.
7. What is the background of Maritime Labour Convention 2006, was there any conflict between different countries when the policy was made? If so, how to balance the different interests?

Part 2: To Governmental Agencies, Trade Unions, NGOs and Industrial Associations

1. Overview of the development, status quo and prospects of the shipping industry in China.
2. Investigate seafarers' rights standard in the shipping industry of China.
3. Is there any long-term development plan to improve seafarers' working and living conditions, welfare and social security?

4. Does China apply sustainable policy to seafaring industry? If so, how does it implement and enforce the policy? How do you evaluate the effects?
5. What are the seafarers' rights criteria applicable in China? Can you make a qualitative and quantitative comparison with the other leading shipping countries?
6. Is there any discrepancy or conflict between development of shipping industry and seafarers' rights policies? If so, what are the differences?
7. Are you confident in continuing development of Chinese seafarers export? Is there a possibility that China would be "phased out", as the developed countries, when the regulatory regime becomes more and more stringent? Any counter-measure to sort out the dilemma to ensure its "sustainable development" in China?
8. Please outline the structure of governance over the industry. How to rationalise the multiple, overlapping jurisdictions that may cause low administrative efficacy?
9. Apart from the general law and policy, how do the related authorities exercise specific control to ensure the international standards are respected?
10. Your general impression of the working conditions, occupational safety and health (or accidents or diseases), protective equipment and facilities, welfare, training, etc. of Chinese seafarers. Are the workers well covered and protected by the Labour Law and Employment Contract Law? Any resort or remedy available to those that may have no fair opportunity to sign employment contract with the shipowners?
11. Is there any gap between domestic and internationally accepted seafarers' rights standards? If so, what kind(s) of assistance extended by the international maritime community do you expect, e.g. regulatory, technical or financial? Do you have any specific proposal who is to provide such assistance and how the assistance is to be provided?
12. Any other concern about the maritime labour industry?

Part 3: To Crew Manning Company

1. Brief history of your company.
2. Scale and portfolio of your company (including structural analysis, e.g. types, sizes, ages of ships in your company)
3. Prospects in the forthcoming 5 years
4. What method(s) do you adopt in ship management? Are the particular methods to be adopted pertinent to the seafarers' management? If so, please provide details.
5. What kinds of precaution are used in preventing the operations from damaging the environment? What facilities do you use to ensure the operations to comply

with the “green” criteria? How do you dispose of the wastes? Are you capable of disposing of the hazardous materials that may otherwise have to be treated in accordance with the “pre-cleaning” requirements? Can you show me the operation of the facilities?

6. Is there any standardised procedure (e.g. ISO quality management system) enforced in your ship management practice? If not, how do you assure that the international and national policy could be respected?
7. How many seafarers do you employ? Do you sign employment contract with every individual worker or outsourcing contract with contractor, or no contract at all? If employment contract is signed, could you provide a copy of pro forma contract? Alternatively, if recruitment of labour is based upon outsourcing arrangements or advertisements or any other expedient (*ad hoc*) muster, how do you make sure that the minimum statutory labour protections are enforced?
8. Welfare Schemes for seafarers, inclusive of wage standards, leaves, social insurances, medical treatments, health care, labour dispute settlement mechanism, etc. Any differentiated standards applied?
9. How do you tackle the new requirements after the enforcement of Maritime Labour Convention 2006? What do you think the new convention will bring to your company and the entire shipping industry?
10. Do the administrations and/or associations inspect the operational procedures regularly or at random? If so, how? What items do they inspect?
11. If the international standards (e.g. The Maritime Labour Convention 2006, ILO Guidelines, etc.) are adopted and enforced, how and to what extent will your business be affected? Apart from the cost and competitiveness factors, is there any positive influence upon your operations? To achieve fair play at international level, what preconditions do you expect to be prearranged and enforced, regulatory, technical and/or financial, etc.?

