

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

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