Part 4: To Ship Owner, Ship Operator, or Ship Manager

1. Brief history and nature of your company
2. Scale and portfolio of your company (including structural analysis, eg., types, sizes, ages, routes of ships that you own, control or operate/charter)
3. What do you understand about seafarers’ rights? What kind of rights do you think seafarers should have and how do you ensure them to fulfilled their rights?
4. Fundamental consideration(s) deciding your choice of crew for your ships. Do you care about the seafarers’ rights? (e.g. Seafarers’ wage, health and safety protection, social security and welfare).
5. If there are additional costs for implementation of higher standard, to what extent are you willing to contribute to the success of global goodwill, knowing that you always can have tactic arrangement for FOC at the last minute?

6. If the seafarers' cost from other countries is cheaper than Chinese seafarers, will you opt to have your ship manned by foreign seafarers?
7. Normally what kind of dispute you may have with seafarers and how to deal with it?
8. What methods you may use in practice to perform the responsibilities of ensuring seafarers' rights?
9. Nationality options of your fleet. The procedures and costs for altering the ship registration.

Part 5: To Seafarers

1. Your age, education level, working experience and present post, your home-town, place of birth, your family situation.
2. Your wage and income. If this is too much sensitive, alternative question will be: are you satisfied with the employer's payment,—to be assessed with the local standard and your homeland standard respectively?
3. Did you sign an employment contract with the shipowner or crew agent? To what extent do you know your rights and welfare, inclusive of social insurance, occupational health protection and care, medical treatment, compensation for chronic illness, leave, overtime payment, etc.? Do you have any effective channel to complain if you are unhappy with the working conditions? Is the Trade Union or public resort readily accessible?
4. Pre- and en-working training courses you have been provided.
5. Working environment and procedures, visible and invisible risks, protective equipment, maximum continuous working hours, perceived and supposed pain or harm to your health, etc.
6. If there is another employer (not engaged in work on board) offering better terms, will you leave the present position? Are you free to do so?
7. Does your family support your decision to work on board? Is there any problem with your family caused by your position as a seafarer?
8. Do you have any expectation for the employer to improve your working conditions that can reasonably be achieved?
9. Do you have a feeling of comradeship when you are working with others?
10. Do you think it better to become a skilful and experienced seafarer or to pursue a post with higher reward for the purpose of personal development?
11. Do you know about the legislation in respect of seafarers' rights in China? Do you know about Maritime Labour Convention 2006?

Appendix B: Questionnaire A

海员权利保护及保障问卷调查(海员适用,共2页) *for Seafarers*

尊敬的海员同志, 您好!

我是格林尼治大学的研究人员, 我们正在做关于海事劳工公约的研究, 想问您几个问题并了解您的宝贵意见。所有回答将被完全保密。请在您认为的选项内打“x”或“_”上写上相应的答案。您的回答将为本研究提供重要参考! 如果留下邮箱本课题组将反馈调研结果并提供所编写的海员权利保护手册一份, 非常感谢您的协助与支持!

一、关于《2006年海事劳工公约》 *About the MLC 2006*

- 您对《2006年海事劳工公约》的熟悉程度如何? How do you know about the MLC 2006?
(a) 十分熟悉 very much; (b) 基本了解 basically; (c) 略有了解 a little;
(d) 完全不了解 not at all
- 您通过什么方式了解到《2006年海事劳工公约》? By which means did you first know about the MLC 2006?
(a) 公司培训 company training; (b) 同事或朋友 colleagues and friends;
(c) 海员工会 trade union; (d) 海事局 MSA; (e) 其他 other _____
- 您认为《2006年海事劳工公约》能对中国海员权利产生什么样的影响? How do you think the impact of MLC 2006 on Chinese seafarers' rights?
(a) 非常大的影响 significantly; (b) 一般影响 slightly; (c) 影响非常有限 very limited impact; (d) 几乎没有影响 no impact
- 您认为中国政府是否应该批准《2006年海事劳工公约》? Do you think that China should ratify the MLC 2006
(a) 应该立刻批准 immediately; (b) 待条件成熟后批准 not ready to ratify;
(c) 无所谓 doesn't matter; (d) 反对批准 objection
- 您是否愿意给出问题4选择的原因是 what is the reason for answer to question 4? _____
- 您认为《2006年海事劳工公约》是否对我国航运政策产生影响? How do you think the impact of the MLC 2006 on Chinese maritime policy?
(a) 非常大的影响 significantly; (b) 一般影响 slightly; (c) 影响非常有限 very limited impact; (d) 几乎没有影响 no impact
- 您认为我国批准公约后, 我国海事劳工标准是否能满足公约要求? How do you think whether the maritime labour standard in China can satisfy the requirements of MLC 2006?
(a) 满足或高于公约要求 completely; (b) 基本满足 basically; (c) 有较大差距 large gap; (d) 差距非常大 very large gap

- 您认为我国批准公约后， 海事管理和执行机关能否顺利执行公约标准?
How do you think whether maritime authority in China can enforce the MLC 2006 properly?
(a) 有非常大的难度 not possible; (b) 短期比较困难 huge difficult for the moment; (c) 基本满足要求 slight difficult; (d) 完全满足要求 no problem at all
- 您是否愿意给出问题8选择的原因是 what is the reason for answer to question 8_____
- 您最关心的是《2006年海事劳工公约》的哪一部分? Which part of MLC 2006 do you care about most?
(a) 服务合同 SEA; (b) 工资 wages; (c) 福利及社会保障 welfare and social security; (d) 海员遣返 repatriation; (e) 其他 other_____
- 您是否认为所在公司已经采取积极措施来实施《2006年海事劳工公约》? Whether you company have taken proper measures to enforce the MLC 2006?
(a) 已采取积极措施 enough measures; (b) 采取有限措施 limited measures; (c) 反应比较消极 negative response; (d) 反应非常消极 very negative response
- 您是否认为公约生效后，船东提供给中国海员的综合待遇有所变化? How do you think the improvement of Chinese seafarers' treatment because of the MLC 2006?
(a) 有显著提高 significant; (b) 有所提高 limited improvement; (c) 没有变化 no change; (d) 有所下降 negative impact; (e) 无法判断 cannot tell
- 您是否认为公约生效后，反而对中国海员有不利影响? Do you think there is negative impact of the MLC 2006 on Chinese seafarers?
(a) 没有不利影响 no negative impact; (b) 利大于弊 do more good than harm; (c) 弊大于利 do more harm than good
- 您认为若有不利影响，其原因是 what is the reason for answer to question 13_____

(二) 海员职业特点 Characteristics of Seafaring Profession

- 您认为海员在我国是否具有良好及应得的社会地位? How do you think seafarers' social status in China?
(a) 社会地位很高 very high; (b) 社会地位一般 very normal; (c) 社会地位偏低 slightly low; (d) 社会地位非常低 very low
- 您认为近年来我国海员的社会地位是否有变化? How do you think the change of Chinese seafarers' social status in recent years?
(a) 有显著提高 significantly improve; (b) 有缓慢提高 slightly improve; (c) 没有变化 no change; (d) 缓慢下降 slightly decline; (e) 显著下降 significantly decline
- 您认为海员社会地位与下述那个因素关系比较大? Which factor do you think significantly affect Chinese seafarers' social status?
(a) 收入水平 income; (b) 权利保护 right protection; (c) 社会认可 recognition of contribution; (d) 享有社会资源 access to public resources; (e) 以上都是 all above

- 您认为海员职业最显著的特殊性是什么? What is the unique characteristics of seafaring profession?
(a) 高风险 dangerous; (b) 辛苦 laborious; (c) 与家人分离 separation with family; (d) 封闭 isolation; (e) 其他 other features
- 与陆上很多职业相比, 您如何看待海员所做的社会贡献? How do you think the contribution of seafarers?
(a) 非常特殊, 不可替代 very unique and irreplaceable; (b) 很大贡献 significant contribution; (c) 一般贡献 normal contribution; (d) 没有特殊性 nothing special

(三) 海员权利及其保障 Seafarer Protection in China

- 您认为与陆上很多职业相比, 海员是否需要特殊保护? Do you think that seafarers need special protection compared with land-based workers?
(a) 非常有必要 very much; (b) 有必要 necessary; (c) 很难说 difficult to say; (d) 完全没有必要 not necessary at all
- 如果需要特殊保护, 您所认为的原因是 what is the reason for answer to question 20
- 您是否在工作中经历权利被侵害的情形? Do you have any experience that your rights were violated?
- 从来没有 never; (b) 1–3次; (c) 3–5次; (d) 5–10次; (e) 10次以上 above
- 如果权利被侵害时, 您的解决途径一般是? What would you do when you found that your rights were violated?
(a) 忍气吞声 do nothing; (b) 工会申诉 rely on trade union; (c) 诉讼 legal procedures; (d) 仲裁 arbitration; (e) 伺机报复 revenge when there is opportunity
- 您认为我国目前的法律体系, 是否给予海员充分的保护与保障? Do you think there is sufficient protection for seafarers in Chinese legal system?
(a) 非常充分 very sufficient; (b) 一般充分 sufficient; (c) 不充分 not sufficient; (d) 非常不充分 far from sufficient
- 您认为在实践中, 中国海员权利是否给予充分的尊重和保护? Do you think there is sufficient protection for seafarers in practice?
(a) 非常充分 very sufficient; (b) 一般充分 sufficient; (c) 不充分 not sufficient; (d) 非常不充分 far from sufficient
- 您认为我国是否有紧迫需要制定《船员法》? Do you think there is urgent need to enact seafarer law in China?
(a) 非常紧迫 very urgent; (b) 一般紧迫 slight urgent; (c) 不紧迫 not urgent; (d) 可有可无 unnecessary to have that
- 您认为制定《船员法》是否能改善我国海员权利现状? Do you think to enact Chinese seafarer law can improve seafarer protection in China?
(a) 非常有必要 very likely; (b) 比较重要 likely; (c) 一般重要 not likely; (d) 用处不大 it is not useful

(四) 被访者简要背景 **Background of Respondent**

- 年龄 age: (a) 21–30; (b) 31–40; (c) 41–50; (d) 51–60; (e) 61 及以上 above
- 婚否 marriage status: (a) 未婚 single; (b) 已婚 married
- 学历 education: (a) 中专及以下 secondary school; (b) 大专 college; (c) 本科 undergraduate; (d) 硕士及以上 master and above
- 海龄 sea experience: (a) 1–5年; (b) 5–10年; (c) 10–15年; (d) 15–20年; (e) 20及以上 20 and above
- 证书类别 certification: (a) 国内 national trade; (b) 沿海 coastal trade; (c) 远洋三千总吨以下 ocean-going below 3000 dwt; (d) 远洋三千总吨以上 ocean-going above 3000dwt
- 籍贯来源 place of birth: _____
- 工作职务 rank on board: _____
- 登记机关 registration MSA: _____ 海事局
- 您是否有其他希望发表的意见
any other comments _____
- 电子邮件 contact information: _____

Appendix C: Questionnaire B

关于《海事劳工公约》的问卷调查(机构适用,共2页) *for Institutions*

尊敬的女士/先生, 您好!

我是格林尼治大学的研究人员,我们正在做关于《海事劳工公约》的研究,想问您几个问题并了解您的宝贵意见。所有回答将被完全保密。请在您认为的选项内打“x”或“__”上写上相应的答案。您的回答将为本研究提供重要参考!如果留下邮箱本课题组将反馈调研结果及研究报告,非常感谢您的协助与支持!

一、关于《2006年海事劳工公约》 **About the MLC 2006**

- 您对《2006年海事劳工公约》的熟悉程度如何? How do you know about the MLC 2006?
 - (a) 十分熟悉 very much; (b) 基本了解 basically; (c) 略有了解 a little; (d) 完全不了解 not at all
- 贵单位是否组织过《2006年海事劳工公约》的学习培训? Have you ever attended any training regarding the MLC 2006?
 - (a) 经常组织 always; (b) 偶尔组织 once a while; (c) 从不组织 never; (d) 没有兴趣 no interest

- 您认为《2006年海事劳工公约》是否会增加航运公司运营成本? How do you think the matter that the MLC 2006 will improve the operation cost of shipping companies?
(a) 大幅增加 significantly; (b) 略有增加 slightly; (c) 增加非常有限 very limited impact; (d) 几乎没有影响 no impact
- 您认为《2006年海事劳工公约》能对中国海员权利产生什么样的影响? How do you think the impact of MLC 2006 on Chinese seafarers' rights?
(a) 非常大 significantly; (b) 一般影响 slightly; (c) 影响非常有限 very limited impact; (d) 几乎没有影响 no impact
- 您认为中国政府是否应该批准《2006年海事劳工公约》? Do you think that China should ratify the MLC 2006?
(a) 应该立刻批准 immediately; (b) 待条件成熟后批准 not ready to ratify; (c) 无所谓 doesn't matter; (d) 反对批准 objection
- 您是否愿意给出问题5选择的原因是 what is the reason for answer to question 5?

- 您认为《2006年海事劳工公约》是否对我国航运政策产生影响? How do you think the impact of the MLC 2006 on Chinese maritime policy?
(a) 非常大 significantly; (b) 一般影响 slightly; (c) 影响非常有限 very limited impact; (d) 几乎没有影响 no impact
- 您认为我国批准公约后,我国海事劳工标准是否能满足公约要求? How do you think whether the maritime labour standard in China can satisfy the requirements of MLC 2006?
(a) 满足或高于公约要求 completely; (b) 基本满足要求 basically; (c) 有较大差距 large gap; (d) 差距非常大 very large gap
- 您认为我国批准公约后,海事管理和执行机关能否顺利执行公约标准? How do you think whether maritime authority in China can enforce the MLC 2006 properly?
(a) 有非常大的难度 not possible; (b) 短期比较困难 huge difficult; (c) 基本满足要求 slight difficult; (d) 完全满足要求 no problem
- 您是否愿意给出问题9选择的原因是 what is the reason for answer to question 9?

- 您最关心的是《2006年海事劳工公约》的哪一部分? Which part of MLC 2006 do you care about most? (a) 服务合同 SEA; (b) 工资 Wages; (c) 福利及社会保障 welfare and social security; (d) 海员遣返 repatriation; (e) 其他 other issues

- 您是否认为贵公司已经采取积极措施来实施《2006年海事劳工公约》? Whether you company have taken proper measures to enforce the MLC 2006?
(a) 已采取积极措施 enough measures; (b) 采取有限措施 limited measures; (c) 反应比较消极 negative response; (d) 反应非常消极 very negative response
- 您是否认为公约生效后,船东提供给中国海员的综合待遇有所变化? How do you think the improvement of Chinese seafarers' treatment because of the MLC 2006?
(a) 有显著提高 significant; (b) 有所提高 limited improvement; (c) 没有变化 no change; (d) 有所下降 negative impact; (e) 无法判断 cannot tell

- 您是否认为公约生效后, 反对中国海员有不利影响? Do you think there is negative impact of the MLC 2006 on Chinese seafarers?
- (a) 没有不利影响 no negative impact; (b) 利大于弊 do more good than harm; (c) 弊大于利 do more harm than good
- 您认为若有不利影响, 其原因是 what is the reason for answer to question 14?_____

(二) 海员职业特点 **Characteristics of Seafaring Profession**

- 您认为海员在我国是否具有良好及应得的社会地位? How do you think seafarers' social status in China?
 - (a) 社会地位很高 very high; (b) 社会地位一般 very normal; (c) 社会地位偏低 slightly low; (d) 社会地位非常低 very low
- 您认为近年来我国海员的社会地位是否有变化? How do you think the change of Chinese seafarers' social status in recent years?
 - (a) 有显著提高 significantly improve; (b) 有缓慢提高 slightly improve; (c) 没有变化 no change; (d) 缓慢下降 slightly decline; (e) 显著下降 significantly decline
- 您认为海员社会地位与下述那个因素关系比较大? Which factor do you think significantly affect Chinese seafarers' social status?
 - (a) 收入水平 income; (b) 权利保护 right protection; (c) 社会认可 recognition of contribution; (d) 享有社会资源 access to public resources; (e) 以上都是 all above
- 您认为海员职业最显著的特殊性是什么? What is the unique characteristics of seafaring profession?
 - (a) 高风险 dangerous; (b) 辛苦 laborious; (c) 与家人分离 separation with family; (d) 封闭 isolation; (e) 其他 other features_____
- 与陆上很多职业相比, 您如何看待海员所做出的社会贡献? How do you think the contribution of seafarers?
 - (a) 非常特殊, 不可替代 very unique and irreplaceable; (b) 很大贡献 significant contribution; (c) 一般贡献 normal contribution; (d) 没有特殊性 nothing special

(三) 海员权利及其保障 **Seafarer Protection in China**

- 您认为与陆上很多职业相比, 海员是否需要特殊保护? Do you think that seafarers need special protection compared with land-based workers?
 - (a) 非常有必要 very much; (b) 有必要 necessary; (c) 很难说 difficult to say; (d) 完全没有必要 not necessary
- 如果需要特殊保护, 您所认为的原因是 what is the reason for answer to question 21?_____

- 您认为我国目前的法律体系，是否给予海员充分的保护与保障？ Do you think there is sufficient protection for seafarers in Chinese legal system?
(a) 非常充分 very sufficient; (b) 一般充分 sufficient; (c) 不充分 not sufficient; (d) 非常不充分 far from sufficient
- 您认为在实践中，中国海员权利是否给予充分的尊重和保护？ Do you think there is sufficient protection for seafarers in practice?
(a) 非常充分 very sufficient; (b) 一般充分 sufficient; (c) 不充分 not sufficient; (d) 非常不充分 far from sufficient
- 您认为我国是否有紧迫需要制定《船员法》？ Do you think there is urgent need to enact seafarer law in China?
(a) 非常紧迫 very urgent; (b) 一般紧迫 slight urgent; (c) 不紧迫 not urgent; (d) 可有可无 unnecessary to have that
- 您认为制定《船员法》是否能改善我国海员权利现状？ Do you think to enact Chinese seafarer law can improve seafarer protection in China?
(a) 非常有可能 very likely; (b) 一般可能 likely; (c) 不太可能 not likely; (d) 用处不大 it is not useful

(四) 被访单位简要背景 **Background of Respondent**

- 贵单位的性质是 Your background 1: (a) 政府机构 government department; (b) 事业单位 public institution; (c) 国企公司 state-owned company; (d) 民营公司 private company; (e) 合资公司 joint-venture company; (f) 外资公司代表处 representative office of foreign company; (g) 其他 other _____
- 贵单位的所属角色是 Your background 2: (a) 海事局 MSA; (b) 船东 shipowner; (c) 海员劳务代理 manning agency; (d) 船舶管理公司 ship management company; (e) 海员工会 trade union; (f) 海员教育培训 Maritime education and training institution; (g) 其他 other _____
- 贵公司(如适用)规模，服务海员人数 How many seafarers in management:
(a) 50人以下 below 50; (b) 51–100人; (c) 10–200人; (d) 201–1000人; (e) 1000人以上 above 1000
- 贵公司(如适用)规模，岸上管理人员人数 How many staff in management: (a) 5人以下 below 5; (b) 6–10人; (c) 11–20人; (d) 21–50人; (e) 50人以上 above 50
- 您在贵单位的工作职务 Your role in your company: _____
- 您是否有其他希望发表的意见
any other comments _____
- 电子邮件 contact information: _____